

| Commodity | Parts per million | Expiration/Revocation Date |
|--------------------|-------------------|----------------------------|
| Sweet potato | 0.1 | 5/1/02 |

(b) Section 18 emergency exemptions. [Reserved]
 (c) Tolerances with regional registrations. [Reserved]
 (d) Indirect or inadvertent residues. [Reserved]

§180.241 [Amended]
 7. Section 180.241 is amended by removing the word "cottonseed."
 8. In §180.254, paragraph (a) is amended by adding a third column titled "Expiration/Revocation Date." to the table, by adding the word "None" in

the new third column for all entries except "Rice" and "Rice straw." and by revising the entries for "Rice" and "Rice straw" to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

(a) General. * * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|-------------------|----------------------------|
| Rice | 0.2 | 8/31/02 |
| Rice, straw (of which no more than 0.2 ppm is carbamates) | 1.0 | 8/31/02 |

* * * * *

§180.305 [Removed]
 9. Section 180.305 is removed.
 10. Section 180.338 is revised to read as follows:

§ 180.338 6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one; tolerances for residues.
 (a) General. Tolerances are established for residues of the fungicide and insecticide 6-methyl-1,3-

dithiolo[4,5-b]quinoxalin-2-one in or on raw agricultural commodities as follows:

| Commodity | Parts per million | Expiration/Revocation Date |
|-------------------------------|-------------------|----------------------------|
| Apple | 0.05 | 8/1/02 |
| Apricot | 0.02 | 8/1/02 |
| Cattle, fat | 0.05 | 8/1/02 |
| Cattle, meat | 0.05 | 8/1/02 |
| Cattle, meat byproducts | 0.05 | 8/1/02 |
| Fruit, citrus | 0.5 | 8/1/02 |
| Goat, fat | 0.05 | 8/1/02 |
| Goat, meat | 0.05 | 8/1/02 |
| Goat, meat byproducts | 0.05 | 8/1/02 |
| Hog, fat | 0.05 | 8/1/02 |
| Hog, meat | 0.05 | 8/1/02 |
| Hog, meat byproducts | 0.05 | 8/1/02 |
| Horse, fat | 0.05 | 8/1/02 |
| Horse, meat | 0.05 | 8/1/02 |
| Horse, meat byproducts | 0.05 | 8/1/02 |
| Milk | 0.01 | 8/1/02 |
| Nut, macadamia | 0.1 | 8/1/02 |
| Pear | 0.05 | 8/1/02 |
| Sheep, fat | 0.05 | 8/1/02 |
| Sheep, meat | 0.05 | 8/1/02 |
| Sheep, meat byproducts | 0.05 | 8/1/02 |
| Walnut | 0.1 | 8/1/02 |

(b) Section 18 emergency exemptions. [Reserved]
 (c) Tolerances with regional registrations. [Reserved]
 (d) Indirect or inadvertent residues. [Reserved]

§180.1001 [Amended]
 12. Section 180.1001 is amended by removing the entry for "fumaric acid-isophthalic acid-styrene-ethylene/propylene glycol copolymer (minimum average molecular weight (in amu) 1 x 10¹⁸)" from the table in paragraph (d).
 [FR Doc. 01-19176 Filed 7-31-01; 8:45 am]
BILLING CODE 6560-50-S

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 204

RIN 3067-AD24

Disaster Assistance; Fire Management Assistance Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

§180.413 [Amended]
 11. Section 180.413 is amended by removing the entry for "cottonseed" from the table in paragraph (a)(1).

SUMMARY: This proposed rule would implement section 420 of the Stafford Act as amended by the Disaster Mitigation Act of 2000 and would provide overall program guidance on the operation and administration of the Fire Management Assistance Grant Program.

DATES: We invite comments on this proposed rule and will accept comments until September 17, 2001.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) 202-646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Curtis Carleton, Chief, Community Services Branch, Federal Emergency Management Agency, 500 C Street SW., room 713, Washington, DC 20472, 202-646-4535; (facsimile) 202-646-3147; or (e-mail) Curtis.Carleton@fema.gov.

SUPPLEMENTARY INFORMATION: Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5187, as amended by section 303 of the Disaster Mitigation Act of 2000, establishes the Fire Management Assistance Grant Program, which expands the scope and level of assistance currently available under the Fire Suppression Assistance Program. Instead of limiting Federal assistance to the "suppression" of forest or grassland fires that threaten such destruction as would constitute a major disaster, section 420, as amended, expands the range of eligible activities to include the "mitigation, management, and control" of such fires.

Part of the difficulty in administering the Fire Suppression Assistance Program over the past several years has been the changing nature and increased frequency of wildfires. From 1970-1995, we (FEMA) averaged about 5-7 State requests per year. However, since 1996, we have averaged approximately 40 requests per year. We attribute this increase in State requests to a higher occurrence of fires burning in the wildland/urban interface, the area where potentially highly flammable wildland vegetation meets high value structures, primarily residences.

In addition to the dramatic increase in requests, expenditures for the Fire Suppression Assistance Program have also increased. From June 1970-December 1996 Federal expenditures totaled \$103,043,218; yet in 1998 alone expenditures under the program totaled \$105,803,191. In one year, the Fire Suppression Assistance Program

exceeded the programmatic costs accumulated over its previous 27 years of existence. We expect this trend of more frequent and costly fires to continue well into the next decade as the boundaries between wildlands and urban population centers continue to diminish, creating a volatile wildland/urban interface. Federal expenditures for the 2000 fire season have already exceeded \$50 million and we expect this number to increase as States submit additional costs to FEMA for review.¹

Despite the relatively high level of funding provided to States under approved fire suppression assistance grants, the program has struggled to meet the needs of States that have exceeded their capability in battling fires in the wildland/urban in recent years. To compensate for deficiencies in the current program, the President has approved several State requests for major disaster and emergency declarations. Since 1996, Federal expenditures for major disaster and emergency declarations provided in conjunction with fire suppression assistance grants have totaled \$62,433,467.

The Disaster Mitigation Act of 2000 amendments to § 420 will allow us to provide States with a higher, more organized level of Federal assistance under the Fire Management Assistance Grant Program than is currently available under the Fire Suppression Assistance Program. In Senate Report 106-295 dated May 16, 2000, which accompanied Senate Bill 1691, members of Congress acknowledged the deficiencies of the current program and commented that the amendments " * * * would allow for payment of the extraordinary cost incurred by local governments in complex, multi-location wildfire situations (e.g., Texas and Oklahoma in 1996, and Florida in 1998), and may preclude the need to issue a major disaster or emergency in these situations."

For instance, to minimize the need for major disaster and emergency declarations to be provided in conjunction with fire management assistance grants, section 420, as amended, includes explicit authority to fund activities allowable under section 403 (42 U.S.C. 5170b)—Essential Assistance—of the Stafford Act. Section 403 authorizes assistance for activities required to meet threats to life and property. To allow payment for the extraordinary costs incurred by local

governments performing eligible firefighting activities, section 420 now authorizes the provision of assistance, including grants, equipment, supplies, and personnel both to State and local governments, whereas under the Fire Suppression Assistance Program assistance was limited to States. To ensure the effective administration and operation of the new Fire Management Assistance Grant Program, section 420, as amended, requires us to coordinate with State and tribal departments of forestry, in addition to the more traditional emergency management agencies that we coordinate with on the administration and operation of other Stafford Act disaster assistance programs.

Our proposed regulations for the new Fire Management Assistance Grant Program reflect the changes mandated by the Disaster Mitigation Act of 2000. These proposed regulations also include other initiatives designed to streamline the Fire Management Assistance Grant Program and make it more consistent with the administration, eligibility, and funding of the other Stafford Act disaster assistance programs.

The Fire Management Assistance Grant Program becomes effective on October 30, 2001, one year from enactment of the Disaster Mitigation Act of 2000.

Disaster Mitigation Act of 2000 Amendments

Mitigation, Management and Control

In order to gather a full spectrum of ideas for the design of the Fire Management Assistance Grant Program, we convened a meeting of foresters and program managers representing eight States, Native American Tribes, the Forest Service, and four FEMA Regional Offices in January 2001. During the meeting, we discussed the practical interpretation and application of "mitigation, management, and control." Based on those discussions, we are interpreting "mitigation, management, and control" as a flexible and broad-based provision intended to reduce the spread of a fire, reduce associated health and safety threats, prevent potential damages by the fire, and repair damage caused by the firefighting activities. In application, activities that may be eligible for funding under the new program include section 403 activities that are associated with the firefighting operation such as evacuations and sheltering, search and rescue, and public information, as well as other activities associated with the "mitigation, management, and control" of declared fires, which may include the

¹ Under the Fire Suppression Assistance Program it normally takes States between 12 and 18 months to gather and submit all eligible costs to FEMA for review.

repair of damage caused by eligible firefighting activities and the pre-positioning of resources.

State and local governments, however, should be aware that "mitigation, management, and control" under this authority, applies only to a fire or fire complex that has been declared under the Fire Management Assistance Grant Program. Therefore, activities designed to reduce the potential for future fires, or to minimize future soil loss, for example, are outside of the scope of mitigation, management, and control, and would be ineligible for funding under the Fire Management Assistance Grant Program.

Local Governments

Under section 420, as amended, we may provide funding to local firefighting organizations more readily than under the current program. Under the current program, States are the sole applicants eligible for assistance; local firefighting organizations may only be reimbursed if they are signatories to a mutual aid agreement with the State. This new provision would eliminate confusion over what are acceptable mutual aid agreements, and would provide a more equitable program with respect to local governments. In the Fire Management Assistance Grant Program, local governments would be considered subgrantees, with the State serving as Grantee, and may be reimbursed for eligible costs incurred without having entered into a pre-existing mutual aid agreement with the State.

Coordination With State and Tribal Foresters

We have worked closely with State foresters in recent years as we have considered changes to the Fire Suppression Assistance Program. We have also worked closely with State foresters on many operational issues. We have had very little opportunity to work with tribal foresters; assistance for firefighting activities on tribal lands is available from other federal sources. We intend to seek out ways to coordinate program issues with tribal foresters, as well as with State foresters. We reflect this intent in our introduction to the proposed regulations.

Streamlining Proposals

We propose to incorporate measures into the Fire Management Assistance Grant Program that are similar to those in the Fire Suppression Assistance Program to ensure that Federal assistance remains supplemental to State and local capabilities. These measures include the establishment of the following: (1) Criteria that would be

used to determine when to approve a State's request for a declaration under the Fire Management Assistance Program, including a requirement for States to develop an Operations Plan that identifies, among other things, indicators of when the State needs Federal supplemental assistance; (2) a fire cost threshold that must be met on all fire management assistance grants, and (3) a 25 percent non-Federal cost-share for fire management assistance grants.

Criteria

We propose criteria that we would evaluate to determine whether a fire threatens such destruction as would constitute a major disaster. These criteria would indicate the conditions and resources specific to the current fire situation for which the State is requesting a declaration. We would consider these criteria in the context of the State's Operations Plan, which we would require each State to develop and maintain for the Fire Management Assistance Grant Program. The Operations Plan should provide an overview of State and local capabilities and identify when the State may need to request a fire management assistance declaration, detail the State's process for requesting assistance, and provide an outline for grant administration. In rendering a determination on a State's request for a declaration, we would consider the State's resources, capabilities, and other special considerations identified in the Operations Plan.

Fire Cost Threshold

We propose to replace the floor cost² that we have used in the Fire Suppression Assistance Program with a fire cost threshold that has been designed to ensure that Federal assistance remains supplemental to State and local capabilities under the Fire Management Assistance Grant Program. After we approve a State's request for a declaration, the State could apply for a fire management assistance grant; however, we would only approve

² Floor costs are a creation specific to the Fire Suppression Assistance Program. Since its inception in 1969, the Fire Suppression Assistance program has relied on the concept of floor costs to establish monetary thresholds, State-by-State, above which Federal funding is provided for a declared fire. Floor costs represent 5 percent of a State's average annual fire fighting costs, the components of which States interpret variously. As a result of these varied interpretations and reporting of fire related costs there is a great disparity in floor costs from State-to-State. We have also noticed that the floor cost has acted as a disincentive for some States to develop budget and mitigation strategies adequately for combating wildfire (lower costs reported = lower floor cost to meet).

a grant when the total eligible costs for a declared fire meet or exceed the fire cost threshold.

In an effort to streamline the Fire Management Assistance Grant Program with other Stafford Act disaster assistance programs and to clarify Federal and State responsibilities better under the new program, we undertook an examination of Federal expenditures approved under the current Fire Suppression Assistance Program from 1990–2000. Our examination showed that we approved 181 fire suppression assistance grants from 1990–2000 and obligated Federal funding in the amount of \$238,511,003 during that ten-year period. Of the 181 approved fire suppression assistance grants, however, 55 grants required less than \$15,000 in Federal funding. Federal expenditures for these 55 grants totaled \$332,583. We found these numbers to be very disconcerting, as both the current and amended versions of section 420 state that assistance is to be provided for those fires burning "on publicly or privately owned forest or grassland which threaten such destruction as would constitute a major disaster." (Emphasis added) In general, with dollar expenditures of this amount, a fire or fire complex would not appear to be beyond most States' capabilities to respond and would not be of such a magnitude that they threaten "such destruction as would constitute a major disaster."³

Under other Stafford Act disaster assistance programs, we note that some type of monetary threshold must first be met before specific disaster assistance programs providing assistance to individuals, and State and local governments are designated under a major disaster declaration. We have studied the potential effects of basing the fire cost threshold for the Fire Management Assistance Grant Program on per capita costs and feel that five percent of \$1.04 per capita of the State population would be appropriate. However, to further ensure that Federal assistance under the Fire Management Assistance Grant Program remains supplemental to State and local resources and capabilities, for those States with a per capita fire cost threshold of less than \$100,000, a minimum \$100,000 fire cost threshold would have to be met before we would be able to approve any Federal assistance. In determining whether or not a State has met its fire cost

³ For example, in the last 10 years there have been two fire suppression assistance grants for declared fires which received federal expenditures under \$100 (\$67 and \$89 respectively).

threshold, we will review State's total eligible costs less any pre-positioning costs. The fire cost threshold would be applied to each fire management assistance grant for which a State submits an application. We feel that the fire cost threshold is both reasonable and justified as the majority of fires declared under the Fire Suppression Assistance Program have received grants with very small dollar expenditures which are not beyond State and local capabilities to respond.

It is very important to note that determinations on State requests for fire management assistance declarations would be based solely on criteria established in 44 CFR part 204, and would not be dependent on whether the State met the fire cost threshold. As States submit grant applications under fire management assistance declarations, those applications that meet or exceed the fire cost threshold would be cost-shared in their entirety without deduction of the threshold. Those applications submitted with total eligible costs below the fire cost threshold would be turned down.

In addition to our proposal for the fire cost threshold, we have been contemplating whether we should include a component to the fire cost threshold that would be based on the cumulative effect of numerous, but smaller fires burning in States that we have declared for fire management assistance, but which failed to meet the fire cost threshold. We would appreciate any thoughts or comments interested parties may have regarding the proposed fire cost threshold and the possibility of addressing the cumulative effect of smaller declared fires that do not meet the fire cost threshold.

Cost Share

In contemplating the design of the Fire Management Assistance Grant Program, we explored ways that we could simplify the administration of the program for our applicants, while aligning the program with other Stafford Act disaster assistance programs. Consequently, we have determined to replace the three-tier matrix, which starts with a 70 percent Federal, 30 percent non-Federal cost-share and can increase to 100 percent Federal funding. We propose a 75 percent Federal, 25 percent non-Federal cost-share provision similar to that used in other Stafford Act disaster assistance programs, and to allow for 90 percent Federal funding for extraordinary fires.

The changes proposed in this section, when finalized, would simplify the administration of the Fire Management Assistance Grant Program, as well as

streamline and align the program with other Stafford Act disaster assistance programs.

National Environmental Policy Act

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

Regulatory Planning and Review

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

Regulatory Flexibility Act

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

prepared a regulatory flexibility analysis.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, we have submitted the collections of information applicable to this proposed rule to the Office of Management and Budget for review and approval.

During the comment period we solicit public comment on:

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

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

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

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

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

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

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

(c) *Standard Form 424 Request for Federal Assistance* must be completed by the State when applying for a grant

under a declared fire. The 424 and accompanying documentation must be submitted by a State to FEMA's Regional Director within nine months of declared fire. The 424 documents the incident period of the fire, the performance period of the grant, and all costs claimed under the approved declaration.

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

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

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

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

(h) *Operations Plan*. The State must submit the Operations Plan within 6 months of the date of the first declared fire and reviewed and updated on a yearly basis in order for a State to submit a 424 to FEMA. The Operations Plan should provide an overview of State and local capabilities, identify when the State may need to request a fire management assistance declaration, detail the State's process for requesting assistance, and outline the grant's administration. In rendering a determination on a State's request for a declaration, the Assistant Director would consider the State's resources, capabilities, and other special considerations identified in the Operations Plan.

(i) *Hazard Mitigation Plan*. A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards.

The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and to implement actions that produce continual benefits and have a long-term impact. Mitigation of fire hazards is addressed as part of the State's comprehensive Hazard Mitigation Plan, described in 44 CFR part 206 Subpart M.

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

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

The estimated hour burden is:

| Burden item | Hours per respondent | Respondents per year | Burden hours per year | Comments |
|--|----------------------|----------------------|-----------------------|--|
| FEMA-State Agreement | 5 minutes | 9 | 1 | We estimate 5 minutes for the Governor to sign this agreement which has the terms and conditions for the Fire Management Assistance Grant Program (FMAGP). |
| FEMA Form 90-58 | 1 hour | 9 | 9 | States use this form to support their request for a declaration. |
| Standard Form 424 | 1 hour | 9 | 9 | The State must complete this form and attachments when applying for a grant under a declared fire. |
| FEMA Form 90-91 | 30 minutes ... | 1,000 | 500 | Prepared by the Principal Advisor, FEMA and State staff, and the applicant. This form documents the costs incurred by an applicant for mitigation, management, and control activities associated with a declared fire and to reimburse applicants based on eligible costs describe din the proposed regulations for the FMAGP. |
| FEMA Form 20-10 | 1 hour | 9 | 9 | The State uses this to submit a final reporting of costs for a fire management assistance grant (FMAG). |
| Standard Form 270 or Letter of Credit. | 30 minutes ... | 9 | 5 | The State uses this form as an option to receive funds. The other option is use of FEMA's Letter of Credit procedures. |
| State Administrative Plan | 8 hour | 9 | 72 | The State must develop this plan for administration of the FMAG. |
| Operations Plan | 20 hours | 9 | 180 | The Operation Plan provides an overview of State and local capabilities, identifies when the State may need to request a fire management assistance declaration, details the State's process for requesting assistance, and outlines the grant's administration. |
| State Hazard Mitigation Plan | 160 | 9 | 1440 | A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The State Hazard Mitigation Plan is to identify wildfire hazards and to implement actions that produce continual benefits and have a long-term impact. Mitigation of fire hazards are part of the State's comprehensive Hazard Mitigation Plan, 44 CFR Part 206, Subpart M. |
| Appeals | 1 | 20 | 20 | Appeals usually consist of a letter briefly describing the reason for the appeal and any new supporting evidence for review. |
| Duplication of Benefits | 1 | 20 | 20 | Notification consists of a letter and supporting documentation. |
| Total Burden Hours | | | 2,265 | |

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

| Requests from: | No. requests | Est'd hours/requester | Cost/hour | Costs/year |
|-------------------------|--------------|-----------------------|-----------|------------|
| States | 9 | 194 | \$40 | \$69,840 |
| Local Governments | 1,000 | 0.52 | \$20 | \$10,400 |
| Totals Costs/Year | | | | \$80,240 |

Executive Order 13132, Federalism

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

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We have reviewed the proposed rule under Executive Order 13175, which became effective on February 6, 2001. Under the Fire Management Assistance Grant Program, tribal governments will have the option to submit requests for fire management assistance declarations directly to us and to serve as "Grantee," carrying out "State" roles when a grant application under the declaration has been approved. In January 2001, we met with foresters and emergency managers representing eight States, Indian tribes, the Forest Service, USDA, and four FEMA Regional offices to discuss the Disaster Mitigation Act of 2000 amendments to Section 420 and the implementation of the new program on October 30, 2001. We received invaluable input from all parties, which

helped us to develop the proposed rule for the Fire Management Assistance Grant Program.

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

List of Subjects in 44 CFR Part 204

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

Accordingly, FEMA proposes to add Part 204 to Subchapter D of 44 CFR, to read as follows:

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

Subpart A—General

- Sec.
- 204.1 Purpose.
- 204.2 Scope.
- 204.3 Definitions used throughout this part.
- 204.4–204.20 [Reserved]

Subpart B—Declaration Process

- 204.21 Fire management assistance declaration criteria.
- 204.22 Submitting a request for a fire management assistance declaration.
- 204.23 Processing a request for a fire management assistance declaration.
- 204.24 Determination on request for a fire management assistance declaration.
- 204.25 FEMA-State Agreement for Fire Management Assistance Grant Program.
- 204.26 Appeal of fire management assistance declaration denial.
- 204.27–204.40 [Reserved]

Subpart C—Eligibility

- 204.41 Eligible applicants.
- 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 Appeal of cost and eligibility determinations.
- 204.55–204.60 [Reserved]

Subpart E—Grant Administration

- 204.61 Cost share.
- 204.62 Duplication of programs.
- 204.63 Allowable costs.
- 204.64 Reporting and audit requirements.

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

Subpart A—General

§ 204.1 Purpose.

This part provides information on the policies and procedures for the declaration process, eligibility, grant application and administrative requirements for the Fire Management Assistance Grant Program in accordance with the provisions of section 420 of the Stafford Act. 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 tribal government submitting an application to us for a fire management assistance grant, or a State, local, or tribal government submitting an application to the Grantee for a subgrant under an

approved fire management assistance grant.

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

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

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

FEMA-State agreement for the Fire management assistance grant program ("the Agreement.") An agreement signed by the Governor of a State and the Regional Director. The agreement contains the necessary terms and conditions, consistent with the declaration and the provisions of applicable laws, Executive Orders, and regulations as the Associate Director may require with respect to the amount of funding to be provided. The agreement specifies the type and extent of Federal assistance to be provided, including descriptions of the incident period and cost sharing provisions, as well as any articles of agreement necessary for the administration of a grant approved under a fire management assistance declaration.

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

Fire severity index. A number indicating the relative severity of the forest or grassland fire danger as determined from burning conditions and other variable factors of fire danger.

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 shall 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 State agency, as designated in the FEMA-State Agreement, to which a grant is awarded and which is accountable for the use of

funds provided. An Indian tribe or authorized tribal organization may be the Grantee and carry out "state" roles when it applies directly to FEMA. For purposes of this part, except as noted, the State is the Grantee.

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 to implement actions that produce continual benefits and have a long-term impact. We address mitigation of fire hazards as part of the State's comprehensive Hazard Mitigation Plan, described in 44 CFR part 206, subpart M.

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

Incident period. The period established by the Regional Director, in consultation with the Governor's Authorized Representative and the Principal Advisor, for the purpose of providing assistance under a fire management assistance declaration. The incident period usually begins with the start of firefighting activities and ends with the completion of mop-up activities. For grant administration purposes, the incident period generally defines the time limits for eligible costs.

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.

Mitigation, management, and control. Those activities undertaken, generally during the incident period of a fire or fire complex, to minimize immediate adverse effects and to manage and control a fire or fire complex. Eligible activities may include associated emergency work and pre-positioning directly related to the fire for which a fire management assistance declaration was approved.

Mobilization. The process and procedures used for activating, assembling, and transporting all resources that the Grantee requested to respond to support an incident.

Operations Plan for the Fire Management Assistance Grant Program. A plan that the State develops, in coordination with FEMA, that provides

an overview of the State and local capabilities and identifies when the State may need to request a fire management assistance declaration, details the State's process for requesting assistance, and outlines the grant's administration. The Operations Plan will assist the Associate Director in evaluating a State's request for a fire management assistance declaration.

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 wildland fire activity. The intent of pre-positioning is to prepare for a likely event rather than react to an event.

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.

Project worksheet. FEMA Form 90-91, which identifies actual costs incurred by eligible applicants as well as quantitative estimates for outstanding work still to be performed 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 other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of 44 CFR part 206.

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

Stafford Act. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

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 fire suppression forces.

We, our, us mean FEMA.

Wildland/urban interface. The geographical meeting point of two diverse systems, wildland and densely populated, built up environment. At this interface, structures and vegetation are sufficiently close such that a forest or grassland fire could spread to structures or a structure fire could ignite vegetation.

§§ 204.4–204.20 [Reserved]

Subpart B—Declaration Process

§ 204.21 Fire management assistance declaration criteria.

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

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

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

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

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

(b) *State Operations Plan for the Fire Management Assistance Program.* (1) *General.* To assist us in evaluating the State's request for a fire management assistance declaration in accordance with the provisions of this part, each

State must develop and maintain an Operations Plan for the Fire Management Assistance Grant Program.

(2) *Content of Plan.* The Operations Plan should identify when the State will request a declaration based on State and local capabilities. We expect the following components to be specifically addressed in the Operations Plan:

- (i) Identification of FEMA and State points of contact;
 - (ii) Identification of jurisdictional responsibility for fighting fire;
 - (iii) Identification of the legislative authority for firefighting, and compliance with the laws and provisions applicable to the Fire Management Assistance Grant Program;
 - (iv) Total State firefighting resources available under normal conditions (using historical data), specification of staffing requirements, and roles and responsibilities;
 - (v) Examples of the conditions and situations under which the State would expect to request a fire management assistance grant and details of the State's process for requesting assistance;
 - (vi) Mobilization plan;
 - (vii) Hazard mitigation plan, which among other things identifies land and property at risk from fires (see § 204.51(d)(2)); and
 - (viii) State administrative plan for fire management assistance grants (see § 204.51(d)(1)).
- (3) *Development and distribution of plan.*

(i) The Regional Director's staff will work with the State to develop the Operations Plan. Once complete, the State should distribute copies of the Operations Plan to the Regional Director, who will forward a copy to the Associate Director.

(ii) The State must submit an acceptable Operations Plan within six (6) months of the approval of its first request for a declaration. We may approve declarations requested within this six-month period based on the information provided in the State's request. The State must submit an acceptable Operations Plan before it can apply for a grant under this part 204.

(iii) If the State fails to develop and submit an acceptable Operations Plan within the 6-month period allowed, the State forfeits the opportunity to apply for any grants under declarations approved within that 6-month period. In addition, we will deny subsequent requests for declarations until such a time as the State submits an acceptable Operations Plan.

(iv) The Operations Plan should be reviewed on a yearly basis and updated as necessary. The Operations Plan should be designed so that State

capabilities and resources are further enhanced or built-upon to better meet the needs of current and future wildfire firefighting efforts. States may not submit Operations Plans that effectively reduce or lower capabilities and resources from prior year levels.

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

(a) In processing a request for a fire management assistance declaration, the Regional Director, in coordination with the Principal Advisor, will verify the information submitted in the State's request. Typically, verification is based on the Principal Advisor's Assessment and the Regional Summary.

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

(1) *Principal Advisor's Assessment.* The Principal Advisor, at the request of the Regional Director, is responsible for providing a technical assessment of the fire or fire complex for which the State is requesting a fire management assistance declaration.

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

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

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

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

At the beginning of each calendar year, the Governor and the Regional Director will enter into a year-long FEMA-State Agreement for the Fire Management Assistance Grant Program (Agreement). The State must have a current signed Agreement before receiving Federal funding for fire management assistance grants. We will provide no FEMA funding absent a signed Agreement. The parties may add properly executed amendments to

modify the standing Agreement throughout the year when needed for program changes or when signatory parties change.

§ 204.26 Appeal of fire management assistance declaration denial.

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

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

§§ 204.27–204.40 [Reserved]

Subpart C—Eligibility

§ 204.41 Eligible applicants.

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

- (1) State and local governments; and
- (2) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, *but not* Alaska Native corporations, the ownership of which is vested in private individuals. A tribe or Alaska Native village may apply either to the State or directly to FEMA.

(b) Entities that are not eligible to apply for a subgrant as identified in paragraph (a) of this section, 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 the findings that the resources were requested by the Incident Commander or other comparable State official.

(d) The activities performed must be the legal responsibility of the applying entity, required as the result of the fire or fire complex for which a fire management assistance declaration was

approved, and located within the declared area.

§ 204.42 Eligible costs.

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

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

(3) Federal funds will be awarded to subgrantees in accordance with State law and procedure and in compliance with 44 CFR part 13.

(b) *Equipment and supplies.* Personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety, including:

(1) Firefighting supplies, tools, materials, expended or lost, to the extent not covered by reasonable insurance, will be reimbursed based on the cost to replace new comparable items. (Examples: shovels, fire boots, and retardant).

(2) Operation and maintenance costs of publicly owned, contracted, rented, or volunteered equipment used in eligible firefighting activities.

(3) Use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. (Note: 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).

(4) Repair of equipment damaged in fire suppression activities, to the extent not covered by reasonable insurance, may be funded based on reasonable State equipment rates or FEMA equipment rates, whichever are lower.

(5) Replacement of equipment lost or destroyed in fire suppression activities, to the extent not covered by reasonable insurance, will be based on the actual depreciated value of the equipment.

(b) *Labor costs.* (1) Federal funding under the fire management assistance grant for labor costs may be provided for:

(i) Overtime for permanent or reassigned state and local employees.

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

(2) The straight or regular time salaries and benefits of a subgrantee's permanently employed personnel (for example, firefighters) are not eligible in calculating the costs of eligible work under sections 403 and 420 of the Stafford Act.

(c) *Travel and per diem costs.* Travel and per diem of employees who are providing services directly associated with eligible fire related activities may be eligible. This includes:

(1) Expenses to provide field camps and meals when made available in place of per diem; as well as

(2) Travel and per diem expenses incurred by the Principal Advisor east of the Mississippi River and in Texas.

(d) *Pre-positioning costs.* The actual costs of pre-positioning Federal resources for up to two weeks before the declaration may be eligible when those resources are used in response to a declared fire at the Incident Commander's request. For extraordinary fire events, the Regional Director may authorize funding for the actual cost of pre-positioning out-of-State and international resources, in addition to Federal resources, for up to 30 days before the declaration, when those resources were used on the declared fire at the Incident Commander's request.

(e) *Emergency work.* We may authorize the use of section 403, 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 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.

(f) *Repair of damage caused by firefighting activities.* Repair of damage caused by eligible firefighting activities listed in this subpart involves short term actions to repair and rehabilitate damage to lands, resources, and facilities directly caused by the wildland fire suppression effort or activities. This includes bulldozer lines, camps, and staging areas; damaged facilities (fences, buildings, bridges, etc.), handlines, roads, etc. This work should be complete before demobilization, or as soon thereafter as practicable. Damage caused by backfires and burnouts to stop fire spread falls under fire damage restoration and does not qualify as damage caused by firefighting activities.

(g) *Mobilization and demobilization.* Costs for mobilization to, and demobilization from, a fire or fire complex may be eligible for reimbursement. Demobilization may be claimed at a delayed date if deployment involved one or more approved events. If claiming mobilization and demobilization charges at a delayed

date, such charges must be claimed against the first declared fire or fire complex.

(h) *Fires on co-mingled Federal/State lands.* Reasonable costs for the mitigation, management, and control of a fire or fire complex burning on Federal 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 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. The exception to this item involves costs associated with eligible pre-positioning, mobilization and demobilization activities, and grant administrative requirements, which are directly related to the approved fire management assistance grant. Additional ineligible costs include:

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

(b) Costs related to planning, presuppression (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) Regular time costs for permanent or reassigned employees of the applicant;

(d) Costs for mitigation, management, and control of a 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 151);

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

§§ 204.44–204.50 [Reserved]

Subpart D—Application Procedures

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

(a) *Preparing and submitting an application.* (1) After the approval of a fire management assistance declaration, the State may submit an application package for a grant to the Regional Director. The application package must include the SF 424 and FEMA Form 20–16a, as well as supporting documentation for the budget.

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

(b) *Fire Cost Threshold.* (1) We will approve the initial grant award to the State when we determine that the State's application demonstrates that the total eligible costs for a declared fire meet or exceed the fire cost threshold. The fire cost threshold for a State is the greater of the following:

- (i) \$100,000; or
- (ii) five percent of \$1.04 per capita of the State population, adjusted periodically for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(2) States must document the total eligible costs for a declared fire on project worksheets, which they must submit with the grant award application.

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

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

(d) *Obligation of the Grant.* Before we approve a grant award, the Grantee must submit a State Administrative Plan and a Hazard Mitigation Plan to the Regional Director for review and approval. Once

approved, the Grantee must incorporate these plans into the State Operations Plan for the Fire Management Assistance Program under § 204.22 (b)(2)(viii).

(1) *State administrative plan.* (i) The State shall 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 shall 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) As with the development of the State Operations Plan for the Fire Management Assistance Program, the Grantee may request the RD to provide technical assistance in the preparation of the State Administrative Plan.

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

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

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

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

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

(2) The Grantee will review and approve the Request in accordance with § 204.41, and forward the Request to the Regional Director for final review and approval.

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

(b) *Preparing a project worksheet.* Once the Regional Director approves an applicant's Request for Fire Management Assistance, the Regional Director's staff may begin to work with the Principal Advisor and the Grantee and local staff to prepare Project Worksheets (FEMA Form 90-91). The State will be the primary contact for transactions with and on behalf of the applicant.

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

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

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

(4) *\$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) The Grantee must certify that all costs reported on applicant project worksheets were incurred for work that was performed in compliance with FEMA law, regulation, 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:

(1) Processed through the U.S.

Department of Health and Human Services SMARTLINK system; and

(2) In compliance with 44 CFR 13.21 and 31 CFR part 205.

§ 204.54 Appeal of cost and eligibility determinations.

Applicants may appeal any cost or eligibility determination FEMA makes related to a fire management assistance grant through a two level appeal process.

(a) *First level appeal.* Applicants should submit the first level appeal through the State to the Regional Director, in writing, within 60 days after a receipt of notice of the action being appealed. The Regional Director will notify the State of the decision in writing within 90 days of the receipt of the appeal or the receipt of additional requested information.

(b) *Second level appeal.* Applicants should submit the second level appeal to the Associate Director through the State and Regional Director, in writing, within 60 days of receipt of the Regional Director's denial. The Associate Director will notify the State of the decision in writing within 90 days of the receipt of the appeal or the receipt of additional requested information. The decision of the Associate Director is the final decision for the Agency.

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

§§ 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%). However, for extraordinary fire events, the Associate Director may increase the Federal cost to ninety percent (90%) whenever actual Federal obligations under this part, excluding FEMA administrative costs, meet or exceed a qualifying threshold as defined in 44 CFR 206.47(b). As stated in § 204.25, provisions for the cost share

will be outlined in the terms and conditions of the FEMA State Agreement for Fire Management Assistance.

(b) In making a determination to adjust the Federal cost share to 90 percent, the Associate Director will take into consideration the impact of declared fires in the State during the calendar year.

§ 204.62 Duplication of programs.

(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 paragraph (a) of this section.

§ 204.63 Allowable costs.

(a) 44 CFR 13.22 establishes general policies for determining allowable costs.

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

(c) 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, or, at our option, as management costs under section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

§ 204.64 Reporting and audit requirements.

(a) *Reporting.* Within 90-days of the Performance Period expiration date, the State shall submit a final:

(1) 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

(2) Performance period, which certifies that only costs approved in the application received reimbursement for costs identified in the subgrant application.

(b) *Audit.* (1) Audits will be performed, for both the Grantee and the subgrantees, under 44 CFR 13.26 or OMB Circular A-133, as appropriate.

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

Dated: July 25, 2001.

Michael D. Brown,

General Counsel.

[FR Doc. 01-19011 Filed 7-31-01; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1769, MM Docket No. 01-163, RM-10134]

Digital Television Broadcast Service; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Montana State University, licensee of noncommercial station KUSM(TV), NTSC channel *9, Bozeman, Montana, requesting the substitution of DTV channel *8 for station KUSM(TV)'s assigned DTV channel *20. DTV Channel *8 can be allotted to Bozeman, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (45-40-24 N. and 110-52-02 W.). As requested, we

propose to allot DTV Channel *8 to Bozeman with a power of 160.0 and a height above average terrain (HAAT) of 305 meters. However, since the community of Bozeman is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before September 17, 2001, and reply comments on or before October 2, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott Patrick, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036-6802.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-163, adopted July 24, 2001, and released July 27, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV Channel *20 and adding DTV Channel *8 at Bozeman.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-19145 Filed 7-31-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1768, MM Docket No. 01-162, RM-10183]

Digital Television Broadcast Service; Cocoa, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Good Like Broadcasting, Inc. licensee of station WTGL-TV, NTSC channel 52, Cocoa, Florida, requesting the substitution of DTV 53 for DTV channel 51. DTV channel 53c can be allotted to Cocoa, Florida, in compliance with the principal community coverage requirements of § 73.625(a) at reference coordinates (28-35-12 N. and 81-04-58 W.). As requested, we propose to allot DTV Channel 53c to Cocoa with a power of 13.0 and a height above average terrain (HAAT) of 514 meters.

DATES: Comments must be filed on or before September 17, 2001, and reply comments on or before October 2, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Sally A. Buckman, Leventhal, Senter & Lerman PLLC, Suite 600, 2000 K Street, NW, Washington, DC 20006-1809 (Counsel for Good Life Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-1600.