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Part II

Federal Emergency Management Agency

44 CFR Part 209

**Supplemental Property Acquisition and
Elevation Assistance; Final Rule**

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**
44 CFR Part 209
RIN 3067-AD06
**Supplemental Property Acquisition
and Elevation Assistance**
AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Final Rule.

SUMMARY: We, FEMA, announce the availability of a Supplemental Property Acquisition and Elevation Assistance Program established for the acquisition or elevation, for hazard mitigation purposes, of properties that have been made uninhabitable by floods in areas that had a major disaster declaration in federal fiscal years 1999 or 2000, and for which Congress has authorized supplemental hazard mitigation assistance.

EFFECTIVE DATE: This final rule is effective August 14, 2001.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This final rule provides guidance on the administration of a Supplemental Property Acquisition and Elevation Assistance program. Congress made funds available under the Consolidated Appropriations Act for FY 2000, Pub. L. 106-113, which provides up to \$215 million for the acquisition of properties affected by Hurricane Floyd or surrounding events, and under Pub. L. 106-246, which provides \$50 million for the acquisition or elevation of properties made uninhabitable by floods in areas that have had a major disaster declaration in federal fiscal years 1999 or 2000. This grant authority is for projects to acquire floodprone properties and demolish or relocate structures, or to elevate floodprone structures. Funds under this assistance program are available only for those properties that serve as the principal residence for the owner, are located in the 100-year floodplain, and were made uninhabitable by the declared disaster.

The purpose of the supplemental property acquisition and elevation assistance is to provide State and local governments with a mechanism for reducing or eliminating future disaster losses by clearing the floodplain and helping occupants to move out of harm's way or by elevating structures

above expected flood levels. Individual homeowners are not eligible to apply directly for these funds and cannot determine from this rule whether they would be eligible to participate in the grant program. State and local government leadership is required to determine priorities for funding and to provide technical assistance and oversight for project development and implementation.

This rule incorporates Federal, State, and local experiences acquired in implementation of Pub. L. 106-113. We invited comments on our interim final rule published February 11, 2000, 65 FR 7270, but our Rules Docket Clerk did not receive any. We have included in this rule explanatory details that were provided previously to State grantees in correspondence and that reflect how the program was implemented in practice.

We will allocate funds from this program among the States that received major disaster declarations during federal fiscal years 1999 and 2000 based on the number and value of properties meeting the eligibility criteria whose owners express interest in participating in the assistance program. We will request in writing that States provide individual property applications for funding to their FEMA Regional Director following publication of this rule. We will verify project eligibility of the applications provided by States in order to assure that all projects meet the criteria for the supplemental assistance program. None of the funds made available for special property acquisition and elevation assistance under this authority will be used in any calculation of a State's funding allocation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act Hazard Mitigation Grant Program, 42 U.S.C. 5170c.

This rule explains the program eligibility criteria to ensure that States target those properties that were severely impacted by Federal disasters and would likely flood again in the future. It explains how we and the States set priorities for projects to ensure that we use funds in a cost-effective manner. We intend to target the funding to meet the needs of lower income households in the areas that are most affected by flood damage, by acquiring structures that had a fair market value of less than \$300,000 just before the declared disaster event. For those properties affected by Hurricane Floyd and acquired with funds provided under Pub. L. 106-113, there is no limit on the total value of the property; the Federal contribution toward the purchase of these properties, however, may not exceed \$225,000. In addition,

these properties should be contiguous to other buyout parcels, part of an acquisition in the same neighborhood or part of a community acquisition plan.

This rule and the program requirements are structured to parallel our Hazard Mitigation Grant Program (HMGP), which also has post-disaster property acquisition, and elevation authority. However, the funding made available under this program has significant restrictions that differ from the HMGP, which States should note:

- (a) Funds are to be used for acquisition, or elevation projects only;
- (b) To be eligible, projects may only include properties that:
 - (1) Are located in the 100-year floodplain;
 - (2) Are the principal residence of the owner;
 - (3) Were made uninhabitable by flooding as the result of a major disaster; and
 - (4) Had a fair market value of less than \$300,000 on the day before the declared disaster event if acquired under Pub. L. 106-246;

(c) Subgrantees may pay participating homeowners no more than the fair market value of the property just before the declared disaster event.

The HMGP does not have the limitations described above. In addition, where specific supplemental authorities contain other restrictions, the rule identifies those authorities.

We encourage States to implement this program in conjunction with the HMGP to the extent possible. States and applicants should use HMGP guidance materials for acquisition 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 authorizing legislation. 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 authority.

Communities interested in participating should note that properties purchased with this special 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 help us and the States to assess program results and improve future mitigation program implementation.

National Environmental Policy Act (NEPA)

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an Environmental Impact Statement (EIS) be prepared for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, an environmental assessment (EA) must be prepared. If, as a result of this study, a Finding of No Significant Impact (FONSI) is made, no further action is necessary. If it will have a significant effect, then the assessment is used to develop an EIS.

Categorical Exclusions. Agencies can categorically identify actions (for example, repair of a building damaged by a disaster) that do not normally have a significant impact on the environment. Unless a major federal action is categorically excluded, an agency must prepare an EA or EIS.

The purpose of the supplemental property acquisition and elevation assistance is to provide State and local governments with a means of reducing or eliminating future disaster losses by clearing the floodplain and helping occupants to move out of harm's way or by elevating structures above expected flood levels. Accordingly, 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) and 44 CFR 10.8(d)(2)(xv). We will perform an environmental review under 44 CFR part 10, Environmental Considerations, on each proposed acquisition, or elevation project before funding and implementation.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review 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 rule sets out our administrative procedures for making funds available for acquiring, relocating or elevating properties that have been made uninhabitable by Hurricane Floyd and by floods in areas that have had major disaster declarations in federal fiscal years 1999 or 2000, with up to \$265,000,000 available for this purpose. (Pub. L. 106-113, November 11, 1999 appropriated \$215,000,000 for post Hurricane Floyd buyouts, and Pub. L. 106-246, July 13, 2000, appropriated \$50,000,000 for buyouts and elevations in areas that had a major disaster declaration in federal fiscal years 1999 or 2000). Most of the \$265,000,000 appropriated funds will be obligated by the end of federal fiscal year 2001. As such the rule will have an effect on the economy of more than \$100,000,000. The impact of the rule 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 or to elevate homes above the 100-year flood level. 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 (OMB) has reviewed this rule under Executive Order 12866.

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, February 16, 1994, we have undertaken to incorporate environmental justice into our 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, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. Properties 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 this rule targets for acquisitions and elevations. By offering such populations pre-event fair market value for their damaged residences to relocate voluntarily outside the flood hazard area, this rule helps give low-income homeowners the means to move to safer ground. In some cases, where a party acquires very low-priced residences, 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 fair market 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.

Paperwork Reduction Act

FEMA has submitted to the OMB a request to continue using the collection of information from States and local governments that is contained in this final rule for the implementation of Supplemental Property Acquisition and Elevation Assistance. The collection has been submitted in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

We published this collection previously in the interim final rule and at that time we asked OMB to give us an emergency approval to use the collection until the final rule is published. We also requested public comments on the practical utility of the data being collected, the accuracy of the burden estimate, ways in which we could enhance the quality, utility and clarity of the information being collected, and ways in which we could minimize the burden on respondents, including the use of information technology. We did not receive any comments and have determined that we should continue to collect the data.

Collection of Information

Title. Supplemental Property Acquisition and Elevation Assistance.

Type of Information Collection. Revision of a Currently Approved Collection.

OMB Number: 3067-0279.

Abstract. This collection is in accordance with FEMA's responsibilities under 44 CFR 206.3 to provide an orderly and continuing means of assistance by the Federal Government to State and local governments. The assistance provides help to alleviate the suffering and damage that result from major disasters and emergencies. Under Pub. L. 106-113 we may provide assistance for the acquisition of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes. Under Public Law 106-246, we may provide

assistance for the acquisition and elevation of properties in areas that had major disaster declarations in federal fiscal years 1999 and 2000.

Forms: SF424, Application for Federal Assistance; FEMA Form 20-15, Budget Information—Construction Programs; Project Narrative; FEMA Form 20-16, 20-16b and 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; Duplication of benefits review—communities and individual

homeowners; Agreement-Settlement/Deeds/Easement—communities and individual homeowners; Individual homeowners—Initial meetings/letters and appraisal/inspection visit, review, offer.

Affected Public: Individuals and Households; State, local and tribal governments. The forms, format and agreements allow State and local officials to apply for the Supplemental Property Acquisition and Elevation Assistance 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 face sheet)	263	.75	197
20-15 Budget—Construction	263	17.2	4524
Project Narrative (section 209.8(b))	263	15	3945
20-16 (Summary of assurances and certifications)	263	1.7	447
20-16b (Assurances, non-construction)		(¹)	
20-16c (lobbying certification)		(¹)	
SF-LLL (lobbying disclosure)	263	.5	132
Form 20-10— Financial Status Report (213 × quarterly = 852)	1052	8	8416
Performance/Progress Report (213 × quarterly=852)	1052	4.2	4418
Duplication of benefits review:			
Communities	263	12.62	3319
Individual homeowners	6625	1	6625
Agreement—Settlement/Deeds/Easement:			
Communities	263	6.31	1660
Individual homeowners	6625	1	6625
Individual Homeowners—Initial Meeting/Letters	6625	2	13250
Individual Homeowners—Appraisal/Inspection Visit, Review, Offer	6625	1	6625
Total burden			60,182

¹ Included in 20-16.

Estimated Cost. We have calculated the estimated costs associated with the collection of this information for the application process and the quarterly reporting process to be \$1,012,460. This calculation is based on the number of burden hours for each type of information collection/form, as indicated above, and the estimated wage rates for those individuals responsible for collecting the information or completing the forms. We used two wage rates; both rates were determined

using data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS). We assumed that urban and regional planners are the most likely staff to have responsibility for information collected and forms completed at the State level. Current BLS data indicate that the median annual earnings of urban and regional planners were \$42,860 in 1998, or an hourly rate of \$20.61. States may use existing systems for submitting grant applications and reporting. We further assumed that community

officials would have the same hourly rate as the urban and regional planners. In order to estimate the costs associated with information collection by individual homeowners, we used BLS data reflecting the median weekly earnings of full-time wage and salary workers nationwide, without regard to sex, age or race. Current BLS data indicates that these median weekly earnings were \$549 in 1999, or a hourly rate of \$13.73.

	Estimated hourly rate	Annual burden hours	Estimated cost
State and community officials	\$20.61	27,057	\$557,654
Individuals	13.73	33,125	454,806
Total burden	16.82	60,182	1,012,460

Comments: 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.

FOR FURTHER INFORMATION CONTACT: For copies of this collection of information, contact Muriel B. Anderson, Federal Emergency Management Agency, 500 C

Street, SW., Washington, DC 20472, (telephone) 202-646-2625, (facsimile) 202-646-3347, or (e-mail) muriel.anderson@fema.gov.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 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, 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 rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. 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. We have, nevertheless, worked with affected States to develop this rule.

In May 2000 we solicited responses from Hurricane Floyd-affected States on several important and complex policy issues about acquisition of floodprone residences. These issues arose during the development of procedures and regulations for the special buyout authority following the catastrophic flooding of Hurricane Floyd. We incorporated in this rule responses that we received from the States and also plan to use them in our continuing efforts to review and strengthen other existing mitigation programs and policies.

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: (1) Pub. L. 106-113, which prescribes how we must transfer the \$215,000,000 appropriation through grants to certain States; and (2) Pub. L. 106-246, which prescribes how we must transfer an additional \$50,000,000 through grants to States that had a major disaster declaration in federal fiscal years 1999 or 2000.

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, amend Chapter I, Subchapter D, of Title 44, Code of Federal Regulations, by revising Part 209 to read as follows:

PART 209—SUPPLEMENTAL PROPERTY ACQUISITION AND ELEVATION ASSISTANCE

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, Div. B, sec. 1000(a)(5) (enacting H.R. 3425 by cross-reference), 113 Stat. 1501, 1536; Pub. L. 106-246, 114 Stat. 511, 568; Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, 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 a program to provide supplemental property acquisition and elevation assistance made available by Congress to provide funds for the acquisition or elevation, for hazard mitigation purposes, of properties that have been made uninhabitable by floods in areas that were declared major

disasters in federal fiscal years 1999 and 2000.

§ 209.2 Definitions.

Except as noted in this part, the definitions listed at §§ 206.2 and 206.431 apply to the implementation of this part.

Allowable open space uses means recreational and wetland management uses including: 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, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

Applicant means a State agency, local government, or qualified private nonprofit organization that submits an application for acquisition or elevation assistance to the State or to FEMA.

Cost-effective means that the mitigation activity will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis. The State will complete an analysis of the cost effectiveness of the project, in accordance with FEMA guidance and using a FEMA-approved methodology. FEMA will review the State's analysis.

Pre-event fair market value means the value a willing buyer would have paid and a willing seller would have sold a property for had the disaster not occurred.

Principal residence means a residence that is occupied by the legal owner; and is the dwelling where the legal owner normally lives during the major portion of the calendar year.

Qualified alien means an alien who meets one of the following criteria:

- (1) An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
- (2) An alien granted asylum under section 208 of the INA;
- (3) A refugee admitted to the United States under section 207 of the INA;
- (4) An alien paroled into the United States under section 212(d)(5) of the INA for at least one year;
- (5) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or section 241(b)(3) of the INA;

(6) An alien granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) An alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

(8) An alien who (or whose child or parent) has been battered and meets the requirements of 8 U.S.C. 1641(c).

Qualified private nonprofit organization means an organization with a conservation mission as qualified under section 170(h) of the Internal Revenue Code of 1954, as amended, and the regulations applicable under that section.

Repetitive Loss Structure means a structure covered by a contract for flood insurance under the National Flood Insurance Program (NFIP) that has incurred flood-related damage on two occasions during a 10-year period, each resulting in at least a \$1000 claim payment;

State Hazard Mitigation Plan means the hazard mitigation plan that reflects the State's systematic evaluation of the nature and extent of vulnerability to the effects of natural hazards typically present in the State and includes a description of actions needed to minimize future vulnerability to hazards.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, qualified private nonprofit organizations, or Indian tribes as outlined in 44 CFR 206.434;

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred;

Uninhabitable means that properties are certified by the appropriate State or local official normally empowered to make such certifications as meeting one or more of the following criteria:

(1) Determined by an authorized local government official to be substantially damaged, according to National Flood Insurance Program criteria contained in 44 CFR 59.1;

(2) Have been red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official in accordance with current codes or ordinances; or

(3) Have been demolished due to damage or environmental contamination by floodwaters.

We, our, or us means FEMA.

§ 209.3 Roles and responsibilities.

The following describes the general roles of FEMA, the State, local communities or other organizations that receive grant assistance, and participating homeowners.

(a) *Federal*. We will notify States about the availability of funds, and will allocate available funding to States that received major disaster declarations during the period covered by the supplemental authority. Our Regional Directors will verify project eligibility, provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State*. The State will be the Grantee to which we award funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State. This determination must be made in conformance with the HMGP project identification and selection criteria (44 CFR 206.435). The State also will provide technical assistance and oversight to applicants for project development and to subgrantees for project implementation. The State will report program progress and results to us. The States also will recover and return to us any funds made available from other sources for the same purposes. When Native American tribes apply directly to us, they will be the grantee and carry out "state" roles.

(c) *Applicant (pre-award) and subgrantee (post-award)*. The applicant (a State agency, local government, or qualified private nonprofit organization) will coordinate with interested homeowners to complete an application to the State. The subgrantee implements all approved projects, generally takes title to all property, and agrees to dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices. The subgrantee will receive, review and make final decisions about any appraisal disputes that are brought by participating homeowners. The subgrantee is accountable to the State, as well as to us, for the use of funds.

(d) *Participating homeowners*. The participating homeowners will notify the community of their interest to participate; provide necessary information to the community coordinator about property ownership, disaster damage, and other disaster benefits received or available; review

the offer made from the community; and accept it or request a review appraisal.

§ 209.4 Allocation and availability of funds.

(a) We will allocate available funds based on the number and value of properties that meet the eligibility criteria and whose owners want to participate in an acquisition or elevation project.

(b) We may reallocate funds for which we do not receive and approve adequate applications. We will obligate most available funds within 12 months following the deadline for submitting applications, 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 us; and
- (c) Qualified private nonprofit organizations.

§ 209.6 Project eligibility.

(a) *Eligible types of project activities*. This grant authority is for projects to acquire floodprone properties and demolish or relocate structures per § 209.10(i), or to elevate floodprone structures. Approved projects must meet the following criteria and comply with all other program requirements described in this rule;

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

(1) Be cost effective. The State will complete an analysis of the cost-effectiveness of the project, in accordance with our guidance and using a methodology that we approve. We will review the State's analysis;

(2) Include only properties that:

(i) For acquisition, the owner agrees to sell voluntarily;

(ii) Are within the 100-year floodplain based on best available data or as identified by a FIRM or FEMA-approved Disaster Recovery Map;

(iii) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of a declared major disaster during federal fiscal years 1999 or 2000;

(iv) For acquisition, had a pre-event fair market value of less than \$300,000 just before the disaster event. Properties submitted for buyout under Pub. L. 106-113 (the original Hurricane Floyd supplemental buyout program) are exempt from this policy, with the limitation that in no case does the Federal share or offer for any such property exceed \$225,000; and

(v) Served as the principal residence for the owner. For multifamily units

such as condominium buildings, all units within the structure should be principal residences of the owners and not sublet.

(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.

(c) For acquisition projects, an owner who is not a United States citizen or qualified alien may receive current fair market value for his or her property. He or she may not receive additional amounts for pre-event fair market value.

(d) Funds available under Pub. L. 106-113 (the original Floyd supplemental appropriation) are limited to use for acquisition purposes only.

§ 209.7 Priorities for project selection.

(a) It is the State's responsibility to identify and select eligible buyout projects for funding under the supplemental grant program. All funded projects must be consistent with the State Hazard Mitigation Plan. The mitigation planning process or any other appropriate means may identify buyout and elevation projects.

(d) States will set priorities in their State mitigation 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 and subgrantees are to give priority consideration to projects for acquisition or elevations of repetitive loss properties, and must include all eligible repetitive loss properties in the projects submitted to us for funding.

(Approved under OMB control number 3067-0212).

§ 209.8 Application and review process.

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding under the Supplemental Property Acquisition and Elevation Assistance program. Under this program, the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part.

(b) *Timeframes.* We will establish deadlines for States to submit applications, and States will set local application deadlines. States may begin forwarding applications to us immediately upon Notice of Availability of Funds and must forward all applications not later than the date set by the Regional Director. States must provide to us the information described

below in paragraph (c) of this section for each property proposed for acquisition or elevation in support of the supplemental allocation requested and within the timeframe that we establish.

We will verify project eligibility estimates provided by States in order to assure that all projects meet the criteria for the supplemental grant awards. We will perform an independent verification of this information for not less than 50 percent of the properties submitted.

(c) *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 20-15, Budget Information—Construction Programs; Project Narrative (section 209.8(c)—community project applications (buyout plans) selected by the State); FEMA form 20-16, 20-16b and 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; the Performance/Progress Report format; and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. The Project Narrative (community project applications) will include:

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

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

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

(4) Project description, including property locations/addresses and scope of activities;

(5) Project cost estimate and match source;

(6) For acquisition projects, open space use description and maintenance assurance;

(7) Risk and cost-effectiveness information, or State's benefit-cost analysis;

(8) Environmental and historic preservation information including

(i) Whether the property is now or ever has been used for commercial or industrial purposes, and

(ii) Any information regarding historic preservation that is readily available; and

(9) Attachments for each property as follows:

(i) A photograph of the structure from the street;

(ii) Owner's name;

(iii) Complete address, including zip code;

(iv) Latitude and longitude;

(v) The date of construction;

(vi) Proximity to the 100-year floodplain;

(vii) Panel and date of the applicable Flood Insurance Rate Map, if any;

(viii) The elevation of the first habitable floor and an estimate of the depth of flooding in the structure;

(ix) The estimated pre-event fair market value of the home. Applicants will estimate the value of properties using the best available information, such as inspections, public records and market values of similar properties in similar neighborhoods to arrive at a pre-event fair market value that reflects what a willing buyer would have paid a willing seller had the disaster not occurred. If tax assessment data are used as the basis, the applicant should add the relevant adjustment percentage for that jurisdiction to adjust the tax assessment to the current fair market value. These adjustment data should be obtained from the jurisdiction's tax assessor's office. For any jurisdictions where the adjustment factor is over 25 percent, applicants should include a justification for the high adjustment factor. Applicants should not include any other project costs in the property values. These costs will be reflected elsewhere;

(x) Indication whether flood insurance was in force at the time of the loss, and policy number, if available.

(xi) Indications that the property will meet the definition of uninhabitable:

(A) Substantial damage determination, and name and title of determining official, or if not yet determined then:

(1) For manufactured homes (mobile homes), inundation of 1 foot or more of water above the first habitable floor or other evidence of substantial damage; or

(2) For permanent structures other than manufactured homes, inundation of 5 feet or more of water above the first above-ground habitable floor or other evidence of substantial damage. Habitable floors do not include basements.

(B) Were red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official under current codes or ordinances; or

(C) Were demolished due to damage or environmental contamination by floodwaters.

(xii) Information regarding whether the structure is on the NFIP repetitive loss list (provide NFIP Repetitive Loss Property Locator Number, if available); and

(xiii) Observations on whether acquisition or elevation of the structure

may result in a mixture of vacant lots and lots with structures remaining on them.

(9) *FEMA review and approval.* We will review and verify 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. We have final approval authority for funding of all projects.

(Approved under OMB control number 3067-0279).

§ 209.9 Appeals.

The State may appeal any decision that we make regarding projects submitted for funding in the Supplemental Property Acquisition and Elevation Assistance program. The State must submit the appeal in writing to the Regional Director and must include documentation that justifies the request for reconsideration. The appeal must specify the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The applicant must appeal within 60 days of the applicant's receipt of our funding decision. The State must forward any appeal from an applicant or subgrantee with a written recommendation to the Regional Director within 60 days of receipt. Within 90 days following the receipt of an appeal, the Regional Director will notify the State in writing as to the new decision or the need for more information.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the written 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) The State and subgrantee will administer the grant in an equitable and impartial manner, without discrimination on the grounds or race, color, religion nationality, sex, age, or economic status in compliance with section 308 of the Stafford Act (42 U.S.C. 5151) and Title VI of the Civil Rights Act. In implementing the grant, the State and the subgrantee will ensure that no discrimination is practiced.

(c) The State and subgrantee will ensure that projects involving alterations to existing structures comply

with all applicable State and local codes.

(d) The State and subgrantee will ensure that projects comply with applicable State and local floodplain management requirements. Structures will be elevated to the Base Flood Elevation.

(e) Property owners participating in acquisition projects may receive assistance up to the pre-event fair market value of their real property, except as limited by the eligibility criteria.

(f) The subgrantee will establish a process, which we must approve, whereby property owners participating in acquisition projects may request a review of the appraisal for their property, or request a second appraisal.

(g) The State will reduce buyout assistance by any duplication of benefits from other sources. Such benefits include, but are not limited to, payments made to the homeowner for repair assistance; insurance settlements; legal settlements; Small Business Administration loans; and any other payments made by any source to address the property loss unless the property owner can provide receipts showing that the benefits were used for their intended purpose to make repairs to the property.

(h) Increased Cost of Compliance coverage benefits under the National Flood Insurance Program (NFIP) may be used to match elevation or acquisition and relocation projects. Increased Cost of Compliance claims can only be used for NFIP-approved costs; these can then be applied to the project grant match. This coverage does not pay for property acquisition, but can pay demolition or structure relocation.

(i) 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 as indicated in this paragraph:

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

(B) A public rest room; or

(C) 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.

(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 that are easily movable (except mobile homes), unimproved, permeable parking lots and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, highways or other uses that obstruct the natural and beneficial functions of the floodplain.

(3) After completing the acquisition project, no application for future 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, even for the allowable uses of the property described above.

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

(5) The subgrantee or other public property owner will seek the approval of the State grantee agency and our Regional Director before conveying any interest in the property to any other party. The subgrantee or other public entity or qualified private nonprofit organization must retain all development rights to the property. Our Regional Director will only approve the transfer of properties that meet the criteria identified in this paragraph.

(6) In order to carry out tasks associated with monitoring, we, the subgrantee, or the State have the right to enter the parcel, with notice to the parcel owner, to ensure compliance with land use restrictions. Subgrantees may identify the open space nature of the property on local tax maps to assist with monitoring. Whether the subgrantee obtains full title or a conservation easement on the parcel, the State must work with subgrantees to ensure that the parcel owner maintains the property in accordance with land use restrictions. Specifically, the State may:

(i) Monitor and inspect the parcel every two years and certify that the owner continues to use the inspected parcel for open space or agricultural purposes; and

(ii) Take measures to bring a non-compliant parcel back into compliance within 60 days of notice.

(7) Only as a last resort, we reserve the right to require the subgrantee to bring the property back into compliance and transfer the title and easement to a qualified third party for future maintenance.

(8) Every 2 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.

§ 209.11 Grant administration.

(a) *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) Circulars A-87 and A-122 on Cost

Principles. States may use up to 7 percent of the grant funds for management costs of 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.

(e) *SMARTLINK Drawdowns.* The State will make SMARTLINK drawdowns to reimburse or advance allowable costs to subgrantees for approved projects.

(f) *Audit requirements.* Uniform audit requirements as set forth in 44 CFR part 14 apply to all grant assistance provided under this subpart. We may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

(g) If a mitigation measure is not completed, and there is not adequate

justification for non-completion, no Federal funding will be provided for that project.

§ 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.* We, subgrantees, and States will monitor the properties purchased under this authority and ensure that the properties are maintained in open space use. We and the State may enforce the agreement by taking any measures that we or 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 us on program effectiveness after project completion and after each subsequent flood event.

Dated: June 8, 2001.

Joe M. Allbaugh,
Director.

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