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**DEPARTMENT OF HOMELAND SECURITY**
**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 Corrections**

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

**ACTION:** Proposed rule.

**SUMMARY:** FEMA proposes to revise its 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. FEMA also proposes 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 proposes to exempt project worksheets claiming only administrative costs from the \$1,000 minimum. FEMA also proposes to make additional minor administrative changes to its FMAG regulations to reflect current statutory and regulatory requirements and clarify grant application procedures.

**DATES:** Comments must be submitted by May 6, 2013.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2013-0004, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail/Hand Delivery/Courier:* Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472-3100.

*Instructions:* All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Notice that is available via a link on the homepage of [www.regulations.gov](http://www.regulations.gov).

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>, click on "Advanced Search," then enter "FEMA-2013-0004" in the "By Docket ID" box, then select "FEMA" under "By Agency," and then click "Search." Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Regulatory Affairs Division, 500 C Street SW., Washington, DC 20472-3100.

**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> for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens destruction that 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 100-107, 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. Section 102(7) of the Stafford Act includes "an Indian tribe or authorized tribal organization, or Alaska Native Village or organization" in its definition of "local government."

<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

In order to receive funding for a fire management assistance grant (FMAG), a State<sup>4</sup> must submit a request for an FMAG declaration. 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 Regional Administrator. State agencies, Tribal governments, and local governments interested in applying for FMAG subgrants must submit a Request for Fire Management Assistance to the grantee. Once FEMA determines that the subgrantee meets the eligibility criteria, FEMA Regional staff begin 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 Regional Administrator. Indirect costs incurred by the grantee during the administration of a grant are allowed in accordance with the provisions of 44 CFR part 13 and OMB Circular A-87; subgrantees may not claim indirect administrative costs.

To be eligible for reimbursement, costs reported on project worksheets must total \$1,000 or more. 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

organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

<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 Regional Administrator 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 Regional Administrator as part of its grant application. See 44 CFR 204.51(b)(4) and 204.52(c). The grantee must submit its grant application within 9 months of the FMAG declaration. 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. Discussion of the Rule

### A. Deadline Extensions

FEMA proposes to revise 44 CFR 204.52(c)(3) to allow the Regional Administrator 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 proposes 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.

As part of its application for a subgrant, a subgrantee must submit a project worksheet and its supporting documentation. The grantee then submits these project worksheets as part of its grant application. Any delays in compiling, organizing, and submitting invoices and billings can hinder a grantee's or subgrantee's ability to meet established deadlines. Financial losses may result when billable services and equipment employed in fire-suppression and related activities are not identified due to time constraints. FEMA proposes allowing an extension of up to 6 months to help alleviate some of the time pressure of completing necessary documentation following an FMAG declaration.

When the FMAG regulations were originally issued in 2001, the time requirements to gather and verify required documentation were informed estimates. Experience has shown that additional time is often necessary to complete these tasks. In practice, many States need to request an extension due to delays in obtaining costs, as documented on project worksheets, and

a number of those States do not meet the deadline even with the 3-month extension.

There are several reasons for the need for additional time. There has been an overall increase in the number of fires and a decrease in the number of personnel available to gather and verify documents such as timesheets, equipment usage, supplies, and other resources. The longer fire seasons place greater demands on personnel, resulting in delays in compiling documentation as resources are employed for longer periods in support of fire-fighting operations. Wildfires occur without notice, and may spread and remain uncontrolled for a long time. The people, equipment, and other resources necessary to combat such fires are sent immediately and may involve numerous agencies, various political/municipal divisions, and numerous public and private organizations. Resources are tracked during fire suppression operations, but the task of reconstructing when and what equipment and resources were utilized for fire suppression efforts can be complex and time consuming. This is more pronounced when operations against multiple fires have been conducted, as documentation must be reviewed to ensure the service and equipment is billed toward the correct fire. This reconstruction must be done for proper preparation of the project worksheet. The proposed deadline extension will provide increased flexibility to subgrantees and grantees, who may benefit from additional time to prepare project worksheets and assemble the grant application package, and may reduce or eliminate financial losses due to delayed invoices by third parties.

### B. Technical Changes To Clarify When Subgrantees Apply to the FMAG Program

Section 204.52(a) currently states that "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 timelines." (emphasis added) FEMA proposes to remove "under an approved fire management assistance grant" from this paragraph in order to clarify that subgrants are actually submitted *before* a fire management assistance grant is approved. That is, when the grantee receives all of the subgrantee project worksheets, it submits them in a package to FEMA for approval as part of its grant application. This revision is not

a substantive change to the FMAG Program.

In 44 CFR 204.52(c)(1), the regulations currently state that applicants should submit all project worksheets through the grantee for approval and transmittal to the Regional Administrator as amendments to the State's application. FEMA proposes to change the term "amendments to" to "part of" the State's application. This proposed change clarifies that the grantee submits the subgrantee project worksheets along with its grant application. This revision is not a substantive change to the FMAG Program.

### C. Technical Change Regarding Submission of the Grant Application

The regulations currently state that States "should" submit their grant applications within 9 months of the declaration. See 44 CFR 204.51(a)(2). FEMA proposes to change the word "should" to "must" to clarify that it is a requirement, and not an option, for States to submit their grant applications within 9 months of the declaration in order to receive FMAGs. This revision is in keeping with the regulatory scheme which allows for an extension to the deadline. If the deadline were optional, there would be no need for an extension provision. This revision is not a substantive change to the FMAG Program, as FEMA currently treats the 9-month deadline as mandatory, and approves requests for extensions on a regular basis.

### D. Requirement That the Request for a Grantee's Time Extension To Submit the Project Worksheet Be in Writing

In 44 CFR 204.52, FEMA proposes to add that a grantee's request and justification for a time extension to submit the project worksheet must be in writing. This is a nonsubstantive change that mirrors the requirement in 44 CFR 204.51 that the grantee must provide justification in writing for its request for a time extension to submit the grant application. FEMA currently requires the request and justification to be in writing; therefore this is not a substantive change.

### E. Technical Change To Clarify Project Worksheet Deadline and Extension

In 44 CFR 204.52(c)(4), FEMA proposes to revise the paragraph to read that project worksheets will not be accepted after the deadline in paragraph (c)(2) has expired, or, if applicable, after an extension specified in paragraph (c)(3) has expired. This is a nonsubstantive change that clarifies that the deadline is required but an extension may be requested and

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

granted. It does not reflect any change to the FMAG Program.

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

In 44 CFR 204.52(c)(5), FEMA proposes to revise the paragraph to indicate that the \$1,000 project worksheet minimum does not apply to project worksheets that only request reimbursement for either grantee or subgrantee allowable administrative costs as defined in 44 CFR 204.63. This is a substantive change. Currently, FEMA does not allow reimbursement for administrative costs if the applicant submits them on a project worksheet that totals less than \$1000. This proposed revision would allow for reimbursement for those costs. This ensures that grantees and subgrantees can be reimbursed for all eligible administrative expenses.

#### *G. Technical Change To Clarify That Administrative Costs Under FMAG Are Not Subject to Management Cost Requirements*

FEMA proposes to specify in 44 CFR 204.63 that allowable costs for the direct and indirect administration of an FMAG are only subject to part 13 and not to 44 CFR part 207. This is a nonsubstantive change that clarifies current regulatory authority; it does not reflect any change to the FMAG program.

#### *H. Technical Change To Conform to the Statutory Requirement That the Fire or Fire Complex be on Public or Private Forest Land or Grassland*

FEMA proposes to specify in 44 CFR 204.21(a) that the fire or fire complex must be on public or private forest land or grassland in order for a State to receive a fire declaration. FEMA inadvertently omitted this requirement from the regulations; the requirement is mandated by section 420 of the Stafford Act. In practice, FEMA has been meeting this requirement and therefore the proposed revision is not substantive; it does not reflect any change to the FMAG program.

#### *I. Nomenclature*

##### *1. Office of Management and Budget (OMB) Form Numbers*

FEMA proposes to remove Office of Management and Budget (OMB) approved form numbers that appear throughout 44 CFR part 204. Throughout 44 CFR part 204, FEMA refers to forms such as the Standard Form (SF) 424, Request for Federal Assistance, and FEMA Form 90–91, for the project worksheet. FEMA proposes to remove the form numbers and refer

only to the title of the form, because the form numbers may change as OMB approves revised forms in the future. This is a nonsubstantive change.

##### *2. Definitions*

FEMA proposes to remove the definitions of “FEMA Form 90–91” and “Standard Form (SF) 424” because FEMA is proposing to remove all references to OMB form numbers in this regulation. Therefore, these definitions are no longer necessary. FEMA also proposes to change the title of the definition of “Request for Federal Assistance” to “Application for Federal Assistance” to reflect the proper title of this form.

FEMA proposes to remove the definition of “we, our, us”; those terms refer to “FEMA” throughout part 204. However, FEMA is proposing to change all such references in part 204 to “FEMA”. Therefore, this definition would no longer be necessary.

Finally, FEMA proposes to remove the words “in block 13” from the definition of “performance period” since the format and numbering of the form may change in the future. By removing “in block 13,” FEMA will not need to revise the regulation if the format and numbering of the form changes.

##### *3. Removal of the Word “Including” in 44 CFR 204.42(b)(1)*

FEMA proposes to remove the word “including” in 44 CFR 204.42(b)(1). Section 204.42(b) lists six separate categories of costs that FEMA considers eligible equipment and supplies costs. The use of the word “including” after the first category is a typographical error.

##### *I. Removal of Part 206, Subpart L—Fire Suppression Assistance*

FEMA proposes to remove subpart L, Fire Suppression Assistance, from part 206, Federal Disaster Assistance, because it is no longer necessary. The Disaster Mitigation Act of 2000 established the Fire Management Assistance Grant Program under Section 420 of the Stafford Act. The Fire Management Assistance Grant Program replaced the Fire Suppression Assistance Program. Part 204 of 44 CFR contains the current regulations for fire assistance authorized by section 420 of the Stafford Act.

### **III. 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 rule has not been reviewed by the Office of Management and Budget.

#### *Summary*

This rule does not impose mandatory costs on grantees and subgrantees. This rule does provide Regional Administrators increased flexibility to assist grantees and subgrantees who submit FMAG applications and warrant an extension. In addition, the exemption from the \$1,000 project worksheet minimum would 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 would transfer between \$10,000 and \$50,000 in administrative costs over the next ten 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 proposed 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 would 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 would need to consider if it was 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 \$1000 project worksheet minimum, for those project worksheets submitted only to claim administrative costs, would transfer eligible administrative costs from grantees and subgrantees to FEMA and the Disaster Relief Fund. This would 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 1 to 5 such project worksheets would be submitted a year. FEMA assumes for this analysis that the cost of such project worksheets to 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 proposed rule would 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 proposed rule would also more accurately reflect the operational and administrative demands of the FMAG grant process. In addition, the proposed rule's nonsubstantive modifications would 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 \$1000 project worksheet minimum for those project worksheets submitted only to claim eligible program administrative costs.

#### B. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct an RFA analysis when an agency is “required by section 553 \* \* \* to publish general notice of proposed rulemaking for any proposed rule.” See 5 U.S.C. 603(a). As the proposed rule imposes no direct monetary cost, FEMA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### C. National Environmental Policy Act (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., as amended, requires agencies to consider the impacts in their decisionmaking on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR part 1500 et seq., require Federal agencies to prepare Environmental Impact Statements (EIS) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. The *List of exclusion categories* at 44 CFR 10.8(d)(2)(ii)

excludes the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. This rule deals with the FMAG program which is excluded under 44 CFR 10.8(d)(2)(xix)(N). The purpose of this rule is to lengthen the time for the submission of grantees' and subgrantees' applications and to provide for administrative changes that better reflect statutory requirements. These changes are administrative-related changes that are categorically excluded under 44 CFR 10.8(d)(2)(i). No extraordinary circumstances exist requiring the need to develop an environmental assessment or environmental impact statement. See 44 CFR 10.8(d)(3). An environmental assessment will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

#### D. 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.

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

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, applies to any notice of proposed rulemaking that would implement any rule which includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more

in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

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 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.

#### *G. Paperwork Reduction Act of 1995*

This rule contains collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520. The information collections included in this rule are approved by OMB under control numbers 1660–0058, Fire Management Assistance Grant Program, and 1660–0025, FEMA Emergency Preparedness and Response Directorate Grants Administration Forms. There are no new information collections included in this proposed rule.

#### *H. Privacy Act Analysis*

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed

regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

The information maintained and collected for the FMAG program is covered by the Privacy Act, specifically under DHS/FEMA—004 Grants Management Information Files System of Records, 74 FR 39705 (Aug. 7, 2009). This rule does not affect this system of records notice. DHS/FEMA has a current Privacy Impact Assessment (PIA) addressing the maintenance of FMAG information as required by the e-Government Act.

#### *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 changes proposed by this rule would not 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. 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. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights*

FEMA has reviewed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, 53 FR 8859 (Mar. 18, 1988), as supplemented by Executive Order 13406, Protecting the Property Rights of the American People, 71 FR 36973 (June 28, 2006). This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630.

#### *K. 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.

#### **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 proposes to amend 44 CFR Chapter I as follows:

## PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 1. Revise the authority citation for part 204 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.

### § 204.1 [Amended]

■ 2. Remove the words “We (FEMA)” and add, in their place, the word “FEMA”.

### § 204.3 [Amended]

■ 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 word “We”, and add, in its place, the word “FEMA”, and remove the word “address” and add, in its place, the word “addresses”;

■ c. In the definition of “Performance period”, remove the words “(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”;

■ 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 the words “(FEMA Form 90–58)”.

### § 204.25 [Amended]

■ 6. In § 204.25 paragraph (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 the word “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 word “we” and add, in its place, the word “FEMA”; and remove the word “determine”, and add, in its place, the word “determines”.

### § 204.51 [Amended]

■ 8. In § 204.51—

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

### § 204.52 [Amended]

■ 9. In § 204.52—

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

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

■ c. In paragraph (c)(5), remove the word “we” and add, in its place, the word “FEMA” wherever it appears; and

■ d. Revise paragraphs (a) 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 44 CFR 204.63.

### § 204.53 [Amended]

■ 10. In § 204.53 paragraph (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 word “we” and add, in its place, the word “FEMA”; remove the word “make” and add, in its place, the word “makes”, and

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

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

#### § 204.63 [Amended]

- 13. In § 204.63—
- a. In paragraphs (a) and (b), remove the word “We” wherever it appears 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 paragraph (a), remove the words “(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.

#### Subpart L—[Removed and reserved]

- 16. Remove and reserve subpart L, consisting of §§ 206.390 through 206.395.

Dated: February 8, 2013.

#### W. Craig Fugate

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–05254 Filed 3–6–13; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 4, 13, 14, 15, and 19

[FAR Case 2012–014; Docket 2012–0014; Sequence 1]

RIN 9000–AM46

#### Federal Acquisition Regulation; Small Business Protests and Appeals

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the Small Business Administration’s (SBA) revision of the small business size and small business status protest and appeal procedures to ensure that contracts set-aside for small businesses are awarded to eligible small business concerns.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before May 6, 2013 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2012–014 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2012–014”. Select the link “Submit a Comment” that corresponds with “FAR Case 2012–014.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2012–014” on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

**Instructions:** Please submit comments only and cite FAR Case 2012–014, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at

202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2012–014.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD, GSA, and NASA are proposing to amend the FAR to update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and to address the application of the Small Business Administration’s (SBA) decisions on a protested concern’s size and other small business status determinations. These changes are consistent with SBA’s final rule published in the **Federal Register** at 76 FR 5680, dated February 2, 2011, that amended SBA’s regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions; SBA’s interim final rule, published in the **Federal Register** at 77 FR 1857, dated January 12, 2012, that amended its regulations pertaining to the Women-Owned Small Business Federal Contract Program so that its protest and appeal procedures would be consistent with all other small business programs; and SBA’s final rule published in the **Federal Register** at 76 FR 8222, dated February 11, 2011, that amended SBA’s regulations to address changes with regard to North American Industry Classification System (NAICS) code determinations and the nonmanufacturer rule.

In addition, this rule proposes to restructure sections of the FAR that address small business status protest and appeal procedures. This restructuring of the FAR text will provide uniformity to the protest and appeals guidance provided at FAR 19.306, Protesting a firm’s status as a HUBZone small business concern, FAR 19.307, Protesting a firm’s status as a service-disabled veteran-owned small business concern, and FAR 19.308, Protesting a firm’s status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program. This rule also updates the protest and appeals guidance found at FAR 19.302, Protesting a small business representation or rerepresentation.

The initial restructuring of the protest and appeals process was established under FAR case 2010–015, Women-Owned Small Business (WOSB) Program, published in the **Federal Register** at 76 FR 18304 on April 1, 2011. This rule proposes to restructure FAR 19.306 and 19.307 to be uniform