

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Parts 2, 9, 10, 204 and 206**

RIN 3067-AD24

**Disaster Assistance; Fire Management  
Assistance Grant Program****AGENCY:** Federal Emergency  
Management Agency.**ACTION:** Final rule.

**SUMMARY:** This rule implements section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended by the Disaster Mitigation Act of 2000, and provides overall program guidance on the operation and administration of the Fire Management Assistance Grant Program.

**DATES:** This rule is effective October 30, 2001.

*Applicability Date:* The rule applies for fires declared on or after October 30, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On August 1, 2001, at 66 FR 39715, we published a proposed rule for the Fire Management Assistance Grant Program in the **Federal Register**. After careful consideration of the comments received in response to the proposed rule, we are publishing this final rule to implement the Fire Management Assistance Grant Program as directed by the Disaster Mitigation Act of 2000, Pub. L. 106-390. The Disaster Mitigation Act of 2000 established a new program under Section 420 of the Stafford Act, 42 U.S.C. 5187—the Fire Management Assistance Grant Program. By statute, the Fire Management Assistance Grant Program is to be implemented on October 30, 2001, one year from enactment of the Disaster Mitigation Act of 2000. Once implemented, the Fire Management Assistance Grant Program replaces the Fire Suppression Assistance Program currently authorized under Section 420 of the Stafford Act.

We received comments from 12 State emergency managers and foresters on the proposed rule for the Fire Management Assistance Grant Program. The majority of comments addressed our proposals for a fire cost threshold, including the possibility of establishing a cumulative fire cost threshold; a State

operations plan; and pre-positioning. Other comments received addressed the 90 percent cost-share, the ineligibility of regular time for permanently employed personnel, the definition of the Wildland/Urban Interface, and the payment and role of the Principal Advisor.

**Fire Cost Threshold**

A majority of commenters, 11 of 12, expressed concern with the calculation and application of the individual fire cost threshold. In particular commenters objected to the individual fire cost threshold being applied to each and every declared fire, and expressed support for a cumulative fire cost threshold which would recognize numerous smaller fires burning throughout a State.

As presented in the proposed rule, the individual fire cost threshold is based on a calculation of five percent  $\times$  \$1.04<sup>1</sup>  $\times$  the State population, or \$100,000, whichever is higher. Almost all the 11 commenters indicated that this individual fire cost threshold is too high a threshold and would penalize States nationwide, regardless of population, if applied to every declared fire.

One goal in developing the Fire Management Assistance Grant Program was to ensure as much consistency as possible with the Public Assistance Program, which is also designed to provide assistance to State and local governments. In evaluating a State's request for public assistance under a Presidential major disaster, the \$1.07 per capita of the State population is used as a financial indicator that a disaster is of such a size and magnitude that it may be beyond State and local resources and capabilities to respond and Federal assistance may be warranted. Similarly, in evaluating a State's initial grant application under a fire management assistance declaration, five percent of \$1.07 per capita statewide will be used as a financial indicator that a declared fire was of such a size and magnitude that it was beyond State and local resources and capabilities to respond and that Federal assistance is warranted.

Although we feel that the individual fire cost threshold published in the

proposed rule is reasonable and justified and will help serve as a means of ensuring that Federal assistance remains supplemental to State and local capabilities, in response to these comments, we have included a calculation for a cumulative fire cost threshold, while retaining the individual fire cost threshold in the final rule (§ 204.51).

To meet the cumulative fire cost threshold, the total costs of all declared and non-declared fires for which a State assumes responsibility in a given calendar year must meet the threshold. The cumulative fire cost threshold will be 3x the individual fire cost threshold presented in the proposed rule or \$500,000, whichever is higher. Assistance will only be provided for the declared fire responsible for meeting or exceeding the cumulative fire cost threshold and any future declared fires for that calendar year. Any previously declared fires during the calendar year which failed to meet the individual fire cost threshold and did not trigger the cumulative fire cost threshold will be ineligible for any assistance under the Fire Management Assistance Grant Program. The cumulative fire cost threshold does not replace the individual fire cost threshold, but is an alternative threshold created to ensure the fullest level of assistance is provided to States when fires are of a such magnitude and severity as would constitute a major disaster.

The fire cost threshold concept is new and untested. We will therefore, closely monitor its implementation to assure that it facilitates the fair and consistent distribution of assistance under the new program, as intended. Should significant weaknesses or inequities surface, we will correct them with a rule change as appropriate.

**Operations Plan**

Seven commenters provided us with input regarding the State Operations Plan for the Fire Management Assistance Program. Most commenters agreed that the Operations Plan is a good concept, but expressed concern with the developmental requirements of the plan as well as the role the plan would have in the declaration and grants management processes.

In particular, many commenters expressed concern that FEMA would interpret the Operations Plans differently than States intended, and that the information to be collated in the Operations Plan is too restrictive if the purpose of the plan is to assist us in evaluating State requests for fire management assistance declarations. Commenters also disagreed with the

<sup>1</sup> On October 9, 2001, a Notice of Adjustment of Statewide Per Capita Impact Indicator was published. In the notice, the Statewide per capita was increased from \$1.04 to \$1.07. This increase was based on an increase in the Consumer Price Index for All Urban Consumers of 2.7 percent for the 12-month period ending in August 2001. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2001. The final rule for the Fire Management Assistance Grant uses \$1.07. This figure will be adjusted annually.

requirement prohibiting States from submitting an Operations Plan that reduced or lowered capabilities and resources from prior year levels. These commenters cited budgetary limitations and legislative decisions that may reduce funding levels from previous years, and asked us to reconsider this requirement.

Based upon these comments, it appears to us that the Operations Plan has exceeded the scope we had initially intended and has become unduly burdensome. From a time and resources perspective to a planning and implementation perspective, the Operations Plan no longer seems to be an appropriate tool for the Fire Management Assistance Grant Program. Additionally, we believe that, to the extent that the Operations Plan may have helped indicate State capability, the fire cost threshold will adequately ensure that federal funding remains supplemental to State and local capabilities and resources. Therefore, we have decided to eliminate the Operations Plan from the final rule.

In the final rule, however, we have ensured that certain information, which we had proposed would be included in the Operations Plan, will still be available to us through other provisions. A State will identify its legislative authorities for firefighting and its compliance with the laws and provisions applicable to the Fire Management Assistance Grant Program in the FEMA-State Agreement for the Fire Management Assistance Grant Program. A State also will still be required to develop and submit a Hazard Mitigation Plan and a State Administrative Plan to the Regional Director for approval. A State can always provide the mobilization plan, as well as staffing and resource and jurisdictional information from the State Fire Plan, should it be appropriate.

#### Pre-positioning

Seven commenters opposed our proposal on pre-positioning. Specifically, commenters indicated that pre-positioning only Federal resources for an initial two-week period is shortsighted. Many commenters supported the inclusion of out-of-State and compact resources in the two-week period, while others not only supported these additional resources, but also the use of in-State and local resources.

Commenters also asked us to define what was considered to be an "extraordinary fire event," for which States could possibly be eligible to receive funding for pre-positioned resources for up to 30 days. Many commenters pointed out that typically

whenever a State requests Federal assistance something "extraordinary" has occurred. A few commenters suggested that rather than separating pre-positioning into finite periods of time which must be directly associated with a declared fire (an initial period of up to 2 weeks, with a maximum of up to 30 days), that we base eligibility on the severity of conditions existing that would be conducive to a catastrophic fire happening if resources were not available for immediate response.

As a result of these comments, in the final rule costs for the pre-positioning of Federal, out-of-State (including compact), and international resources may be eligible for pre-positioning, but only for the period, up to a maximum of 21 days before the declared fire, that the State can demonstrate such pre-positioning was warranted based on recognized scientific indicators. These indicators include, but are not limited to drought indices, short-term weather forecasts, the current number of fires burning in the State, and the availability of in-state firefighting resources, and may also include other quantitative indicators with which to measure the increased risk of the threat of a major disaster.

The Regional Director will determine the number of days of pre-positioning to be approved for Federal funding, up to a maximum of 21 days before the declared fire. All eligible pre-positioning will still need to be directly associated with a declared fire to be eligible since Section 420 is very clear that all assistance authorized must be for the "mitigation, management, and control of any fire on public or private forestland or grassland that threatens such destruction as would constitute a major disaster." (Emphasis added).

#### Cost Share

Four commenters provided input on the cost share. All four commenters welcomed streamlining the cost-share to 75 percent Federal, 25 percent non-Federal. The commenters revealed, however, that the possibility of receiving a 90 percent cost-share was more confusing than helpful and added an element of complexity not keeping with the original intent of a simple formula of 75 percent Federal cost-share for all declared fires.

Based on these comments and the fact that the 90 percent Federal cost-share would be used infrequently, we have decided to eliminate the 90 percent Federal cost-share in the final rule.

#### Grants Management

Four commenters wrote to provide us with suggestions to improve our grants

management process. Most of the discussion was focused on our requirement that the Standard Form (SF) 424 (Request for Federal Assistance) document actual costs. Commenters, citing the application process for other Stafford Act disaster assistance programs, such as the Public Assistance Program, suggested that the SF 424 be submitted based on estimated costs. As actual costs are received, the SF 424 then can be amended to reflect any adjustments. Commenters also provided a myriad of other changes we could implement to overhaul our grants management process. The proposed changes included using forms other than the FEMA forms listed, and instituting new deadlines for submittal of these forms and the completion of the grants management process.

Generally, costs under the Fire Management Assistance Grant Program will be submitted after all eligible work has been completed and will be documented on the SF 424 as non-construction costs; whereas costs under the Public Assistance Program are submitted before eligible work has begun and are documented on the SF 424 primarily as construction costs.

Since eligible work under the Public Assistance Program can take several months to years to complete and is a longer-term process in which we provide progress payments as work is completed, it is not uncommon for the SF 424 to be submitted by the Grantee based on the estimated costs of the disaster. For the purposes of the Fire Management Assistance Grant Program, however, all eligible work should be completed no later than 30 days after the close of the incident period for a declared fire. Due to the short-term, non-construction nature of the work performed and costs incurred, we do not see the need to base approval of the initial grant award on estimated costs. Therefore, under the Fire Management Assistance Grant Program, we will continue to approve the initial grant application based on actual costs. Once a State has documented that its actual costs meet the fire cost threshold, we may approve the initial grant award and the State may submit amendments to the grant award as necessary.

Based on our consultation with our Financial and Acquisition Management Division, as well as our Regional program staff, no changes will be made to our grants management process at this time. We appreciate the comments received and will be closely monitoring the grants management process under the Fire Management Assistance Program once the program takes effect on October 30, 2001.

### Regular Time

Three commenters expressed concern that regular-time for permanently employed personnel is ineligible under the Fire Management Assistance Grant Program. These three commenters explained that there are real costs to States when permanently employed personnel are deployed in support of firefighting efforts. We understand that there are real costs to the State; however, the regular time salaries of permanently employed personnel, including those reassigned to the fire line, would still be incurred in the absence of a fire management assistance declaration. In addition, this approach is consistent with our practice in the Public Assistance Program. Therefore, regular time for permanently employed personnel will remain ineligible in the final rule.

### Definition of Wildland/Urban Interface

Three commenters suggested an alternative definition for wildland/urban interface. The three commenters suggested that we use the definition of wildland/urban interface contained in the publication *Fire in the West, the Wildland Urban Interface Problem*. While a very thorough definition of wildland/urban interface, our discussions with the National Fire Protection Association and the Forest Service, United States Department of Agriculture, have led us to believe that this definition is by no means the definitive or nationally accepted definition of wildland/urban interface. Since we do not mention the wildland/urban interface anywhere in the final regulations, we are deleting it from the definitions section of the final rule (§ 204.3).

### Payment of the Principal Advisor

Three commenters asked why we pay for the Principal Advisor east of the Mississippi, but not west of the Mississippi. In 1996, we were advised by the Forest Service, USDA, that Principal Advisors west of the Mississippi do not require any reimbursement, while Principal Advisors east of the Mississippi require reimbursement beyond regularly scheduled hours. We have operated under this guidance ever since. Since this is a Federal policy, we have decided to delete this section from the final rule.

### Role of the Principal Advisor

The commenters who questioned our payment for the Principal Advisor also questioned the role of the Principal Advisor and indicated that the role was not made clear in the proposed rule. We

feel that the role was clear in the proposed rule. We rely on the Principal Advisor to provide us with technical assistance in gathering the appropriate information to help us assess the potential threat posed by a fire or fire complex. Although we will not be providing any additional clarification in the final rule on the role of the Principal Advisor, we may consider doing so in related guidance materials still to be developed for the Fire Management Assistance Grant Program.

### Criteria

Two commenters discussed “the potential impact on environmental and historic/cultural resources” declaration criterion. One commenter suggested that we rethink the inclusion of this criterion since these resources are not eligible for assistance under the Fire Management Assistance Grant Program. Another commenter applauded the inclusion of this criterion in our overall evaluation criteria. Although it was our intent to recognize these resources and acknowledge them as important, we recognize that it is not appropriate to include this criterion in the content of the final rule. Therefore, this criterion has been removed from the final rule.

### Other Comments

We received various individual comments addressing demolition of damaged facilities and removal of demolition debris under Section 403, soil restoration/reseeding efforts under repair of firefighting damage, unreasonableness of the requirement to develop a hazard mitigation plan, and delegation of declaration authority to the Regional Director. While the discussions were thoughtful, and we understand the rationale for their proposal, we do not agree with these comments and have not made any changes in the final regulations to reflect these suggestions.

We have made several changes to the proposed rule intended to improve the overall operation of the Fire Management Assistance Grant Program and the delivery of assistance under the program. These changes include the adoption of a cumulative fire cost threshold, the elimination of the State Operations Plan, the modification of our proposal for pre-positioning, and the elimination of a 90 percent Federal cost-share.

This final rule also contains a new provision, § 206.42(d), that was not in the proposed rule. The section reiterates the statutory provision concerning recovery of assistance for intentional acts contained in 42 U.S.C 5160.

### National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(xix).

### Regulatory Planning and Review

We have formally submitted this rule to OMB for review. This rule, however, is not economically significant under Executive Order 12866, Regulatory Planning and Review, September 30, 1993; it would not have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy or State governments or communities. The rule sets out the administrative requirements for applying for and receiving Federal fire management assistance grants. Based on the history of the Fire Suppression Assistance Program currently authorized by Section 420 of the Stafford Act, and the components in this rule, we anticipate that the total of grants we provide annually will typically not exceed \$15 million, though in years with extraordinary fire conditions and activity, we could provide grants totaling over \$50 million. We do not anticipate providing over \$100 million annually. We have vetted thoroughly all proposed policy changes with the affected constituents.

### Regulatory Flexibility Act

We certify that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This rule deals with assistance to States and local governments to provide supplemental Federal assistance to fight fires burning on publicly or privately owned forest or grassland which threaten such destruction as would constitute a major disaster; it provides program guidance and outlines administrative requirements for the Fire Management Assistance Grant Program as they relate to States and local governments. We developed this rule in consultation with the States and we estimate that the cost impacts of the changes are neutral. Thus, we do not expect the final rule (1) to affect adversely the availability of funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. We have not prepared a regulatory flexibility statement.

*Paperwork Reduction Act*

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, we have submitted the collections of information applicable to this rule to the Office of Management and Budget for review and approval. OMB has reviewed and approved the information collections in this rule and assigned OMB control number 3067-0290.

During the comment period we solicited public comment on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of FEMA, including whether the information will have practical utility;

(2) Whether our estimate of the burden of the proposed collection of information is accurate, including the validity of the methodology and assumptions that we used;

(3) What we might do to enhance the quality, utility, and clarity of the information that we are to collect; and

(4) What other measures we can take to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, electronic submission of responses, or other technological collection techniques.

Following is a summary of how each form will be used:

(a) *FEMA-State Agreement*. We provide Federal assistance under section 420 of the Stafford Act and a FEMA-State Agreement for the Fire Management Assistance Grant Program. The Governor and the Regional Director sign the Agreement, which contains the necessary terms and conditions consistent with the provisions of applicable laws and Executive Orders, and specifies the type and extent of Federal assistance to be provided. Supplemental agreements may be

executed as necessary to update the agreement.

(b) *FEMA Form 90-58 Request for Fire Management Assistance* is used by the State to provide information to support the need for a declaration. Additional supporting information may be furnished by the State or requested by FEMA after the initial request has been received. Since the program will operate on a "real-time" incident basis, a request for a declaration must be submitted while a fire(s) is burning and uncontrolled. A State may request a declaration by telephone, promptly following up the conversation with the FEMA Form 90-58.

(c) *Standard Form 424 Request for Federal Assistance* must be completed by the State when applying for a grant under a declared fire. The 424 and accompanying documentation must be submitted by a State to FEMA's Regional Director within 9 months of declared fire. The 424 documents the incident period of the fire, the performance period of the grant, and all costs claimed under the approved declaration.

(d) *FEMA Form 90-91 Project Worksheet* is prepared by the Principal Advisor and FEMA and State staff working with the applicant. The PW is used to report on the costs incurred by applicant for mitigation, management, and control activities and is used by FEMA to reimburse applicants based on eligible costs as described in the proposed regulation for the Fire Management Assistance Program.

(e) A State *Administrative Plan* must be developed by the State for the administration of the fire management assistance grant. The plan must designate the State agency that has responsibility for program administration and ensure State compliance with the provisions of law and regulation applicable to fire management assistance grants.

(f) *FEMA Form 20-10, Financial Status Report*, is used by the State in its final reporting of costs under the Fire Management Assistance Grant Program.

(g) *Standard Form 270, Request for Advance or Reimbursement*, is used by the State as an option to receive funds. The other option is use of FEMA's Letter of Credit procedures.

(h) *Operations Plan*, Based on comments received regarding the use of the Operations Plan, we have eliminated the requirement from the final rule.

(i) *Hazard Mitigation Plan*. A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce long-term benefits. We address mitigation of fire hazards as part of the State's comprehensive Hazard Mitigation Plan, described in 44 CFR subpart M.

(j) *Appeals*. When a State's request for a fire management assistance declaration is denied, the Governor of a State or Governor's Authorized Representative may appeal the decision in writing. Likewise, applicants may appeal any cost or eligibility determination under an approved declaration. Appeals usually consist of a letter briefly describing the reason for the appeal and any new supporting documentation the State or applicant submits to FEMA for review.

(k) *Duplication of Benefits*. Applicants are required to notify FEMA of all benefits, actual or anticipated, received from other sources for the same loss for which they are applying to FEMA for assistance. Notification can be accomplished in a letter, accompanied by supporting documentation.

The estimated hour burden is:

Burden item	Hours per respondent	Respondents per year	Burden hours per year (in hours)	Comments
FEMA-State Agreement ....	5 minutes .....	9	1	We estimate 5 minutes for the Governor to sign this agreement which has the terms and conditions for the Fire Management Assistance Grant Program (FMAGP) .
FEMA Form 90-58 .....	1 hour .....	9	9	States use this form to support their request for a declaration.
Standard Form 424 .....	1 hour .....	9	9	The State must complete this form and attachments when applying for a grant under a declared fire.
FEMA Form 90-91 .....	30 minutes .....	1,000	500	Prepared by the Principal Advisor, FEMA and State staff, and the applicant This form documents the costs incurred by an applicant for mitigation, management, and control activities associated with a declared fire and to reimburse applicants based on eligible costs described in the proposed regulations for the FMAGP.

Burden item	Hours per respondent	Respondents per year	Burden hours per year (in hours)	Comments
FEMA Form 20-10 .....	1 hour .....	9	9	The State uses this to submit a final reporting of costs for a fire management assistance grant (FMAG).
Standard Form 270 or Letter of Credit.	30 minutes .....	9	5	The State uses this form as an option to receive funds. The other option is use of FEMA's Letter of Credit procedures
State Administrative Plan ..	8 hour .....	9	72	The State must develop this plan for administration of the FMAG.
State Hazard Mitigation Plan.	160 .....	9	1440	A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The State Hazard Mitigation Plan is to identify wildfire hazards and to implement actions that produce continual benefits and have a long-term impact. Mitigation of fire hazards are part of the State's comprehensive Hazard Mitigation Plan, 44 CFR Part 206, Subpart M.
Appeals .....	1 hour .....	20	20	Appeals usually consist of a letter briefly describing the reason for the appeal and any new supporting evidence for review.
Duplication of Benefits .....	1 hour .....	20	20	Notification consists of a letter and supporting documentation.
<b>Total Burden Hours ...</b>	.....	.....	<b>2,085</b>	

For the purposes of this rule we estimate the following annual cost burdens:

Requests from:	Number requests	Est'd hours/requester	Cost/hour	Costs/year
States .....	9	172	\$40	\$61,812
Local Governments .....	1,000	0.52	20	10,400
<b>Totals Costs/Year .....</b>	.....	.....	.....	<b>\$80,240</b>

*Executive Order 13132, Federalism*

This rule involves no policies that have federalism implications under Executive Order 13132, Federalism, dated August 4, 1999. The rule establishes the administrative requirements for the Fire Management Assistance Grant Program in applying for and receiving Federal grants. It involves no preemption of State law nor does it limit State policymaking discretion. Nevertheless, in the course of designing the Fire Management Assistance Grant Program, we met with State emergency managers and foresters, and representatives from Tribal governments and the Forest Service, USDA, in January 2001 to gather input on the failings of the Fire Suppression Assistance Program and to see what steps we could take to improve the delivery of assistance under the Fire Management Assistance Grant Program. Based upon their input, we drafted this rule. Both FEMA and State concerns and the extent to which this rule meets those concerns are set out earlier in the preamble.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

We have reviewed the proposed rule under Executive Order 13175, which became effective on February 6, 2001. Under the Fire Management Assistance Grant Program, tribal governments will have the option to submit requests for fire management assistance declarations directly to us and to serve as "Grantee," carrying out "State" roles when a grant application under the declaration has been approved

In reviewing the rule, we find that the rule does not have "tribal implications" as defined in Executive Order 13175 because it will not have a substantial direct effect on one or more Indian tribal governments, on the relationship between the Federal Government and Indian tribal governments, or on the distribution of power and responsibilities between the Federal Government and Indian tribal governments. Moreover, the rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

**List of Subjects**

*44 CFR Part 2*

Administrative practice and procedure.

*44 CFR Part 9*

Flood Plains, Reporting and recordkeeping requirements.

*44 CFR Part 10*

Environmental impact statements.

*44 CFR Part 204*

Administrative practice and procedure, Fire management assistance, Grant programs-fire management, Reporting and recordkeeping requirements.

*44 CFR Part 206*

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR, chapter I as follows:

## PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 5 U.S.C. 552; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12127, 3 CFR, 1979 Comp., p. 376; E.O. 12148, as amended, 3 CFR, 1979 Comp., p. 412.

### § 2.81 [Amended]

2. In 44 CFR 2.81 amend the list of current OMB control numbers by inserting “204.....3067–0290” between “151 subpart B” and “205.33”.

## PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

3. Revise the authority for Part 9 to read as follows:

**Authority:** E.O. 11988 of May 24, 1977, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24 1977, 3 CFR, 1977 Comp. p. 121; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

### § 9.5 [Amended]

4. Revise 44 CFR 9.5 (c)(6), to read “Fire Management Assistance (Section 420).”

## PART 10—ENVIRONMENTAL CONSIDERATIONS

5. The authority for Part 10 continues to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E.O. 11991 of March 24, 1977, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of March 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148 of July 20, 1979, 44 FR 43239, 3 CFR, 1979 Comp., p. 412, as amended.

### § 10.8 [Amended]

6. Revise 44 CFR 10.8 (d)(2)(xix)(N) to read “Fire Management Assistance Grants.”

7. Add Part 204 to read as follows:

## PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

### Subpart A—General

Sec.

204.1 Purpose.

204.2 Scope.

204.3 Definitions used throughout this part.

204.4–204.20 [Reserved]

### Subpart B—Declaration Process

204.21 Fire management assistance declaration criteria.

204.22 Submitting a request for a fire management assistance declaration.

204.23 Processing a request for a fire management assistance declaration.

204.24 Determination on request for a fire management assistance declaration.

204.25 FEMA-State Agreement for Fire Management Assistance Grant Program.

204.26 Appeal of fire management assistance declaration denial.

204.27–204.40 [Reserved]

### Subpart C—Eligibility

204.41 Applicant eligibility.

204.42 Eligible costs.

204.43 Ineligible costs.

204.44–204.50 [Reserved]

### Subpart D—Grant Application Procedures

204.51 Application and approval procedures for a fire management assistance grant.

204.52 Application and approval procedures for a subgrant under a fire management assistance grant.

204.53 Certifying costs and payments.

204.54 Appeals.

204.55–204.60 [Reserved]

### Subpart E—Grant Administration

204.61 Cost share.

204.62 Duplication and recovery of assistance.

204.63 Allowable costs.

204.64 Reporting and audit requirements.

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

### Subpart A—General

#### § 204.1 Purpose.

This part provides information on the procedures for the declaration and grants management processes for the Fire Management Assistance Grant Program in accordance with the provisions of section 420 of the Stafford Act. This part also details applicant eligibility and the eligibility of costs to be considered under the program. We (FEMA) will actively work with State and Tribal emergency managers and foresters on the efficient delivery of fire management assistance as directed by this part.

#### § 204.2 Scope.

This part is intended for those individuals responsible for requesting declarations and administering grants under the Fire Management Assistance Grant Program, as well as those applying for assistance under the program.

### § 204.3 Definitions used throughout this part.

**Applicant.** A State or Indian tribal government submitting an application to us for a fire management assistance grant, or a State, local, or Indian tribal government submitting an application to the Grantee for a subgrant under an approved fire management assistance grant.

**Associate Director.** The Associate Director or Assistant Director, as applicable, of the Readiness, Response and Recovery Directorate of FEMA, or his/her designated representative.

**Declared fire.** An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, which the Associate Director has approved in response to a State's request for a fire management assistance declaration and in accordance with the criteria listed in § 204.21.

**Demobilization.** The process and procedures for deactivating, disassembling, and transporting back to their point of origin all resources that had been provided to respond to and support a declared fire.

**FEMA Form 90–91.** see Project Worksheet.

**Fire complex.** Two or more individual fires located in the same general area, which are assigned to a single Incident Commander.

**Governor's Authorized Representative (GAR).** The person empowered by the Governor to execute, on behalf of the State, all necessary documents for fire management assistance, including the request for a fire management assistance declaration.

**Grant.** An award of financial assistance, including cooperative agreements, by FEMA to an eligible Grantee. The grant award will be based on the projected amount of total eligible costs for which a State submits an application and that FEMA approves related to a declared fire.

**Grantee.** The Grantee is the government to which a grant is awarded which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State, as designated in the FEMA-State Agreement for the Fire Management Assistance Grant Program, is the Grantee. However, after a declaration, an Indian tribal government may choose to be a Grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as Grantee will assume the responsibilities of a “state”, as described in this Part, for the purpose of administering the grant.

*Hazard mitigation plan.* A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce long-term benefits. We address mitigation of fire hazards as part of the State's comprehensive Hazard Mitigation Plan, described in 44 CFR part 206, subpart M.

*Incident commander.* The ranking official responsible for overseeing the management of fire operations, planning, logistics, and finances of the field response.

*Incident period.* The time interval during which the declared fire occurs. The Regional Director, in consultation with the Governor's Authorized Representative and the Principal Advisor, will establish the incident period. Generally, costs must be incurred during the incident period to be considered eligible.

*Indian tribal government.* An Indian tribal government is any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Individual assistance.* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of part 206.

*Local government.* A local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribal government or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

*Mitigation, management, and control.* Those activities undertaken, generally during the incident period of a declared fire, to minimize immediate adverse effects and to manage and control the fire. Eligible activities may include associated emergency work and pre-positioning directly related to the declared fire.

*Mobilization.* The process and procedures used for activating, assembling, and transporting all resources that the Grantee requested to respond to support a declared fire.

*Performance Period.* The time interval designated in block 13 on the Application for Federal Assistance (Standard Form 424) for the Grantee and all subgrantees to submit eligible costs and have those costs processed, obligated, and closed out by FEMA.

*Pre-positioning.* Moving existing fire prevention or suppression resources from an area of lower fire danger to one of higher fire danger in anticipation of an increase in fire activity likely to constitute the threat of a major disaster.

*Principal advisor.* An individual appointed by the Forest Service, United States Department of Agriculture, or Bureau of Land Management, Department of the Interior, who is responsible for providing FEMA with a technical assessment of the fire or fire complex for which a State is requesting a fire management assistance declaration. The Principal Advisor also frequently participates with FEMA on other wildland fire initiatives.

*Project worksheet.* FEMA Form 90-91, which identifies actual costs incurred by eligible applicants as a result of the eligible firefighting activities.

*Public assistance.* Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations for eligible emergency measures and repair, restoration, and replacement of damaged facilities. For further information, see Subparts G and H of Part 206.

*Regional Director.* A director of a regional office of FEMA, or his/her designated representative.

*Request for Federal Assistance.* See Standard Form (SF) 424.

*Standard Form (SF) 424.* The SF 424 is the Request for Federal Assistance. This is the form the State submits to apply for a grant under a fire management assistance declaration.

*Subgrant.* An award of financial assistance under a grant by a Grantee to an eligible subgrantee.

*Subgrantee.* An applicant that is awarded a subgrant and is accountable

to the Grantee for the use of grant funding provided.

*Threat of a major disaster.* The potential impact of the fire or fire complex is of a severity and magnitude that would result in a presidential major disaster declaration for the Public Assistance Program, the Individual Assistance Program, or both.

*Uncontrolled fire.* Any fire not safely confined to predetermined control lines as established by firefighting resources.

*We, our, us* mean FEMA.

#### §§ 204.4-204.20 [Reserved]

### Subpart B—Declaration Process

#### § 204.21 Fire management assistance declaration criteria.

(a) *Determinations.* We will approve declarations for fire management assistance when the Associate Director determines that a fire or fire complex threatens such destruction as would constitute a major disaster.

(b) *Evaluation criteria.* We will evaluate the threat posed by a fire or fire complex based on consideration of the following specific criteria:

- (1) Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas;
- (2) Availability of State and local firefighting resources;
- (3) High fire danger conditions, as indicated by nationally accepted indices such as the National Fire Danger Ratings System;
- (4) Potential major economic impact.

#### § 204.22 Submitting a request for a fire management assistance declaration.

The Governor of a State, or the Governor's Authorized Representative (GAR), may submit a request for a fire management assistance declaration. The request must be submitted while the fire is burning uncontrolled and threatens such destruction as would constitute a major disaster. The request must be submitted to the Regional Director and should address the relevant criteria listed in § 204.21, with supporting documentation that contains factual data and professional estimates on the fire or fire complex. To ensure that we can process a State's request for a fire management assistance declaration as expeditiously as possible, the State should transmit the request by telephone, promptly followed by written documentation (FEMA Form 90-58).

#### § 204.23 Processing a request for a fire management assistance declaration.

(a) In processing a State's request for a fire management assistance

declaration, the Regional Director, in coordination with the Principal Advisor, will verify the information submitted in the State's request.

(b) The Regional Director will then forward the State's request to the Associate Director for determination along with the Principal Advisor's Assessment and the Regional Summary.

(1) *Principal Advisor's Assessment.* The Principal Advisor, at the request of the Regional Director, is responsible for providing us with a technical assessment of the fire or fire complex for which the State is requesting a fire management assistance declaration. The Principal Advisor may consult with State agencies, usually emergency management or forestry, as well as the Incident Commander, in order to provide us with an accurate assessment.

(2) *Regional summary and recommendation.* Upon obtaining all necessary information on the fire or fire complex from the State and the Principal Advisor, the Regional Director will provide the Associate Director with a summary and recommendation to accompany the State's request. The summary and recommendation should include a discussion of the threat of a major disaster.

**§ 204.24 Determination on request for a fire management assistance declaration.**

The Associate Director will review all information submitted in the State's request along with the Principal Advisor's assessment and Regional summary and render a determination. The determination will be based on the conditions of the fire or fire complex existing at the time of the State's request. When possible, the Associate Director will evaluate the request and make a determination within several hours. Once the Associate Director makes a determination, the Associate Director will promptly notify the Regional Director. The Regional Director will then inform the State of the determination.

**§ 204.25 FEMA–State agreement for fire management assistance grant program.**

(a) After a State's request for a fire management assistance declaration has been approved, the Governor and Regional Director will enter into a standing FEMA–State Agreement (the Agreement) for the declared fire and for future declared fires in that calendar year. The State must have a signed and up-to-date FEMA–State Agreement before receiving Federal funding for fire management assistance grants. FEMA will provide no funding absent a signed and up-to-date Agreement. An Indian tribal government serving as Grantee,

must sign a FEMA–Tribal Agreement, modeled upon the FEMA–State Agreement.

(b) The Agreement states the understandings, commitments, and conditions under which we will provide Federal assistance, including the cost share provision and articles of agreement necessary for the administration of grants approved under fire management assistance declarations. The Agreement must also identify the State legislative authority for firefighting, as well as the State's compliance with the laws, regulations, and other provisions applicable to the Fire Management Assistance Grant Program.

(c) For each subsequently declared fire within the calendar year, the parties must add a properly executed amendment, which defines the incident period and contains the official declaration number. Other amendments modifying the standing Agreement may be added throughout the year to reflect changes in the program or signatory parties.

**§ 204.26 Appeal of fire management assistance declaration denial.**

(a) *Submitting an appeal.* When we deny a State's request for a fire management assistance declaration, the Governor or GAR may appeal the decision in writing within 30 days after the date of the letter denying the request. The State should submit this one-time request for reconsideration in writing, with appropriate additional information, to the Associate Director through the Regional Director. The Associate Director will notify the State of his/her determination on the appeal, in writing, within 90 days of receipt of the appeal or the receipt of additional requested information.

(b) *Requesting a time-extension.* The Associate Director may extend the 30-day period provided that the Governor or the GAR submits a written request for such an extension within the 30-day period. The Associate Director will evaluate the need for an extension based on the reasons cited in the request and either approve or deny the request for an extension.

**§§ 204.27–204.40 [Reserved]**

**Subpart C—Eligibility**

**§ 204.41 Applicant eligibility.**

(a) The following entities are eligible to apply through a State Grantee for a subgrant under an approved fire management assistance grant:

- (1) State agencies;
- (2) Local governments; and
- (3) Indian tribal governments.

(b) Entities that are not eligible to apply for a subgrant as identified in (a), such as privately owned entities and volunteer firefighting organizations, may be reimbursed through a contract or compact with an eligible applicant for eligible costs associated with the fire or fire complex.

(c) Eligibility is contingent upon a finding that the Incident Commander or comparable State official requested the applying entity's resources.

(d) The activities performed must be the legal responsibility of the applying entity, required as the result of the declared fire, and located within the designated area.

**§ 204.42 Eligible costs.**

(a) *General.* (1) All eligible work and related costs must be associated with the incident period of a declared fire.

(2) Before obligating Federal funds the Regional Director must review and approve the initial grant application, along with Project Worksheets submitted with the application and any subsequent amendments to the application.

(3) Grantees will award Federal funds to subgrantees under State law and procedure and complying with 44 CFR part 13.

(b) *Equipment and supplies.* Eligible costs include:

(1) Personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety, including:

(2) Firefighting supplies, tools, materials, expended or lost, to the extent not covered by reasonable insurance, will be replaced with comparable items.

(3) Operation and maintenance costs of publicly owned, contracted, rented, or volunteer firefighting department equipment used in eligible firefighting activities to the extent any of these costs are not included in applicable equipment rates.

(4) Use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. (Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators may be eligible.)

(5) Repair of equipment damaged in firefighting activities to the extent not covered by reasonable insurance. We will use the lowest applicable equipment rates, or other rates that we determine, to calculate the eligible cost of repairs.

(6) Replacement of equipment lost or destroyed in firefighting activities, to the extent not covered by reasonable

insurance, will be replaced with comparable equipment.

(b) *Labor costs.* Eligible costs include:

(1) Overtime for permanent or reassigned State and local employees.

(2) Regular time and overtime for temporary and contract employees hired to perform fire-related activities.

(d) *Travel and per diem costs.* Eligible costs include:

(1) Travel and per diem of employees who are providing services directly associated with eligible fire-related activities may be eligible.

(2) Provision of field camps and meals when made available in place of per diem;

(e) *Pre-positioning Costs.* (1) The actual costs of pre-positioning Federal, out-of-State (including compact), and international resources for a limited period may be eligible when those resources are used in response to a declared fire.

(2) The Regional Director must approve all pre-positioning costs.

(i) Upon approval of a State's request for a fire management assistance declaration by the Associate Director, the State should immediately notify the Regional Director of its intention to seek funding for pre-positioning resources.

(ii) The State must document the number of pre-positioned resources to be funded and their respective locations throughout the State, estimate the cost of the pre-positioned resources that were used on the declared fire and the amount of time the resources were pre-positioned, and provide a detailed explanation of the need to fund the pre-positioned resources.

(iii) The State will base the detailed explanation on recognized scientific indicators, that include, but are not limited to, drought indices, short-term weather forecasts, the current number of fires burning in the State, and the availability of in-State firefighting resources. The State may also include other quantitative indicators with which to measure the increased risk of the threat of a major disaster.

(iv) Based on the information contained in the State's notification, the Regional Director will determine the number of days of pre-positioning to be approved for Federal funding, up to a maximum of 21 days before the fire declaration.

(3) Upon rendering his/her determination on pre-positioning costs, the Regional Director will notify the Associate Director of his/her determination.

(f) *Emergency work.* We may authorize the use of section 403 of the Stafford Act, Essential Assistance, under an approved fire management assistance

grant when directly related to the mitigation, management, and control of the declared fire. Essential assistance activities that may be eligible include, but are not limited to, police barricading and traffic control, extraordinary emergency operations center expenses, evacuations and sheltering, search and rescue, arson investigation teams, public information, and the limited removal of trees that pose a threat to the general public.

(g) *Temporary repair of damage caused by firefighting activities.*

Temporary repair of damage caused by eligible firefighting activities listed in this subpart involves short-term actions to repair damage directly caused by the firefighting effort or activities. This includes minimal repairs to bulldozer lines, camps, and staging areas to address safety concerns; as well as minimal repairs to facilities damaged by the firefighting activities such as fences, buildings, bridges, roads, etc. All temporary repair work must be completed within thirty days of the close of the incident period for the declared fire.

(h) *Mobilization and demobilization.* Costs for mobilization to, and demobilization from, a declared fire may be eligible for reimbursement. Demobilization may be claimed at a delayed date if deployment involved one or more declared fires. If resources are being used on more than one declared fire, mobilization and demobilization costs must be claimed against the first declared fire.

(i) *Fires on co-mingled Federal/State lands.* Reasonable costs for the mitigation, management, and control of a declared fire burning on co-mingled Federal and State land may be eligible in cases where the State has a responsibility for suppression activities under an agreement to perform such action on a non-reimbursable basis. (This provision is an exception to normal FEMA policy under the Stafford Act and is intended to accommodate only those rare instances that involve State firefighting on a Stafford Act section 420 fire incident involving co-mingled Federal/State and privately-owned forest or grassland.)

#### **§ 204.43 Ineligible costs.**

Costs not directly associated with the incident period are ineligible. Ineligible costs include the following:

(a) Costs incurred in the mitigation, management, and control of undeclared fires;

(b) Costs related to planning, pre-suppression (*i.e.*, cutting fire-breaks without the presence of an imminent threat, training, road widening, and

other similar activities), and recovery (*i.e.*, land rehabilitation activities, such as seeding, planting operations, and erosion control, or the salvage of timber and other materials, and restoration of facilities damaged by fire);

(c) Costs for the straight or regular time salaries and benefits of a subgrantee's permanently employed or reassigned personnel;

(d) Costs for mitigation, management, and control of a declared fire on co-mingled Federal land when such costs are reimbursable to the State by a Federal agency under another statute (See 44 CFR part 51);

(e) Fires fought on Federal land are generally the responsibility of the Federal Agency that owns or manages the land. Costs incurred while fighting fires on federally owned land are not eligible under the Fire Management Assistance Grant Program except as noted in § 204.42(i).

#### **§§ 204.44–204.50 [Reserved]**

### **Subpart D—Application Procedures**

#### **§ 204.51 Application and approval procedures for a fire management assistance grant.**

(a) *Preparing and submitting an application.* (1) After the approval of a fire management assistance declaration, the State may submit an application package for a grant to the Regional Director. The application package must include the SF 424 (Request for Federal Assistance) and FEMA Form 20-16a (Summary of Assurances—Non-construction Programs), as well as supporting documentation for the budget.

(2) The State should submit its grant application within 9 months of the declaration. Upon receipt of the written request from the State, the Regional Director may grant an extension for up to 3 months. The State's request must include a justification for the extension.

(b) *Fire cost threshold.* (1) We will approve the initial grant award to the State when we determine that the State's application demonstrates either of the following:

(i) Total eligible costs for the declared fire meet or exceed the individual fire cost threshold; or

(ii) Total costs of all declared and non-declared fires for which a State has assumed responsibility in a given calendar year meet the cumulative fire cost threshold.

(2) The individual fire cost threshold for a State is the greater of the following:

(i) \$100,000; or

(ii) Five percent  $\times$  \$1.07  $\times$  the State population, adjusted annually for inflation using the Consumer Price

Index for All Urban Consumers published annually by the Department of Labor.

(3) The cumulative fire cost threshold for a State is the greater of the following:

(i) \$500,000; or

(ii) Three times the five percent  $\times$  \$1.07  $\times$  the State population as described in § 204.51(b)(2)(ii).

(4) States must document the total eligible costs for a declared fire on Project Worksheets, which they must submit with the grant application.

(5) We will not consider the costs of pre-positioning resources for the purposes of determining whether the grant application meets the fire cost threshold.

(6) When the State's total eligible costs associated with the fire management assistance declaration meet or exceed the fire cost threshold eligible costs will be cost shared in accordance with § 204.61.

(c) *Approval of the State's grant application.* The Regional Director has 45 days from receipt the State's grant application or an amendment to the State's grant application, including attached supporting Project Worksheet(s), to review and approve or deny the grant application or amendment; or to notify the Grantee of a delay in processing funding.

(d) *Obligation of the grant.* Before we approve the State's grant application, the State must have an up-to-date State Administrative Plan and a Hazard Mitigation Plan that has been reviewed and approved by the Regional Director. Once these plans are approved by the Regional Director, the State's grant application may be approved and we may begin to obligate the Federal share of funding for subgrants to the Grantee.

(1) State administrative plan.

(i) The State must develop an Administrative Plan (or have a current Administrative Plan on file with FEMA) that describes the procedures for the administration of the Fire Management Assistance Grant Program. The Plan will include, at a minimum, the items listed below:

(A) The designation of the State agency or agencies which will have responsibility for program administration.

(B) The identification of staffing functions for the Fire Management Assistance Program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(C) The procedures for:

(1) Notifying potential applicants of the availability of the program;

(2) Assisting FEMA in determining applicant eligibility;

(3) Submitting and reviewing subgrant applications;

(4) Processing payment for subgrants;

(5) Submitting, reviewing, and accepting subgrant performance and financial reports;

(6) Monitoring, close-out, and audit and reconciliation of subgrants;

(7) Recovering funds for disallowed costs;

(8) Processing appeal requests and requests for time extensions; and

(9) Providing technical assistance to applicants and subgrant recipients, including briefings for potential applicants and materials on the application procedures, program eligibility guidance and program deadlines.

(ii) The Grantee may request the Regional Director to provide technical assistance in the preparation of the State Administrative Plan.

(2) Hazard Mitigation Plan. As a requirement of receiving funding under a fire management assistance grant a State or tribal organization, acting as Grantee, must:

(i) Develop a Hazard Mitigation Plan in accordance with 44 CFR part 206, subpart M, that addresses wildfire risks and mitigation measures; or

(ii) Incorporate wildfire mitigation into the existing Hazard Mitigation Plan developed and approved under 44 CFR part 206, subpart M that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

#### **§ 204.52 Application and approval procedures for a subgrant under a fire management assistance grant.**

(a) *Request for Fire Management Assistance.* (1) State, local, and tribal governments interested in applying for subgrants under an approved fire management assistance grant must submit a Request for Fire Management Assistance to the Grantee in accordance with State procedures and within timelines set by the Grantee, but no longer than 30 days after the close of the incident period.

(2) The Grantee will review and forward the Request to the Regional Director for final review and determination. The Grantee may also forward a recommendation for approval of the Request to the Regional Director when appropriate.

(3) The Regional Director will approve or deny the request based on the eligibility requirements outlined in § 204.41.

(4) The Regional Director will notify the Grantee of his/her determination; the Grantee will inform the applicant.

(b) *Preparing a Project Worksheet.* (1) Once the Regional Director approves an

applicant's Request for Fire Management Assistance, the Regional Director's staff may begin to work with the Grantee and local staff to prepare Project Worksheets (FEMA Form 90-91).

(2) The Regional Director may request the Principal Advisor to assist in the preparation of Project Worksheets.

(3) The State will be the primary contact for transactions with and on behalf of the applicant.

(c) *Submitting a Project Worksheet.* (1) Applicants should submit all Project Worksheets through the Grantee for approval and transmittal to the Regional Director as amendments to the State's application.

(2) The Grantee will determine the deadline for an applicant to submit completed Project Worksheets, but the deadline must be no later than six months from close of the incident period.

(3) At the request of the Grantee, the Regional Director may grant an extension of up to three months. The Grantee must include a justification in its request for an extension.

(4) Project Worksheets will not be accepted after the deadline and extension specified in paragraphs (c)(2) and (c)(3) of this section has expired.

(5) *\$1,000 Project Worksheet minimum.* When the costs reported are less than \$1,000, that work is not eligible and we will not approve that Project Worksheet.

#### **§ 204.53 Certifying costs and payments.**

(a) By submitting applicants' Project Worksheets to us, the Grantee is certifying that all costs reported on applicant Project Worksheets were incurred for work that was performed in compliance with FEMA laws, regulations, policy and guidance applicable to the Fire Management Assistance Grant Program, as well as with the terms and conditions outlined for the administration of the grant in the FEMA-State Agreement for the Fire Management Assistance Grant Program.

(b) Advancement/Reimbursement for State grant costs will be processed as follows:

(1) Through the U.S. Department of Health and Human Services SMARTLINK system; and

(2) In compliance with 44 CFR 13.21 and U. S. Treasury 31 CFR part 205, Cash Management Improvement Act.

#### **§ 204.54 Appeals.**

An eligible applicant, subgrantee, or grantee may appeal any determination we make related to an application for the provision of Federal assistance according to the procedures below.

(a) *Format and content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee will review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal will contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of appeal.* (1) The Regional Director will consider first appeals for fire management assistance grant-related decisions under subparts A through E of this part.

(2) The Associate Director will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical advice.* In appeals involving highly technical issues, the Regional Director or Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director will notify the grantee in writing of the disposition of the appeal.

(e) The decision of the Associate Director at the second appeal level will be the final administrative decision of FEMA.

#### § 204.55–204.60 [Reserved]

### Subpart E—Grant Administration

#### § 204.61 Cost share.

(a) All fire management assistance grants are subject to a cost share. The Federal cost share for fire management assistance grants is seventy-five percent (75%).

(b) As stated in § 204.25, the cost share provision will be outlined in the terms and conditions of the FEMA-State Agreement for the Fire Management Assistance Grant Program.

#### § 204.62 Duplication and recovery of assistance.

(a) *Duplication of benefits.* We provide supplementary assistance under the Stafford Act, which generally may not duplicate benefits received by or available to the applicant from insurance, other assistance programs, legal awards, or any other source to address the same purpose. An applicant must notify us of all benefits that it receives or anticipates from other sources for the same purpose, and must seek all such benefits available to them. We will reduce the grant by the amounts available for the same purpose from another source. We may provide assistance under this Part when other benefits are available to an applicant, but the applicant will be liable to us for any duplicative amounts that it receives or has available to it from other sources, and must repay us for such amounts.

(b) *Duplication of programs.* We will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. We may disallow or recoup amounts that fall within another Federal agency's authority. We may provide assistance under this part, but the applicant must agree to seek assistance from the appropriate Federal agency and to repay us for amounts that are within another Agency's authority.

(c) *Negligence.* We will provide no assistance to an applicant for costs attributable to applicant's own negligence. If the applicant suspects negligence by a third party for causing a condition for which we made assistance available under this Part, the applicant is responsible for taking all reasonable steps to recover all costs attributable to the negligence of the third party. We generally consider such amounts to be duplicated benefits available to the Grantee or subgrantee,

and will treat them consistent with (a) of this section.

(d) *Intentional acts.* Any person who intentionally causes a condition for which assistance is provided under this part shall be liable to the United States to the extent that we incur costs attributable to the intentional act or omission that caused the condition. We may provide assistance under this part, but it will be conditioned on an agreement by the applicant to cooperate with us in efforts to recover the cost of the assistance from the liable party. A person shall not be liable under this section as a result of actions the person takes or omits in the course of rendering care or assistance in response to the fire.

#### § 204.63 Allowable costs.

44 CFR 13.22 establishes general policies for determining allowable costs.

(a) We will reimburse direct costs for the administration of a fire management assistance grant under 44 CFR part 13.

(b) We will reimburse indirect costs for the administration of a fire management assistance grant in compliance with the Grantee's approved indirect cost rate under OMB Circular A–87.

#### § 204.64 Reporting and audit requirements

(a) *Reporting.* Within 90-days of the Performance Period expiration date, the State will submit a final Financial Status Report (FEMA Form 20–10), which reports all costs incurred within the incident period and all administrative costs incurred within the performance period; and

(b) *Audit.* (1) Audits will be performed, for both the Grantee and the subgrantees, under 44 CFR 13.26.

(2) FEMA may elect to conduct a program-specific Federal audit on the Fire Management Assistance Grant or a subgrant.

### PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

7. The authority citation for part 206 continues to read as follows:

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p.329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 12571, 3 CFR, 1989 Comp., p. 214.

8. Amend § 206.2 as follows:

a. Revise paragraph (a)(3)(i) to read “Unless otherwise specified in subparts A through K of this part, the Associate Director or Assistant Director of the

Readiness, Response and Recovery Directorate, or his/her designated representative.”

b. Revise paragraph (a)(20) to read as follows:

**§ 206.2 Definitions.**

(a) \* \* \*

(20) *Public Assistance:*  
Supplementary Federal assistance

provided under the Stafford Act to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of this part. Fire Management Assistance Grants under section 420 of the Stafford Act are also considered Public

Assistance. See subpart K of this part and part 204 of this chapter.

\* \* \* \* \*

Dated: November 8, 2001.

**Michael D. Brown,**

*Acting Deputy Director.*

[FR Doc. 01-28577 Filed 11-13-01; 8:45 am]

**BILLING CODE 6718-02-P**