

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 152

RIN 3067-AD21

Assistance to Firefighters Grant Program

AGENCY: U.S. Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Homeland Security.

ACTION: Final rule.

SUMMARY: FEMA is publishing this final rule to establish guidance on our program to make grants directly to fire departments of a State for the purpose of enhancing their ability to protect the health and safety of the public as well as that of firefighting personnel facing fire and fire-related hazards. These grants are awarded on a competitive basis to eligible applicants that most closely address the program's priorities and then demonstrate financial need and maximize the benefit to be derived from the grant funds. The program's priorities will be stated in the Notice of Funds Availability (NOFA) that we will publish pursuant to the program's annual appropriation.

DATES: *Effective Date:* This final rule is effective on March 14, 2003.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472. Comments may also be transmitted via fax to (202) 646-4536 or e-mail to rules@fema.gov. Please reference "Assistance to Firefighters Grant Program" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Grants Program Office, U.S. Fire Administration (USFA), Federal Emergency Management Agency, 500 C Street, SW., room 304, Washington, DC 20472, or call 1-866-274-0960, or e-mail USFAGRANTS@fema.gov.

SUPPLEMENTARY INFORMATION: This final rule establishes guidance on the administration of grants made under the authority of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 *et seq.*).

The purpose of the program is to award grants directly to fire departments of a State to enhance their ability to protect the health and safety of the public, as well as that of

firefighting personnel, facing fire and fire-related hazards.

We will award the grants on a competitive basis to the applicants that (1) most closely address the program's priorities, and (2) demonstrate financial need; maximum benefit derived from the grant funds with their projects; and effective and efficient project plans and procurements. For the purpose of this program, "State" is defined as the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Eligible applicants for the Assistance to Firefighters Grant Program are limited to fire departments of a State as defined herein. A "fire department of a State" is defined as an agency or organization that has a formally recognized arrangement with a State, local or tribal authority (city, county, parish, fire district, township, town or other governing body) to provide fire suppression to a population within a fixed geographical area. A fire department can apply for assistance for its emergency medical services (EMS) unit provided the unit falls organizationally under the auspices of the fire department. A municipality or fire district may submit an application on behalf of a fire department when the fire department lacks the legal status to do so, *e.g.*, where the fire department falls within the auspices of the municipality. When a municipality or fire district submits an application on behalf of a fire department, the fire department is precluded from submitting an additional application.

Fire departments that are Federal fire departments are not eligible for this grant program. Fire departments that are contracted by the Federal government and are solely responsible for suppression of fires on Federal installations are not eligible for this grant program. Fire stations that are not independent fire departments but are part of, or controlled by a larger fire department or agency are typically not eligible. Fire departments that are for-profit departments (*i.e.*, do not have specific non-profit status and/or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and/or training offices.

Congress included in the legislation a list of fourteen activities eligible for

funding under this program. Those activities are as follows: (a) To hire additional firefighting personnel; (b) to train firefighting personnel in firefighting, emergency response (including response to a terrorism incident or use of a weapon of mass destruction), arson prevention and detection, or the handling of hazardous materials, or to train firefighting personnel to provide any of the training described above; (c) to fund the creation of rapid intervention teams to protect firefighting personnel at scenes of fires and other emergencies; (d) to certify fire inspectors; (e) to establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel can carry out their duties; (f) to fund emergency medical services provided by fire departments; (g) to acquire additional firefighting vehicles, including fire trucks; (h) to acquire additional firefighting equipment, including equipment for communications, monitoring, and response to a terrorism incident or use of a weapon of mass destruction; (i) to acquire personal protective equipment required for firefighting personnel by the Occupational Safety and Health Administration (OSHA), and other personal protective equipment for firefighting personnel, including protective equipment to respond to a terrorism incident or the use of a weapon of mass destruction; (j) to modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel; (k) to enforce fire codes; (l) to fund fire prevention programs; (m) to educate the public about arson prevention and detection; and, (n) to provide incentives for the recruitment and retention of volunteer firefighting personnel for volunteer firefighting departments and other firefighting departments that utilize volunteers.

The specific activities that will be eligible for funding will be announced in the NOFA that we will publish pursuant to the program's annual appropriation.

Eligible applicants can apply for this program on-line via FEMA's electronic grant (e-grant) application process. (While we encourage all applicants to apply on-line, we will provide and accept paper applications. Details about how to request a paper application and how to submit a paper application can be found later in this section of this final rule or on the U.S. Fire Administration's Web site: www.usfa.fema.gov). The e-grant application consists of electronic versions of FEMA's grant forms. The

application will include questions that are designed to provide general, generic information about the applicant. The application will also include activity-specific questions for each activity that the department plans to implement with the grant funds. The activity-specific questions will also be used by us to determine if your application addresses the program's priorities and merits further review.

In connection with the activity-specific questions, the applicants will be asked to provide details concerning the various budget items necessary to accomplish their proposed projects. Lastly, the application will include a project narrative in which the applicant provides a detailed description of their planned activity or activities, the applicant's financial need, and the benefits to be derived from the costs of the activity.

In selecting applications for award, we will first evaluate each application independently based on established applicant eligibility criteria and with respect to program priorities. Then we will evaluate the applications of those with the best score for their project descriptions, the financial needs of the applicant and an analysis of the benefits that would result from the grant award. In the first screening, every application will be evaluated based on the answers to the activity-specific questions. The applications that most closely address the Assistance to Firefighters Grant Program's established priorities will be deemed to be in the "competitive range" and subject to a second level of review. This second level of review is conducted using technical review panels (made up of individuals from the fire service and fire service organizations) that assess the application's merits with respect to the detail provided in the narrative about the project, the applicant's financial need, and the project's benefit to be derived from the cost. At least three technical evaluation panelists will independently score each application and then discuss the merits/shortcomings of the application in order to reconcile any major discrepancies. A consensus on the score is not required. The scores of the panelists will be added together, and then divided by the number of panelists to arrive at the final score of the application. The highest scoring applications will then be considered for award.

The law requires a certain distribution of grant funds between career departments and combination/volunteer fire departments. Specifically, we must ensure that fire departments that have either all-volunteer forces of firefighting

personnel or combined forces of volunteer and career firefighting personnel receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect. The specific proportions will be gleaned from the most recent survey conducted by the National Fire Protection Association and announced in the NOFA that we will publish pursuant to the program's annual appropriation.

To fulfill our obligations under the law which requires us to make grants to a variety of fire departments, we may deviate from our primary decision factor of rank order and use department type (career, combination, or volunteer) and/or the type of community the fire department serves (urban, suburban, or rural) and/or the geographic location of the department as alternate decision factors when selecting departments for award. In these instances in which we are making decisions based on geographic location, we will use States as the basic geographic unit. We are also required under the law to make grants for fire prevention programs that total no less than five (5) percent of the funds appropriated for the grant program. We are also limited in the amount of funds that may be awarded for firefighting vehicles, specifically, no more than twenty-five (25) percent of the funds appropriated for the grants shall be used to assist grant recipients to purchase firefighting vehicles.

For each year the grant program is appropriated, we will issue a NOFA and announce the application requirements as well as other pertinent information regarding the application. The application will be available on FEMA's e-grant system and accessible from the FEMA and USFA Internet homepages. Although we do not encourage the use of paper applications, paper applications will be available for applicants that do not have access to the Internet.

Complete application packages must be submitted electronically or otherwise received by us on or before the close of business (5 p.m. EST) on the closing date as announced in the Notice of Availability of Funds. We will not accept late or incomplete applications. The automated grant application system has features built into it that will guarantee that the application is complete when submitted.

Eligible applicants can access an electronic version of the application form at the FEMA/USFA Web site (www.usfa.fema.gov). If an applicant does not have access over the Internet to the FEMA/USFA Web sites, the

applicant may contact us directly to request a copy via mail. Those applicants interested in receiving an application in the mail can (1) submit their request to USFA Grant Program Technical Assistance Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727-8998, (2) phone 866-274-0960, or (3) e-mail us at USFAGRANTS@fema.gov. Applicants not using the automated e-grant system should complete and submit their signed original application to us at USFA Grant Program Technical Assistance Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727-8998. In order for us to receive paper applications by the closing date, paper applications must be postmarked three business days prior to the closing date, or transmitted via next-day courier service one full business day prior to the closing date. Faxed applications will not be considered.

We solicited comments on the proposed rule in our previously published interim final rule. The interim final rule appeared in the **Federal Register** on February 22, 2002. We received thirteen (13) responses that contained seventeen (17) individual comments. Five comments were unrelated to the rule (e.g., dealing with the application deadline or advertising the availability of excess Federal property). Three comments were specific to the eligibility of certain items and five were specific to the eligibility of certain types of applicants. All concerns over expense eligibility have been addressed in this final rule. The five comments regarding applicant eligibility were all focused on the eligibility of non-fire based organizations; four were related to the exclusion of non-fire based EMS providers into the program. We are bound by our statutory authority, which only allows us to make grants to fire departments, and therefore we made no changes to the final rule with respect to applicant eligibility. One comment indicated that the program's emphasis should be based on basic operational needs rather than basing it on the industry's standards that often incorporate a certain amount of "expensive technology." We made no adjustments to our rule as a result of this comment because our program already places a higher priority on basic firefighting needs. We received one comment that concerned the inclusion of combination departments with volunteer departments rather than with career departments. This policy is a direct reflection of the authorizing legislation. Therefore, we did not make

any changes. We also received a comment regarding the non-funding of firefighting personnel. The hiring of firefighting personnel is one of the fourteen activities delineated by Congress as an eligible activity under this program. We have been very deliberate in our expansion of the program to include all of these activities, but the policy not to fund the hiring of firefighting personnel for 2002 was derived from the program's appropriation language. Each year that the program is appropriated, we will announce specific details concerning the activities that will be available for funding in a Notice of Funds Availability.

The final comment concerned the inability of many departments to meet the required cost-share. This concern has been supported by several applicants that have had to decline their award due to lack of funds and by several of our grantees that reported their difficulties in funding their match. Unfortunately, the authorizing legislation requires that the applicants participate in the cost of the grant projects by providing "funds" as a cost-share. As such, no changes were made to the requirement for a cash match.

In any year that the Assistance to Firefighters Grant Program is authorized and appropriated, we may elect to set aside a portion of the funds available under this program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention programs.

In accordance with statutory requirement, our support for these fire prevention and safety activities will concentrate on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, we are also placing an emphasis on funding projects that focus on protecting the U.S. Fire Administration (USFA)-identified high-risk populations, *i.e.*, children under fourteen, seniors over sixty-five, and firefighters. Since the victims of burns experience both short- and long-term physical and psychological effects, we are also placing a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries, primarily those affecting children.

The specific details concerning this fire prevention and safety program will be announced in the NOFA that we will publish pursuant to the program's annual appropriation.

Administrative Procedures Act Determination

We are publishing this final rule having incorporated all appropriate public comment received under the Administrative Procedures Act (APA), 5 U.S.C. 553.

National Environmental Policy Act

The National Environmental Policy Act requires that any major Federal action be reviewed for its potential impact on the environment. This rule, a major Federal action, has been reviewed as to its potential to impact the environment. It was found that the types of activities proposed to be eligible by this rule would fall under at least one of the categorical exclusions defined by 44 CFR 10.8(d)(2). Therefore, this rule, which addresses those actions, is categorically excluded from the preparation of an environmental assessment or environmental impact statement according to 44 CFR 10.8(d)(2)(ii).

E.O. 12898, Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629, February 16, 1994, agencies must undertake to incorporate environmental justice into their policies and programs. The Executive Order requires each Federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. In addition, each Federal agency must 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, denying persons the benefits of, or subjecting persons to discrimination in those programs, policies, and activities because of their race, color, or national origin. No action that we can anticipate under this final rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, the final rule does not impose substantial direct compliance costs on those communities nor does it discriminate by excluding persons or denying benefits because of race, color, or national origin. Accordingly, this final rule is in compliance with the requirements of Executive Order 12898.

E.O. 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, we are required to examine whether this rule is a "significant regulatory action" as defined in the rule. A significant regulatory action is subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This final rule sets out our administrative procedures for making grants under the Assistance to Firefighters Grant Program. This program has been authorized and appropriated at levels that exceed the \$100,000,000 threshold and when the applicant's cost-share is considered we must conclude this rule to be a significant action. We have, therefore, determined that this rule is a "significant regulatory action" under the terms of Executive Order 12866. In light of this finding, we set forth the following regulatory impact analysis.

The final rule would facilitate the issuance of grants to local fire departments in the following programmatic areas: Fire operations and firefighter safety, fire prevention, emergency medical services, and firefighting vehicles. Although we have not undertaken quantitative studies to measure the envisaged effects of the program, we have determined that the funding distributed under this program will have an immediate, lasting, and positive effect on the safety of the communities served by the recipient fire departments, as well as on the safety of the firefighters themselves.

We highlight the fact that the final rule does not relate to a new or discretionary program of a regulatory nature. Instead, through this final rule, we are implementing a Congressionally mandated initiative aimed at protecting

the health and safety of the public and firefighting personnel against fire and fire-related hazards. See 15 U.S.C. 2229.

The Office of Management and Budget has reviewed the final rule under Executive Order 12866.

Paperwork Reduction Act

This final rule contains a collection of information that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Office of Management and Budget (OMB) has approved our use of the collection of information titled “Assistance to Firefighters Grant Program—Grant Application Supplemental Information” to implement the program and assigned it OMB control number 1660–0054, which expires December 31, 2005. Under the provisions of the Act, we may not conduct or sponsor, and a person is not required to respond to or may not be penalized for failing to comply with, a collection of information unless it displays a currently valid OMB control number. The information provided by grant applicants is required by us to provide them Federal grant assistance under the Assistance to Firefighters Grant Program under the authority of the Federal Fire Prevention and Control Act of 1947 (15 U.S.C. 2201 *et seq.*).

We use the information included in grant application packages to evaluate the eligibility and merits of each request for funding. The supplementary information augments the screening and referral forms used by the grants administration program to determine if applicants meet basic eligibility requirements.

The information collected will be used to evaluate each of the 20,000 to 25,000 anticipated applications objectively to verify eligibility and to determine which of the proposed projects most closely address the established program priorities and which applicants have the greatest needs. The information will also be used to determine which projects offer the highest benefits for the costs incurred and the information will be used to ensure that FEMA’s responsibilities mandated in the legislation are fulfilled accurately and efficiently. FEMA will also use the information to ensure that funds are distributed to volunteer and career departments; and to urban, suburban, and rural fire departments, as mandated by Congress. We also will use the information to assure an equitable distribution geographically, using States as the geographic unit.

Executive Order 13132, Federalism

This Executive Order 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, 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.

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that the rule does not have federalism implications as defined by the Executive Order. The rule sets out our administrative procedures for making grants available for fire departments to enhance their ability to protect the health and safety of the public and that of their firefighting personnel facing fire and fire-related hazards. The rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law, nor does it limit State policymaking discretion.

The Office of Management and Budget has reviewed the final rule under Executive Order 13132.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is a “major rule” within the meaning of that Act. It will result in an annual effect on the economy of \$100,000,000 or more. The rule sets out our administrative procedures for making grants available for eligible applicants, *i.e.*, fire departments, to enhance their ability to protect the health and safety of the public as well as that of the firefighting personnel facing fire and fire-related hazards.

In compliance with section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 808(2), for good cause we find that notice and public procedure on this final rule are impractical, unnecessary, or contrary to the public interest.

Unfunded Mandates Reform Act

The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of

1995, 2 U.S.C. 1501 *et seq.*, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 152

Fire prevention, Grant programs—firefighters assistance.

Accordingly, we revise Part 152 of 44 CFR, Chapter I, to read as follows:

PART 152—ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

Sec.

152.1 Purpose and eligible uses of grant funds.

152.2 Definitions.

152.3 Availability of funds.

152.4 Roles and responsibilities.

152.5 Review process and evaluation criteria.

152.6 Application review and award process.

152.7 Grant payment, reporting and other requirements.

152.8 Application submission and deadline.

152.9 Reconsideration.

Authority: Federal Fire Protection and Control Act, 15 U.S.C. 2201 *et seq.*

§ 152.1 Purpose and eligible uses of grant funds.

(a) This competitive grant program will provide funding directly to fire departments of a State for the purpose of enhancing departments’ abilities to protect the health and safety of the public, as well as that of firefighting personnel, facing fire and fire-related hazards. Eligible applicants can submit only one application per application period. Departments that submit multiple applications in one application period will have each of their applications deemed ineligible.

(b) Eligible applicants are fire departments or fire departments of a State which is defined as an agency or organization that has a “formally recognized arrangement” with a State, local or tribal authority (city, county, parish, fire district, township, town, or other non-Federal governing body) to provide fire suppression services within a fixed geographical area. A fire department can apply for assistance for its emergency medical services unit provided the unit falls organizationally under the auspices of the fire department. A municipality or fire district may submit an application on behalf of a fire department when the fire department lacks the legal status to do so, *e.g.*, where the fire department falls within the auspices of the municipality. When a municipality or fire district submits an application on behalf of a fire department, the fire department is

precluded from submitting an additional application. Non-Federal airport and/or port authority fire departments are eligible, but only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression, on a first-due basis, outside the confines of the airport or port facilities. Airport or port authority fire departments whose sole responsibility is suppression of fires on the airport grounds or port facilities are not eligible for this grant program. Fire departments that are Federal or contracted by the Federal government and whose sole responsibility is suppression of fires on Federal installations are not eligible for this grant program. Fire stations that are not independent but are part of, or controlled by a larger fire department or agency, are typically not eligible. Fire departments that are for-profit departments (*i.e.*, do not have specific non-profit status or are not municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

(c) Congress included in the legislation a list of fourteen activities eligible for funding under this program. Those activities are as follows:

- (1) To hire additional firefighting personnel;
- (2) To train firefighting personnel in firefighting, emergency response (including response to a terrorism incident or use of a weapon of mass destruction), arson prevention and detection, or the handling of hazardous materials, or to train firefighting personnel to provide any of the training in this paragraph (c);
- (3) To fund the creation of rapid intervention teams to protect firefighting personnel at scenes of fires and other emergencies;
- (4) To certify fire inspectors;
- (5) To establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel can carry out their duties;
- (6) To fund emergency medical services provided by fire departments;
- (7) To acquire additional firefighting vehicles, including fire trucks;
- (8) To acquire additional firefighting equipment, including equipment for communications, monitoring, and response to a terrorism incident or use of a weapon of mass destruction;
- (9) To acquire personal protective equipment required for firefighting

personnel by the Occupational Safety and Health Administration, and other personal protective equipment for firefighting personnel, including protective equipment to respond to a terrorism incident or the use of a weapon of mass destruction;

(10) To modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel;

(11) To enforce fire codes;

(12) To fund fire prevention programs;

(13) To educate the public about arson prevention and detection; and

(14) To provide incentives for the recruitment and retention of volunteer firefighting personnel for volunteer firefighting departments and other firefighting departments that utilize volunteers.

(d) The specific activities that will be eligible for funding will be announced in the Notice of Funding Availability (NOFA) that we will publish pursuant to the program's annual appropriation.

§ 152.2 Definitions.

Active firefighter is a member of a fire department or organization in good standing that is qualified to respond to and extinguish fires or perform other fire department emergency services and has actively participated in such activities during the past year.

Bay is the part or compartment of a building that provides parking for one or more pieces of firefighting apparatus.

Career department is a fire suppression agency or organization in which all active firefighters are considered full-time employees, are assigned regular duty shifts, and receive financial compensation for their services rendered on behalf of the department. Departments with active firefighters that are paid stipends on a per-call basis are not career departments. See the definition of combination department in this section.

Combination department is a fire suppression agency or organization in which at least one active firefighter receives financial compensation for his/her services rendered on behalf of the department and at least one active firefighter does not receive financial compensation for his/her services rendered on behalf of the department other than life/health insurance, workmen's compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

Construction is the creation of a new structure or any modification of the footprint or profile of an existing structure. Changes or renovations to an existing structure that do not change the

footprint or profile of the structure but exceed either \$10,000 or 50 percent of the value of the structure, are also considered construction for the purposes of this grant program. Changes that are less than \$10,000 and/or 50 percent of the value of the structure are considered renovations, for the purposes of this grant program.

Direct delivery of training is training conducted within a training organization's own jurisdiction using the organization's own resources (trainers, facilities, equipment, etc.).

Fire boat is a vessel designed primarily for firefighting operations, however, may also be capable of water rescue and hazardous materials spills mitigation, etc. These vessels may also have the capability to pump a large volume of water from a drafting operation.

Fire department or fire department of a State is an agency or organization that has a "formally recognized arrangement" with a State, local or tribal authority (city, county, parish, fire district, township, town, or other non-Federal governing body) to provide fire suppression services within a fixed geographical area. A fire department can apply for assistance for its emergency medical services unit provided the unit falls organizationally under the auspices of the fire department. A municipality or fire district may submit an application on behalf of a fire department when the fire department lacks the legal status to do so, *e.g.*, where the fire department falls within the auspices of the municipality. When a municipality or fire district submits an application on behalf of a fire department, the fire department is precluded from submitting an additional application. Non-Federal airport and/or port authority fire departments are eligible, but only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression services, on a first-due basis, outside the confines of the airport or port facilities. Airport or port authority fire departments whose sole responsibility is suppression of fires on the airport grounds or port facilities are not eligible for this grant program. Fire departments that are Federal or contracted by the Federal government and whose sole responsibility is suppression of fires on Federal installations are not eligible for this grant program. Fire departments or fire stations that are not independent but are part of, or controlled by a larger fire department or agency, are typically not eligible. Fire departments that are for-profit departments (*i.e.*, do not have specific non-profit status or are not

municipally based) are not eligible to apply for assistance under this program. Also not eligible for this program are ambulance services, rescue squads, auxiliaries, dive teams, urban search and rescue teams, fire service organizations or associations, and State/local agencies such as a forest service, fire marshal, hospitals, and training offices.

Firefighter see the definition of *Active Firefighter* in this section.

First-due response area is a geographical area in proximity to a fire or rescue facility and normally served by the personnel and apparatus from that facility in the event of a fire or other emergency.

Formally recognized arrangement is an agreement between the fire department and a local jurisdiction such that the jurisdiction has publicly or otherwise formally deemed that the fire department has the first-due response responsibilities within a fixed geographical area of the jurisdiction. Often this agreement is recognized or reported to the appropriate State entity with cognizance over fire departments, such as registration with the State Fire Marshal's office, or the agreement is specifically contained in the fire department's or jurisdiction's charter.

Integrated communication systems and devices are equipment or systems for dispatch centers or communication infrastructure. Examples of these include 911 systems, computer-aided dispatch systems, global positioning systems, fixed repeaters, etc. Towers are an integral part of any communication system, but they are not eligible to be included in any award under this program.

New mission is a first-responder function that a department has never delivered in the past or that was once delivered but has since been abandoned by the department due to the lack of funding or community support. Examples include technical search and rescue, emergency medical services, hazardous materials response, etc. A new mission does not include services already provided from existing facilities. Opening additional stations to provide similar services would be considered an expansion of existing services.

Population means permanent residents in the first-due response area or jurisdiction served by the applicant. It would include students but does not include seasonal population or any population in area that the fire department responds to under mutual/automatic aid agreements.

Prop is something that can be held up in a classroom or moved from site to site in order to facilitate or enhance the

training experience. A training tower (pre-fabricated or constructed) is not a prop.

Renovation is changes or alterations or modifications to an existing structure that do not exceed either \$10,000 and/or 50 percent of the market value of the structure and do not involve a change in the footprint or profile of the structure.

Rural community is a community that has low population density, zoned agricultural or parkland, and whose fire department has a relatively low volume of fire calls.

State means any of the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Suburban community is a community that has a medium density population with a portion of their jurisdiction being zoned for industrial and/or commercial uses, and whose fire department has a high call volume relative to a rural community.

Supplies means any expendable property that typically has a one-time use limit and an expectation of being replaced within one year.

The United States Fire Administrator's (USFA) operational and performance objectives are to reduce losses of life and reduce economic losses due to fire and related emergencies. Specific target groups are children under 14 years old, seniors over 65 years old, and firefighters.

Urban community is a community with a high density population with a major proportion of its jurisdiction zoned for commercial and/or industrial use and a significant call volume.

Vehicle is a mechanized device used for carrying passengers, goods, or equipment. Examples of vehicles include, but are not limited to: pumpers, brush trucks, tankers, tenders, attack pumpers, rescue (transport and non-transport), ambulances, foam units, quints, aerials, ladders, hazmat vehicles, squads, crash rescue (ARFF), boats, hovercraft, planes, and helicopters. Details concerning vehicle eligibility will be provided in the NOFA that will be published pursuant to this program's annual appropriation.

Volunteer department is a fire suppression agency or organization in which no active firefighters are considered full-time employees, and which no members receive financial compensation for their services rendered on behalf of the department other than life/health insurance, workers' compensation insurance, length of service awards, pay per-call or per-hour, or similar token compensation.

Watercraft is a small boat (less than 13 feet in length) or other watercraft designed and equipped for water and/or ice rescue, rather than basic firefighting operations. Generally, these vessels will be equipped with water rescue equipment, flotation devices, and other basic medical and rescue equipment and their primary function will be rescue activities.

§ 152.3 Availability of funds.

(a) Fire departments that have received funding under the Assistance to Firefighter Grant Program in previous years are eligible to apply for funding in the current year. However, due to our responsibilities under this program to assure adequate distribution of awards amongst certain types of departments (career, combination and volunteer) and certain types of communities (urban, suburban or rural) as well as a equitable geographic distribution, we reserve the right to fund or not to fund previous recipients of grants under this program in order for us to fulfill these responsibilities.

(b) No applicant can receive more than \$750,000 in Federal grant funds under this program in any fiscal year.

(c) No applicant can submit more than one application per fiscal year. Applicants that submit multiple applications will have each of their applications deemed ineligible.

(d) The scoring of the applications will determine the distribution of the funding across the eligible programs. Notwithstanding anything in this part, no more than twenty-five (25) percent of the funds appropriated for grants shall be used to assist grant recipients to purchase firefighting vehicles and not less than five (5) percent of the funds shall be used for fire prevention programs.

(e) We will not provide assistance under this part for activities for which another Federal agency has more specific or primary authority to provide assistance for the same purpose. We may disallow or recoup amounts that fall within other Federal agency's authority.

§ 152.4 Roles and responsibilities.

(a) Applicants must:

(1) Complete the application and certify to the accuracy of all the information contained therein;

(2) Certify that they are an eligible applicant, *i.e.*, a fire department, as defined in this part;

(3) Certify that the person submitting the application is duly authorized to do so, and

(b) Recipients (Grantees) must agree to:

(1) Share in the costs of the projects funded under this grant program. Fire departments in areas serving populations over 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to thirty (30) percent of the total project cost. Fire departments serving areas with a population of 50,000 or less will have to match the Federal grant funds with an amount of non-Federal funds equal to ten (10) percent of the total project cost. No waivers of this requirement will be granted except for fire departments of Insular Areas as provided for in 48 U.S.C. 1469a.

(2) Maintain operating expenditures during the grant's period of performance in the areas funded by a grant at a level equal to or greater than the average of their operating expenditures in the two years preceding the year in which this assistance is received.

(3) Obtain the appropriate Federal, State, or local permits necessary to fulfill the grant's scope of work including historical and/or environmental clearances as required.

(4) Retain grant files and supporting documentation for three years after the official closeout of the grant.

(5) Report to FEMA on the progress made on the grant and financial status of the grant. The award documents will detail the specific period of performance for each grantee and provide instructions on the frequency and timing of the required performance reports.

(6) Maintain documentation to support the expenditure of grant funds as well as pertinent grant decisions.

(7) Make their grant files and other books and records related to the grant, available if requested for an audit to ensure compliance with any requirement of the grant program.

(8) Agree to provide information to the U.S. Fire Administration's National Fire Incident Reporting System (NFIRS) for the period covered by the grant. If a grantee does not currently participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as they develop the capacity to report. Capacity to report to the NFIRS must be established prior to the termination of the one-year performance period. [NFIRS is under review for approval by the Office of Management and Budget under OMB control number 3067-0161.]

(c) FEMA activities:

(1) We will ensure that the funds are awarded based on the priorities and expected benefits articulated in the

statute, this part, USFA's strategic plan, and the Notice of Funds Availability.

(2) We will ensure that not more than twenty-five (25) percent of the appropriated funding will be used to purchase firefighting vehicles.

(3) We will ensure that not less than five (5) percent of the funds are made available to national, State, local, or community organizations, including fire departments, for the purpose of carrying out fire prevention programs.

(4) We will ensure that fire departments with volunteer staff, or staff comprised of a combination of career fire fighters and volunteers, receive a proportion of the total grant funding that is not less than the proportion of the United States population that those firefighting departments protect.

(5) We will ensure that grants are made to fire departments located in urban, suburban, and rural communities.

(6) We will strive to ensure geographic diversity of awards as stipulated in § 152.6.

(7) We will strive to ensure that activities funded under this grant program are consistent with the programs goals and intent, and generally in the government's best interest.

(8) We will provide the chief executives of the States with information concerning the total number and dollar amount of awards made to fire departments in their States; the program areas and activities supported by these grants; and other information about specific awards when generated and available.

§ 152.5 Review process and evaluation criteria.

(a) Every application will be evaluated based on the answers to the activity-specific questions during our initial screening. The applications that are determined to best address the Assistance to Firefighters Grant Program's established priorities during this initial screening will be in the "competitive range" and subject to a second level of review. We will use the narratives/supplemental information provided by the applicants in their grant applications to evaluate, on a competitive basis, the merits and benefits of each request for funding. In selecting applications for award, we will evaluate each application for assistance independently based on established eligibility criteria and the program priorities. Eligible applicants that best address the priorities will advance to a second level of review. The second level of review involves an assessment of the financial needs of the applicant, and an

analysis of the benefits that would result from the grant award.

(b) In order to be successful at this second level of the evaluation, an applicant must complete the narrative section of the application package. The narrative should include a detailed description of the planned program, uses for the grant funds including details of each budget line item. For example, if personnel costs are included in the budget, please provide a break down of what those costs are for. The narrative should explain why the grant funds are needed and why the department has not been able to obtain funding for the planned activities on its own. A discussion of financial need should include a discussion of any Federal funding received for similar activities. Finally, the applicant's narrative should detail the benefits the department or community will realize as a result of the grant award.

(c) This second level of review will be conducted using a panel of technical evaluation panelists. These panelists are largely made up of non-Federal experts with a fire service background. The panelists will assess the application's merits with respect to the clarity and detail provided in the narrative about the project, the applicant's financial need, and the project's purported benefit to be derived from the cost. Technical evaluation panelists will independently score each application before them and then discuss the merits/shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The highest scoring applications resulting from this second level of review will then be considered for award. We seek to maximize the benefits derived from the funding by crediting applicants with the greatest financial need and whose proposed activities provide the greatest benefit versus the cost.

(d) In addition to the project narrative, the applicant must provide an itemized budget detailing the use of the grant funds. If an applicant is seeking funds in more than one eligible activity within a program, separate budgets will have to be generated for each activity and then an overall or summary budget will have to be generated. For those applicants applying on line, the summary budget will be automatically generated by the e-grants system.

(e) Specific rating criteria for each of the eligible programs will be published in a Notice of Funding Availability that we will publish pursuant to the program's annual appropriation.

§ 152.6 Application review and award process.

(a) As stated in § 152.5, we will evaluate each application in the preliminary screening process to determine which applications best address the program's established priorities. The best applications as determined in this preliminary step will be deemed to be in the "competitive range." All applications in the competitive range will advance to a second level review by a technical evaluation panel. Using the evaluation criteria detailed in the Program Guidance and in the NOFA (both of which are published pursuant to this program's annual appropriation), the panelists will score each application they evaluate. The assigned score will reflect the degree to which the applicant: clearly relates their proposed project; demonstrates financial need; and, details a high benefit to cost value of the proposed activities. We will provide the panelists the complete application content for their evaluation. We will also provide them with reference materials for national standards or regulations and guidelines with respect to typical costs for proposed apparatus and equipment purchases.

(b) Our award decisions will be based on the stated priorities of the grant program first, then on the demonstrated need of the applicant and the benefits to be derived from the proposed projects. We will make awards on a competitive basis, *i.e.*, we will fund the highest scored applications before considering lower scored applications.

(c) In a few cases, to fulfill our obligations under the law to make grants to a variety of departments, we may also make funding decisions using rank order as the preliminary basis, and then analyze the type of fire department (paid, volunteer, or combination fire departments), the size and character of the community it serves (urban, suburban, or rural), and/or the geographic location of the fire department. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit. We may also base our funding decisions on previous grant awards funded by this program and/or grantees' performance on previous grants and a technical evaluation of reasonable costs for labor, services, materials or equipment.

§ 152.7 Grant payment, reporting and other requirements.

(a) Grantees will have twelve months to incur obligations and complete the scope of work to fulfill their

responsibilities under this grant program. The performance period of each grant will be detailed in the Articles of Agreement that we provide each grantee. Grantees may request funds from FEMA as reimbursement for expenditures made under the grant program or they may request funds for immediate cash needs under FEMA regulations (44 CFR 13.21). Advances of funds may also be approved to meet immediate cash needs.

(b) Generally, fire departments cannot use grant funds to pay for products and services contracted for, or purchased prior to the effective date of the grant. However, we will consider requests for reimbursement for these on an exception basis. Expenses incurred after the application deadline but prior to award may be eligible for reimbursement if the expenses were justified, unavoidable (*i.e.*, urgent and compelling), consistent with the scope of work, and specifically approved by the Assistance Officer. Expenses, obligations, commitments or contracts incurred or entered into prior to the application deadline are not eligible to be included as an expense.

(c) All grantees must follow their own established procurement process when buying anything with Federal grant funds (as provided in 44 CFR 13.26). If the grantee does not have an established procurement process, they must seek a minimum of two bids for any acquisition.

(d) When requesting funding, grantees can only request an amount that is necessary to satisfy their immediate cash needs directly related to the grant, *i.e.*, an amount equal to the total eligible grant expenses due within 30 days. Grantees can request payments of up to one hundred (100) percent of the federal share of the award amount but only if delivery of the ordered products and/or services is imminent (approximately 30 days) and the resulting payment will require the entire amount of funds.

(e) A grantee may request sufficient funding for a down payment if required to do so by the seller, such as in grants involving some purchases of firefighting vehicles. The grantee may request as much as fifty (50) percent of the federal share of the award amount at the time of the order placement to pay the down payment. The grantee may request the balance of the federal share upon delivery of the ordered equipment or vehicle.

(f) The recipients of funding under this program must report to us on how the grant funding was used and the benefits that resulted. This will be accomplished via submission of performance reports. Details regarding

the reporting requirements will be provided in the Articles of Agreement provided to each grantee.

(g) Fire departments that receive funding under this program must agree to provide information to the National Fire Incident Reporting System (NFIRS) for the period covered by the assistance. If a grantee does not currently participate in the incident reporting system and does not have the capacity to report at the time of the award, that grantee must agree to provide information to the system for a twelve-month period commencing as soon as possible after they develop the capacity to report. Capacity to report to the NFIRS must be established prior to the termination of the one-year performance period. [NFIRS is under review for approval by the Office of Management and Budget under OMB control number 3067-0161.]

§ 152.8 Application submission and deadline.

In each year that this program is authorized and receives an appropriation, we will announce the grants availability via Notice of Funds Availability. That Notice will contain all pertinent information concerning the eligible funding activities, funding priorities, funding levels, application period, timelines, and deadlines.

§ 152.9 Reconsideration.

(a) *Reconsideration of initial grant award decisions.* We will review our decision with respect to an initial grant award decision only when the applicant asserts that we have made a material technical or procedural error in the processing of the application and can substantiate such assertions. As grants are awarded on a competitive basis, in accordance with the findings of an independent panel of experts, we cannot consider requests for reconsideration based upon the merits of an original application. Similarly, we will not consider new information provided after the submission of the original application. In the case of new information, we encourage applicants to incorporate their changed circumstances into their applications for future grant cycles.

(b) *Reconsideration of other decisions.* We will consider requests for reconsideration of decisions other than those related to the initial grant award on their merits.

(c) We must receive a request for reconsideration under this section within 60 days of the date of the notice of the decision for which reconsideration is requested.

(d) Requests for reconsideration
should be directed to: Director, Grants
Program Office, U.S. Fire

Administration, FEMA, 500 C Street,
SW., Room 330, Washington, DC 20472.

Dated: March 7, 2003.

Michael D. Brown,

*Acting Under Secretary, Emergency
Preparedness and Response Directorate.*

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