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Part VI

Federal Emergency Management Agency

44 CFR Part 209

**Hurricane Floyd Property Acquisition and
Relocation Grants; Interim Final Rule**

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 209

RIN 3067-AD06

Hurricane Floyd Property Acquisition and Relocation Grants

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule with request for comments.

SUMMARY: We, FEMA, announce the immediate availability of \$215 million in grants provided under the Consolidated Appropriations Act for FY 2000, for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

DATES: *Effective Date:* This interim final rule is effective February 11, 2000.

Comments: We invite comments on this interim final rule, which should be received by April 11, 2000.

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, (facsimile) (202) 646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3619, (facsimile) (202) 646-3104, or (email) robert.shea@fema.gov.

SUPPLEMENTARY INFORMATION: This interim final rule provides guidance on the administration of grants made under title I, chapter 2 of the Consolidated Appropriations Act for FY 2000, ("Act"), Pub.L. 106-113. The Act provides \$215 million for the acquisition and relocation of properties affected by Hurricane Floyd and surrounding events for hazard mitigation purposes.

Recognizing that the overriding aim of the Hurricane Floyd supplemental funds is to clear the floodplain by helping occupants to move out of harm's way, we intend to use the funding to meet the needs of lower income households in the areas that are most affected by flood damage. We are allocating the \$215 million among the States that received major disaster declarations due to Hurricane Floyd. The allocation will be based on the number and value of properties meeting the eligibility criteria whose owners express interest in participating in a buyout. We are requesting States by

letter to provide this information to the Associate Director for Mitigation by January 31, 2000. As stated in the Act, allocations to States under this authority have no impact on the calculation of available funding under the Stafford Act (42 U.S.C. 5170c), the Hazard Mitigation Grant Program.

Separately, we will request States to provide feedback regarding several important issues related to the implementation of our grant programs that fund buyouts and relocations of floodprone property. We will use this feedback to evaluate the need for modifications to these grant programs.

This rule explains the process for States and us to prioritize projects to ensure funds are used in a cost-effective manner. We describe the program eligibility criteria in the rule to ensure States target properties severely impacted by Hurricane Floyd or surrounding events that would likely flood again in the future.

The rule and the program requirements are structured parallel to our Hazard Mitigation Grant Program (HMGP) program, which also has property acquisition authority. We expect to minimize the differences between the two programs and to simplify the administration of both programs in the field. The Act does contain several provisions that differ from the HMGP that States should note:

- (a) Funds are to be used for acquisition/relocation projects only;
- (b) To be eligible, projects may only include properties that:
 - (1) Are located in the Special Flood Hazard Area;
 - (2) Are the principal residence of the owner; and
 - (3) Were made uninhabitable by Hurricane Floyd or surrounding natural hazard event.
- (c) Subgrantees may pay participating homeowners no more than the fair market value of the property before September 1, 1999.

The HMGP does not have the limitations described above.

We encourage States to implement this program in conjunction with the HMGP to the extent possible. States and applicants may use HMGP guidance materials for acquisition and relocation projects, including the HMGP Interim Desk Reference (FEMA-345) and the Property Acquisition Handbook (FEMA-317) to the extent that the guidance does not conflict with these regulations or the Act. For example, FEMA-345 and FEMA-317 provide model deed restrictions and easements and detailed procedures for avoiding duplication of benefits provided by other programs or insurance. The model

deed language and the duplication of benefits review process apply to this special buyout authority as well.

Communities interested in participating should note that properties purchased with this grant funding must remain as open space in perpetuity and may receive no future disaster assistance from any Federal source. For example, public park facilities on purchased open space land are not eligible for our Public Assistance program funding if future flood disasters occur in the area.

States are responsible for measuring both the expected benefits of funded projects and actual program effectiveness after future flood events. This process will assist the State and us in assessing program results and improving future mitigation program implementation.

National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(vii). In addition, we will perform an environmental review under 44 CFR Part 10, Environmental Considerations, on each proposed acquisition project before funding and implementation.

Executive Order 12898, Environmental Justice

This rule will have no disproportionate, adverse impact on low-income or minority populations within the meaning of E.O. 12898. Properties in Special Flood Hazard Areas that have a high risk of flooding are frequently associated with depressed property values and inhabited by low-income residents. This is the case in many communities that were affected by Hurricane Floyd and that this rule targets for buyouts. The rule's effect of offering such populations more than post-event, current fair market value for their damaged residences to relocate voluntarily outside the flood hazard area helps give low-income homeowners the means to move to safer ground, which might not otherwise be available to them. In some cases, where very low-priced residences are acquired, the buyout offer may not be enough to pay for available housing outside the hazard area because the law caps the offer at pre-event value. In such cases we will coordinate with the State to help identify alternative funding sources for those buyouts or to cover the relocation differential.

Executive Order 12866, Regulatory Planning and Review

The rule sets out our administrative procedures for making grants available for acquiring and relocating houses damaged by Hurricane Floyd. Most of the \$215,000,000 appropriation will be obligated within one year. As such the rule will have an effect on the economy of more than \$100,000,000, the impact of which will promote public health and safety by providing low-income homeowners with the financial means to move voluntarily out of high-risk flood hazard areas. Therefore, this rule is a major rule as defined in 5 U.S.C. 804(2) and is an economically significant rule under Executive Order 12866. The Office of Management and Budget has reviewed this rule under Executive Order 12866.

Paperwork Reduction Act

The Federal Emergency Management Agency is submitting a request for review and approval of a new collection of information, which is contained in this interim rule. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulations 5 CFR 1320.13. FEMA is requesting that this information collection be approved by February 11, 2000, for use through July 2000.

FEMA expects to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the collection of information, which is necessary for State and local officials to apply for the Hurricane Floyd Special Buyout Authority. The forms or formats—SF-424, Application for Federal Assistance; FEMA form 20-15, Budget Instructions—Construction Programs; Project Narrative (section 209.8(b)); FEMA form 20-16, 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; and the Performance/Progress Report format—serve as basic screening and referral documents and may be used in determining whether

applicants meet the basic eligibility requirements of this Authority.

Supplementary Information. This collection is in accordance with FEMA's responsibilities under 44 CFR section 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provided helps to alleviate the suffering and damage that result from major disasters and emergencies. Under the Consolidated Appropriations Act of FY2000, FEMA may provide assistance for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

Collection of Information.

Title. Hurricane Floyd Property Acquisition and Relocation Grants.

Type of Information Collection. New.

Form Numbers. SF-424, Application for Federal Assistance; FEMA form 20-15, Budget Information-Construction Programs; FEMA form 20-16, 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; and the Performance report format.

Abstract.

(1) *SF-424 facesheet.* This is a standard form used by applicants to accompany applications for Federal assistance. It provides the agency summary information about applicant organization and the type of assistance requested. Local governments may use the SF-424 to provide pertinent applicant profile information with their application. States may submit amendments to their original application by submitting an additional SF-424 that requests a revision to the original.

(2) *Budget forms.* This is a standard form which applicants submit with the application detailing the proposed budget for the grant. For construction projects, applicants complete FEMA form 20-15. FEMA will use this information to determine if the requested funding is reasonable and to perform a benefit-cost analysis on the proposed project (construction projects only).

(3) *Project Narrative.* The narrative statement, more commonly referred to as the project application, identifies the proposed measure to be funded and provides information supporting the projects eligibility. The narrative will contain nine essential elements: the description of the hazard/problem, proposed measures, location of project, proposed work schedule, an itemized

list of expected benefits and estimated dollar values, alternative approaches considered to meet the objective, the surrounding environment and possible environmental impacts, existing resources in the project area, provide an analysis of the environmental effects of the proposed project and alternatives on the resources discussed above, provide environmental studies/reviews, if possible.

(4) *Assurances and certifications.*

These are standard forms that are completed by the State. FEMA form 20-16 summarizes all assurances and certifications that the State must sign in order to receive grant assistance. FEMA forms 20-16 and 20-16(c) list assurances that the State must provide in order to receive assistance for construction programs. FEMA form 20-16c lists three certifications that the State must make in order to receive Federal assistance: lobbying; debarment, suspension, and other responsibility matters; and drug free workplace requirements.

(5) *Disclosure of Lobbying Activities.*

The SF-LLL is a standard form disclosing lobbying activity on the part of grant recipients. These assurances are an integral element of the grant agreement between FEMA and the State, ensuring compliance with all applicable Federal statutes, executive orders, and regulations.

(6) *Financial Status Report.* The FEMA Form 20-10—Financial Status Report Form is used by Grantees, to give an accurate, current and complete disclosure, on a quarterly basis the financial results of financially assisted activities. Reporting must be made in accordance with the financial reporting requirements of the grant or subgrant. Form 20-10 is due thirty (30) days after the expiration or termination of grant support. Grantees are required to submit an original and two copies to the Regional Office. Grantees may use this form in dealing with their subgrantees.

(7) *Performance Report.* The State will use this format to report on the implementation schedule, any delays, projected overruns, and problems encountered.

Affected Public: State, local and tribal governments and Individuals and households. The forms are used to allow State and local officials to apply for the Hurricane Floyd Special Buyout Authority on behalf of their communities and citizens.

Estimated Total Annual Burden Hours.

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
SF-424 (Application facesheet)	213	.75	160
20-15 Budget—Construction	213	17.2	3,664
Project Narrative (section 209.8(b))	213	15	3,195
20-16 (Summary of assurances & certifications)	213	1.7	362
20-16b (Assurances, non-construction)		included in 20-16	
20-16c (lobbying certification)		included in 20-16	
SF-LLL (lobbying disclosure)	213	.5	107
Form 20-10—Financial Status Report 213× quarterly = 852	852	8	6,816
Performance Report 213 × quarterly = 852	852	4.2	3,578
Duplication of benefits review.	213	12.62	2,688
Communities Individual homeowners	5,375	1	5,375
Agreement—Settlement/Deeds/Easement	213	6.31	1,344
Communities Individual homeowners	5,375	1	5,375
Individual Homeowners—Initial Meeting/Letters	5,375	2	10,750
Individual Homeowners—Appraisal/Inspection Visit, Review, Offer	5,375	1	5,375
Total Burden			48,789

Estimated Cost. We have not calculated the costs associated with this collection due to the emergency nature of the funding availability and grant approval process. However, we believe there are few additional costs associated with this authority. States may use existing systems for submitting grant applications and reporting.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSEE:

Interested persons should submit written comments to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503 within 30 days of this notice. FEMA will continue to accept comments for an additional 30 days. Send written comments on the collection of information, including the burden estimate to Muriel B. Anderson,

FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524 or e-mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Executive Order 12612, Federalism

We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that 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.

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, Pub. L. 104-121. The rule is a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day grant activities required by Pub. L. 106-113, which prescribes how the \$215,000,000 appropriation will be transferred through grants to certain States.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act and OMB has assigned Control No. 3067-0279. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 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 209

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

Accordingly, we amend Chapter I, Subchapter D, by adding Part 209 to read as follows:

PART 209—HURRICANE FLOYD PROPERTY ACQUISITION AND RELOCATION GRANTS

Sec.

- 209.1 Purpose.
- 209.2 Definitions.
- 209.3 Roles and responsibilities.
- 209.4 Allocation and availability of funds.
- 209.5 Applicant eligibility.
- 209.6 Project eligibility.
- 209.7 Priorities for project selection.
- 209.8 Application and review process.
- 209.9 Appeals.
- 209.10 Project implementation requirements.
- 209.11 Grant administration.
- 209.12 Oversight and results.

Authority: Pub. L. 106-113, Appendix E—H.R. 3425; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979

Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412.

§ 209.1 Purpose.

This part provides guidance on the administration of grants made under the Consolidated Appropriations Act for FY 2000, Pub. L. 106-113, which provides \$215 million for the acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes.

§ 209.2 Definitions.

Except as noted in this part, the definitions listed at 44 CFR 206.2 apply to the implementation of this part.

§ 209.3 Roles and responsibilities.

We describe specific responsibilities of program participants throughout this part. The following materials describe the general roles of FEMA, the State, and communities or other organizations that receive grant assistance.

(a) *Federal.* The Director will allocate available funding to States that received major disaster declarations resulting from Hurricane Floyd and surrounding events. The Regional Directors will provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State.* The State will be the Grantee to which FEMA awards funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State and provide technical assistance and oversight to subgrantees for project development and implementation. The State will report program progress and results to us. Native American tribes will be the grantee and carry out "state" roles when they apply directly to FEMA.

(c) *Subgrantee.* The subgrantee (a State agency, local government, or private non-profit organization) will coordinate with interested homeowners to complete an application to the State and implement all approved projects. The subgrantee generally takes title to all property and manages it as open space. The subgrantee is accountable to the State for the use of funds.

§ 209.4 Allocation and availability of funds.

(a) The Director will allocate available funds based on the number and value of properties meeting the eligibility criteria whose owners have expressed interest in participating in a buyout.

(b) The Director may reallocate funds for which we do not receive and approve adequate applications. We will obligate all available funds by January 1, 2002, unless extenuating circumstances exist.

§ 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

- (a) State and local governments;
- (b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to FEMA.
- (c) Private nonprofit organizations with a conservation purpose as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 170(h), and applicable regulations promulgated thereunder.

§ 209.6 Project eligibility

(a) *Eligible types of project activities.* This grant authority is for projects to acquire and demolish or relocate floodprone properties. Approved projects will meet the following criteria and comply with program requirements.

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete a benefit-cost analysis, using a FEMA-approved methodology. We will review the State's analysis.

(2) Include only properties that:

- (i) The owner agrees to sell voluntarily;
- (ii) Are located in the Special Flood Hazard Area;
- (iii) Served as the principal residence for the owner (*i.e.*, meets criteria for owner-occupied, primary residence under our Individual Assistance program); and
- (iv) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of Hurricane Floyd or surrounding natural hazard events.

(3) Conform with 44 CFR Part 9, Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

§ 209.7 Priorities for project selection.

States will set priorities in their State Hazard Mitigation Plan (State buyout plan) to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States may update their Hazard Mitigation Grant Program administrative plan to incorporate administration and project selection under this authority.

§ 209.8 Application and review process.

(a) *Timeframes.* States will set local application deadlines. States must forward all applications by April 30, 2000. We will fund projects as we

receive and approve them. The Regional Director may extend the deadline by up to 60 days, upon a State's request, if extenuating circumstances prevent the State from meeting the deadline.

(b) *Format.* The State will forward its application to the Regional Director. The Application will include a Standard Form (SF) 424, Application for Federal Assistance, FEMA Form 20-16B, Assurances for Construction Programs, attached community project applications (buyout plans) selected by the State, and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. Community project applications will include:

(1) Community applicant information, including contact names and numbers;

(2) Summary project information;

(3) Description of the problem addressed by the proposed project;

(4) Description of the applicant's decision-making process, including alternatives considered;

(5) Project description, including property locations and scope of activities;

(6) Project cost estimate and match source;

(7) Open space use description and maintenance assurance;

(8) Cost-effectiveness information, or State's benefit-cost analysis;

(9) Environmental and historic preservation information; and

(10) Attachments as necessary (property site inventory, location map, FIRM, etc);

(c) *FEMA review.* FEMA will review the State's eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Director may extend this timeframe if complicated issues arise.

§ 209.9 Appeals.

The State may appeal decisions by FEMA regarding the eligibility of submitted applications within 60 days of receipt of the decision. The format and timelines for the appeal must conform to 44 CFR 206.440.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the concurrence of the Regional Director, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR parts 13 and 14, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) Participating property owners may receive assistance up to the fair market

value of their real property as of September 1, 1999 (reduced by any potential duplication of benefits from other sources).

(c) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed ("the property"):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except for the following:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public rest room; or

(iii) A structure that is compatible with open space, recreational, or wetlands management usage and proper floodplain management policies and practices, which the Director approves in writing before the construction of the structure begins.

(3) After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal entity or source, and no Federal entity or source will provide such assistance.

(4) Any structures built on the property according to paragraph (c)(2) of this section, must be located to minimize the potential for flood damage, be floodproofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.

(5) Every two years on October 1st, the subgrantee will report to the State, certifying that the property continues to be maintained consistent with the

provisions of the agreement. The State will report the certification to us.

(d) In general, allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the floodplain.

§ 209.11 Grant administration.

Cost share. We may contribute up to 75 percent of the total eligible costs. The State must ensure that non-Federal sources contribute not less than 25 percent of the total eligible costs for the grant. The State or any subgrantee cannot use funds that we provide under this Act as the non-Federal match for other Federal funds nor can the State or any subgrantee use other Federal funds as the required non-Federal match for these funds, except as provided by statute.

(b) *Allowable costs.* A State may find guidance on allowable costs for States and subgrantees in Office of Management and Budget (OMB) Circular A-87 and A-122 on the Cost Principles. States may use up to 7% of these funds for costs to manage the grant. The State should include management costs in its application. Subgrantees must include reasonable costs to administer the grant as a direct project cost in their budget.

(c) *Progress reports.* The State must provide a quarterly progress report to us under 44 CFR 13.40, indicating the status and completion date for each project funded. The report will include any problems or circumstances affecting completion dates, scope of work, or project costs that may result in noncompliance with the approved grant conditions.

(d) *Financial reports.* The State must provide a quarterly financial report to us under 44 CFR 13.41.

§ 209.12 Oversight and results.

(a) *FEMA oversight.* Our Regional Directors are responsible for overseeing this grant authority and for ensuring that States and subgrantees meet all program requirements. Regional Directors will review program progress quarterly.

(b) *Monitoring and enforcement.* Subgrantees, States, and FEMA will monitor the properties purchased under this authority and ensure they are maintained in open space use. FEMA and the State may enforce the agreement by taking any measures they deem appropriate.

(c) *Program results.* The State will review the effectiveness of approved projects after each future flood event in the affected area to monitor whether projects are resulting in expected savings. The State will report to FEMA on program effectiveness after project completion and after each subsequent flood event.

Dated: February 7, 2000.

James L. Witt,

Director.

[FR Doc. 00-3235 Filed 2-10-00; 8:45 am]

BILLING CODE 6718-04-P