



# Fire Management Assistance Grant Program Guide

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**FEMA**

# TABLE OF CONTENTS

ACRONYMS .....	iii
DEFINITIONS .....	iv
FOREWORD .....	vii
CHAPTER ONE – OVERVIEW.....	8
Governing Documents.....	8
Federal Statutes.....	8
Regulations. ....	8
Policies.....	9
CHAPTER TWO – DECLARATION PROCESS.....	10
Submitting a Declaration Request.....	10
Declaration Request Processing.....	10
Declaration Criteria .....	10
Information for the Declaration Request .....	11
Required Information. ....	11
Fire Complex. ....	11
Incident Period. ....	11
Duties, Roles, and Responsibilities.....	12
State Role. ....	12
FEMA Regional Office Role.....	12
Principal Advisor’s Role.....	13
Headquarters Office Role.....	13
Appeal of Denied Declaration Request .....	13
Post-Declaration Requirements .....	14
FEMA-State Agreement.....	14
Inclusion of Affected Counties.....	16
Modifying a Declaration Request to Add Counties.....	16
Rollup .....	16
CHAPTER THREE – ELIGIBILITY .....	17
Grant and Subgrant Applicants.....	17
Eligible Applicants .....	17
Ineligible Applicants .....	17
Eligible Costs Overview .....	17
Equipment and Supplies, Generally.....	18
Labor Costs .....	18
Travel and Per Diem.....	19
Pre-Positioning Costs.....	19
Emergency Work/Essential Assistance.....	20
Temporary Repairs.....	20
Mobilization and Demobilization.....	21
Donated Resources .....	21
Ineligible Costs .....	21

CHAPTER FOUR – MUTUAL AID .....	23
Mutual Aid Agreements .....	23
Emergency Management Assistance Compact (EMAC).....	23
CHAPTER FIVE – GRANT MANAGEMENT .....	24
Grant Application File .....	24
Initial Grant Application and Approval Timeframe.....	24
Fire Cost Threshold .....	25
State Administrative Plan .....	25
State Mitigation Plan .....	26
Grantee Responsibilities .....	26
Subgrants .....	27
Eligible Subgrant Entities .....	27
Project Worksheets (PWs) .....	27
Procurement Policies .....	27
Cost Share .....	28
Duplication of Benefits.....	28
Negligence and Intentional Acts .....	28
Administrative Costs.....	29
Grantee.....	29
Subgrantee.....	30
Appeals of Grant Eligibility .....	30
Grant Closeouts.....	31
Audit Requirements and Documentation .....	31
CHAPTER SIX – SUPPLEMENTARY INFORMATION .....	33
Forms .....	33
Alphabetical Order by Form Name .....	33
Ascending Order by Form Number .....	33
Forms Available only as PDF .....	34
Subpart and Section References, 44 CFR Part 204 .....	34
Subpart A—General .....	34
Subpart B—Declaration Process.....	34
Subpart C—Eligibility .....	34
Subpart D—Application Procedures.....	34
Subpart E—Grant Administration .....	34
9500 Series Policy Publications.....	35
44 CFR Part 204 .....	35

## ACRONYMS

CFFDRS	Canadian Forest Fire Danger Rating System
CFR	Code of Federal Regulations
EMAC	Emergency Management Assistance Compact
FEMA	Federal Emergency Management Agency
FF	FEMA Form
FMAGP	Fire Management Assistance Grant Program
GAR	Governor's Authorized Representative
ICS	Incident Command System
KBDI	Keetch-Byram Drought Index
NFDRS	National Fire Danger Rating System
NIC	NIMS Integration Center
NIMS	National Incident Management System
OMB	Office of Management and Budget
PL	Public Law
PW	Project Worksheet
RFMAS	Request for Fire Management Assistance Subgrant
SMP	State Mitigation Plan
USFS	U.S. Forest Service

## DEFINITIONS

**Affected County.** One or more county(ies) or tribal area(s) where a declared fire or fire complex originated or burned into.

**Applicant.** A State or Indian tribal government submitting an application to 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.

**Chief Executive.** The person who is the Chief, Chair, Chairman, Chairwoman, Governor, President, or similar executive official of an Indian tribal government.

**Declared Fire.** An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, which the Administrator has approved in response to a State's request for a fire management assistance declaration and in accordance with the criteria listed in 44 CFR part 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.

**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 Indian 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 Mitigation Plan, described in 44 CFR part 201.

**Incident Commander.** The ranking official responsible for overseeing the management of fire operations, planning, logistics, and finances of the field response. [The ranking "red card" official responsible for a declared fire. ("Red card" is the fire qualifications card issued to fire-

rated persons showing their training needs and their qualifications to fill specified fire - suppression and support positions on a fire or other incident.))]

**Incident Period.** The time interval during which the declared fire occurs. The Regional Administrator, in consultation with the GAR and the Principal Advisor, will establish the incident period. Generally, costs must be directly related to or 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 44 CFR part 206).

**Local Government.** 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 non-profit 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.

**Major Disaster.** Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. (Stafford Act section 102(2), 42 U.S.C. 5122(2))

**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 U. S. Forest Service, U. S. Department of Agriculture, or Bureau of Land Management, U. S. 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 frequently participates with FEMA on other wildland fire initiatives.

**Project Worksheet.** FEMA Form 009-0-0-7, which identifies actual costs incurred by eligible applicants as a result of the eligible firefighting activities. The PW is used to document the location, damage description and dimensions, scope of work, and cost estimates for materials, labor, and other costs of each project . It is the basis for the FMAGP grant.

**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 44 CFR subparts G and H of part 206.

**Regional Administrator.** The administrator of a regional office of FEMA, or his/her designated representative.

**Rollup.** When one or more FMAG declarations are administratively merged into a major or emergency disaster declaration.

**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.

**State.** Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**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.

## FOREWORD

A wildfire's behavior is unpredictable and can change direction unexpectedly, spread across fire breaks and highways, and destroy or damage homes, buildings, and any other structures in its path. Uncontrolled fires can rapidly turn into blazing infernos producing fear, economic loss, disrupted lives, and loss of life and property.

Controlling fires is the responsibility first of the local community and then the State. At times, however, their combined efforts are not sufficient to stop the spread of the fire and mitigate fire risk to the built environment. When this occurs, the State may request Federal assistance to supplement State, Tribal, and local efforts. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. §5121, et seq. (the Stafford Act) authorizes the President to provide Fire Management Assistance in response to a declared fire. Federal assistance is coordinated through the Department of Homeland Security's Federal Emergency Management Agency (FEMA). Under the Fire Management Assistance Grant (FMAG) Program, FEMA provides assistance in the form of grants for equipment, supplies, and personnel costs, to any State, Indian tribal government, or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

The FMAGP replaced FEMA's Fire Suppression Assistance Program when Section 420 of the Stafford Act was amended by the Disaster Mitigation Act of 2000, Public Law 106-390 and is effective for all fires declared on or after October 30, 2001. In order to ensure proper implementation of the program, it is vital that those involved at any level with the FMAG Program share a common understanding of the program policies and procedures. To support this goal, FEMA has prepared this guide as an effort to provide the State, Tribal, and local partners with information about the program.

This guide describes the FMAG Program basic provisions, application procedures, and other related program guidance. The guide should be used by elected leaders, emergency managers, public works directors, financial management personnel, and other individuals who have the responsibility for responding to wildfires.

Please send any comments or suggestions to improve this Guide to:

FMAG Program  
Public Assistance Division, 4th Floor, Rm 408  
Federal Emergency Management Agency  
500 C Street, SW  
Washington, D.C. 20472



## CHAPTER ONE – OVERVIEW

This guide describes the basic provisions, processes, and procedures of the Fire Management Assistance Grant (FMAG) Program. Under this Program, FEMA provides financial assistance in the form of grants, to assist in reimbursement for equipment, supplies, and personnel, to any State, Indian tribal government, or local government for the mitigation, management, and control of any declared fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

The FMAG Program is part of the FEMA Public Assistance (PA) Program and is based on a partnership of FEMA, State, Tribal, and local officials.

**FEMA** is responsible for managing the program, reviewing and approving declaration requests, approving grants, and providing technical assistance to the State and applicants.

The **State**, in most cases, acts as the Grantee for the FMAGP. FEMA, the State, and the applicant are all responsible for grants awarded under the FMAGP. The State as Grantee, educates potential applicants, works with FEMA to manage the program, and is responsible for implementing and monitoring the grants awarded under the program.

After a declaration, an Indian tribal government may choose to be a Grantee or, if permitted under state law, it may act as a subgrantee under the State. An Indian tribal government acting as Grantee will assume the responsibilities of a "state" for the purpose of administering the grant.

**Local officials** are responsible for providing accurate and sufficient data to the State, documenting costs incurred in response to an FMAGP Declaration and fire suppression efforts.

### Governing Documents

The FMAG Program is based on a hierarchy of statutes, regulations, and policies. The statute is the Federal law that authorizes the program. From the statute, regulations are published to further define program scope. Finally, policies are written to apply the statute and regulations to specific situations. These authorities govern the criteria through which FEMA provides funds under the FMAG Program.

Federal Statutes. Statutes are laws passed by the U.S. Congress and signed by the President. They cannot be changed or waived by FEMA or any other government agency or official.

The FMAG Program is authorized by section 420 of the Stafford Act (42 U.S.C. 5187).

Section 420:

- Authorizes the President to provide Fire Management Assistance to State and local governments;
- Requires coordination with State and Tribal Departments of Forestry;
- Allows the President to provide Essential Assistance under section 403 of the Stafford Act; and
- Requires the establishment of rules and regulations to carry out the program.

Regulations. Regulations are rules designed to implement a statute based on an agency's interpretation of a statute. They establish the basic requirements for administering a program.

Typically, regulations are published through an official process that allows for public comment. Regulations have the full force and effect of law and must be complied with once they are implemented. The regulations published in 44 CFR part 204 govern the FMAGP and detail the program procedures, eligibility, and requirements.

Additional regulations regarding grant administration and allowable costs are found in 44 CFR part 13, **UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**. Relevant OMB Circulars, specifically A-87 (Cost Principles for State, Local, and Indian tribal Governments), and A-133, (Audits of State, Local Government, and Non-Profit Organizations) must also be followed in grant administration.

**Policies.** Policies clarify or provide direction for specific situations within the parameters established by the Stafford Act and regulations that pertain to the FMAGP. FEMA writes and publishes policies to ensure consistency in interpretation across the nation. FMAGP policies are included in other PA program policies.

## CHAPTER TWO – DECLARATION PROCESS

### **Submitting a Declaration Request**

When an uncontrolled fire on non-Federal public or private forest or grassland is such a threat that, in the opinion of the on scene commanders or other government officials, the fire threatens such destruction that would constitute a major disaster, the Governor may request assistance from the FMAGP.

To begin the FMAGP application process, the Governor of a State or the Governor's Authorized Representative (GAR) submits a request for an FMAGP declaration. In addition to the declaration request, the Governor may also designate the GAR to execute, on behalf of the State, all necessary documents for requesting fire management assistance.

### **Declaration Request Processing**

The Governor or GAR must submit a request while the fire is burning uncontrolled and threatening such destruction as would constitute a major disaster (44 CFR 204.22). As the FMAG Program operates in real time during an incident, declaration requests may be submitted day or night. To expedite processing the State's declaration request, the request should be submitted verbally by telephone to the FEMA Regional Administrator or designated FEMA Regional Fire Duty Liaison.

When submitting a declaration request, the Governor of a State or the GAR should provide factual data and professional estimates as available to support the request. The State's verbal request must be followed up with the completed Request for Fire Management Assistance Declaration, FEMA form 078-0-1 (replaces 90-58). The information on FF 078-0-1 provides written confirmation of information submitted during the telephone declaration request and is required for official FEMA files. All official forms including the FF 078-0-1 and the Principal Advisor's Report, FF 078-0-2 (replaces 90-32), must be received in FEMA's Headquarter Office within 14 days of the date of the phone request to the FEMA Regional Office.

Pursuant to 44 CFR 204.22, Governors and GARs are the only officials authorized to request FMAG declarations. Indian tribal governments are not authorized to make FMAG declaration requests at this time. While Indian tribal governments typically receive fire suppression assistance through other federal agencies, they may seek assistance under a declared FMAG to the extent the requested assistance is not available from another federal source.

### **Declaration Criteria**

The following four criteria from 44 CFR part 204.21 are used to evaluate the threat of a fire or fire complex:

- (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; and
- (4) Potential major economic impact.

## **Information for the Declaration Request**

**Required Information.** For FEMA to apply the evaluation criteria in 44 CFR 204.21, the following information, if available, should be included in both the verbal and written requests:

- Size of fire(s) in acres or square miles;
- Name, location, and population of community(ies) threatened;
- Number of primary and secondary residences and businesses threatened;
- Distance of fire to nearest communities;
- Number of persons evacuated to date, if applicable;
- Current and predicted (24-hour) weather conditions; and
- Degree to which State and local resources are committed to this fire and other fires in Federal, State, or local jurisdictions.

To further support a declaration request, the State may append additional documentation to the FF 078-0-1, including:

- Fire severity maps;
- Geographic, topographical, or land assessment maps; or
- Incident status summary report (ICS-209).

### **Fire Complex.**

A State may submit a request for an FMAGP declaration for a fire complex. Pursuant to 44 CFR 204.3, all fires within the complex should be located in the same general area. All fires within a complex should be managed by the same Incident Commander, and should be approved under the fire declaration. Even though an entire complex may be designated in a declaration request, not all fires within the complex will automatically qualify. FEMA, in cooperation with the State, will determine which fires are eligible under a fire management assistance declaration.

### **Incident Period.**

The FEMA Regional Administrator, in consultation with the GAR and the Principal Advisor determine the start and end dates of the incident period, which is usually not established until the fire is controlled.

The incident period may start on the date of the fire management assistance declaration or with the initial firefighting actions at the time when the fire threatens such destruction as would constitute a major disaster. While the incident period is normally considered closed when the fire is controlled, the final decision rests with the FEMA Regional Administrator, GAR, and Regional Advisor.

The end of a shift or a workday normally marks the closing of the incident period. If the incident period starts before the date of the State's declaration request, the factors and circumstances supporting that determination should be documented by the GAR and reviewed and approved by the FEMA Regional Administrator. Factors that may allow for an incident period to begin prior to the date of the declaration may include documented immediate threats to life and property that occurred prior to the declaration request where evacuations or other actions were necessary to prevent loss of life, property, or damage to critical infrastructure or critical watershed areas.

Generally, wildland firefighting costs must be incurred during the incident period of a declared fire to be considered eligible under 44 CFR 204.42(a). However, costs related to pre-positioning, mobilizing and demobilizing incurred outside of the approved incident period may be determined to be eligible costs. These costs are discussed in detail in Chapter Three, Eligibility.

## **Duties, Roles, and Responsibilities**

### **State Role.**

The Governor or GAR is responsible for submitting a fire declaration request. The request should be submitted by telephone to FEMA's Regional Fire Duty Liaison. Following a phone request, the Governor or GAR must complete the FF 078-0-1, Request for Fire Management Assistance Declaration, and submit it to the FEMA Regional Administrator no later than 14 days after the date of the initial phone request.

### **FEMA Regional Office Role.**

The Regional Office is responsible for receiving the declaration request, obtaining additional information from the State if the declaration request is incomplete or insufficient to make a determination, and for making the declaration decision.

Within the Regional Office, the Regional Fire Duty Liaison is the primary point of contact for FMAG requests. The Regional Fire Duty Liaison will request an assessment of the fire from the Principal Advisor. After all the information is obtained from the State and verified with the assistance of the Principal Advisor, the Regional Fire Duty Liaison contacts the Region's Recovery Director for a briefing prior to contacting the Regional Administrator. The Regional Administrator approves or denies the request. If the request is approved, the Regional Fire Duty Liaison receives the FMAG declaration number from the Headquarters Office Declaration Unit and provides the number to the State.

The Regional Administrator evaluates the declaration request and approves or denies the request based on:

- Evaluation criteria;
- Information provided in the State's request; and
- Principal Advisor's Report.

The threat posed by a fire or fire complex is evaluated using the State's declaration request. The following information is used to evaluate the threat:

1. The fire or fire complex threatens lives and improved property, including critical facilities/infrastructure and critical watersheds. Improved properties include, but are not limited to:
  - Homes (single family and multi-family [i.e., townhouses, condos, apartments]);
  - Hospitals, prisons, and schools;
  - Police and fire stations;
  - Water treatment facilities;
  - Public utilities; and
  - Major roadways.
2. Availability of State and local firefighting resources:
  - The degree of commitment by Federal, State, and local resources to other fires; and

- The lack of available Federal, State, and local wildland firefighting resources.
3. High fire danger conditions as indicated by nationally accepted indices:
    - National Fire Danger Rating System (NFDRS);
    - Keetch-Byram Drought Index (KBDI);
    - Palmer Drought Index;
    - Haines Index; and
    - Canadian Forest Fire Danger Rating System (CFFDRS).
  4. Potential major economic impact:
    - State level;
    - Local level; and
    - Regional level.

Following the Regional Administrator's decision, the Region contacts the State to inform of approval or denial. Once a determination is rendered, the Regional POC provides a summary email of the declaration facts to the Regional Administrator and other FEMA leadership.

**Principal Advisor's Role.**

The Principal Advisor provides technical assistance to the FEMA Regional Fire Duty Liaison regarding the fire or fire complex that is under consideration for a declaration request. The Principal Advisor completes the Principal Advisor's Report, (FF 078-0-2), and provides it to the FEMA Regional Fire Duty Liaison or reports the information verbally. Specifically, the Principal Advisor provides a technical assessment regarding the weather, fire behavior, and fire prognosis. The Principal Advisor's Report (FF078-0-2) is used to verify the information and facts submitted by the State. The Principal Advisor's Report does not recommend whether to approve or deny a State's declaration request.

The Principal Advisor's Report is included as part of the State's declaration request package submitted to the FEMA Regional Office. The Report should be submitted to FEMA's Regional Office no later than 14 days after the date of the State's request for a fire management assistance declaration.

**Headquarters Office Role.**

The Headquarters Office, including the Deputy Associate Administrator of the Office of Response and Recovery and Deputy, Recovery Assistant Administrator, and Declarations Unit staff receives the Region's summary email of the declaration or denial facts. If the declaration request was approved, the Declarations Unit responds with the FMAG number they assigned to the declared fire, and prepares and sends a letter from the FEMA Administrator to the White House regarding the determination. Additionally, the Declarations Unit provides the assigned FMAG declaration number to the Regional Fire Duty Liaison.

**Appeal of Denied Declaration Request (44 CFR 204.26)**

If FEMA denies the State's request for a declaration, the State has one opportunity to appeal the denial. The appeal must be submitted in writing to the Regional Administrator no later than 30 days from the date of the letter informing the State of the denial. The appeal should contain any additional information that strengthens the State's original request for assistance.

The Regional Administrator will review the appeal, prepare a recommendation, and forward the appeal package to the FEMA Headquarters Office. The FEMA Headquarters Office notifies the State of its determination, in writing, within 90 days of receipt of the appeal, or receipt of the additional requested information.

The State may request a time extension to submit the appeal. The request for an extension must be submitted in writing to the Regional Administrator not later than 30 days from the date of the letter denying the declaration request. The request for an extension must include a justification for the need for an extension. The FEMA Headquarters Office evaluates the need for the extension based on the reasons cited in the request and renders a determination. The Regional Office will notify the State, in writing whether the extension request is granted or denied.

### **Post-Declaration Requirements**

A State or Indian tribal government intending to apply to FEMA for assistance under the FMAGP must have a formally approved State/Tribal Mitigation Plan. If the State or Indian tribal Government does not have an approved State Mitigation Plan in accordance with 44 CFR part 204.51(d)(2) it must formally submit an acceptable State Mitigation Plan for FEMA's review and approval within 30 days of the signature date of the Amendment of the FEMA-State Agreement for the FMAGP (Exhibit E). FEMA has 45 days to review the Plan. FEMA will not approve the application for assistance under the FMAGP if the State or Indian tribal government does not have an existing State Mitigation Plan or fails to submit one within the required timeframe.

### **FEMA-State Agreement**

The FEMA-State or FEMA-Tribal Agreement for FMAGP (the Agreement) is a legally binding document, that outlines the terms and conditions under which grant funding is provided for fire management assistance declarations, and details applicable laws and regulations governing the program.

The Agreement is in effect for one calendar year. It must be updated annually and, ideally, should be signed each January before the start of fire season. The Agreement lists the GAR and other officials authorized to act on the behalf of the State. A FEMA-Tribal Agreement must be signed if an Indian tribal government wishes to serve as a dual Grantee.

The Agreement consists of a cover letter and five Exhibits. A FEMA-State Agreement template is available from the FEMA HQ Declarations Unit or Public Assistance Division. A brief description of the exhibits follows:

- *Exhibit A - State Officials authorized to execute certification and otherwise to act on behalf of the State.*

Exhibit A designates the GAR and Alternate GAR empowered by the Governor to execute all necessary documents for FMAGP, including the declaration request and application for a Fire Management Assistance Grant.

In cases where the FEMA-Tribal Agreement is signed, the list of State Certification Officers designates and empowers an Indian tribal authorized representative and Alternate Tribal authorized representative, empowered by the Indian tribal chairman, to execute the application for a Fire Management Assistance Grant. Until Exhibit A has

been completed, only the Chief Executive of the Indian tribal government has the authority to submit the application for a Fire Management Assistance Grant.

- *Exhibit B - Certification Regarding Drug-Free Workplace Requirements.*

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1998, 44 CFR part 17, subpart F. Grantees must certify prior to award that they will maintain a drug-free workplace.

- *Exhibit C - Certification for Contracts, Grants, Loans, and Cooperative Agreements, New Restrictions on Lobbying.*

Certification is required by the regulations implementing the "New Restrictions on Lobbying", 44 CFR part 18. It certifies no Federal appropriated funds are used to influence or attempt to influence officers or employees of an agency, member of Congress, an officer of employee of Congress in connection with the awarding of a Federal grant or loan, cooperative agreement, or an extension continuation, renewal, amendment or modification of these.

- *Exhibit D - Disaster Grant Agreement Articles.*

The four Articles in this exhibit describe fiscal and other general grant obligations that must be followed. These include 44 CFR parts 13, 17, 18, 204 and subchapter B, **Insurance and Hazard Mitigation**, subchapter C, **Fire Prevention and Control**, subchapter D, **Disaster Assistance**, part 7 relating to **Nondiscrimination in Federally-Assisted Programs**, OMB Circulars, A-110, A-102, A-87, A-122, and A-133, 31 CFR 205.6 **Funding Techniques**, Cash Management Improvement Act, and other specific terms and conditions.

- *Exhibit E - Amendment to the FEMA-State Agreement for the Fire Management Assistance Grant Program.*

After a State's declaration request has been approved, the Governor or GAR should immediately sign the Amendment (described below) of the FEMA-State Agreement for FMAGP. The Amendment must be signed by the State (or Indian tribal Government when appropriate) and FEMA for each declared fire that occurs within the calendar year.

The Amendment contains specific information for each declared fire, including the name of the fire or fire complex, declaration number, affected counties, and incident period. The Amendment must be completed for each declared fire and appended to the Agreement. The GAR or Chief Executive of the Indian tribal government as identified on the list of State Certification Officers can sign the Amendment on behalf of the State or Indian tribal government.

If a State does not have a signed FEMA-State Agreement prior to submitting a declaration request to FEMA, the State should sign an Agreement immediately after FEMA has approved the declaration request. If the Agreement is signed after the first fire is declared, the Governor must sign both the Agreement and Exhibit E. The State must sign and submit the Agreement prior to, or with, the submittal of the FMAGP grant assistance request (Standard Form 424). Funding will not be obligated until the Governor signs the Agreement (or Chief Executive of the Indian tribal government, when appropriate, signs). Failure to sign the Agreement may result in denial of the Fire Management Assistance Grant.



### **Inclusion of Affected Counties**

Block 15 of FF 078-0-1 (Request for a Fire Management Assistance Declaration) provides an entry for the county(ies) affected by the fire. Only one county is required to be listed on the FF 078-0-1 at the time of submission. All counties affected by the declared fire must be listed in Exhibit E of the FEMA–State Agreement when it is submitted.

### **Modifying a Declaration Request to Add Counties**

If a declared fire or fire complex burns into adjacent counties, the additional counties may be eligible for assistance under the declared fire. In order to be eligible, the State must provide sufficient information to justify assistance for the additional counties. The State must submit the same type of information for the requested add-on county(ies) as was provided to FEMA for the original declaration request. All information is evaluated on the threat of the fire, potential economic impact, weather conditions, and committed and available resources. Once all information is submitted, FEMA will evaluate and decide whether to designate the additional county(ies). If the request to add counties is denied, the appeal process is the same as that for a denied fire declaration request as described in this guide and in 44 CFR part 204.26, **Appeal of Fire Management Assistance Declaration Denial**.

### **Rollup**

In situations where a State has received an FMAG declaration(s), the State may request a major disaster or emergency declaration in response to the wildfires or wildfire threat. The FMAG Program is FEMA's primary vehicle to assist state and local governments responding to wildland fires. As such, FEMA will generally not recommend a major disaster declaration for a wildland fire, unless the fire has significant impacts and costs that could not be addressed by the FMAG Program. Therefore, when evaluating a request for a major disaster as a result of wildland fire, FEMA will not use costs that are eligible, or could have been eligible, under an FMAG declaration to determine the state or countywide per capita indicators for the fire.

In order for FEMA to declare a major disaster, the request must meet the indicators under 44 CFR Part 206.37(c)(1) and 44 CFR 206.48. To declare an emergency, the request must meet the language under 44 CFR Part 206.37(2).

If either a major or an emergency declaration is approved in addition to an FMAG declaration, eligible costs may be claimed under the most appropriate declaration. The Grantee must ensure that costs claimed under one declaration type are not also claimed and reimbursed under the other declaration.

## CHAPTER THREE – ELIGIBILITY

This section discusses eligibility criteria for FMAGP. The two eligibility main components are:

- Eligible Applicants for Grants and Subgrants; and
- Eligible Costs.

Applicant eligibility and eligible costs are discussed in their entirety in 44 CFR subpart C – Eligibility, 204.41 – 201.43.

### Grant and Subgrant Applicants

**Eligible Applicants:** Those entities legally responsible for the firefighting activities for which reimbursement is being requested. The following applicants are eligible to apply through the Grantee:

- State agencies;
- Local governments; and
- Indian tribal governments.

Under an FMAGP declaration, an affected Indian tribal government may elect to serve as Grantee, or it may act as a subgrantee of the State. An Indian tribal government acting as Grantee must assume all the responsibilities of a State as outlined in 44 CFR part 204 for the purpose of administering a grant. An Indian tribal government must have a FEMA-Tribal Agreement and an approved Tribal Mitigation Plan in place in order to serve as a Grantee.

**Ineligible Applicants:** Governmental entities that do not have legal responsibility for the firefighting activities, privately owned entities, and volunteer firefighting organizations. However, ineligible applicants may be reimbursed through a compact, mutual aid agreement or contract with an eligible applicant for eligible costs associated with the declared fire or fire complex. Such payments are contingent on a FEMA determination that the activities meet all other eligibility criteria.

### Eligible Costs Overview

All eligible work and related costs must be associated with the incident period of a declared fire. FMAGP eligible work directly related to the declared fire is documented into two general categories:

- Category B – (Emergency Protective Measures): Limited assistance provided under section 403 of the Stafford Act; and
- Category H – (Fire-fighting Activities): Eligible work associated with fire-related activities provided under section 420 of the Stafford Act.

Eligible work performed must be:

- The legal responsibility of the applicant, whether it was performed by the applicant's own agents or through a secondary party as described in the preceding paragraphs;
- Required as a result of the declared fire; and
- Located within the designated area.

Eligible costs include, but are not limited to the following:

- Equipment and supplies;
- Labor costs;
- Travel and per diem;
- Temporary repairs of damage caused by firefighting activities;
- Mobilization and demobilization; and
- Limited Pre-positioning costs approved by the Regional Administrator.

(Note: 44 CFR part 204 and Agency policies provide definitive guidance on Eligible Costs and should be consulted when making eligibility determinations.)

Grantee and subgrantee administrative costs are discussed in Chapter Five, Grant Management. Eligibility of costs incurred by entities working through Mutual Aid Agreements is discussed in Chapter Four, Mutual Aid.

### **Equipment and Supplies, Generally**

Purchase of supplies and equipment that are necessary to respond to the declared fire may be eligible. The Grantee or subgrantee however, may be required to compensate FEMA for the fair market value of the equipment and supplies when the items are no longer needed for fire suppression activities. FEMA Policy No. 9525.12, *Disposition of Equipment, Supplies and Salvaged Materials* provides guidance.

FEMA will reimburse applicants for costs associated with equipment and supplies used on declared fires. Eligible costs include:

- Personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety;
- Replacement of firefighting supplies, tools, and materials that are expended, lost, or destroyed, with comparable items to the extent not covered by reasonable insurance.
- Reimbursement for ownership and operation costs of applicant-owned equipment based on equipment rate guidelines in 44 CFR 206.228(a)(1), **Allowable costs**;
- Operation and maintenance costs of publicly owned, contracted, rented, or volunteer firefighting department equipment to the extent any of these costs are not included in applicable equipment rates;
- Payment for use of U.S. government-owned equipment based on reasonable actual costs as billed by a Federal agency and paid by the State. Reimbursement for the use of Federal Excess Personal Property is based only on the direct cost for use of the equipment;
- Repair of applicant-owned equipment is determined by FEMA's Regional Office based on repair of damaged applicant-owned equipment less insurance proceeds. The FEMA Regional Office will determine equipment rate costs on the lowest applicable equipment rates, which may be FEMA, U.S. Forest Service, or State or local rates, depending on the piece of equipment and the formula used to calculate the rate; and
- Costs to replace applicant-owned equipment that is lost or destroyed in firefighting activities with comparable equipment of the same age, capacity, and condition to the extent not covered by reasonable insurance.

### **Labor Costs**

Labor costs eligible for reimbursement include:

- Overtime for force account permanent or reassigned State, Indian Tribal, or local governmental employees, including firefighters, police, logistical support, and other personnel involved in eligible fire suppression-related activities;
- Seasonally employed personnel, when covered under existing budgets and used for fire suppression activities during the season of employment, are considered permanently employed for the purpose of cost eligibility;
- Regular-time and overtime for temporary and contract employees hired to perform eligible fire suppression-related activities;
- Increased portion of overtime costs for regular full-time employees backfilling (one level) for other regular full-time employees within the same entity who are performing eligible fire suppression-related work; and
- Permanent employees who are funded from an external source (e.g., by a grant from a Federal agency, statutorily dedicated funds, or rate-payers) to work on specific tasks not related to a declared fire may be paid for regular-time and overtime for fire suppression-related work.

For further guidance see FEMA Policy No. 9525.7, *Labor Costs-Emergency Work* .

### **Travel and Per Diem**

Travel and per diem are eligible for applicants under a declared fire. Eligible travel and per diem include:

- Travel and per diem for all State, Indian Tribal, and local governmental employees who provide services requested by the Incident Commander and directly associated with declared and eligible fire-related activities, and
- Field camps and meal costs when provided in lieu of per diem.

### **Pre-Positioning Costs**

States frequently pre-position Federal, out-of-State, State, International, and local resources during extreme fire hazards to improve initial attack capabilities. Pre-positioning is the temporary relocation of existing fire prevention or suppression resources from an area of low 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.

Pre-positioning costs incurred up to a maximum of 21 days before the date of the fire declaration may be eligible under FMAGP, even when staged outside the designated area. Pre-positioning costs for out-of-state, Federal, and International pre-positioned resources that were actually used on the declared fire are eligible. Pre-positioning of privately owned local resources (those physically located within a State) may be eligible, however, State or local government-owned/operated resources are not eligible. Costs incurred to pre-position resources that remained at the staging area and were not used on the declared fire are not eligible.

For example, if one staging area has three Blackhawk helicopters pre-positioned and only one of the helicopters is used in the wildland firefighting efforts for a declared fire, then only the pre-positioning costs for that one helicopter are eligible for funding. The use of one piece of equipment on a declared fire does not make pre-positioning costs for an entire staging area (i.e., all three helicopters) eligible for funding.

The Regional Administrator must approve all pre-positioning costs. For pre-positioning costs to be eligible under FMAGP, the State must:

- Notify the FEMA Regional Administrator of its intention to seek funding for pre-positioning resources at the time it submits the declaration request (or immediately thereafter). Since pre-positioning is undertaken in anticipation of an event, it is reasonable for a State to know whether it anticipates submitting costs for pre-positioning at the time the declaration request is approved or immediately thereafter;
- Document specific pre-positioned resources by number, type, and location;
- Estimate the cost of the pre-positioned resources and the duration of pre-positioning; and
- Provide detailed justification for pre-positioning, including scientific indicators such as drought indices, current allocation of State firefighting resources, weather conditions, and the number of wildland fires currently burning in the State.

Parties are encouraged to have a written mutual aid agreement in place prior to a declared fire that addresses pre-positioning costs. For further guidance see FEMA Policy No. 9523.6, *Mutual Aid Agreements for Public Assistance and Fire Management Assistance*.

### **Emergency Work/Essential Assistance**

FEMA may provide funding under FMAGP for essential assistance to reduce or minimize immediate threats to life and property under section 403, **Essential Assistance** of the Stafford Act when such assistance is directly related to the mitigation, management, and control of the declared fire.

Mitigation, management, and control are those activities undertaken, generally during the incident period of a declared fire, to minimize the immediate adverse effects and to manage and control the fire. Only emergency work performed during the incident period of a declared fire is eligible for funding.

Essential mitigation, management, and control activities under section 403 may include:

- Police barricading and traffic control;
- Extraordinary emergency operations center expenses;
- Evacuation and sheltering (people, household pets, and service animals);
- Search and rescue;
- Arson patrol and investigation teams, operating during the declared fire incident period when there is a clear continuing threat;
- Public information dissemination to inform people what to do during the declared fire; and
- Limited removal of burned or unburned trees (i.e., snags) that pose a threat to the safety of the general public.

Mitigation activities designed to reduce the potential for future fires or to minimize damage from future fires are ineligible for funding under FMAGP.

### **Temporary Repairs**

Temporary repair of damage caused by firefighting activities are short-term actions to repair damage directly caused by firefighting efforts or activities. All temporary repair of damage caused by firefighting activities must be completed within 30 days of the close of the incident period for the declared fire. It should be noted that temporary repair of damage caused by firefighting activities does not include repair of damage caused by the declared fire. Additionally, the eligible cost of temporary repairs is less any proceeds covered by insurance.

Examples of temporary repair activities that may be eligible for funding include:

- Minimal repairs to bulldozer lines, field camps, and staging areas to address safety concerns. For example, severe gouging of the grounds of a heavily trafficked park or recreation area may be eligible to be filled or boarded over to mitigate public safety and health concerns. However, temporary repairs would not include a complete re-grading of an entire park or recreation area.
- Minimal repairs to facilities, such as fences, buildings, bridges, and roads, damaged by firefighting activities. For example, repair of a portion of a fence that was removed to gain access to a declared fire with a section of chain link fence may be eligible.

### **Mobilization and Demobilization**

Costs for mobilizing and demobilizing resources to and from a declared fire may be eligible for reimbursement under FMAGP.

- Mobilization is the process used for activating, assembling, and transporting all resources the Grantee requested to respond to or support a declared fire.
- Demobilization is the process of deactivating, disassembling, and transporting back to their point of origin all wildland firefighting resources that had been provided to respond to and support a declared fire.
- Eligible demobilization costs may be incurred after the close of the Incident Period, when the fire is controlled, and may be claimed at a delayed date after other eligible costs.
- If resources are continuously mobilized throughout multiple declared/non-declared fires, incurred eligible de-mobilization costs may be claimed once, for the last declared fire where the resource was actually used.

### **Donated Resources**

In some fires, individuals and organizations donate volunteer labor, equipment, and material. FEMA has determined that the value of "in-kind" contributions by third parties may be credited toward the calculation of the non-Federal cost share.

FEMA Policy No. 9525.2, *Donated Resources*, provides guidance on how to credit applicants for the value of donated resources.

### **Ineligible Costs**

Ineligible costs include the following:

- Costs not directly associated with the fire's incident period (with the exception of pre-positioning, and mobilization/demobilization of eligible resources);
- Costs incurred in the mitigation, management, and control of undeclared fires;
- Costs for the straight or regular-time salaries and benefits of permanently employed or reassigned personnel of a subgrantee;
- Costs for mitigation, management, and control of a declared fire on commingled Federal land when such costs are reimbursable to the State by a Federal agency under another statute;
- Time and costs expended by volunteer labor, which by nature is offered on a donated basis and is not bound by contract or employment terms (see "Donated Resources"); and

- Costs related to planning, pre-suppression, recovery, and mitigation of possible future damage related to the burn area of the declared fire, such as:
  - Planning actions such as risk assessments;
  - Cutting fire-breaks without the presence of an imminent threat;
  - Pre-planned non-field training;
  - Road widening;
  - Land rehabilitation such as seeding, planting operations, or erosion control;
  - Timber salvage; and
  - Restoration of facilities damaged by fire.

## CHAPTER FOUR – MUTUAL AID

### **Mutual Aid Agreements**

Many State, Tribal, and local governments enter into mutual aid. A mutual aid agreement is an agreement between jurisdictions or agencies to provide services across boundaries in an emergency or major disaster. Such agreements usually provide for reciprocal services or direct payment for services. FEMA will reimburse mutual aid costs for eligible emergency work, when requested by the applicant (receiving entity) in accordance with FEMA Policy 9523.6, *Mutual Aid Agreements for Public Assistance*.

Key provisions of the Policy include:

- Reimbursement provisions are not contingent on a declared fire;
- Assistance is for the performance of eligible work;
- Claimed costs are reasonable;
- Requesting and providing entities keep detailed records of services requested and received; and
- Claimed costs are in accordance with FEMA policy.

When a pre-event agreement provides for reimbursement, but also provides for an initial period of unpaid assistance, FEMA will pay the eligible costs of assistance after the initial unpaid period. When a pre-event mutual aid agreement provides for reimbursement and there is a consistent record of reimbursement without Federal funds, FEMA reimbursement will follow the provisions of the agreement.

When the parties do not have a pre-event written mutual aid agreement, the Requesting and Providing entities may verbally agree on the type and extent of mutual aid resources to be provided to the current event, and the terms, conditions, and costs of such assistance. Post-event verbal agreements must be documented in writing and executed by an official of each entity with authority to request and provide assistance, and provided to FEMA as a condition of receiving reimbursement.

### **Emergency Management Assistance Compact (EMAC)**

EMAC is a form of mutual aid whereby a disaster-impacted state can request and receive assistance from other member states quickly and efficiently. There are two types of work potentially eligible for FEMA reimbursement; grant management work and emergency work. To the extent the specific agreement between states meets the requirements of the FEMA policy on mutual aid agreements and the work meets FEMA eligibility requirements, costs may be eligible for FEMA assistance. Reimbursement for these costs is subject to the non-Federal cost share for that FMAGP declaration.

All costs must be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the applicant. The receiving entity is responsible for requesting FEMA assistance and for the non-Federal cost share.

Follow this link for additional information on EMAC: <http://www.emacweb.org>



## CHAPTER FIVE – GRANT MANAGEMENT

The Grantee is the State or Indian tribal government receiving an FMAGP grant and is responsible for administering the grant. There is only one Grantee for each declared fire, except when a State Grantee and an Indian Tribal Grantee are under the same fire declaration. Only the State agency as designated by the Governor in the FEMA-State Agreement for FMAGP for the declared fire, or an Indian tribal government, can be designated as the Grantee.

General administrative requirements for grants and cooperative agreements are found in [44 CFR Part 13](#), **Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments**. Additional program specific requirements for the FMAG Program are found in 44 CFR part 204, **Fire Management Assistance Grant Program**.

### Grant Application File

The Regional Office maintains a grant application file that may include the following forms.

- Standard Form 424 Request for Federal Assistance
- FEMA Form 078-0-1 Request for Fire Management Declaration (replaced FF 90-58)
- FEMA Form 078-0-2 Principal Advisor's Report (replaced FF 90-32)
- FEMA Form 089-0-24 Request for Fire Management Assistance Subgrant (RFMAS) (replaced FF 90-133)
- FEMA Form 009-0-0-7 Project Worksheet (PW) (replaced FF 90-91)
- FEMA Form 20-16a Assurances Non-Construction Programs
- FEMA Form 20-16b Assurances Construction Programs
- Standard Form 269 Financial Status Report
- Standard Form 425 Federal Financial Report (replaced FEMA Form 20-10)

\*Note: FMAG form numbers changed when OMB approved new forms and form numbers. The 90-32 is now 078-0-2, 90-58 is now 078-0-1, 90-91 is now 009-0-0-7, and the 90-133 is now 089-0-24.

The FEMA Regional Office is responsible for reviewing grant applications for eligibility and approving and obligating funds.

### Initial Grant Application and Approval Timeframe

The State must submit its initial grant application (SF 424) no later than nine months after the date of the fire declaration. In extenuating circumstances, such as delay in receiving bills for Federal resources ordered, the State may submit a written request for a time extension to the FEMA Regional Administrator. The request for a time extension must provide a detailed justification for the delay and need for the extension. Upon receipt of the written request from the State, the FEMA Regional Administrator may approve a time extension of up to three months.

The FEMA Regional Administrator has 45 days from the receipt of the State's initial grant application, or an amendment to the State's grant application, to approve or deny the application package or amendment or to notify the State of a delay. Before the Regional Administrator can approve the State's grant application, the State must demonstrate that it:

- Met the fire cost threshold;
- Has an approved State Administrative Plan; and
- Has an approved State Mitigation Plan.

### **Fire Cost Threshold**

Prior to approval of the grant, the State's eligible fire costs must meet either its individual fire cost threshold or the cumulative fire cost threshold.

When submitting the initial grant application, the State must demonstrate that it has met either the individual or cumulative fire cost threshold. To demonstrate that the individual or cumulative fire cost threshold has been met, the State or FEMA staff must document the total eligible costs for a declared fire on PWs. These are attached to the SF 424 and submitted as part of its grant application.

It is important to note that the cost for the pre-positioning of wildland firefighting resources is not considered when determining whether a grant application meets the fire cost threshold. The costs for all eligible fires within a declared fire complex are aggregated and treated as an individual fire for purposes of meeting or exceeding the fire thresholds.

Amendments to the initial grant application may be submitted thereafter, increasing the overall value of the grant.

*Individual Fire Cost Threshold:* The individual fire cost threshold is based on total eligible costs for the declared fire. The individual fire cost threshold for a State is the greater of the following:

- \$100,000; or
- 5% x the statewide per capita indicator x the State population (the statewide per capita indicator is adjusted annually for inflation. (The FY14 indicator is \$1.39.)

*Cumulative Fire Cost Threshold:* The cumulative fire cost threshold is based on total eligible costs incurred during the calendar year for all declared fires and total costs incurred on non-declared wildland fires (Federal costs not billed/payable by the State cannot be included in this calculation). The cumulative fire cost threshold for a State is the greater of the following:

- \$500,000; or
- 3 x 5% the statewide per capita indicator x the State population (the statewide per capita indicator is adjusted annually for inflation. (The FY14 indicator is \$1.39.)

NOTE: The fire cost thresholds for each State are adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor.

### **State Administrative Plan**

In accordance with 44 CFR part 204.51(d)(1), **Application and Approval Procedures for a Fire Management Assistance Grant, State Administrative Plan**, the State must develop an Administrative Plan or have a current FEMA-approved Administrative Plan on file with the FEMA Regional Office that describes the procedures for administering the FMAGP. The plan may be a stand-alone document or an addendum to the Public Assistance Program State Administrative Plan.

At a minimum, the State Administrative Plan must include:

- The designation of the State agency (i.e., Grantee) that will have responsibility for program administration; and
- The identification of staffing functions, sources of staff to fill these functions, and management and oversight responsibilities of each.
- Procedures for:
  - Notifying potential applicants of the availability of the program;
  - Assisting FEMA in determining applicant eligibility;
  - Submitting and reviewing subgrant applications;
  - Processing payment requests for subgrantees;
  - Submitting, reviewing, and accepting performance and financial reports;
  - Monitoring, closing-out, auditing, and reconciling of subgrants;
  - Recovering funds for disallowed costs;
  - Processing appeal requests and requests for time extensions; and,
  - Providing technical assistance and materials on the application procedures, program eligibility guidance, and program deadlines.

The State should review its FMAG Program State Administrative Plan annually and make necessary amendments to reflect changes in programmatic guidance or signatory parties. The State may request the Regional Administrator provide technical assistance in preparing the State Administrative Plan.

### **State Mitigation Plan**

Section 322 of the Stafford Act, **Mitigation Planning** and implementing regulations (44 CFR parts 201 and 204), require governments to take a proactive approach to mitigation planning. Before FEMA can approve a State FMAGP application the Grantee must have an approved State Mitigation Plan that addresses wildfire risks and mitigation measures.

The intent of requiring hazard mitigation planning to receive FMAGP grants is to identify the State's wildfire hazards and cost-effective mitigation alternatives that produce long-term benefits.

### **Grantee Responsibilities**

The Grantee is responsible for administering an FMAGP grant. Grantee responsibilities include the following:

- Submitting the grant application package to the FEMA Regional Administrator for review and approval;
- Managing the administration and operation of FMAGP in coordination with FEMA;
- Disbursing funding to subgrantees;
- Monitoring subgrant awards;
- Conducting closeouts; and
- Obtaining audits.

The Grantee is the primary contact for transactions with and on behalf of applicants applying for a fire management assistance subgrant. The Grantee is responsible for submitting all subgrantee requests (FF 089-0-24) and PWs to FEMA for review and approval as part of the

grant application package. The Grantee certifies applicant eligibility and that costs for work performed in the wildland firefighting activities comply with FEMA laws, regulations, policy, and guidance applicable to FMAGP, as well as the terms and conditions outlined for the administration of the grant in the FMAGP FEMA-State Agreement. During the closeout process or an audit, should funds be disallowed, the Grantee is responsible for recovery and return of funds to FEMA.

## **Subgrants**

### Eligible Subgrant Entities

State and Indian tribal governmental agencies not designated as Grantee, as well as local governmental entities, may be eligible for FMAGP subgrants. In cases where an Indian tribal government is serving in a dual role as a Grantee and subgrantee under the State's declaration, all Indian tribal government entities applying for subgrants must submit their applications through the Indian tribal government Grantee. Privately owned entities, private nonprofits, and volunteer entities are not eligible for subgrant, but may be reimbursed through Mutual Aid agreements with an eligible subgrantee.

### Request for Fire Management Assistance Subgrant (**RFMAS**)

State, Indian Tribal, and local governments interested in applying for FMAGP subgrants must submit a RFMAS (FF 089-0-24) to the Grantee in accordance with State procedures, and within the timeframe established by the Grantee, but no later than 30 days after the close of the incident period.

The RFMAS is an applicant's official notification to both the Grantee and FEMA of its intent to apply for a subgrant. The form includes information identifying the applicant, including the applicant's name, address, and primary and secondary contacts. The Grantee reviews the RFMAS and forwards it to the FEMA Regional Office. The Regional Administrator then determines applicant eligibility and informs the Grantee of his/her determination. The Grantee then notifies the applicant. If approved, the subgrant application process may begin.

### Project Worksheets (PWs)

After approving a Grantee or Subgrantee's request, FEMA Regional staff may begin to work with the Grantee and local staff to prepare PWs. The Regional Administrator may request the Principal Advisor to assist with PW preparation. If a Grantee or FEMA prepares a PW for a subgrantee, the subgrantee must review and concur with the PW.

Subgrantees must submit all PWs to the Grantee for review. The Grantee then submits them to the Regional Administrator as part of its grant application. PWs must be greater than \$1,000 to be eligible under FMAGP. PWs must be submitted within the timeframe established by the Grantee, but no later than six months from the close of the incident period. At the request of the Grantee, the Regional Administrator may grant a three month extension.

### Procurement Policies

Established procurement policies must be followed when procuring goods or services with FEMA Public Assistance/FMAG funds. Established policies must adhere to all State, Tribal, and local laws and regulations as well as Federal standards. If procurement standards do not comport with FEMA regulations, the procurement standards outlined in 44 CFR part 13.36,

**Procurement** must be followed.

Grantees and subgrantees should take the necessary steps to ensure there are opportunities to award contracts to minority, women-owned, and Labor Surplus Area businesses and firms whenever possible. Examples of affirmative steps include, but are not limited to: ensuring that the group of contractors considered for awards reflects appropriate demographics, placing qualified minority and women-owned businesses on solicitation lists, soliciting these businesses when possible, and requiring prime contractors to take these steps as well.

FEMA will review, on an ongoing basis, procurement documents to validate that affirmative steps to utilize minority and women-owned businesses are being followed during the administration of an award. Individuals, organizations, and vendors can challenge contract awards through formal protest, complaints of discrimination in awarding the contract, allegations of real or apparent conflict of interest, or failure to follow established procedure for making an award. It is your responsibility to have protest procedures to handle and resolve disputes relating to your procurements and to provide information regarding protests to FEMA.

#### Cost Share

Under 44 CFR part 204.61 the Federal cost share for a FMAG Program Grant is 75 percent. The 25 percent non-Federal cost share can be provided in its entirety by the Grantee, subgrantee, or a combination of the two. Under the FMAGP regulations, FEMA may not adjust the cost-share. All terms and conditions are outlined in the FEMA-State Agreement and apply to all declared fires within each calendar year.

#### **Duplication of Benefits**

Pursuant to section 312 of the Stafford Act, and 44 CFR part 204.62(a) **Duplication and Recovery of Assistance**, *Duplication of benefits*, FEMA 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. A subgrantee must notify the Grantee of all benefits that it receives or anticipates to receive from other sources for the same purpose and must seek all such benefits available to them. FEMA will reduce the grant by the amount available for the same purpose from other sources.

Assistance may be provided under FMAGP when other benefits do not fully cover the eligible work. However, the applicant must repay FEMA for any duplicated amounts that it receives or has available to it from other sources.

FEMA does not provide assistance for activities for which another Federal agency has more specific or primary authority to provide assistance. FEMA may disallow or recoup amounts that fall within another Federal agency's statutory authority. FEMA may provide assistance in such situations, but the applicant must agree to seek assistance from the appropriate Federal agency and to repay FEMA for amounts that are within another agency's authority. It is the applicant's responsibility to notify the Grantee of any duplicate costs recovered from another Federal agency.

#### **Negligence and Intentional Acts**

Pursuant to 44 CFR part 204.62(c), FEMA will not provide assistance to an applicant for costs attributable to its own negligence. If negligence by another party results in damages, assistance may be provided, on the condition that the applicant agrees to cooperate in all efforts

necessary to recover the cost of such assistance from the negligent party. Any individual who intentionally causes a declared fire shall be liable to the United States to the extent of costs incurred. An individual will not be liable as a result of actions taken or omitted in the course of rendering care or assistance in response to the fire.

If the applicant suspects negligence or intentional acts by a third party for contributing to or igniting a declared fire, the applicant is responsible for taking all reasonable steps to recover costs from the third party. Any recovered costs are considered duplicated benefits and need to be remitted to FEMA.

To ensure that applicants take reasonable steps toward cost recovery and possible prosecution of responsible entities, FEMA will require applicants to document their liability findings and proposed plan of action. The Grantee must work with the State's Attorney General to pursue legal avenues to recover costs from any negligent third party responsible for a declared fire. The State's decision to prosecute for damages from a liable third party must be documented and signed by the State's Attorney General, and provided by the Grantee to the Regional Office as part of the State's initial grant application or as a subsequent amendment.

The Applicant must demonstrate reasonable efforts to recover costs from a negligent third party. If FEMA determines an applicant has not made reasonable efforts to recover costs from a negligent third party responsible for igniting a declared fire, FEMA may withhold or recoup funding from the grant. FEMA recognizes that it may not be feasible or cost effective for applicants to pursue cost recovery from all third parties responsible for igniting a declared fire.

FEMA may pursue measures against a third party whose intentional acts contributed to the costs incurred by the declared fire even if an applicant chooses not to prosecute.

When the declared fire was determined to have been caused by an intentional act, the Grantee and/or subgrantee must agree to cooperate with the Federal government in any action it may take to recover costs. Specifically, 44 CFR part 204.62(d), **Duplication and Recovery of Assistance** requires "an agreement by the applicant to cooperate with [FEMA] in [its] efforts to recover the cost of the assistance from the liable party." Again, when the State signs the FEMA-State Agreement, under Article 9 it agrees "...on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal Government in seeking recovery of funds ... against any party or parties whose intentional acts or omissions may have caused or contributed to the damage or hardship for which Federal assistance is provided... ."

FEMA will review any costs recovered by the Grantee and/or subgrantee for a fire caused by an act of negligence to determine if there is a duplication of benefits. Duplicated costs must be repaid based on the Federal cost share. Consideration will be given to the terms and conditions of the award or settlement, and any additional legal costs incurred.

### **Administrative Costs**

Grantee

Under 44 CFR part 204.63, the Grantee may claim both direct and indirect administrative costs for costs associated with requesting, obtaining, and administering a grant for a declared fire.

Direct costs include regular and overtime pay and travel expenses for permanent, reassigned, temporary, and contract employees who assist in administering the Grant.

Funding for other direct costs incurred by the Grantee administering a grant, such as equipment and supply purchases, may be eligible, but must be approved by the Regional Administrator.

Indirect costs incurred by the Grantee during the administration of a grant are allowed in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87. The Grantee must submit a copy of the indirect cost proposal along with the PW for indirect costs. The PW is reviewed by FEMA's Disaster Finance Center for reasonableness and eligibility.

Costs included in the computation of the indirect cost rate are not allowable as direct administrative costs.

#### Subgrantee

The subgrantee may claim costs associated with requesting, obtaining, and administering a subgrant for a declared fire. Direct costs include regular and overtime pay and travel expenses for permanent, reassigned, temporary, and contract employees who assist in administering the fire management assistance subgrant.

Funding for other direct costs incurred by the subgrantee administering a subgrant, such as equipment and supply purchases, may be eligible, but must be reviewed by the Grantee and FEMA Regional Administrator.

Subgrantees may not claim indirect administrative costs.

#### **Appeals of Grant Eligibility**

A Grantee or subgrantee may appeal any grant-related determination made by FEMA, including determinations on applicant eligibility, work eligibility, and cost eligibility. (See 44 CFR part 204.54), **Appeals**.

There are two levels of appeals. The first is to the FEMA Regional Administrator. The second appeal is to the Assistant Administrator of the Recovery Directorate in FEMA Headquarters, and it is the final administrative decision of FEMA.

Applicants must submit all appeals within 60 days to the Grantee. The Grantee will review the appeal and forward it with a written recommendation to the FEMA Regional Administrator.

Appeals should contain documented justification supporting the appellant's position, specifying the determination in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial determination was inconsistent.

Within 90 days following receipt of an appeal, the FEMA Regional Administrator (for first appeals) or Deputy Associate Administrator of the Office of Response and Recovery at FEMA Headquarter Office (for second appeals) will notify the Grantee in writing of the disposition of the appeal or of the need for additional information.

A request for additional information will include a date when 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 Administrator or Deputy Associate Administrator of the Office of Response and Recovery will notify the Grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the FEMA Regional Administrator takes appropriate implementing action.

When an appeal involves technical issues, the FEMA Regional Administrator or Deputy Associate Administrator of the Office of Response and Recovery may submit the appeal to an independent scientific or technical person or group 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 a technical report, the FEMA Regional Administrator or Deputy Associate Administrator of the Office of Response and Recovery will notify the Grantee in writing of the disposition of the appeal.

### **Grant Closeouts**

Regulations governing grant closeouts are found in 44 CFR part 13.50, **Closeout**. The purpose of closeout is to certify that all eligible costs have been disbursed. During the closeout process, estimated costs are reconciled with actual costs. It is the Grantee's responsibility to document all costs associated with the eligible wildland firefighting activities. The Grantee is responsible for making sure that all documentation on PWs is accurate, complete, and up to date for closeout. Failure to properly document any project may result in loss of funding for that project.

The Grantee must submit all required documentation within 90 days after the performance period expiration date. The performance period is the time interval designated in block 13 on SF 424 for the Grantee and all subgrantees to submit eligible costs and have those costs processed, obligated, and closed out by FEMA. The Grantee will submit a final Federal Financial Report (SF 425), which reports all costs incurred within the incident period and all administrative costs incurred within the performance period.

A grant is ready to be closed when all funds have been distributed and all documentation is complete. Either FEMA or the Grantee can begin the closeout process. The FEMA Regional Office may begin the closeout process with a letter of inquiry, followed by a letter of intent to proceed with the closeout when no other justification can be provided to keep the grant open.

### **Audit Requirements and Documentation**

All grant and subgrant recipients must comply with OMB Circular A-133, **Audits of States, Local Governments, and Non-Profit Organizations**. Specifically that section requiring grant or subgrant recipients expending \$500,000 or more in Federal funds in a fiscal year to obtain an audit. Specific information pertaining to the audit requirements of each State is outlined in their respective State Administration Plans. States must abide by both Federal and State audit requirements.

Grant recipients may also be subject to additional audits by the Department of Homeland Security Office of Inspector General and State auditors for items not covered under OMB Circular A-133. Specific documentation and procedures are based on the requirements of the OMB. The OMB requires grant recipients to maintain financial and program records for three years following certification and request for closeout. The Office of Inspector General may



independently, or at FEMA's request, initiate an audit of a Grantee or subgrantee for a particular fire or fire complex.

In some instances, State law and procedures may require paperwork to be retained for longer than the three years required by OMB. It is important for grant recipients to check the specific audit requirements and statutes governing their State.

The importance of maintaining a complete and accurate set of records for each project cannot be overemphasized. Accurate and complete documentation will facilitate the validation, approval, and funding processes for projects.

All of the documentation pertaining to a project should be filed together with the corresponding Project Worksheet and maintained as part of the permanent record of the project. These records become the basis for verifying project costs.

Documentation is the process of establishing and maintaining accurate records of events and expenditures related to suppression and recovery work. The information required for documentation basically describes the "who, what, when, where, why, and how much" for each item of disaster recovery work.

It is important that events and expenses incurred in an FMAG declaration are accurately documented. While there are many ways to maintain records, a system must be in place to ensure all necessary information is readily available and in a usable format.

Accurate documentation helps to:

- Recover eligible costs;
- Have the information necessary to develop PWs;
- Have the information available, which the Region and/or State may need to see, to validate the accuracy and eligibility of costs; and
- Be ready for any State or Federal audits, or other Federal program reviews.

## CHAPTER SIX – SUPPLEMENTARY INFORMATION

### Forms

The following forms may be accessed at FEMA's Management Directorate Webpage located at: <http://online.fema.net/management/records/forms.shtm>

#### Alphabetical Order by Form Name

SF 424	Application for Federal Assistance
FF 90-128	Applicant's Benefits Calculation Worksheet
FF 20-16B	Assurances—Construction Programs
FF 20-16A	Assurances—Non-construction Programs
FF 20-20	Budget Information—Non-construction Programs
FF 20-16C	Certifications Regarding Lobbying; Debarment, Suspension And Other Responsibility Matters; And Drug-Free Workplace Requirements
FF 90-126	Contract Work Summary Record
SF 425	Federal Financial Report
FF 90-127	Force Account Equipment Summary Record
FF 90-123	Force Account Labor Summary Record
FF 90-124	Material Summary Sheet
FF 078-0-2	Principal Advisor's Report (replaces 90-32)
FF 009-0-0-7	Project Worksheet (replaces 90-91)
FF 90-91A	Project Worksheet—Damage Description and Scope of Work Continuation Sheet
FF 90-91B	Project Worksheet—Cost Estimate Continuation Sheet
FF 90-91C	Project Worksheet— Maps and Sketches Sheet
FF 90-125	Rented Equipment Summary Record
FF 078-0-1	Request for Fire Management Assistance Declaration (Replaces FF 90-58)
FF 089-0-24	Request for Fire Management Assistance Subgrant (Replaces FF 90-133)
FF 90-120	Special Considerations Questions
FF 20-16	Summary Sheet for Assurances and Certifications

#### Ascending Order by Form Number

FF 009-0-0-7	Project Worksheet
FF 078-0-1	Request for Fire Management Assistance Declaration (Replaces FF 90-58)
FF 078-0-2	Principal Advisor's Report (Replaces FF 90-32)
FF 089-0-24	Request for Fire Management Assistance Subgrant (Replaces FF 90-133)
FF 20-16	Summary Sheet for Assurances and Certifications
FF 20-16A	Assurances—Non-construction Programs
FF 20-16B	Assurances—Construction Programs
FF 20-16C	Certifications Regarding Lobbying; Debarment, Suspension And Other Responsibility Matters; And Drug-Free Workplace Requirements
FF 20-20	Budget Information—Non-construction Programs
SF 424	Application for Federal Assistance
SF 425	Federal Financial Report
FF 90-32	Principal Advisor's Report (replaced by 078-0-2)
FF 90-120	Special Considerations Questions
FF 90-123	Force Account Labor Summary Record

FF 90-124	Material Summary Sheet
FF 90-125	Rented Equipment Summary Record
FF 90-126	Contract Work Summary Record
FF 90-127	Force Account Equipment Summary Record
FF 90-128	Applicant's Benefits Calculation Worksheet
FF 90-133	Request for Fire Management Assistance Subgrant (replaced by 089-0-24)
FF 90-58	Request for Fire Management Assistance Declaration (replaced by 078-0-1)
FF 90-91	Project Worksheet (replaced by 009-0-0-7)
FF 90-91A	Project Worksheet—Damage Description and Scope of Work Continuation Sheet
FF 90-91B	Project Worksheet—Cost Estimate Continuation Sheet
FF 90-91C	Project Worksheet— Maps and Sketches Sheet

### **Forms Available only as PDF**

Incident Status Report ICS-209 <http://www.usda.gov/documents/ics209.pdf>

## **Subpart and Section References, 44 CFR Part 204**

### **Subpart A—General**

- § 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—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

## **9500 Series Policy Publications**

FEMA policies governing Public Assistance and Fire Management Assistance may be accessed on-line at: <http://www.fema.gov/government/grant/pa/9500toc.shtm>

## **44 CFR Part 204**

Title 44: Emergency Management and Assistance

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

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Section Contents

### **Subpart A—General**

- § 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—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

## **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.

**Assistant Administrator.** The Assistant Administrator for the Disaster Assistance 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 Assistant Administrator for the Disaster Assistance

Directorate 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 Mitigation Plan, described in 44 CFR part 201.

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 Administrator, 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 Administrator. The administrator 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.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61370, Oct. 28, 2003; 74 FR 15345, Apr. 3, 2009]

§§ 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 Assistant Administrator for the Disaster Assistance Directorate 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 Administrator 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 Administrator , in coordination with the Principal Advisor, will verify the information submitted in the State's request.

(b) The Regional Administrator will then forward the State's request to the Assistant Administrator for the Disaster Assistance Directorate 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 Administrator , 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 Administrator will provide the Assistant Administrator for the Disaster Assistance Directorate 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 Assistant Administrator for the Disaster Assistance Directorate 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 Assistant Administrator for the Disaster Assistance Directorate 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 Administrator . The Regional Administrator 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 Administrator 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 Administrator . The Assistant Administrator for the Disaster Assistance Directorate 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 Assistant Administrator for the Disaster Assistance Directorate 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 Assistant Administrator for the Disaster Assistance Directorate 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 Administrator 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.

(c) 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 Administrator must approve all pre-positioning costs.

(i) Upon approval of a State's request for a fire management assistance declaration by the Assistant Administrator for the Disaster Assistance Directorate, the State should immediately notify the Regional Administrator 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 Administrator 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 Administrator will notify the Assistant Administrator for the Disaster Assistance Directorate 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 Administrator . 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 Administrator 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 Administrator 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 Administrator . Once these plans are approved by the Regional Administrator , 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 Administrator 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 Mitigation Plan in accordance with 44 CFR part 201 that addresses wildfire risks and mitigation measures; or
- (ii) Incorporate wildfire mitigation into the existing Mitigation Plan developed and approved under 44 CFR part 201 that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

[66 FR 57347, Nov. 14, 2001, as amended at 68 FR 61371, Oct. 28, 2003]

§ 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 Administrator for final review and determination. The Grantee may also forward a recommendation for approval of the Request to the Regional Administrator when appropriate.

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

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

(b) Preparing a Project Worksheet. (1) Once the Regional Administrator approves an applicant's Request for Fire Management Assistance, the Regional Administrator's staff may begin to work with the Grantee and local staff to prepare Project Worksheets (FEMA Form 90-91).

(2) The Regional Administrator 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 Administrator 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 Administrator 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 Administrator . The grantee will review and evaluate all subgrantee appeals before submission to the Regional Administrator . The grantee may make grantee-related appeals to the Regional Administrator . 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 Administrator will consider first appeals for fire management assistance grant-related decisions under subparts A through E of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator'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 Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (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 Administrator or Assistant Administrator for the Disaster Assistance Directorate 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 Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) Technical advice. In appeals involving highly technical issues, the Regional Administrator or 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 Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal.

(e) The decision of the Assistant Administrator for the Disaster Assistance Directorate 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.