

## Federal Emergency Management Agency

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will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17111, Apr. 8, 1998]

### PARTS 207–208 [RESERVED]

## PART 209—HURRICANE FLOYD PROPERTY ACQUISITION AND RELOCATION GRANTS

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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.

SOURCE: 65 FR 7272, Feb. 11, 2000, unless otherwise noted.

### § 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 exists.

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### § 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.

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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.**

(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) 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.

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(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 non-compliance 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 Direc-

tors 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.

### **PARTS 210-294 [RESERVED]**