

(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—SUPPLEMENTAL PROPERTY ACQUISITION AND ELEVATION ASSISTANCE

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SOURCE: 66 FR 32669, June 15, 2001, unless otherwise noted.

#### § 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 rec-

reational 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 non-profit 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

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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.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001]

#### § 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