

in this section, DHS will deem that the Sponsoring Agency has waived its right to appeal any decision that could have been the subject of an appeal.

§ 208.63 Request by DHS for supplemental information.

(a) At any stage of the reimbursement and appeal processes identified in this subpart, DHS may request the Sponsoring Agency to provide supplemental information that DHS considers necessary to determine either a claim for reimbursement or an appeal. The Sponsoring Agency must exercise its best efforts to provide the supplemental information and must submit to DHS a written response that includes such supplemental information as the Sponsoring Agency is able to provide within 30 days after receiving DHS’s request.

(b) If DHS makes a request for supplemental information at any stage of the reimbursement and appeal processes, the applicable time within which its determination of the claim or appeal is to be made will be extended by 30 days. However, without the consent of the Sponsoring Agency, no more than one such time extension will be allowed for any stage of the reimbursement and appeal processes.

§ 208.64 Administrative and audit requirements.

(a) *Non-Federal audit.* For Sponsoring Agencies and States, requirements for non-Federal audit are contained in 44 CFR 13.26, in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

(b) *Federal audit.* DHS or the General Accounting Office may elect to conduct a Federal audit of any payment made to a Sponsoring Agency or State.

§ 208.65 Mode of transmission.

When sending all submissions, determinations, and requests for supplemental information under this subpart, all parties must use a means of delivery that permits both the sender and addressee to verify the dates of delivery.

§ 208.66 Reopening of claims for retrospective or retroactive adjustment of costs.

(a) Upon written request by the Sponsoring Agency DHS will reopen the time period for submission of a request for reimbursement after the Sponsoring Agency has submitted its request for reimbursement, if:

(1) The salary or wage rate applicable to the period of an Activation is retroactively changed due to the execution of a collective bargaining agreement, or due to the adoption of a generally applicable State or local law, ordinance or wage order or a cost-of-living adjustment;

(2) The Sponsoring Agency or any Participating Agency incurs an additional cost because of a legally-binding determination; or

(3) The Deputy Director determines that other extenuating circumstances existed that prevented the Sponsoring Agency from including the adjustment of costs in its original submission.

(c) The Sponsoring Agency must notify DHS as early as practicable that it anticipates such a request.

§§ 208.67–208.70 [Reserved]

PART 209—SUPPLEMENTAL PROPERTY ACQUISITION AND ELEVATION ASSISTANCE

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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.

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 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