

§ 221.10 Personal property acquisition.

Personal property acquisition will be accomplished as prescribed in 44 CFR 220.13.

Subpart C—Relocation Assistance**§ 221.11 Relocation assistance.**

Relocation assistance will be provided to all displaced persons pursuant to 49 CFR part 24, subpart C. Additional requirements and considerations are:

(a) Those eligible for permanent relocation assistance may be required to vacate their property immediately to a temporary location because of the danger continued occupancy may pose to the health and safety of the occupants or the public.

(b) Pursuant to the requirements of Executive Order 11988 and 44 CFR part 9, persons displaced by a CERCLA action will not be relocated to areas in a floodplain unless there are not practicable alternative housing sites.

(c) Persons displaced by a CERCLA action and who permanently relocate to an area of special hazard (as defined in the Flood Disaster Protection Act of 1973, Pub. L. 93-234) will not be eligible for federal financial assistance for acquisition or construction purposes (pursuant to section 102(a) of the Act) if they do not purchase flood insurance.

(d) Persons displaced are not eligible for assistance to relocate to special flood hazard areas of communities which do not participate in the Flood Insurance Program.

Subpart D—Payments for Moving and Related Expenses**§ 221.12 Moving and related expenses.**

Payments for moving and related expenses will be provided as prescribed in 49 CFR part 24, subpart D.

Subpart E—Replacement Housing Payments**§ 221.13 Replacement housing payments.**

Payments for replacement housing will be provided as prescribed in 49 CFR part 24, subpart E.

Subpart F—Mobile Homes**§ 221.14 Mobile homes.**

Assistance for mobile home owners and occupants will be provided as prescribed in 49 CFR part 24, subpart F.

PART 222—SUPERFUND COST SHARE ELIGIBILITY CRITERIA FOR PERMANENT AND TEMPORARY RELOCATION**Sec.**

- 222.1 Purpose.
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AUTHORITY: Reorganization Plan Number 3 of 1978; 42 U.S.C. 9601 *et seq.*; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510; Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499; E.O. 12580, Superfund Implementation.

SOURCE: 52 FR 6800, Mar. 5, 1987, unless otherwise noted.

§ 222.1 Purpose.

This part prescribes the criteria to be followed by the Federal Emergency Management Agency (FEMA), or any state acting on its behalf when implementing cost sharing under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), *as amended*, also known as Superfund.

§ 222.2 Definitions.

(a) *Acceptable contributions* means either cash (or its equivalent, appropriated funds) or the value of contributions of goods, facilities or services, or combinations of these, that can qualify for and meet matching share requirements.

(b) *Allowable costs* means those eligible, reasonable and necessary, costs which are permitted under the appropriate Federal cost principles, in accordance with FEMA policy, within the scope of the project, authorized for FEMA participation and in accordance

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with OMB Circular A-87, Cost Principles for State and Local Governments.

(c) *Cash contributions* means the recipient's (state or local government) cash outlay, including the outlay of money contributed to the recipient by other public agencies, institutions, private organizations, and individuals.

(d) *Cost share* means that portion of the allowable project cost which is not derived from Federal assistance.

(e) *Value* is the cost to the state for services and facilities or goods.

§ 222.3 Program intent.

(a) This regulation is intended to provide criteria with regard to the states' allowable costs associated with the administration of temporary and permanent relocation activities under CERCLA. CERCLA section 104(c)(3), as amended, states that the state will pay or assure payment of (1) 10 per centum of the costs of the remedial action, including all future maintenance or, (2) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the state or political subdivision for the release) of any sums expended in response to a release at a facility that was operated by the state or a political subdivision thereof, either directly, or through a contractual relationship or otherwise at the time of any disposal of hazardous substances therein. The Federal Government will pay 90 per centum under (a)(1) and 50 per centum or less under (a)(2).

(b) FEMA will determine, based on policy determinations with prospective effect, applying the criteria set out in §§ 222.4 and 222.5, the eligibility of any matching contributions not covered by this regulation. Expenditures and other actions must be in compliance with applicable FEMA/State cooperative agreements, contracts, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Regulations), relocation plans, relocation criteria, and OMB Circular A-87, Cost Principles for State and Local Governments. FEMA and the state shall maintain adequate records of its acquisition and relocation activities in sufficient

detail to demonstrate compliance with these regulations.

(c) This regulation shall be used in conjunction with the following documents:

(1) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Public Law 96-510;

(2) Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499;

(3) Executive Order 12580, Superfund Implementation;

(4) FEMA relocation regulations and criteria;

(5) OMB Circular A-87, Cost Principles for State and Local Governments;

(6) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Regulations) 44 CFR part 25; and

(7) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 9615)

§ 222.4 Matching contributions.

Either cash and/or the value of goods, services or facilities can qualify as matching contributions. Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the project for which the Federal funds have been made available for obligation under an approved program or project.

§ 222.5 Criteria for acceptable contributions.

(a) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(b) The state seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto (subject to valid approved credit from a previous project), and except as specifically provided

herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from primary recipient's records;

(3) Not allocable to or included as a cost of any other federally-financed program;

(4) Authorized under State law;

(5) In conformance with limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types or amounts of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and

(7) In conformance with OMB Circular A-87, Cost Principles for State and Local Governments.

§222.6 Documentation of matching contributions.

(a) The state shall maintain documentation for all items related to the relocation that it plans to use as a matching contribution. For items eligible for matching contributions, documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient.

(b) When items are not specifically on the list of General Eligible Costs, §222.7 of this part) the following shall be required in addition to the documentation in paragraph (a) of this section: Sufficient supporting documentation detailing the type of work eligible, and justification to the relocation activity.

(c) The state shall also comply with the following requirements for all matching contributions:

(1) The state is responsible for maintaining records of the match and providing the documentation by eligible category when requested by FEMA or its agent.

(2) The basis by which the state determines the value of the match must be documented and a copy retained as part of the official record. State matching share records are subject to audit inspections in the same manner and to the same extent as records deal-

ing with the receipt and disposition of Federal funding.

(3) These records shall become property of FEMA following completion of the project or, at FEMA's request, shall be retained by the state for a period of ten years.

(Approved by the Office of Management and Budget under Control Number 3067-0184)

§222.7 General eligible costs.

Subject to the provision of section 104(c)(5) of CERCLA, *as amended*, the following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on the criteria set forth in §222.5. All costs must be reasonable.

(a) Direct and indirect salaries or wages (including overtime) of employees hired specifically for the permanent or temporary relocation when engaged in the performance of eligible work for the permanent or temporary relocation.

(b) Direct and indirect salaries or wages (including overtime) of state employees whose duties change, when they are engaged in the performance of eligible work for the permanent or temporary relocation.

(c) Regular salaries or wages of regularly employed police and fire personnel when they are engaged in the performance of work for the permanent or temporary relocation.

(d) Reasonable costs for work performed by private contractors on eligible projects contracted for by the state.

(e) Audit costs for the relocation activity.

(f) Costs for providing site security.

(g) Travel costs and per diem costs of state employees not to exceed the actual subsistence expense basis for the permanent or temporary activity.

(h) Costs for rental of protective gear and costs for protective gear reasonably lost, worn out or destroyed when used in performing work directly related to the permanent relocation activity and fully documented. Protective gear may be purchased if it cannot be rented more cheaply.

(i) Only costs for the control of vectors which exceed the average cost included for same during the previous three years, when such controls are in the public interest.

(j) Costs for providing permanent relocation assistance and real property acquisition when in accordance with Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 9615) and FEMA regulations and criteria issued pursuant thereto. These costs include:

(1) Costs for exercising the power of eminent domain to obtain real property interest;

(2) Costs for the filing and recording of deeds in the recorder's office;

(3) Costs for the review of all sales contracts, title insurance commitments and deeds regarding the conveyance of real property interests prior to the purchase of such real property interests; and

(4) Costs for the development and implementation of a property acquisition and permanent relocation assistance program. These include, but are not limited to the following costs:

(i) Development of a permanent relocation analysis;

(ii) Development and implementation of a community relations program;

(iii) Title searches and appraisals for property within the boundaries of the project;

(iv) A relocation assistance advisory program;

(v) Title reviews, settlements and closings associated with properties located within boundaries of the project;

(vi) The preparation of offers of compensation;

(vii) Acquisition of properties;

(viii) Costs for administrative settlements;

(ix) Costs for relocation assistance; and

(x) Costs for replacement housing payments.

(k) Costs for providing temporary relocation assistance in accordance with FEMA policies which include: Negotiating leases, rent reimbursements, moving expenses, essential utility costs at original residence, food subsidy during transient accommodations, rental of essential furniture, and kennel costs.

§ 222.8 Ineligible costs.

(a) Regular salaries or wages of state employees, other than police or fire personnel, whose duties do not change or are not directly associated with the permanent or temporary relocation are ineligible.

(b) Replacement of revenue lost as a result of contamination in the project area are not eligible.

(c) Costs associated with potential litigation as a result of the states' pursuit and recovery of the states' cost share.

§ 222.9 Appeals.

(a) The Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, shall be responsible for making all policy determinations regarding Superfund cost-sharing eligibility for permanent and temporary relocation. The allowability of matching contributions, particularly those not covered in this regulation, will also be determined by the Assistant Associate Director.

(b) Appeals from the determinations of the Assistant Associate Director may be made to the Associate Director, State and Local Programs and Support.

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