

**§ 360.4 Administrative procedures.**

(a) *Award.* Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in § 360.2.

(b) *Period of agreement.* Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in § 360.2(b) to give continuity to the total training and education program.

(c) *Submission procedure.* Each State applicant shall comply with the following procedures:

(1) *Issuance of a request for application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting agreements.* Recipients of State Agreement benefits will report

quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

**§ 360.5 General provisions for State Cooperative Agreement.**

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

## PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

### Subpart A—Earthquake Hazards Reduction Assistance Program

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### Subpart B [Reserved]

AUTHORITY: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

SOURCE: 57 FR 34869, Aug. 7, 1992, unless otherwise noted.

## Subpart A—Earthquake Hazards Reduction Assistance Program

### § 361.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA's earthquake hazards reduction assistance program, and establishes the criteria for cost-sharing.

### § 361.2 Definitions.

*Cash Contribution* means the State cash outlay (expenditure), including the outlay of money contributed to the State by other public agencies and institutions, and private organizations and individuals. All expenditures must be listed in the project's approved budget.

*Certification* represents the Governor's written assurance describing the steps State agencies will take toward meeting the 50 percent cash contribution required following the third year of program funding. The letter of certification is intended to assist the State maintain a commitment to and plan for securing the future cash match with the long-range goal of developing an ongoing, rather than a short-term, State program.

*Cost Sharing* and *Matching* represent that portion of project costs not borne by the Federal Government.

*Eligible Activities* are activities for which FEMA may provide funding to States under this section. They include specific activities or projects related to

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earthquake hazards reduction which fall into one or more of the following categories: Preparedness and response planning; mitigation planning and implementation, including inventories preparation, seismic safety inspections of critical structures and lifelines, updating building and zoning codes and ordinances to enhance seismic safety; and public awareness and education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(3)).

*In-kind contributions* represent the value of non-cash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

*Project* means the complete set of approved earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given Federal fiscal year.

*Project Period* is the duration of time over which an earthquake hazards reduction project is implemented.

*State* refers to the States of the United States of America, individually or collectively, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Mariana Islands, and any other territory or possession of the United States. It also means local units of government or substate areas that include a number of local government jurisdictions.

*State Assistance* means the funding provided under this subpart by FEMA through the National Earthquake Hazards Reduction Program (NEHRP) to States to develop State programs specifically related to earthquake hazards reduction. The term also includes assistance to local units of government or substate areas, such as a group of several counties.

*Target Allocation* is the maximum amount of FEMA earthquake program funds presumably available to an eligible State in a fiscal year. It is based

primarily upon the total amount of State assistance funds available to FEMA annually, the number of eligible States, and a nationally standardized comparison of these States' seismic hazard and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

**§361.3 Project description.**

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with respect to earthquake-related issues, including methods of mitigating earthquake damage, planning to prevent or minimize earthquake damage, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible according to the definition in §361.2. The categories, or program elements, listed therein comprise a comprehensive earthquake hazards reduction project for any given seismic hazard area. Key aspects of each of these elements are as follows:

(1) *Mitigation* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures (i.e., updating building and zoning codes and ordinances to enhance seismic safety), and regarding buildings' nonstructural elements, contents and furnishings. Mitigation includes preparing inventories of and conducting seismic safety inspections of critical structures and lifelines, and developing plans for identifying and retrofitting existing struc-

tures that pose threats to life or would suffer major damage in the event of a serious earthquake.

(2) *Preparedness/response planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once the earthquake has occurred. Preparedness/response planning usually considers functions related to the following:

- (i) Rescue and fire services;
- (ii) Medical services;
- (iii) Damage assessments;
- (iv) Communications;
- (v) Security;
- (vi) Restoration of lifeline and utility services;
- (vii) Transportation;
- (viii) Sheltering, food and water supplies;
- (ix) Public health and information services;
- (x) Post-disaster recovery and the return of economic stability;
- (xi) Secondary impacts, such as dam failures, toxic releases, etc.; and
- (xii) Organization and management.

(3) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stimulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

- (i) The general public;
- (ii) School populations (administrators, teachers, students, and parents);
- (iii) Special needs groups (e.g., elderly, disabled, non-English speaking);
- (iv) Business and industry;
- (v) Engineers, architects, builders;
- (vi) The media; and
- (vii) Public officials.

(4) *Other Activities* in support of those listed in §361.3(b)(1), (b)(2), and (b)(3) may include, but are not limited to, State seismic advisory boards which provide State and local officials responsible for implementing earthquake hazards reduction projects with expert

advice in a variety of fields; hazard identification which defines the potential for earthquakes and their related geological hazards in a particular area; and vulnerability assessments, also known as loss estimation studies, which provide information on the impacts and consequences of an earthquake on an area's resources, as well as opportunities for earthquake hazards mitigation.

(c) State eligibility for financial assistance to States under this section is determined by FEMA based on a combination of the following criteria:

(1) Seismic hazard, including the historic occurrence of damaging earthquakes, as well as probable seismic activity;

(2) Total population and major urban concentrations exposed to such risk; and

(3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards;

(2) Earthquake hazards reduction accomplishments of the State to date;

(3) State and Federal priorities for needed earthquake hazards reduction activities; and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) As a condition of receiving FEMA funding, a percentage of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities

under the Mitigation Planning element. The percentage, to be determined by FEMA, may be increased by no more than 5 percent annually, beginning at 15 percent in fiscal year 1991 with a limit of 50 percent of the total State project. The increase will take into account the amount of time a State has been participating in the program. States may expend more than the required percentage of funding on eligible mitigation activities.

(g) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(h) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

#### §361.4 Matching contributions.

(a) All State assistance will be cost shared after the first year of funding. States which received a grant before October 1, 1990, which included the 50 percent non-Federal contribution to the State program, will continue to match the Federal funds on a 50 percent cash match basis.

(b) States which did not receive a grant before October 1, 1990, will assume cost sharing on a phased-in basis over a period of four years with the full cost sharing requirements being implemented in the fourth year. The sequence is as follows:

(1) For the first fiscal year, cost sharing will be voluntary. FEMA will provide State assistance without requiring a State match. Those States that are able to cost-share are encouraged to do so (on either a cash or in-kind basis).

(2) For the second fiscal year, the minimum acceptable non-Federal contribution is 25 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(3) For the third fiscal year, the minimum acceptable non-Federal contribution is 35 percent of the total project

cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(4) For the fourth and subsequent fiscal years, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. However, State assistance will not exceed the established target allocation.

(c) The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

(d) In the event a State interrupts its participation in this program, if it later elects to participate again, the nature and amount of that State's cost sharing shall be determined by the regulations then in effect, taking into account the number of years in which the State previously participated.

**§361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.**

(a) In order to qualify for assistance, a State must:

(1) Demonstrate that the assistance will result in enhanced seismic safety in the State;

(2) Provide a share of the costs of the activities for which assistance is being given, in accordance with §361.4; and

(3) Demonstrate that it is taking actions to ensure its ability to meet the 50 percent cash contribution commitment either on an ongoing basis or for new States, by the fourth year of funding.

(i) The Governor of newly participating State must certify to the FEMA Regional Director the State will take steps to meet the 50 percent cash contribution requirement after the third

year of funding. The specific steps to be taken will be outlined in the certification which must be submitted prior to the State receiving program funds.

(ii) The Governor must certify the State's continued commitment in the second and third years of funding. The certification will describe the progress made on the steps contained in the previous year's certification and steps to be taken in the future. The certification must be submitted to the Regional Director before the State will receive program funds.

(iii) If a State encounters difficulties meeting the 50 percent cash contribution requirement for the target allocation following the fourth year of funding, the Regional Director may require the Governor to continue certifying the State is working to resolve the difficulty.

(iv) A State will not receive Federal funds if it cannot provide the required cash contribution.

(b) 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.

(c) 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, 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 the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

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

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

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with OMB Circular A-87, “Cost Principles for State and Local Governments,” and with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) A State must submit and FEMA must approve a statement of work before the State receives any grant funds. The statement of work and target allocation of funds are based on a 12-month performance period. Except under extenuating circumstances, the funds initially obligated to the State will be based on the amount of time remaining in the performance period at the time the statement of work is approved. (Approved by the Office of Management and Budget under OMB control number 3067-0170)

(e) States are expected to perform activities and therefore expend funds on a quarterly basis in accordance with the approved statement of work. At the end of the third quarter, State and FEMA regional office staff will review the State’s accomplishments to date. Funds not expended in accordance with the approved statement of work by the end of the third quarter of the performance period will not be made available to the State unless the State can demonstrate, and FEMA approves, its ability to perform activities adequately resulting in the expenditure of the funds by the end of the performance period.

**§361.6 Documentation of matching contributions.**

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three-year period after the date of submission of the final financial report required by the CCA, or

date of audit, whichever date comes first.

**§361.7 General eligible expenditures.**

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in §361.2.

(b) 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 criteria set forth in §361.5. All costs must be reasonable, and consistent with OMB Circular A-87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

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

(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State’s cost principles governing travel.

(4) Non-expendable personal property, office supplies, and supplies for workshops; exhibits.

(5) A maximum of \$8,000 or 10 percent of the total project allocation, whichever is less, may be expended for personal computer equipment in the first year of program funding. A full-time earthquake staff person must be employed and the equipment must be dedicated entirely to the earthquake project.

(6) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(7) Training which directly benefits the conduct of earthquake hazards reduction activities.

**§ 361.8 Ineligible expenditures.**

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A-87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment, except as stated in § 361.7(b)(5). If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)); and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

**Subpart B [Reserved]****PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES**

Sec.

362.1 Purpose.

362.2 Definitions.

362.3 Criteria for determining acceptance.

AUTHORITY: 42 U.S.C. 7701, 7705c.

SOURCE: 59 FR 35631, July 13, 1994, unless otherwise noted.

**§ 362.1 Purpose.**

This part establishes criteria for determining whether the Director may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

**§ 362.2 Definitions.**

As used in this part—

*Gifts of property* means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, in-

cluding transfer by donation, devise or bequest.

*Gifts of services* means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

*Program Agencies* means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

*Property* means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

*Services* means labor or professional work performed for the benefit of another or at another's command.

*Solicit* means to endeavor to obtain by asking or pleading.

**§ 362.3 Criteria for determining acceptance.**

The following criteria shall be applied whenever a gift of property or gift of services is offered to the Director for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Director or his designee.

(c) The Director may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the General Counsel, FEMA, for conformance with all applicable laws and regulations.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.