

**ENVIRONMENTAL PROTECTION  
AGENCY**
**40 CFR Part 300**

[EPA-HQ-SFUND-1983-0002; FRL-9918-37-Region 8]

**National Oil and Hazardous  
Substances Pollution Contingency  
Plan; National Priorities List: Partial  
Deletion of the California Gulch  
Superfund Site**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 announces the deletion of the Operable Unit 4 (OU4), Upper California Gulch; Operable Unit 5 (OU5), ASARCO Smelters/Slag/Mill Sites; and Operable Unit 7 (OU7), Apache Tailing Impoundment, of the California Gulch Superfund Site (Site) located in Lake County, Colorado, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the Operable Unit 4, Upper California Gulch (media of concern—waste rock and fluvial tailing piles); Operable Unit 5, ASARCO Smelters/Slag/Mill Sites (media of concern—slag and soil); and Operable Unit 7, Apache Tailing Impoundment (media of concern—tailing and soil), of the California Gulch Superfund Site (Site). Operable Unit 2, Malta Gulch; Operable Unit 8, Lower California Gulch; Operable Unit 9, Residential Populated Areas; and Operable Unit 10, Oregon Gulch were partially deleted by previous rules. Operable Unit 1, the Yak Tunnel/Water Treatment Plant; Operable Unit 3, the Denver & Rio Grande Western Railroad Company Slag Piles/Railroad Easement/Railroad Yard; Operable Unit 6, Starr Ditch/Penrose Dump/Stray Horse Gulch/Evans Gulch; Operable Unit 11, the Arkansas River Floodplain; and Operable Unit 12 (OU12), Site-wide Water Quality will remain on the NPL and is/are not being considered for deletion as part of this action. The EPA and the State of Colorado, through the Colorado Department of Public Health and the Environment, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, the

deletion of these parcels does not preclude future actions under Superfund.

**DATES:** This action is effective October 24, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-HQ-SFUND-1983-0002. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov>

or in hard copy:

- By calling EPA Region 8 at (303) 312-7279 and leaving a message, or
- At the Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486-0569, Monday and Wednesday from 10:00 a.m.–8:00 p.m., Tuesday and Thursday from 10:00 a.m.–5:00 p.m., and Friday and Saturday 1:00 p.m.–5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR-SR, 1595 Wynkoop Street, Denver, CO 80202-1129, (303) 312-6689, email: [kiefer.linda@epa.gov](mailto:kiefer.linda@epa.gov).

**SUPPLEMENTARY INFORMATION:** The portion of the site to be deleted from the NPL is: Operable Unit 4, Upper California Gulch; Operable Unit 5, ASARCO Smelters/Slag/Mill Sites; and Operable Unit 7, Apache Tailing Impoundment, of the California Gulch Superfund Site (Site) in Lake County, Colorado. A Notice of Intent for Partial Deletion for this Site was published in the **Federal Register** (79 FR 47043) on August 12, 2014.

The closing date for comments on the Notice of Intent for Partial Deletion was September 11, 2014. Two public comments were received. One comment supported the partial deletion. The other comment requested that the OU4, OU5 and OU7 not be partially deleted due to concerns over water quality. In response, water quality has greatly improved since the NPL listing in 1983. The Upper Arkansas was recently designated a Colorado Parks and Wildlife Gold Medal Fishing area. The media covered in OU4, OU5 and OU7 are wastes from mining, milling and smelting activities. The general remedial action objectives of OU4, OU5, and OU7

were to contain and control sources of contamination. Surface water and ground water quality were not specifically addressed in the remedies for these operable units. Site-wide water quality is specifically addressed in OU12, which is an active operable unit. Under OU12, response action can be conducted anywhere on the Site if needed to address releases that impact or may impact water quality goals in the Arkansas River. In OU4, OU5 and OU7, all responses actions have been completed and institutional controls are in place. A responsiveness summary was prepared and placed in both the docket, EPA-HQ-SFUND-1983-0002, on [www.regulations.gov](http://www.regulations.gov), and in the local repository listed above.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

Dated: October 9, 2014.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

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**BILLING CODE 6560-50-P**

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**
**44 CFR Parts 204 and 206**

[Docket ID FEMA-2013-0004]

RIN 1660-AA78

**Disaster Assistance; Fire Management  
Assistance Grant (FMAG) Program—  
Deadline Extensions and  
Administrative Correction**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, the Federal Emergency Management Agency (FEMA) provides grants for the mitigation, management, and control of any fire or fire complex on public or private forest land or grassland that threatens such destruction as would constitute a major disaster. This rule finalizes, without change, a proposed rule to revise the Fire Management Assistance Grant (FMAG) program regulations to lengthen the potential extension for the grantee's submission of its grant application to FEMA from up to 3 months to up to 6 months. This rule also finalizes, without change, the proposed regulation to lengthen the potential extension for a subgrantee to submit a project worksheet from up to 3 months to up to 6 months. The rule finalizes additional minor administrative changes to the rule.

**DATES:** This rule is effective November 24, 2014.

**FOR FURTHER INFORMATION CONTACT:** William Roche, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington DC, 20472-3100, (phone) 202-212-2340, or (email) [William.Roche@dhs.gov](mailto:William.Roche@dhs.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

The Fire Management Assistance Grant (FMAG) Program is authorized by section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act<sup>1</sup> (Stafford Act). Section 420 authorizes the President to provide assistance, including grants, equipment, supplies, and personnel to any State or local government<sup>2</sup> or Indian Tribal 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.<sup>3</sup>

<sup>1</sup> Disaster Relief Act of 1974, Public Law 93-288, section 417, 88 Stat. 158 (1974), redesignated as section 420 by the Stafford Act, Public Law 100-707, section 106(j), 102 Stat. 4705 (1988); *codified* as amended at 42 U.S.C. 5187.

<sup>2</sup> Disaster Mitigation Act of 2000, Public Law 106-390, section 303, 42 U.S.C. 5121, added "local government" to section 420 of the Stafford Act.

<sup>3</sup> A major disaster under the Stafford Act is any natural catastrophe or, regardless of cause, any fire, flood, or explosion which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance 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.

In order to receive funding for an FMAG, only a State<sup>4</sup> may submit a request for an FMAG declaration and the request must be submitted to the Regional Administrator (RA) while the fire is burning uncontrolled. *See* 44 CFR 204.22. If FEMA approves the request and issues the declaration, the grantee<sup>5</sup> may begin preparing a grant application package for submission to the FEMA RA. State agencies, Tribal governments, and local governments interested in applying for FMAG subgrants must submit a Request for Fire Management Assistance Subgrant to the grantee. *See* 44 CFR 204.41(a). Once FEMA determines that the subgrantee meets the eligibility criteria, FEMA Regional staff begins to work with the grantee and local staff to prepare project worksheets. *See* 44 CFR 204.52(b). The project worksheet identifies actual costs incurred by the subgrantee or grantee as a result of firefighting activities, and is the mechanism by which FEMA reimburses eligible costs.

Under the FMAG program, certain administrative costs are reimbursable. Grantees and subgrantees may claim direct costs (i.e., those costs directly attributable to a particular project) associated with requesting, obtaining, and administering a grant for a declared fire, including regular and overtime pay and travel expenses for permanent, reassigned, temporary, and contract employees who assist in administering the fire management assistance grant. Other direct administrative costs incurred by the grantee or subgrantee, such as equipment and supply purchases, may be eligible, but must be reviewed by the grantee and FEMA RA. 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; subgrantees may not claim indirect administrative costs.

Because FEMA will not approve project worksheets under \$1000, administrative costs reported on project worksheets must total \$1,000 or more to be eligible for Public Assistance reimbursement. *See* 44 CFR 204.52(c)(5).

Subgrantees must submit all of their project worksheets to the grantee for review. The grantee determines the deadline for subgrantees to submit completed project worksheets, but the

<sup>4</sup> Pursuant to FEMA regulations at 44 CFR 204.22, only the Governor of a State or the Governor's Authorized Representative can request an FMAG declaration.

<sup>5</sup> The grantee is usually a State; however, an Indian Tribal government may also be the grantee, in which case it takes on the same responsibilities as the State. *See* 44 CFR 204.3.

deadline must be no later than 6 months from the close of the incident period.<sup>6</sup> At the request of the grantee, the FEMA RA may grant an extension of up to 3 months for the submission of the project worksheet. The grantee must include a justification in its request for an extension. *See* 44 CFR 204.52(c).

The grantee submits the subgrantee project worksheets to the FEMA RA as part of its grant application. *See* 44 CFR 204.51(b)(4) and 204.52(c). The grantee should submit its grant application within 9 months of the FMAG declaration. *See* 44 CFR 204.51(a)(2). Upon receipt of a written request from the grantee, the Regional Administrator may grant an extension for up to 3 months. The grantee's request must include a justification for the extension. *See* 44 CFR 204.51(a).

**II. The Proposed Rule**

On March 7, 2013, FEMA published a Notice of Proposed Rulemaking (78 FR 14740), which proposed to lengthen the potential extension for the grantee's submission of its grant application to FEMA from up to 3 months to up to 6 months of the declaration. The proposed rule also proposed to lengthen the potential extension for a subgrantee to submit a project worksheet from up to 3 months to up to 6 months. These proposed deadline extensions provide increased flexibility to applicants who may benefit from additional time to prepare the documentation necessary to support a grant application and may reduce or eliminate financial losses due to delayed invoices by third parties that exceed the maximum 3-month deadline extension. In addition, FEMA proposed to exempt project worksheets claiming only administrative costs from the \$1,000 minimum. This would allow entities with only a small amount of administrative costs to be reimbursed for those costs.

FEMA also proposed to make additional minor administrative changes to its FMAG regulations to reflect current statutory and regulatory requirements and clarify grant application procedures. These administrative changes included:

a. Changing the regulatory text to clarify the current regulatory language that suggests that FMAG grants are approved before local governments submit their project worksheets. Local governments submit their project worksheets to the State and the State submits all the project worksheets to FEMA as part of the grant application package. *See* 44 CFR 204.51 and 205.52.

b. Changing the regulatory text from stating that grantees "should" submit their grant

<sup>6</sup> The incident period is the time interval during which the declared fire occurs.

application within 9 months of the fire incident to stating they “must” submit the grant application within 9 months of the fire incident. *See* 44 CFR 204.51(a)(2). FEMA proposed this change because the deadline has never been optional.

c. Adding to the regulatory text to state explicitly that the request for extensions and justifications for project worksheets must be in writing. This is a non-substantive change that mirrors the requirement in 44 CFR 204.51 that the grantee must provide justifications in writing for its request for a time extension to submit grant applications. Further, the current regulations already require subgrantees to request an extension and provide a justification in its request for an extension but FEMA did not state that the request be in writing when it promulgated the current regulations. *See* 44 CFR 204.52(c)(3).

d. Clarifying that project worksheets will not be accepted after the regulatory deadline, or after the extension if the grantee or subgrantee asked for an extension

e. Clarifying that FMAG administrative costs are not part of management costs. *See* 44 CFR 204.63. FEMA reimburses FMAG direct and indirect administrative costs in accordance with 44 CFR part 13 rather than 44 CFR part 207 which addresses management costs.

f. Removing references to OMB forms, the definition of “we, our, us” and making format changes

g. Removing the word “including,” this was a typographical error, from the list of reimbursable equipment costs.

h. Removing Part 206, subpart L, Fire Suppression Assistance, because the FMAG program replaced the Fire Suppression Assistance Program.

FEMA proposed these administrative changes and changes in nomenclature to clarify its FMAG regulations.

### III. Discussion of Public Comments

FEMA received six comments on the proposed rule; five were favorable and one was unrelated to the proposed rule.

#### A. General

The comments were generally supportive of the proposed rule, finding the proposed changes were “timely” and “welcome,” and that the addition of 3 months to the extension process and the elimination of the \$1,000 minimum for administrative costs were both good improvements.

#### 1. FEMA’s Dissemination of Information

One commenter requested that FEMA review its method of disseminating information to the public. This commenter stated that there was very little knowledge of FEMA’s proposed revisions among State forestry agencies throughout the United States.

FEMA takes note of this comment and will include Other Federal Agencies (OFA) in future communications. In addition, FEMA will query OFAs

involved with the program to determine the best ways to notify State forestry agencies of FMAG activities and communications. FEMA has also ensured a robust external affairs roll out to notify stakeholders prior to publication of the final rule.

In another comment, the commenter stated that the cost thresholds for the FMAG program are rarely updated in an efficient manner and are difficult to locate, which leads to additional work in submitting a request for assistance for potential applicants. FEMA notes that the individual and cumulative cost thresholds are adjusted for inflation annually in January using the Consumer Price Index for All Urban Consumers published by the United States Department of Labor. FEMA sends the individual and cumulative cost thresholds via electronic communication to every FMAG program contact in the FEMA regions, usually at the end of January or beginning of February, for wider dissemination to its stakeholders. In addition, FEMA has updated its Web site to make this information more available and accessible. A link to the FMAG cost thresholds for Fiscal Year (FY) 2014 can be found on the FEMA Web site at: <http://www.fema.gov/policies-and-publications>.

#### 2. Request To Modify Forms and Required Data

One commenter suggested that FEMA consider modifying its data requirements and forms associated with submitting a request for an FMAG declaration. The commenter stated that request for an FMAG declaration is currently structured to accommodate a western fire where the impact is concentrated over a large single geographic area, rather than in the context of multiple fires in multiple regions of a State and varied impacts and environments.

FEMA’s forms, and the associated data necessary to complete FEMA’s forms, address one fire. FEMA acknowledges that gathering the necessary data to support a FMAG request for multiple fires within the regulatory timeframe can be a challenge. FEMA will look into this further, and if it decides to pursue the issue, will do so in a separate mechanism. FMAG declarations operate on a 24-hour real-time basis and are frequently conducted over the telephone with written follow-up. The Governor of a State or the Governor’s Authorized Representative submits a request for a fire management assistance declaration to the FEMA RA while the fire is burning uncontrolled and threatening such destruction as

would constitute a major disaster. *See* 44 CFR 204.22. The RA gathers the State’s information, and calls upon a Principal Advisor for a technical assessment of the fire. *See* 44 CFR 204.23. Using all available data and information, the RA develops a Regional summary and recommendation, and makes a decision to approve or deny the declaration request. *See* 44 CFR 204.24. The request is approved or denied based on the conditions that existed at the time of the request and whether the fire or fire complex threatens such destruction as would constitute a major disaster. *See* 44 CFR 204.21 and 44 CFR 204.24.

#### 3. Definition of “Fire Complex”

Another comment suggested that FEMA revise the FMAG fire complex definition to accommodate a variety of organizational frameworks that fulfill the objective of effectively managing fire(s). FEMA understands the position that multiple smaller fires may pose the same or equivalent threat of a major disaster that a single large fire presents. The FMAG Program currently provides assistance for a single large fire or a fire complex that is managed by a single incident commander. The scenario of multiple smaller fires in a wide geographic area being regionally managed has not been brought forward to FEMA’s knowledge. FEMA uses four criteria to evaluate the threat posed by a fire or fire complex. These criteria include: (1) Threat to lives and improved property, including threats to critical facilities/infrastructure, and critical watershed areas; (2) availability of State and local<sup>7</sup> 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. *See* 44 CFR 204.21. This recommendation is outside the scope of this rulemaking, but FEMA will take it under consideration in any future revisions to the FMAG program.

One commenter requested that the FMAG process provide better allowance for the use of a “fire complex” structure of management in which multiple fires on a local level are managed collectively by a central incident management organization based out of a regionally located office. Again, this comment is

<sup>7</sup> Sandy Recovery Improvement Act of 2013, Public Law 113–2, section 103, 42 U.S.C. 5123, states that any reference in this Act to ‘State and local,’ ‘State or local,’ ‘State, and local,’ ‘State, or local,’ or ‘State, local’ (including plurals) with respect to governments or officials is deemed to refer also to Indian tribal governments and officials, as appropriate.

outside the scope of this rulemaking, but FEMA will take the comment under consideration to determine if the current definition of a fire complex is appropriate.

#### 4. Better Recognition of State Forest Fire Suppression

One comment suggested that the FMAG Program better recognize the organization structure of State forestry fire suppression throughout the eastern United States. FEMA understands that fire suppression organizational structures in the eastern part of the country vary from other organizational structures in mountainous areas in much of the western United States and vary from fire suppression structures needed in the large grassland areas in the Midwest. Based on FEMA data, FEMA believes the FMAG Program, in its current form, adequately recognizes and is responsive to all fire suppression organization structures. From 2006 to 2013, there were over 500 FMAG declared fires in the United States. In that same period of time there were 9 major disaster declarations for wild land fires. Since FMAGs are limited to those fires that threaten a major disaster, this data shows that the FMAG Program is successful how it is currently structured and administered. Unless presented with additional information, we do not anticipate modifying the existing program structure.

#### B. Deadline Extensions

In the proposed rule, FEMA proposed to revise 44 CFR 204.52(c)(3) to allow the FEMA RA to grant up to a 6-month extension for a subgrantee to submit the project worksheet. The current regulations allow for a maximum 3-month extension. In addition, FEMA proposed to lengthen the 3-month deadline extension for the grantee's submission of its grant application to FEMA in 44 CFR 204.51(a)(2) to a maximum 6-month extension.

##### 1. General Support

Commenters supported this change, citing various reasons. One commenter supported the change because of limited staffing in States that experience the majority of fires, and the additional time would allow the reporting of all costs, especially after large, lengthy or multiple fires. Another commenter noted that the additional 3-month extensions for grantees and subgrantees were especially needed during a "significant" fire season. Another commenter noted that the change would ease the burden on local governments to submit all the necessary information on

time to maintain eligibility for FMAG funds.

##### 2. Consistency of FMAG and Public Assistance

One commenter stated that while the extended time period was positive, the general framework of the FMAG and Public Assistance programs should be consistent and cost effective. While outside the scope of this rulemaking, FEMA notes that it does agree with this comment and when possible the FMAG program and other Public Assistance programs are aligned and use the same or similar policies. For example, the purchase of supplies and equipment that are necessary to respond to the declared fire may be an eligible FMAG cost. 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. This is consistent with Public Assistance eligibility criteria found in FEMA Policy No. 9525.12, *Disposition of Equipment, Supplies and Salvaged Materials*, which provides guidance at [http://www.fema.gov/pdf/government/grant/pa/9525\\_12.pdf](http://www.fema.gov/pdf/government/grant/pa/9525_12.pdf). However, due to the different nature of wildfires from other disasters, the FMAG program has its own regulations. See 44 CFR Part 204. There are different time requirements as specified in those regulations.

##### 3. Common Practice

One commenter stated that the proposed time extensions have already been a common FEMA practice. FEMA notes that this rulemaking codifies current practice, which FEMA has been implementing since 2002. FEMA's goal for these changes is to create a regulatory mechanism for granting extensions and avoid the need to routinely grant extensions beyond the regulatory limit, which is a significant administrative burden not only to the applicant but to FEMA and the State or Indian Tribal government. By extending the deadlines, the regulations better reflect reality and the actual time needed to submit an FMAG application or project worksheet.

##### 4. Additional Time Extensions

One commenter suggested that FEMA incorporate a provision to allow the FEMA RA to grant additional time extensions if necessary as a result of delayed third party billings from Federal agencies. Another commenter raised the concern that even with the proposed changes many local governments will need additional extensions to take into account delays

experienced by local jurisdictions in obtaining cost/invoices for air assets provided to the local jurisdiction to the incident under contract with Federal agencies. FEMA understands that delayed third party billings are an issue with some grants, especially with OFA. The United States Forest Service has recently implemented a software upgrade program (Financial Management Modernization Initiative) that is intended to expedite billings. FEMA expects this to eliminate delayed billings so this should not be an issue once fully implemented. In addition, when FEMA drafted its proposed rulemaking, FEMA looked into this option as an alternative to the proposed changes. However, to ensure consistent time extension determinations, FEMA set a time frame for the extensions.

#### C. Elimination of the \$1,000 Project Worksheet Minimum for Administrative Costs

FEMA currently does not allow reimbursement for a project worksheet that totals less than \$1,000. In the proposed rule, FEMA proposed to revise 44 CFR 204.52(c)(5) to indicate that the \$1,000 project worksheet minimum does not apply to project worksheets that are limited to allowable administrative costs as defined in 44 CFR 204.63. This is a substantive change, and ensures that grantees and subgrantees are reimbursed for all eligible administrative expenses.

Three commenters supported this proposed change. One commenter stated that due to current rule limitations and without this revision, many small entities are unable to recover these costs. This revision would allow small entities to be reimbursed for their administrative efforts regardless of the amount. Another commenter acknowledged that this proposed change would allow for full reimbursement of all eligible administrative costs. Finally, a commenter welcomed this change for FMAG as many of the smaller jurisdictions have not been able to obtain reimbursement for their direct administrative costs since the costs tend to fall well below \$1,000.

## IV. Regulatory Analysis

### A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this rule.

#### Summary

This rule does not impose mandatory costs on grantees and subgrantees. This rule does provide the RA with increased flexibility to assist grantees and subgrantees who submit FMAG applications and whose circumstances warrant an extension. In addition, the exemption from the \$1,000 project worksheet minimum will allow grantees and subgrantees not previously reimbursed for eligible program administrative expenses to receive additional compensation from FEMA and the Disaster Relief Fund. FEMA estimates this exemption will transfer between \$10,000 and \$50,000 in administrative costs over the next 10 years (undiscounted) from grantees and subgrantees to FEMA.

#### Total Costs and Benefits of This Rule

There are no direct monetary costs associated with the increased extensions identified in the rule. The cost of existing requirements (i.e., grant application submission) has the potential to be shifted, but not changed, by this rule. However, an extension may indirectly impact a grantee's or subgrantee's cash flow. For instance, if funds needed to reimburse fire suppression services (per a mutual aid fiscal agreement) are delayed due to an extension, then a grantee will have to use alternative means to avoid a budgetary shortfall. Regardless, it is the grantee's choice whether or not to apply for an extension and the grantee will need to consider if it is more beneficial to expend extra efforts to submit its FMAG application without an extension or to find alternative means to cover any associated shortfalls. Based on previous FMAG application submittals, FEMA expects approximately twenty 6-month grantee extensions to be granted over the next 10 years. As is current practice (44 CFR 204.52(c)(3)), subgrantee extensions are at the request of the grantee. Our estimate of grantee extensions includes any subgrantee extension requests that may be included as part of the grantee's request. A

grantee request may cover multiple subgrantee extensions.

The exemption from the \$1,000 project worksheet minimum for those project worksheets submitted only to claim administrative costs will transfer eligible administrative costs from grantees and subgrantees to FEMA and the Disaster Relief Fund. This will allow grantees and subgrantees not previously reimbursed for eligible program administrative expenses to receive compensation. FEMA subject matter experts from FEMA's Recovery Directorate estimate an average of one to five such project worksheets will be submitted each year. FEMA assumes for this analysis that the cost of such project worksheets will be \$1,000. The resulting total additional transfer to grantees and subgrantees, over 10 years, ranges between \$10,000 and \$50,000 (undiscounted).

Benefits of the rule include increased flexibility to grantees and subgrantees for submitting their respective applications. A longer application period may also allow applicants to use lengthier but more cost efficient grant application preparation methods. The rule will also more accurately reflect the operational and administrative demands of the FMAG grant process. In addition, the rule's nonsubstantive modifications will improve regulatory clarity.

#### Retrospective Review

To facilitate the periodic review of existing regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Review of FEMA's existing FMAG regulations revealed that they could be modified to provide for greater flexibility for FEMA to account for extenuating circumstances that may delay applications. Therefore, FEMA is increasing available extension times by 3 months for both grantee and subgrantee FMAG submissions. In addition, FEMA has decided to expand coverage of administrative costs by exempting the \$1,000 project worksheet

minimum for those project worksheets submitted only to claim eligible program administrative costs.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. As this rule imposes no direct monetary cost, FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities. FEMA notes that public comment on the proposed rule suggested this rule could especially benefit small entities. Commenters stated that small entities and smaller jurisdictions would now be able to recover full reimbursement for all eligible administrative costs as their direct administrative costs tended to fall below the previous \$1,000 threshold.

#### C. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501 *et seq.*), as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

This rule contains collections of information that are subject to review by OMB under the PRA. The information collections included in this rule are approved by OMB under control numbers 1660–0058, Fire Management Assistance Grant Program, which expires on October 31, 2014, and 1660–0025, FEMA Emergency Preparedness and Response Directorate Grants Administration Forms, which expires on September 30, 2017. There is no new information collections included in this rule.

#### D. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the

policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This rule involves no policies that have federalism implications under Executive Order 13132.

#### *E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. The Unfunded Mandates Reform Act, however, does not apply to regulations that provide for emergency assistance or relief at the request of any State, local, or Tribal government or any official of a State, local, or Tribal government (2 U.S.C. 1503). FMAGs are provided upon the request of the State. In addition, FEMA has determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### *F. Executive Order 12898, Environmental Justice*

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381 (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under this rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Accordingly, the requirements of

Executive Order 12898 do not apply to this rule.

#### *H. Executive Order 12988, Civil Justice Reform*

FEMA has reviewed this rule under Executive Order 12988, Civil Justice Reform, 61 FR 4729 (Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

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

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects 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. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. FEMA has determined that this rule does not have Tribal implications and does not impose substantial direct compliance costs on Indian Tribal governments. The FMAG program is a voluntary grant program in which Indian Tribes may participate as grantees or subgrantees; the program provides monetary assistance to Indian Tribes, and does not affect the relationship between the Federal Government and Indian Tribes or the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### *J. National Environmental Policy Act*

FEMA did not prepare an environmental assessment as defined by the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970)(42 U.S.C. 4321 *et seq.*), as amended, because a categorical exclusion applies to this rulemaking action. This rule deals with the FMAG program, which is categorically excluded from the preparation of an environmental impact statement under 44 CFR 10.8(d)(2)(xix)(N). Further, no extraordinary circumstances exist

requiring the need to develop an environmental assessment or environmental impact statement. See 44 CFR 10.8(d)(3).

#### *L. Congressional Review of Agency Rulemaking*

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (“Congressional Review Act”), Public Law 104–121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a “major rule” within the meaning of the Congressional Review Act.

#### **List of Subjects**

##### *44 CFR Part 204*

Administrative practice and procedure, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

##### *44 CFR Part 206*

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR parts 204 and 206 as follows:

#### **PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM**

- 1. Revise the authority citation for part 204 to read as follows:

**Authority:** 42 U.S.C. 5121 through 5207; 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

##### **§ 204.1 [Amended]**

- 2. Remove the words “We (FEMA)” and add, in their place, the word “FEMA”.
- 3. In § 204.3—
  - a. In the definition of “Applicant”, remove the word “us” and add, in its place, the word “FEMA”;
  - b. In the definition of “Hazard mitigation plan”, remove the words “We address”, and add, in their place, the words “FEMA addresses”;
  - c. In the definition of “Performance period”, remove “(Standard Form 424)” and “in block 13”;
  - d. In the definition of “Project worksheet”, remove the words “FEMA Form 90–91, which identifies”, and add,

in their place, the words “The form which identifies”;

■ e. Remove the definitions of “FEMA Form 90–91”, “Request for Federal Assistance”, “Standard Form (SF) 424”, and “We, our, us”; and

■ f. Add a definition of “Application for Federal Assistance” in alphabetical order to read as follows:

§ 204.3 Definitions used throughout this part.

\* \* \* \* \*

Application for Federal Assistance.

The form the State submits to apply for a grant under a fire management assistance declaration.

\* \* \* \* \*

§ 204.21 [Amended]

■ 4. In § 204.21—

■ a. In paragraphs (a) and (b) introductory text, remove the word “We” and add, in its place, the word “FEMA”; and

■ b. In paragraph (a), after the word “complex”, add the words “on public or private forest land or grassland”.

§ 204.22 [Amended]

■ 5. In § 204.22, remove the word “we” and add, in its place, the word “FEMA”; and remove “(FEMA Form 90–58)”.

§ 204.25 [Amended]

■ 6. In § 204.25(b), remove the word “we” and add, in its place, the word “FEMA”.

§ 204.42 [Amended]

■ 7. In § 204.42—

■ a. In paragraph (b)(1), after the word “safety”, remove the comma and add, in its place, a period, and remove “including:”;

■ b. In paragraphs (b)(5) and (f), remove the word “We” and add, in its place, the word “FEMA”; and

■ c. In paragraph (b)(5), remove the words “we determine” and add, in their place, the words “FEMA determines”.

§ 204.51 [Amended]

■ 8. In § 204.51—

■ a. In paragraph (a), remove the space after the word “Administrator”; and remove the phrase “SF 424 (Request for Federal Assistance) and FEMA Form 20–16a (Summary of Assurances—Non-construction Programs)” and add, in its place, the phrase “Application for Federal Assistance and Summary of Assurances—Non-construction Programs”;

■ b. In paragraph (a)(2), remove the word “should” and add, in its place, the word “must”; and remove the number “3” and add, in its place, the number “6”;

■ c. In paragraphs (b)(1) and (b)(5), remove the word “We” and add, in its place, the word “FEMA”;

■ d. In paragraphs (b)(1) and (d), remove the word “we” and add, in its place, the word “FEMA”;

■ e. In paragraph (b)(1), remove the word “determine”, and add, in its place, the word “determines”, and

■ f. In paragraph (d), after the words “Regional Administrator”, remove the space wherever they appear; and remove the word “approve”, and add, in its place, the word “approves”.

■ 9. In § 204.52—

■ a. In paragraph (b)(1), remove “(FEMA Form 90–91)”;

■ b. In paragraph (c)(1), remove the words “amendments to” and add, in their place, the words “part of”; and

■ c. Revise paragraphs (a)(1) and (c)(3), (4), and (5) to read as follows:

§ 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 fire management assistance subgrants must submit a Request for Fire Management Assistance subgrant 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.

\* \* \* \* \*

(c) \* \* \*

(3) At the request of the Grantee, the Regional Administrator may extend the time limitations in this section for up to 6 months when the Grantee justifies and makes a request in writing.

(4) Project Worksheets will not be accepted after the deadline in paragraph (c)(2) of this section has expired, or, if applicable, after an extension specified by the Regional Administrator in paragraph (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 FEMA will not approve that Project Worksheet. This minimum threshold does not apply to Project Worksheets submitted for the direct and indirect costs of administration of a fire grant, as defined in § 204.63.

§ 204.53 [Amended]

■ 10. In § 204.53(a), remove the word “us” and add, in its place, the word “FEMA”.

§ 204.54 [Amended]

■ 11. In § 204.54—

■ a. In the introductory paragraph, remove the words “we make” and add,

in their place, the words “FEMA makes”; and

■ b. In paragraph (a), after the words “Regional Administrator”, remove the space wherever it appears.

§ 204.62 [Amended]

■ 12. In § 204.62—

■ a. In paragraphs (a), (b), (c), and (d), remove the word “We” wherever it appears and add, in its place, the word “FEMA”;

■ b. In paragraph (a), remove the word “provide” and add, in its place, the word “provides”;

■ c. In paragraph (c), remove the word “consider” and add, in its place, the word “considers”;

■ d. In paragraph (d), remove the word “incur” and add, in its place, the word “incurs”;

■ e. In paragraphs (c) and (d), remove the word “we” and add, in its place, the word “FEMA”; and

■ f. In paragraphs (a), (b), and (d), remove the word “us” wherever it appears and add, in its place, the word “FEMA”.

■ 13. In § 204.63—

■ a. In paragraphs (a) and (b), remove the word “We” and add, in its place, the word “FEMA”;

■ b. Add a new paragraph (c) to read as follows:

§ 204.63 Allowable costs.

\* \* \* \* \*

(c) Management costs as defined in 44 CFR part 207 do not apply to this section.

§ 204.64 [Amended]

■ 14. In § 204.64(a), remove “(FEMA Form 20–10)”.

PART 206—FEDERAL DISASTER ASSISTANCE

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

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

Subpart L—[Removed and Reserved]

■ 16. Remove and reserve subpart L, consisting of §§ 206.390 through 206.399.

Dated: October 9, 2014.

W. Craig Fugate, Administrator, Federal Emergency Management Agency.

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