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Part II

Department of Homeland Security

Federal Emergency Management Agency

**44 CFR Parts 59, 61, 78, et al.
Flood Mitigation Grants and Hazard
Mitigation Planning; Interim Rule**

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Parts 59, 61, 78, 79, 80, 201, and 206**

[Docket ID FEMA-2006-0010]

RIN 1660-AA36

Flood Mitigation Grants and Hazard Mitigation Planning**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Interim rule.

SUMMARY: This interim rule implements certain provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 to provide new incentives for States and communities to mitigate the effects of flood damage to severe repetitive loss properties by creating the Severe Repetitive Loss program (SRL), and through reduced cost-share requirements in the existing Flood Mitigation Assistance program (FMA). In addition, the rule ensures that the FMA planning requirements are consistent with other applicable regulations, and streamlines the planning requirements for Indian tribal governments. It also describes requirements for the acquisition of property for open space with mitigation funds, including under SRL and FMA. Finally, this interim rule makes technical changes to clarify current practices and implements conforming amendments to reflect current authorities, including the recent change to the standard amount of authorized Hazard Mitigation Grant Program assistance.

DATES: *Effective Date:* December 3, 2007.*Comment Date:* Comments on the rule including the new Paperwork Reduction Act collections are due on or before December 31, 2007.

Applicability Date: Part 78 will continue to apply to the administration of funds awarded for which the application period opened prior to December 3, 2007. Parts 79 and 80 will apply to the administration of funds awarded for which the application period opens on or after December 3, 2007, except that § 80.19 will apply as of December 3, 2007 regardless of the original project date.

ADDRESSES: You may submit comments, identified by Docket ID FEMA-2006-0010, by one of the following methods:Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA-2006-0010 in the subject line of the message.

Fax: 866-466-5370.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT:Cecelia Rosenberg, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (phone) 202-646-3321, (facsimile) 202-646-2719, or (e-mail) cecilia.rosenberg@dhs.gov.**SUPPLEMENTARY INFORMATION:****Request for Comments**

FEMA encourages public participation in this rulemaking. Comments will be most helpful if they state a particular section (or sections) of the rule, and offer specific proposals for change, as needed. All submissions received must include the agency name and docket ID (FEMA-2006-0010). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of www.regulations.gov.

All comments received, as well as this document are available on the public docket for this rulemaking. For access to the docket, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

At this time, FEMA does not anticipate it will hold a public meeting for this rulemaking project.

Table of Abbreviations

BC—Benefit Cost
 BCA—Benefit Cost Analysis
 CAP—SSE—Community Assistance Program—State Support Services Element
 CRS—Community Rating System
 DHS—Department of Homeland Security
 FEMA—Federal Emergency Management Agency
 FIRM—Flood Insurance Rate Map
 FIS—Flood Insurance Study
 FMA—Flood Mitigation Assistance
 HMGP—Hazard Mitigation Grant Program
 ICC—Increased Cost of Compliance
 NEPA—National Environmental Policy Act of 1969

NFIA—National Flood Insurance Act of 1968
 NFIF—National Flood Insurance Fund
 NFIP—National Flood Insurance Program
 OMB—Office of Management and Budget
 PDM—Pre-disaster Mitigation
 POC—Point of Contact
 PRA—Paperwork Reduction Act of 1995
 RFC—Repetitive Flood Claims
 SHMO—State Hazard Mitigation Officer
 SQA Net—Simple and Quick Access Net
 SRL—Severe Repetitive Loss
 USACE—United States Army Corps of Engineers

I. Background

This rule implements provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (the Act), Public Law 108-264, 118 Stat. 714, found at 42 U.S.C. 4102a. The Act amends the National Flood Insurance Act of 1968 to provide new programs and incentives for States and communities to mitigate flood damage to severe repetitive loss properties. Severe repetitive loss properties are residential properties covered under a contract for flood insurance that have incurred flood-related damage (i) for which 4 or more separate claims payments have been made under flood insurance coverage, with the amount of each such claim exceeding \$5,000, and with the cumulative amount exceeding \$20,000; or (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount exceeding the value of the property. Pursuant to the Act, this interim rule implements the new Severe Repetitive Loss (SRL) program, which is authorized by the Act until September 30, 2009, and amends the existing Flood Mitigation Assistance (FMA) program to meet the requirements of the Act. In addition, FEMA is modifying the mitigation planning regulations to minimize the burden on State, local, and Indian tribal governments, to streamline the planning process, and to ensure consistency in the local planning requirements that apply to all FEMA mitigation programs, including the SRL and FMA programs.

Also, effective October 4, 2006, section 684 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109-295, amended the amount of Hazard Mitigation Grant Program (HMGP) assistance authorized for States with an approved Standard State Mitigation Plan from 7.5 percent to 15 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under FEMA Public and Individual Assistance programs for amounts spent up to \$2 billion, and established a sliding scale for HMGP assistance, based on the amount of the total estimated

Federal assistance. This interim rule amends FEMA's regulations to reflect this statutory change.

II. Discussion of Interim Rule

The SRL grant program was created pursuant to Section 1361A of the National Flood Insurance Act of 1968 (NFIA, or "the Act"), 42 U.S.C. 4030, as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, with the goal of reducing flood damages to SRL properties. The long-term goal of the SRL program is to reduce or eliminate claims under the NFIP through project activities that will result in the greatest savings to the NFIF in the shortest period of time.

The new program, the SRL program, is authorized through September 30, 2009 and is designed to provide mitigation assistance to address properties that have experienced repetitive flood losses and that are insured under the NFIP. The SRL program focuses on a subset of all repetitive flood loss properties: Those residential properties with a high frequency of losses or a high value of claims. The mitigation of losses sustained by these properties, through projects such as buyouts, elevation, relocation, or floodproofing, will produce savings for policyholders under the NFIP and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance. The program relies on a strategy of making mitigation offers to these severe repetitive loss property owners and shifting more of the burden of recovery costs to those property owners who decline the offer of mitigation assistance, and choose to remain vulnerable to repetitive flood damage, by incrementally increasing their rates for flood insurance. As established by Congress, the sale of flood insurance under the NFIP is subject to the rules and regulations of FEMA. FEMA has elected to have State-licensed insurance companies' agents and brokers sell flood insurance to consumers. Those whose rates are increased will be eligible to appeal this increase via an independent third party from a list based on professional qualifications impartially developed by FEMA's Alternative Dispute Resolution (ADR) office. To reduce costs, the property owner may request that the Administrator substitute a reviewer from FEMA's ADR office for the independent third party.

With respect to grant programs, FEMA has actively engaged in flood mitigation through its HMGP, FMA, PDM and Repetitive Flood Claims (RFC) programs. Each of these programs was

created under different legislative authorities, and as a result, have varied impacts on reducing the nation's inventory of the most floodprone structures. What has not existed is a program that specifically addresses and provides funds for the elimination of, or reduction of risk to, the subset of those properties that create the largest impact on claims paid from the NFIF. Most of these properties existed before the inception of the NFIP and its associated floodplain management standards, and are thus eligible for discounted insurance rates. Furthermore, none of these other programs feature a formal mitigation offer process whereby insurance rates may be increased if the property owner declines the offer.

FEMA intends to focus the SRL program in communities and on property owners who choose to participate in the program. This will maximize the benefits of the program, while minimizing adverse impacts on communities and property owners. The program will provide an opportunity for many property owners to address recurring flooding problems, and reduce the impact of these events.

The legislation also provides an incentive to mitigate damage to severe repetitive loss properties through reduced non-Federal cost-share requirements for the SRL and FMA programs (from 25 percent to 10 percent) for projects in States with approved State Mitigation Plans that meet the additional repetitive loss requirements. The reduced cost share would be available only for projects that address severe repetitive loss properties.

While the SRL and FMA programs will be implemented as separate programs, with different funding accounts, they are similar in their goals and purpose. FEMA has included both of these programs in one implementing regulation to ensure as much consistency as reasonable between the programs and to limit the confusion around program implementation, since both programs will likely be managed by the same State agency staff.

The final rule implementing the FMA program is published elsewhere in today's **Federal Register**. (It follows an interim rule published March 20, 1997 at 62 FR 13346.) See 44 CFR part 78. This part will continue to be used to implement the FMA program for all grants awarded for which the application period opened prior to December 3, 2007.

This new interim rule creates a new part (part 79, with details specific to acquisition projects at a new part 80), that restates the requirements for the existing FMA program in a format more

consistent with the approach to all of FEMA's mitigation grant programs. Part 79 will implement the FMA program for all grants awarded for which the application period opens on or after December 3, 2007.

Part 79 also implements a change to the cost share available to States under the FMA program if their approved mitigation plan meets certain criteria, described herein in § 201.4. States would be eligible for a reduced cost share if their mitigation plan addresses actions related to reducing the risk to repetitive loss properties that they have already taken, and those actions that they intend to take.

The requirements for the new SRL program are incorporated into this rule. In addition, this interim rule brings the FMA program regulations into conformance with current policies, and ensures better conformance to existing grants management requirements. In authorizing the SRL program in section 102 of the Act, and amending the FMA program in section 103 of the Act, Congress directed FEMA to "provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time" and to provide assistance for activities that are "in the best interest of the National Flood Insurance Fund." FEMA has concluded that Congress' stated goals for the two programs are similar. Therefore, there is no substantial difference in how FEMA will determine the funding priority for the two programs.

As an additional aspect of implementing these programs, this rule includes a new part (part 80) which describes the requirements and procedures for open space property acquisition which applies to the SRL and FMA programs, as well as all FEMA hazard mitigation assistance programs. In light of the Act's requirements regarding property acquisition, FEMA determined that a central reference point for all mitigation grant program property acquisitions would make the programs more consistent overall and easier to implement.

Elsewhere in today's **Federal Register**, FEMA published a final rule implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165. (It follows an interim rule published February 26, 2002 at 67 FR 8844.) The final rule identified the requirements for State, Tribal, and local mitigation plans. This new interim rule streamlines the mitigation planning requirements contained in that rule by making the

FMA planning requirements, currently implemented in a separate part of the regulation at § 78.5, consistent with the mitigation planning requirements outlined in part 201. This will ensure that local governments can comply with one set of mitigation planning requirements in order to be eligible to apply for all FEMA mitigation project grant funding, including the FMA and SRL programs.

In addition, this interim rule streamlines the roles and responsibilities of Indian tribal governments in mitigation planning. In the preexisting regulations, Indian tribal governments were given the option of preparing either a State-level Mitigation Plan, or a Local-level Mitigation Plan, depending on whether or not they intended to apply directly to FEMA as a grantee or whether they would apply through the State as a subgrantee. FEMA has found, however, that neither of these options has sufficiently met the needs of the Indian tribal governments.

To address this problem, this interim rule establishes a specific planning requirement for Indian tribal governments that recognizes some of the unique aspects of these governments. The rule establishes Tribal Mitigation Plans for plans prepared and approved after December 3, 2007. The rule provides that plans prepared and approved under the preexisting rule, under either the State or local requirements, would also be recognized as Tribal Mitigation Plans. These older plans, however, would be required to meet the revised criteria when the original approval expires. Most Indian tribal governments fit the local planning model, in that they do not have sub-jurisdictions as States do; however, if they are grantees, the rule would require that they provide the capability assessment and identification of funding options that are listed in the State plan requirements. This rule combines the appropriate aspects of these planning requirements into one section, with a single plan required for Indian tribal governments.

This rule also implements section 106 of the Act, which modifies the insurance rates for property leased from the Federal government “located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.” These properties will be charged the full actuarial insurance premium rates.

Finally, this rule makes conforming amendments, as well as technical corrections to clarify current authorities and practices. This rule thus makes revisions to the amount of assistance

available to States under the Hazard Mitigation Grant Program in § 79.4 as a result of changes made to the Stafford Act in the Post-Katrina Emergency Management Reform Act passed in October 2006.

III. Solicitation of Public Comments

Section 102 of the Act required FEMA, within 90 days of the Act, to consult with State and local officials in carrying out the development of procedures for the distribution of funds to States and communities to carry out eligible mitigation activities. To meet this requirement, FEMA published a **Federal Register** notice on September 15, 2004, at 69 FR 55642, to initiate consultation with State and local officials, as well as members of the public. In the notice, FEMA solicited responses to the following questions: What key factors FEMA should consider in developing the SRL program; the parameters that FEMA should use to define severe repetitive loss for multifamily structures; the process FEMA should use to notify property owners that their property is considered a severe repetitive loss property by virtue of the legislative definition; the criteria FEMA should use to allocate funds to States, including whether or not there should be caps on the funding as is the case under the FMA program; the criteria that should be used to approve State mitigation plans to take advantage of the increased Federal cost share; the criteria FEMA should use to determine projects that will result in the greatest amount of savings to the National Flood Insurance Fund (NFIF); and, what types of assistance should FEMA provide to States and communities when making offers to owners of SRL properties. Interested parties initially had until November 30, 2004, to submit written comments in response to these questions. FEMA extended the deadline for comments until December 7, 2004. FEMA received 26 written comments. Eight of those comments were received from States, ten from communities and eight were from associations. On November 17, 2004, as part of the consultation process, FEMA held a meeting in Washington DC with representative officials of State and local governments, organizations representing emergency management, floodplain management, and insurance professions, and other interested parties.

FEMA reviewed and considered all oral and written responses as FEMA developed the SRL grant program and this interim rule. FEMA’s questions, the public comments, and FEMA’s

responses to the public comments are listed below.

Question 1: What key factors should FEMA consider in developing the Pilot Program for Severe Repetitive Loss Properties under section 1361A?

Multiple commenters stated that the program should be administered by the States, similar to existing FEMA mitigation grant programs, including FMA and Pre-Disaster Mitigation (PDM). However, once commenter wrote that the existing programs take too long to implement.

Multiple commenters stated that funding allocations should be disbursed based on the location of SRL properties (those with the greatest drain, greatest losses, most number of SRL properties, etc.), rather than disbursing funds evenly among States. Multiple comments indicated that the ranking of properties should ensure that those properties with the most loss claims should be addressed first. Multiple commenters stated that allocations should also consider the State and/or community capability, defined as having plans in place, past performance shown to mitigate repetitive loss properties, projects lined-up, and/or matching funds available. Multiple comments also indicated that funds should be prioritized to those communities with experience managing FEMA funds and/or with matching funds and projects lined-up. Multiple commenters indicated that reallocations should occur quickly to move funds to communities that need them.

A considerable number of commenters stated that the data used for determining those properties that meet the SRL property definition was not accurate and needed to be updated/corrected, and that real-time claim reporting was needed.

Multiple commenters stated that the parameters for demolition rebuild projects need to be clarified. Multiple commenters stated that property owners, communities, and States must be able to determine the most appropriate mitigation measures.

Multiple commenters stated that there needs to be clear definitions for “notices” and “offers,” and that both need to include clear details of the appeals process and insurance implications. Further, multiple commenters stated that there needs to be a clear description of the property value in an offer.

Multiple commenters stated that FEMA would need additional staff with National Flood Insurance Program (NFIP) expertise to manage the program.

Multiple commenters stated that the Increased Cost of Compliance (ICC) should be made available for match, or indicated that many communities would not be able to provide the cost share.

Multiple commenters indicated that the program should focus on cost effectiveness, and Benefit/Cost analysis in particular.

Multiple commenters indicated that the planning requirement should be clearly defined, and multiple commenters suggested a plan be required to prioritize funding.

Multiple commenters requested that a streamlined, simple, or tailored application and grants management process be implemented; and that guidance needs to be clear regarding the roles and responsibilities of FEMA, States and communities.

Multiple commenters stated that mitigation funds should be directed to only those covered under an NFIP policy. Multiple respondents indicated that insurance policy writers needed education and awareness/outreach, both to understand the program and the ICC benefits.

FEMA's Response

In response to comments regarding administration of the program by the States, the new Part 79 added in this rulemaking deals with the States' program administration responsibilities, which are being designed similar to the way FEMA's other mitigation grant programs operate. In response to comments regarding the accuracy of data used to identify SRL properties, insurance and claims information for properties validated as meeting the legislative characteristics of SRL are now available to States on a web-based site (SQA Net), which is updated monthly. Furthermore, regulations and program procedures clearly describe the notice, offer, and appeals processes. Program procedures have been developed to define the parameters and limitations imposed for the demolition/rebuild activity type. State, local and tribal mitigation plans will be required and are described in this interim rule; allocation of funds will be based on the number of SRL properties within each State, in accordance with the authorizing legislation; it is also described in this interim rule. Awards shall be prioritized in order of the greatest savings to the National Flood Insurance Fund, by virtue of the Benefit Cost Ratio.

With respect to concerns over the accuracy of claims data, FEMA has continually worked to update the claims information data to increase accuracy,

including field verification of property information when necessary. Furthermore, property owners can discuss errors in their claim history with NFIP representatives. As described under the response to Question 3, a property owner is given a toll-free number to call if they have questions about their designation as an SRL property.

With respect to concerns regarding the details of receiving a mitigation offer, particularly for an acquisition, FEMA has developed an offer letter that will contain information regarding the mitigation project type; the amount of the purchase offer, including the basis and methodology for calculating the purchase offer, and the final offer amount that reflects applicable deductions; notification that participation in the SRL program is voluntary; the amount of time the property owner has to accept or reject the offer; the right of the property owner to appeal the increase in flood insurance rates if they refuse the offer; a summary of the consultation process, and other pertinent information.

In response to the comment that funds should only be directed to those covered under a NFIP policy, the definition of a SRL property includes the requirement that the property is covered by a NFIP policy.

ICC coverage under the Standard Flood Insurance Policy (SFIP) provides for the payment of a claim to help pay for the cost to comply with State or community floodplain management laws or ordinances from a flood event in which a building has been declared substantially damaged or repetitively damaged. When an insured building is damaged by a flood and the State or community declares the building to be substantially or repetitively damaged, ICC coverage will help pay for the cost to elevate, floodproof, demolish, or relocate the building up to a maximum benefit of \$30,000. This coverage is in addition to the building coverage for the repair of actual physical damages from flood under the SFIP. ICC claims payments from previous flood events may be used to meet the non-Federal cost share requirements, as long as the period for making such a claim remains open.

Question 2: What parameters should FEMA use to define severe repetitive loss for multifamily structures consisting of 5 or more residences?

Multiple commenters stated that the multifamily properties definition should be the same as the single-family properties definition. However, several

alternative options to define multifamily properties were suggested including:

- The ratio of cumulative loss versus replacement cost;
- The determination of substantial damage for a structure;
- A proportionate definition based on the number of units; or
- Five or more residences covered under a single contract for flood insurance that have had 4 or more claims, each exceeding 6.25 percent of the replacement value of the structure, with cumulative payments exceeding 25 percent of the replacement value. Parameters to consider included total damages, number of losses, dollar loss per claim, and low-rise versus high-rise structures.

Multiple commenters agreed that at least 2 claims payments that cumulatively exceed the replacement value of the structure (as stated in Section 1361A(b)(2) of the Act) should apply to single family as well as multifamily properties.

Multiple commenters indicated that multifamily properties should follow single-family properties as the priority for mitigation funding.

Multiple commenters indicated that Benefit Cost Analysis data applied to multifamily projects consider more than building damages, but also content damages, in order to make multifamily projects cost-effective.

FEMA's Response

FEMA evaluated two options in selecting the definition of "multifamily property" for the purposes of this interim final rule. The first option was keeping the same claims thresholds as defined in the Act for single family properties. The second option FEMA evaluated was defining "multifamily property" as reflecting the increased property values and number of units typically associated with multifamily properties. FEMA analyzed claim information for multifamily properties and determined that a claim history including four separate claims of \$25,000 with the cumulative amount of such payments exceeding \$100,000 or having at least two separate claims payments with the cumulative amount of such claims exceeding the value of the property would be reasonable criteria to select for the meaning of the term "severe repetitive loss" for multifamily properties.

Based on evaluating options, FEMA determined that selecting the first option allowed properties for which a relatively inexpensive mitigation solution may be available (such as elevating HVAC equipment or eliminating finished enclosures below

elevated floors) to be eligible for SRL program funds. These minimal mitigation steps may also lead to a diminished need for disaster housing as well. This definition was chosen because it allows for the maximum number of multifamily residences to be eligible for funding consideration under the SRL program by virtue of meeting the definition of an SRL property.

Thus, "multifamily property" is defined in part 79 as "a property consisting of five or more residences". Furthermore, the definition of "Severe Repetitive Loss" as defined in part 79 of this interim rule uses the same parameters for multifamily properties as for single family.

Question 3: What process should FEMA use to notify property owners that their property is considered a severe repetitive loss property as defined by the statute?

A considerable number of commenters stated that notices to property owners needed to be coordinated with, sent concurrently to, or shared with State, Tribal and local communities. A considerable number of respondents stated that FEMA should be responsible for notifying property owners, and multiple commenters indicated that this notice should be in writing, either through certified or registered mail.

A considerable number of respondents stated that the notice needed to include clear, non-legal, plain English language that described the notice, the program, the determination, the process, appeals, etc. Multiple commenters suggested a standard form or one-page document explaining the program. Furthermore, multiple responses wrote that the notice be provided with the property owner's insurance policy renewal to link the program to insurance coverage. Multiple commenters stated that disclosure in property records, and real estate transactions needed to be enforced.

FEMA's Response

FEMA's Special Direct Facility (SDF) is operated by the NFIP's Servicing Agent. It has been in existence since 2000, when FEMA determined it needed to manage more closely the loss adjustments to the subset of repetitive loss properties that had the highest number of losses. For the same reasons, property owners whose claims history meets the SRL criteria have been receiving letters approximately 150 days before their policy is renewed that identify their properties as SRL properties. In addition to managing loss adjustments, the SDF will manage the

increase in premiums should the property owner decline an offer of mitigation. The letters also explain that their flood insurance policy will be transferred to FEMA's Special Direct Facility (if the policy is not already being serviced there). These letters are also sent to the property owner's flood insurance agent, and to their mortgage lender. This letter provides a toll-free number that the property owner can call if they have questions about their designation as an SRL property, or any other questions about the transfer of their policy.

Question 4: What criteria should FEMA consider when allocating funds to States and/or communities under the Pilot Program? Should FEMA consider base allocations for States with higher numbers of severe repetitive loss properties?

Multiple commenters stated that funds should target those properties with the most losses to the NFIF, therefore targeting the most egregious properties regardless of location. A considerable number of commenters indicated that allocations should be based on the total number of SRL properties per State. Finally, multiple commenters indicated that base allocations for those States with high numbers of SRL properties should be considered.

Multiple commenters stated that any allocation should provide enough to cover the cost of at least 1 project or some acceptable number of properties, and multiple responses stated that allocations should consider variations in costs to mitigate.

Commenters wrote that additional considerations for allocation included capability factors, such as project readiness, leveraged local investment, past mitigation grant performance, NFIP compliance, and Community Rating System (CRS) ratings. Multiple commenters suggested FEMA base allocations on approved mitigation plans.

Commenters suggested several alternative bases for allocations, including: Insured values or market values, or values based on value of future losses.

FEMA's Response

Subpart 79.4 of this interim rule provides for allocations to be based upon the percentage of the total number of SRL properties located within each State, as per the authorizing legislation, Flood Insurance Reform Act of 2004, Public Law 108-264. States with little or no allocation will be able to apply for 10 percent of the total funds

appropriated in any fiscal year, provided that the State or Tribal applicant has at least 1 SRL property. State allocations will be large enough to permit the implementation of at least 1 project.

FEMA considered several options in evaluating how to administer allocations based on the percentage of the total number of SRL properties located within each State, as per the authorizing legislation, Flood Insurance Reform Act of 2004, Public Law 108-264. States with little or no funding allocation will be able to apply for 10 percent of the total funds made available under SRL in any fiscal year, provided that the State or Tribal applicant has at least one SRL property. The options evaluated and not accepted included small allocations to all States; larger allocations to a limited number of States with numerous SRL properties; and a variety of allocation scenarios for States with a limited number of SRL properties.

Ultimately FEMA decided on an allocation that could be adjusted annually based on the number of SRL properties in a particular State. FEMA would evaluate the point at which it is more beneficial for a State to compete for the 10 percent set-aside than to receive an allocation that was insufficient. This allocation approach provided the necessary funds to accomplish mitigation projects. The average flood mitigation project funded under FEMA's mitigation programs is approximately \$70,000-\$100,000.

The legislation also required a 10 percent set-aside of the grant funds for States receiving little or no allocation. FEMA determined that "little or no allocation" meant the point at which it was more beneficial for a State to compete for appropriate funds to accomplish mitigation activities than to receive a small allocation, or one which is below the \$70,000-\$100,000 average mitigation project cost. The allocation option that FEMA selected is a reasonable approach to both allocations and the 10 percent set-aside.

Question 5: Should there be caps on Pilot Program funding for States and communities similar to Flood Mitigation Assistance program funds? If so, how would the cap amounts be determined?

The overwhelming response was there should be no caps on funding.

Multiple commenters requested FEMA remove the caps on funding currently implemented under the FMA program as well.

FEMA's Response

At the commenters' request, FEMA has not imposed any funding caps within the SRL program. FMA caps are not changed by this rule, since they are statutorily based.

Question 6: What criteria should FEMA use to review and approve State mitigation plans consistent with 44 CFR part 201 to ensure that they contain recommended actions to mitigate severe repetitive loss properties?

Multiple commenters indicated that FEMA should be as flexible as possible in the criteria used to review and approve plans, including simple goals and strategies that acknowledge properties at risk.

Multiple commenters indicated that mitigation is local, and therefore States should not be held accountable for local strategies. Multiple commenters suggested that existing State or local plans should be accepted, particularly given the limited timeframe of authority for the Pilot program.

Suggestions, if a plan is required, included providing for amendments to existing plans and approving projects while the amendments are being reviewed. Multiple commenters suggested that criteria to be reviewed focus on capability factors such as plan implementation, past performance and effort, not the number of severe repetitive loss properties mitigated. Multiple commenters were concerned that the lack of accuracy in the repetitive loss database may affect their ability to meet the planning requirements related to severe repetitive loss property mitigation. Discrepancies in claims information and property values as shown in the repetitive loss database may result in not showing certain properties as being SRL properties, yet those properties may in fact have been mitigated, "counting" towards a SRL property mitigated. Similarly, database discrepancies may show a property as being SRL, when in fact it may not be. Therefore, if the property has not been mitigated, it may count "against" the state's efforts to indicate mitigation of SRL properties in their state plan.

Several commenters stated that disclosure of offer and insurance information needed to be a part of the property's permanent record, and information needs to be conveyed to the existing and new homeowners regarding the mitigation offer. Finally, multiple commenters indicated that there were too many "lists" between repetitive loss and severe repetitive loss.

FEMA's Response

In this interim rule, FEMA requires states to have an approved State Mitigation Plan meeting the requirements of §§ 201.4 or 201.5 to qualify for the reduced non-federal cost share. The plan must satisfy all standard requirements but also identify specific actions the state has taken to reduce the number of repetitive loss properties; specify how the state intends to reduce the number of such properties; and describe the state's strategy to ensure that local jurisdictions with SRL properties take actions to reduce the number of these properties, including the development of local mitigation plans. Amendments to currently approved State plans will be acceptable. However, at the time of the next required plan update, the amendment must be incorporated into the plan and adopted as part of the plan. Until such time as the amendment is approved by FEMA, grants could be awarded; but the lower non-Federal cost share would not be available until the amendment is approved. While State and local plans must contain different types of data, the two types of planning efforts must be linked via common mitigation goals and objectives.

With respect to the number of repetitive loss lists, FEMA has made available a separate list of SRL properties on SQA Net, which is available to State NFIP Coordinators and State Hazard Mitigation Officers via FEMA Regional Offices. SQA Net is a secure web portal that enables access of data from the NFIP flood insurance database. Data is updated monthly. In pursuing a repetitive loss strategy, FEMA developed a definition of repetitive loss structures, and maintained a list of those structures. A target repetitive loss list was also developed, which consisted of a subset of the list of repetitive loss properties that had the highest number of losses. FEMA does not consider these lists to be excessive, and finds that each serves a valuable purpose.

Question 7: What criteria should FEMA use to make the determination that a State has taken actions to reduce the number of severe repetitive loss properties in its communities?

Commenters characterized criteria in terms of qualitative and quantitative criteria, as well as procedures for developing and reviewing plans.

Qualitative factors suggested include the effort (that is, the number of offers made or the most egregious properties approached, but not necessarily accepted or mitigated); documentation

that any actions were taken; partnerships with other programs and funding sources; level of outreach; and strength of the Community Assistance Program-State Support Services Element (CAP-SSSE). This program provides funding to States to provide technical assistance to communities in the National Flood Insurance Program (NFIP) and to evaluate community performance in implementing NFIP floodplain management activities. Quantitative factors proposed include number of properties mitigated, higher regulatory standards, number of Community Rating System (CRS) communities, number of repetitive loss properties, other programs in place, a plan in place, prioritization of properties, leveraging of matching funds, and others.

Multiple commenters stated that States with approved mitigation plans in place should not have to submit new plans or "prove" that actions have been taken. Conversely, multiple commenters suggested that States submit a report or other documentation each year to show actions taken.

FEMA's Response

Section § 201.5(c)(3)(v) of this interim rule addresses the State mitigation planning requirements for meeting this provision. The regulation requires documentation of actions already taken that specifically focused on SRL properties. Because the mitigation measures for each State and community could vary widely depending on the factual circumstances of each state and community, FEMA opted not to set fixed criteria.

With respect to submitting plans and updates, since most States already have approved mitigation plans, they may only need to make limited revisions or clarifications to the plan that focus on this subset of properties. The entire plan will not need to be resubmitted, only the amendment that pertains to the SRL mitigation actions. Finally, at a minimum, states are required to review and update their mitigation plans every 3 years. Although they may opt to submit revisions annually, showing the mitigation actions taken, FEMA believed an annual requirement to be overly burdensome.

Question 8: What criteria should FEMA use to determine projects that will result in the greatest amount of savings to the National Flood Insurance Fund? How should the criteria relate to current FEMA procedures for determining cost effectiveness?

A considerable number of commenters stated that Benefit Cost

Analysis (BCA) should be used to determine the greatest amount of savings to the NFIF. Multiple commenters indicated that the benefit cost analysis should be waived for all SRL properties or for those with 2 or more claims that cumulatively exceed the property value. Additional suggestions for the use of benefit cost methodologies included providing clear guidance, a request that it be simple to use, and that it allow FEMA and applicants to consider all factors, not just damages. Commenters provided alternative criteria for ranking properties such as: claims paid; claims relative to property values; greatest cost savings to insured properties mitigated; or cost effectiveness based on insurance premium costs.

Multiple commenters expressed that the term "property value" needed to be defined clearly, whether based on appraisal value, replacements value, insured value, or fair market value.

FEMA's Response

All projects for which FEMA provides funding must be cost effective. For the purpose of determining the amount of savings to the NFIF as a result of the project, FEMA agreed with the commenters and used a Benefit Cost Ratio. In this rule, FEMA determines an SRL property by the cumulative amount of claims when 4 or more claims have been made, or by the market value of the property in relation to the cumulative amount of two or more claims when that cumulative amount exceeds the market value (§ 79.2(g)).

Instead of using the term "property value", FEMA used the term "market value" and defined it in § 79.2. FEMA defined market value as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

Question 9: What types of assistance do States and communities want from FEMA when making offers to owners of severe repetitive loss properties?

Multiple commenters asked for funding for States and communities to assist with administrative costs, technical assistance needs, staff, and application development as part of making offers to owners of SRL properties. State and community

commenters also stated that legal assistance prior to initiating offers and negotiating with owners would assist them.

A considerable number of commenters stated that the data supporting the SRL properties list needed to be updated for accuracy, including validating the data for addresses, names, claims history, and property values. In addition, commenters requested access to the database, SQA Net, flexibility to add structures or validate data, and verifying premiums. Commenters also suggested FEMA maintain a single national database for projects, and provide information on the true actuarial rate in case of refusal at the time of the offer.

Multiple commenters stated that adequate number of FEMA staff needed to be available to manage the program, and that the staff needs to be trained in NFIP and FEMA mitigation programs.

Multiple commenters stated that assistance was needed to notify property owners of the consequences of not accepting offers. The commenters also stated that a simple FEMA handout or document explaining the insurance repercussions and the appeals process would be extremely helpful. Multiple commenters also requested FEMA describe the tax implications of accepting mitigation funds.

Multiple commenters requested training be made available or improved for the program, and specifically identified insurance agents as a target for training.

FEMA's Response

As with our other grant programs, administrative costs are available to applicants and subapplicants as a percentage of the grant award, once the grant is awarded. Furthermore, applicants and subapplicants may be reimbursed for pre-award costs for activities directly related to the development of the project proposal. These costs can only have been incurred during the open application period. These criteria are detailed in § 79.8 of this interim rule.

Certain legal expenses may be considered eligible applicant and/or subapplicant management cost activities when associated with: solicitation, review and processing of the SRL subapplications and subgrant awards, obtaining pre-award consultation agreements from SRL property owners, and staff salary costs directly related to performing the activities above. All management cost activities must be in conformance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements

to State and Local Governments and applicable program guidance.

Applicant management costs are limited to up to 10 percent of the grant award and subapplicant management costs are limited to up to 5 percent of the grant award. Eligible management costs incurred prior to the grant award, but after the SRL application period has opened are identified as pre-award management costs. Costs incurred with respect to pre-award activities associated with project implementation are not eligible.

Data on SRL properties is available on the SQA Net to State NFIP Coordinators and State Hazard Mitigation Officers. This data is being validated and updated continuously. Over one third of the properties identified as having a data anomaly have been validated. New information is published each month on SQA Net. Information on the insurance premium rate increases for property owners refusing the mitigation offer will be provided during the consultation. Project-related data for the SRL program will be housed within the same database that is maintained for all other Pre-Disaster Mitigation (PDM) grant programs.

Only FEMA Regional and disaster related staff as well as State personnel, have been granted access to the repetitive loss and SRL data available to SQA Net. Several new features have been added to SQA Net recently including the ability to submit requested updates to repetitive loss records electronically over the Internet. The ability to search for claims records and to view former and active policy records via SQA Net is expected to be in place by Spring 2008. With respect to allowing local government access to SQA Net, there are concerns regarding potential security issues and the increased possibility of the unintentional inappropriate release of the data at the local level resulting in a Privacy Act violation. Although they do not have access to the SQA Net system, local communities continue to be approved users of the repetitive loss data under the Privacy Act.

Program implementation information will contain information on premium rate increases, if a property owner refuses the mitigation offer. This program information also contains checklists of the types of information that the State or community would need to compile and make available as part of the consultations. The program information will be augmented further with mitigation consultation tools and resources for States and communities to aid in the consultation and offer process.

Tax implications of accepting mitigation offers must be answered by the property owner's tax advisor or other State or locally sponsored tax advisory service. FEMA does not have the authority to provide information on this issue.

Section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 calls for the establishment of minimum training and education

requirements for insurance agents who sell flood insurance policies. FEMA is working with state insurance commissioners on training requirements for agents that sell flood insurance policies.

Question 10: What role should states and communities have in the appeals process for severe repetitive loss property owners who decline mitigation offers under the Pilot Program? What rules and procedures should be contained in the Appeals Process?

Of the comments received, 19 entities offered comments on question 10. A general synopsis of these comments is as follows:

General comments on appeals process	States/territories	Local communities	Associations/organizations
Advocate information sharing between FEMA and States	1	3	4
Advocate State and/or community involvement in Appeals Process	5	4	1
Advocate that only FEMA be involved in Appeals Process .....	.....	1	.....
State participants still discussing the issue with other State agencies	1	.....	.....

The following are the comments on the appeals requirement of the Pilot Program presented by State and local officials and representative organizations during the consultation:

- Clarity in the details, especially the Appeals Process and the insurance consequences.

- States and communities are also sensitive to any possibility of liability which may preclude much participation in the Appeals Process. However, States and communities may be willing to participate in an administrative capacity in collecting data for appeals and ensuring that applications are completed.

- Property owners should make an appeal in writing, along with supporting documentation. The jurisdiction can also file documentation either in support or against the property owner's reason for the appeal.

- The decision to accept or deny the appeal must come from FEMA, thereby removing the States and communities from the threat of legal action. FEMA should send written notice of its findings to the state, community and property owner.

- Appeals rule requirements should not be written in a way that allows the property owners to easily avoid mitigation activities or higher flood insurance premiums.

- States and communities should be an informational role; again, concern to keep the States and communities from the potential legal liabilities.

- The local communities and the State officials should just assist people with the appeals. FEMA should make all your final decisions and handle all the paperwork. We also feel that there should be some formal recommendation from your parishes or local communities or State.

- The appeal process should start with the community. If the owner of a property rejects an offer but can easily show that in purchasing, that he relied on a FIRM [Flood Insurance Rate Map] map that indicated the property was not on the mapped flood hazard area, this should not have to go to FEMA.

- The appeal should go through the local government. They are the ones with claims on the property; they could validate it. Should come through the state as the administrator of the program. We could validate it; just like with an appeal from the local government, you concur, you may not concur, no comment, but that provides the additional insight.

FEMA's Response

As established in § 78.7(d) of this rule, an appeal on increased insurance rates is made in writing by the property owner to the FEMA Regional Administrator within 90 days of the date of the notice of insurance increase. The Regional Administrator may request the Grantee, and Sub-grantee (State and community) if applicable, to assist in the collection of data to support the property owner's appeal. The Regional Administrator will review the information provided by the property owner and may participate in discussions with the property owner, and if applicable, with the Grantee and Sub-grantee to resolve the appeal prior to sending it to an Independent Third Party or a reviewer from FEMA's Alternative Dispute Resolution office (at the property owner's discretion).

IV. Regulatory Requirements

A. Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final

rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds that the procedures for prior comment and response are impracticable, unnecessary, or contrary to public interest.

This interim rule implements provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, which amended the National Flood Insurance Act of 1968. The key component of this rule includes implementation of the new SRL program as well as amending provisions of the existing FMA program. The rule also streamlines the planning process, and clarifies the planning requirements to address existing, unanticipated inconsistencies.

Authorization for the SRL program expires on September 30, 2009. Funding for the new SRL program was made available as of fiscal year 2006, thus it is important to allow States, tribes, communities, and property owners to access these funds so that they may have the opportunity to reduce their flood losses to these high risk properties as soon as possible. It is also in the public interest to mitigate these SRL properties as soon as possible to minimize further costs resulting from upcoming seasonal flooding. These properties often pose the highest costs to the Nation in terms of discounted Federal flood insurance rates, as well as Federal disaster assistance payments,

Prior comment on this rule is not in the public interest where the implementation of the new SRL program, as well as the modified FMA program, will assist States recovering from flood disasters nationwide, including Hurricanes Katrina and Rita, by providing additional grant resources

and increasing the Federal cost share for projects mitigating SRL properties. In particular, States and communities are at a critical stage for identifying properties to be mitigated in the post-Katrina recovery efforts, and these funds are essential for targeting the most costly properties in the area. To be most effective, the funds need to be made available to the Gulf Coast States and communities affected by Katrina and Rita as soon as possible. At the end of August 2007, there were just under 8,100 properties identified as meeting the definition of severe repetitive loss properties; approximately 58 percent, or 4,685 properties, lie within the 5 States most affected by Hurricanes Katrina and Rita. Mitigating these SRL properties will provide States the opportunity to reduce future losses to these SRL properties, which represent the largest drain on the NFIF and also will reduce future disaster costs to the local, State, and Federal government.

States, tribes, and communities also have a strong interest in accessing, as soon as possible, information in the rule that outlines how the States can revise their mitigation plans to receive the reduced cost share under the FMA and SRL programs. This cost-share reduction is an important incentive and, in some cases, necessary to allow communities, which otherwise would not be able to meet the match requirement, to mitigate SRL properties. It is essential that the availability of this information not be delayed, particularly where in many cases the revisions to mitigation plans will themselves, require time-consuming coordination across multiple agencies.

In accordance with the Administrative Procedure Act, 5 U.S.C. 553 (b), FEMA believes that prior notice and comment would be contrary to the public interest, as it would serve only to delay the benefits of this rule to States, tribes, and communities, and would continue imposing the costs of these at-risk properties on the general public.

FEMA nevertheless recognizes the importance of public input in the regulatory process. To that end, FEMA involved the public in a consultation process prior to the publication of this interim rule. To initiate the consultation process, FEMA published a **Federal Register** notice on September 15, 2004, 69 FR 55642. The comment period was supposed to close on November 30, 2004, but FEMA extended the deadline for comments until December 7, 2004, and received 26 written comments from States, communities, and associations. Also, as part of the consultation, FEMA invited representative officials of State and local governments, organizations

representing emergency management, floodplain management, and insurance professions, to provide oral presentations on the requirements and issues raised in the **Federal Register** notice. Comments received were given careful consideration in the preparation of this interim rule.

Finally, FEMA actively encourages and solicits comments on this interim rule from interested parties. These comments will be given careful consideration, and could result in changes to these regulations.

B. National Environmental Policy Act

FEMA has considered this rule in accordance with its implementing regulations for complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), which are found at 44 CFR part 10. This rule addresses applicant planning requirements, as well as eligibility, funding increases, and cost sharing/funding incentives relating to certain disaster mitigation programs and does not change the type or nature of mitigation actions that may be funded. This rulemaking would neither individually nor cumulatively have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required. This rulemaking is among the category of actions included in the Categorical Exclusions listed at 44 CFR 10.8(d)(2)(ii), which excludes the preparation, revision and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. The related actions of the development of plans and administrative activities that are included in this rule are also categorically excluded under 44 CFR 10.8(d)(2)(iii) and 44 CFR 10.8(d)(2)(i).

C. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, Floodplain Management. Part 9 sets forth FEMA's policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: To avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management. As stated in the rule, the purpose of the SRL and FMA programs is to mitigate insured property losses from floods, thereby minimizing impacts to the NFIF, which is consistent with the intent of the Executive Order. In addition, for project activities funded through the SRL and FMA programs, each project will go through the environmental review process, which will include compliance with Executive Order 11988.

D. Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Alternatives

In determining how to move forward with this rule, two alternatives were considered. The first alternative was to issue an interim rule for the SRL program, and to modify the existing separate FMA rule to incorporate changes made by the Act. This would result in two sections of the CFR addressing mitigation grant programs funded through the NFIP which could result in disjointed implementation of the two similar programs.

The second alternative (and the one adopted by FEMA) was to establish and proceed with the implementation of the SRL and FMA programs as described in

this interim rule. This will allow FEMA to ensure a more consistent approach to implementation and management of these programs. FEMA has been working to implement all of the mitigation grant programs in a consistent manner, and this regulatory change furthers that attempt. These changes are also expected to limit confusion around program implementation since both programs will likely be managed by the same state agency staff.

Congressional Appropriations

The regulations implementing the FMA program were originally issued on March 20, 1997. Historically, the program has provided \$20 million in grants on an annual basis to States and communities to reduce flood losses to properties insured under the NFIP. In fiscal year 2007, \$31 million was made available for the FMA program to fund activities that help reduce repetitive flood insurance claims, thereby reducing the drain on the NFIP from these properties. This program provides an opportunity for every State to fund planning and project activities but, since it is a small program, it is unable to assist all those who could benefit from it. The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 provides for additional program funding for the FMA program, as well as makes it easier for some to participate in the program, by providing the ability for States to reduce the cost share for those properties that meet the definition of a severe repetitive loss property.

The primary purpose of this rule is to implement the new SRL program, which will provide grants to property owners to mitigate their risk from flooding, with incremental increases in the insurance premiums imposed if they decline to accept the offers of mitigation. In fiscal year 2007, \$40 million was made available by Congress for the SRL program. Therefore, in fiscal year 2007, a total of \$71 million was allocated for these programs (\$31 million for FMA and \$40 million for SRL).

Impact From Increase in Insurance Premiums

Most severe repetitive loss properties were built prior to December 31, 1974, and the insurance premiums for these properties are supported financially by other NFIP policyholders. Repetitive loss properties only account for approximately 1 percent of the current NFIP policies, yet these properties historically account for over 30 percent of the amount paid in claims. Under the SRL program, owners of severe

repetitive loss properties will receive mitigation offers. Refusals of these offers will result in increased premiums for owners of these properties. Thus, in either case, this rule should help shift the disproportionate burden away from the majority of NFIP policyholders who do not own SRL properties.

Within the NFIP, the average discounted premium paid by owners of property built before December 31, 1974 is \$800 per year. However, if those properties were rated on an actuarial basis, taking into account their actual flood risk, the annual premiums they should be paying would average between \$1,700 and \$1,900 per year. Severe repetitive loss properties as a subset of the pre-1974 properties have higher flood risks than most properties with discounted premiums insured under the NFIP, and their actuarial rates could be much higher. For purposes of estimating the annual economic impact of this interim rule, FEMA used an average actuarial premium rate of \$5,000 for these severe repetitive loss properties. This average actuarial rate does not reflect the discount premium rate; rather it more closely represents the flood risk to the property.

Of the \$40 million available each year for the SRL program, FEMA assumes that \$37 million will be awarded as project grants, and that the average grant per property is \$75,000. Therefore, offers will be made to approximately 500 property owners in the first year. It is assumed that up to 3 percent of those property owners might decline the offer of mitigation assistance, and that these 15 properties would be subject to the increased insurance premiums. This 3 percent figure is based on the fact that although NFIP engages in litigation for less than 1 percent of its claims in an average claims year, there have been 3 times the normal number of claims as a result of Hurricanes Katrina, Rita, and Wilma. Also, after the wildfires of Cerro Grande, FEMA instituted a similar grant program whereby homeowners received funds for repair, with an appeals provision. Approximately 3 percent of those homeowners appealed their grant amount.

This increased cost of insurance for these 15 properties would result in an average discounted premium increase of approximately \$400 per property owner (50% of the \$800 average discounted premium), for a total increase in insurance premiums of \$6,000 the first year. This premium rate can increase over time, until the actuarial rate (averaged, for the purpose of this rule to \$5,000) is reached. At no time, however, would the premium paid for the affected property exceed the actuarial rate. If,

over the remaining 1 year of the pilot SRL program, one expects the number of property owners declining the offer of assistance to remain the same, then the total number of affected properties will be 30. Within 10 to 20 years, when all 30 of the affected properties whose owners declined the mitigation offer will each pay actuarial premium rates described above as averaging \$5,000 per year, the maximum annual impact of the program would be \$150,000 ($\5000×30).

Changes to HMGP

The rulemaking makes a technical change to reflect existing HMGP post-disaster allocation amounts already in effect as a result of amendments to Section 404 of the Stafford Act (42 U.S.C. 5170c, as amended by Pub. L. 109-295, § 684). The change set non-discretionary standard allocation amounts for the program.

Open Space

As part of implementing the SRL and FMA, this rule also includes a new part (part 80) which describes the requirements and procedures for open space acquisition which will apply to these programs, as well as all FEMA mitigation grant programs. The Act requires certain special acquisition procedures for SRL, however open space acquisitions funded under all FEMA mitigation grant programs otherwise subject to the same requirements to ensure mitigation objectives are met. Prior to this rule, acquisition requirements for each mitigation grant program were addressed in the respective mitigation grant program regulations or guidance, such as at § 78.12 for FMA and § 206.434 for HMGP, including associated program guidance. A central reference point for all mitigation grant program property acquisitions is intended to make the programs easier to implement. There will be no additional cost from this change.

Increase in Federal Share

The rule also implements the changes to the FMA program by allowing for a 90 percent Federal share for the mitigation of severe repetitive loss properties, amending the method by which State funding allocations are calculated, and making the FMA planning requirements and other program aspects consistent with other FEMA mitigation planning and program requirements. Though there is no net change in the funding allocated for FMA with this new cost share provision, the distribution of the funding will shift to the Federal "side". In FY 2007, \$31

million was made available for the FMA program. Since the change in Federal share will be from 75 percent to 90 percent, the change in Federal outlay will be \$4.65 million. This figure includes two very conservative assumptions: That all properties mitigated under FMA will be SRL properties; and that all States will seek this new cost share by virtue of revising their State mitigation plans.

Intangible Benefit

As of the end of August 2007, just under 8,100 properties were identified as meeting the definition of severe repetitive loss. Of those, approximately 58 percent are in the 5 States most affected by hurricanes Katrina and Rita. Alabama has 223 properties, Louisiana has 2,567 properties, Mississippi has 148 properties, Texas has 1,275 properties, and Florida has 472 properties. Implementation of the new SRL program, as well as the modified FMA program, will assist these States in recovering from these disasters by providing additional grant resources and the ability to increase the Federal cost share for projects mitigating SRL properties.

The economic impact of this rule is approximately \$76 million. This rulemaking has been determined to be a nonsignificant regulatory action under section 3(f) of Executive Order 12866 by OMB. This rule adheres to the principles of regulation of the Executive Order.

E. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, FEMA incorporates environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under the interim rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule implements the SRL program, providing mitigation grants to severe repetitive loss properties, and modifies aspects of the FMA program and the

mitigation planning requirements. With respect to Indian tribal governments, the rule streamlines and simplifies the planning requirements. Finally, this interim rule amends § 206.432 to reflect statutory and technical changes to HMGP. Accordingly, the requirements of Executive Order 12898 do not apply to this interim rule.

F. Paperwork Reduction Act of 1995

This interim rule includes provisions constituting collections of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Under section 3507(d) of the PRA, The Federal Emergency Management Agency (FEMA) will submit a copy of this rulemaking action to the Office of Management and Budget (OMB) for review. FEMA is submitting a request for review and approval of collections of information under OMB's emergency processing procedures. Through publication of this interim rule, FEMA is requesting a 6-month approval for these information collections. FEMA plans to follow this emergency approval request with a 3-year approval request. The 3-year request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation at 5 CFR 1320.10. This interim rule also serves as the 60 day notice required by 5 CFR 1320.8. FEMA invites the public to comment on the proposed collections of information during this 60 day comment period.

Several collections of information referenced in this interim rule have existing OMB approvals under the PRA. The rule in §§ 79.3(b), 79.3(c), 79.3(d), 79.5(a)(2), 79.5(b), 79.6(b), 79.7(b), 79.9(a), 201.3, 201.6, and 201.7 contains collections of information under the PRA for which FEMA requests approval of amendments to existing collections by OMB. In addition, FEMA is requesting approval of two new collections of information for the interim rule contained under the new §§ 79.7(d), 80.13(a), 80.13(b), 80.17(e), 80.19(b), 80.19(d), 80.19(e), 80.21, and 206.434.

1. Collection of Information

Part 201 under OMB Number 1660-0062, State/Local/Tribal Hazard Mitigation Plans—under section 322 of Stafford Act clarifies the State, Tribal, and local mitigation planning requirements. Before this interim rule goes into effect, applicants for FMA funds are required to develop a plan that specifically addresses flood mitigation planning requirements under part 78. This plan is collected under OMB collection number 1660-0075;

Flood Mitigation Assistance—Flood Mitigation Plan. Applicants for all other types of mitigation grant funding are required to develop a plan that addresses all hazards for which the applicant seeks funds under part 201, which may also include floods. This plan is collected under OMB collection number 1660-0062; State/Local/Tribal Hazard Mitigation Plans—under section 322 of Stafford Act. With the revisions established by this interim rule, the all hazards plan developed under part 201 will meet the requirements for all mitigation grants including FMA, which means that applicants will no longer be required to submit the flood specific plans under part 78. Because of this change FEMA is discontinuing OMB collection number 1660-0075, and revising OMB collection number 1660-0062.

Due to this change in the mitigation grant process, there are outstanding flood mitigation grants that have been issued with the requirement that the grantee submit a flood mitigation plan pursuant to the requirements of part 78. Although FEMA will no longer require the submission of flood mitigation plans for those funds awarded during application periods that open on or after the effective date of this rule, FEMA will continue to accept flood mitigation plans until the end of a grantee's current period of performance to include any extensions granted pursuant to § 78.9 and FEMA's Financial and Acquisition Management Division's Extension Policy.

Title: State/Local/Tribal Hazard Mitigation Plans-Section 322 of the Disaster Mitigation Act of 2000.

OMB Number: 1660-0062.

Abstract: The purpose of the State/Local/Tribal Hazard Mitigation Plan requirements is to outline the strategy by which State, tribal and local governments use to demonstrate the goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 2,408.

Estimated Total Annual Burden Hours: 768,320.

Frequency of Response: On Occasion.

The authorized SRL grant program will be implemented under the new part 79. However, the administration of FMA funds for which application period opens prior to publication of this rule will be subject to part 78, while the new

part 79 is used to administer new FMA grants.

2. Collection of Information

The SRL grant program was authorized by Congress in 2004 and expires on September 30, 2009. The SRL grant program focuses on a subset of all repetitive flood loss properties, residential properties with a high frequency of losses or a high value of claims, defined as severe repetitive loss properties. This is a non-disaster grant program that is authorized annually and not as a result of a Presidential Disaster

Declaration. The information collection activity under the approved OMB information collection 1660-0025, FEMA Grant Administrative Forms is a paper-based collection used by States and local government to obtain grant information and is being amended to include the following burden hours for the SRL grant program.

Title: FEMA Grant Administration Forms.

OMB Number: 1660-0025.

Abstract: This collection of information focuses on the standardization and consistent use of

standard and FEMA forms associated with grantees request for disaster and non-disaster federal assistance, submission of financial and administrative reporting and recordkeeping. The use of the forms will minimize burden on the respondents and enable FEMA to continue to improve in its grants administration practices.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

DISASTER PROGRAMS

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
PA:					
SF 424	56	1	45 minutes	56	42 hours.
FF 20-20	56	1	9.7 hours	56	543 hours.
FF 20-16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 20-10	56	4	1 hour	224	224 hours.
SF-LLL	56	1	10 minutes	56	9 hours.
Subtotal	56		13.3 hours	392	57 Disaster Declarations × 913 hours = 52,041.
SCC:					
SF 424	17	1	45 minutes	17	13 hours.
FF 20-20	17	1	9.7 hours	17	165 hours.
FF 20-16, A, B, C	17	1	1.7 hours	17	29 hours.
FF 20-10 (SF 269)	17	4	1 hour	68	68 hours.
SF-LLL	17	1	10 minutes	17	3 hours.
Subtotal	17		13.3 hours	119	57 Disaster Declarations × 278 hours = 15,846.
ONA:					
SF 424	40	1	45 minutes	40	30 hours.
FF 20-20	40	1	9.7 hours	40	388 hours.
FF 20-16, A, B, C	40	1	1.7 hours	40	68 hours.
FF 20-10	40	4	1 hour	160	160 hours.
SF-LLL	40	1	10 minutes	40	7 hours.
Subtotal	40		13.3 hours	320	57 Disaster Declarations × 653 hours = 37,221.
HMGF:					
SF 424	52	1	45 minutes	52	39 hours.
FF 20-20	52	15	9.7 hours	780	7,566. hours.
FF 20-16, A, B, C	52	1	1.7 hours	52	88 hours.
FF 20-10	52	4	1 hour	208	208 hours.
FF 20-17	52	15	17.2 hours	780	13,416 hours.
FF 20-18	52	6	4.2 hours	312	1,310 hours.
FF 20-19	52	6	5 minutes	312	25 hours.
SF-LLL	52	1	10 minutes	52	9 hours.
Subtotal	52		35 hours	2,548	57 Disaster Declarations × 22,661 hours = 1,291,677.
FMAGP:					
SF 424	12	4	45 minutes	48	36 hours.
FF 20-20	36	4	9.7 hours	144	1,397 hours.
FF 20-16, A, B, C	36	4	1.7 hours	144	245 hours.

DISASTER PROGRAMS—Continued

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
FF 20–15	36	4	17.2 hours	144	2,477 hours.
FF 20–10	12	4	1 hour	48	48 hours.
FF 20–18	36	4	4.2 hours	144	605 hours.
FF 20–19	36	4	5 minutes	144	12 hours.
SF–LLL	36	4	10 minutes	144	24 hours.
Subtotal	36	.....	35 hours	960	94 Disaster Declarations × 4,844 hours = 455,336.
Disaster Grants Total	56	.....	110 hours	3,800	1,852,121 hours.

NON-DISASTER PROGRAMS

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
US&R:					
SF 424	28	1	45 minutes	28	21 hours.
FF 20–20	28	1	9.7 hours	28	272 hours.
FF 20–16, A, B, C	28	1	1.7 hours	28	48 hours.
FF 76–10A	28	1	1.2 hours	28	34 hours.
FF 20–10	28	2	1 hour	56	56 hours.
SF 270	28	1	1 hour	28	28 hours.
SF LLL	28	1	10 minutes	28	5 hours.
Subtotal	28	.....	16 hours	224	498 hours.
CAP-SSSE:					
SF 424	56	1	45 minutes	56	42 hours.
FF 20–20	56	1	9.7 hours	56	543 hours.
FF 20–15	56	1	17.2 hours	56	963 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 76–10A	56	1	1.2 hours	56	67 hours.
FF 20–10	56	2	1 hour	112	112 hours.
FF 20–18	56	1	4.2 hours	56	235 hours.
FF 20–19	56	1	5 minutes	56	4 hours.
SF LLL	56	1	10 minutes	56	9 hours.
Subtotal	56	.....	36 hours	560	2,070 hours.
CSEPP:					
SF 424	10	1	45 minutes	10	8.0 hours.
FF 20–20	10	1	9.7 hours	10	97.0 hours.
FF 20–10	10	4	1 hour	40	40.0 hours.
FF 20–16, A, B, C	10	1	1.7 hour	10	17.0 hours.
FF 76–10A	10	1	1.2 hour	10	12.0 hours.
FF 20–18	10	1	4.2 hours	10	42.0 hours.
FF 20–19	10	1	5 minutes	10	1.0 hours.
SF LLL	10	1	10 minutes	10	2.0 hours.
Subtotal	10	.....	19 hours	120	219 hours.
NDSP:					
SF 424	51	1	45 minutes	51	38.0 hours.
FF 20–20	51	1	9.7 hours	51	495.0 hours.
FF 20–16, A, B, C	51	1	1.7 hours	51	87.0 hours.
FF 76–10A	51	1	1.2 hours	51	61.0 hours.
FF 20–10	51	4	1 hour	204	204.0 hours.
SF 270	51	1	1 hour	51	51.0 hours.
SF LLL	51	1	10 minutes	51	8.0 hours.
Subtotal	51	.....	16 hours	510	944 hours.
ICE:					
FF 20–10	17	4	1 hour	68	68.0 hours.
Subtotal	17	.....	1 hour	17	68 hours.

NON-DISASTER PROGRAMS—Continued

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
EqC:					
FF 20-10	3	2	1 hour	6	6 hours.
Subtotal	3		1 hour	6	6 hours.
AIDMATRIX:					
SF 424	1	1	45 minutes	1	.75 minutes.
FF 20-20	1	1	9.7 hours	1	9.7 hours.
FF 20-10	1	4	1 hour	4	4.0 hours.
FF 20-16 A, B, C	1	1	1.7 hours	1	1.7 hours.
SF LLL	1	1	10 minutes	1	.16 minutes.
Subtotal	1		13 hours	8	16 hours.
AHPP:					
SF 424	4	1	45 minutes	4	3.0 hours.
FF 20-20	4	1	9.7 hours	4	39.0 hours.
FF 20-10	4	4	1 hour	16	16.0 hours.
FF 20-16, A, B, C	4	1	1.7 hours	4	6.8 hours.
SF LLL	4	1	10 minutes	4	.66 hours.
Subtotal	4		13 hours	32	65 hours.
CTP:					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20-20	20	1	9.7 hours	20	194.0 hours.
FF 20-15	20	1	17.2 hours	20	344.0 hours.
FF 20-16, A, B, C	20	1	1.7 hours	20	34.0 hours.
FF 20-10	20	4	1 hour	80	80.0 hours.
SF LLL	20	1	10 minutes	20	3.3 hours.
Subtotal	20		31 hours	180	670.3 hours.
MMMS:					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20-20	20	1	9.7 hours	20	194.0 hours.
FF 20-15	20	1	17.2 hours	20	344.0 hours.
FF 20-16, A, B, C	20	1	1.7 hours	20	34.0 hours.
FF 20-10	20	2	1 hour	40	40.0 hours.
SF LLL	20	1	10 minutes	20	3.0 hours.
Subtotal	20		31 hours	120	630 hours.
RFC:					
SF 424	56	1	45 minutes	56	42.0 hours.
FF 20-20	56	1	9.7 hours	56	543.0 hours.
FF 76-10A	56	1	1.2 hours	56	67.0 hours.
FF 20-16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 20-10	56	4	1 hour	224	224.0 hours.
FF 20-18	56	1	4.2 hours	56	235.0 hours.
FF-20-19	56	1	5 minutes	56	5.0 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	616	1,220 hours.
SRL:					
FF 424	56	1	45 minutes	56	42.0 hours.
FF 20-20	56	1	9.7 hours	56	543.0 hours.
FF 76-10A	56	1	1.2 hours	56	67.0 hours.
FF 20-16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 20-10	56	4	1 hour	224	224.0 hours.
FF 20-18	56	1	4.2 hours	56	235.0 hours.
FF 20-19	56	1	5 minutes	56	5 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	616	1,220 hours.
FMA:					
SF 424	56	3	45 minutes	168	126.0 hours.
FF 20-20	56	3	9.7 hours	168	1630.0 hours.
FF 20-16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 76-10A	56	3	1.2 hours	168	202.0 hours.
FF 20-10	56	4	1 hour	224	224.0 hours.
FF 20-18	56	1	4.2 hours	56	235.0 hours.
FF 20-19	56	1	5 minutes	56	4.0 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	952	2,525 hours.

NON-DISASTER PROGRAMS

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
PDM:					
SF 424	56	2	45 minutes	112	84 hours.
FF 20-15	56	1	17.2 hours	56	963.2 hours.
FF 20-20	56	2	9.7 hours	112	1,086.4 hours.
FF 76-10A	56	2	1.2 hours	112	134.4 hours.
FF 20-16, A, B, C	56	2	1.7 hours	112	190.4 hours.
FF 20-10	56	8	1 hour	448	448 hours.
FF 20-17	56	20	17.2 hours	1,120	19,264 hours.
FF 20-18	56	2	4.2 hours	112	470.4 hours.
FF 20-19	56	2	5 minutes	112	9.3 hours.
SF LLL	56	2	10 minutes	112	18.6 hours.
Subtotal	56	.....	53 hours	2,408	22,668.7 hours.
AFG*:					
SF 424	4,246	1	45 minutes	4,246	3,185.0 hours.
FF 20-20	4,246	2	9.7 hours	8,492	82,372.0 hours.
FF 76-10A	4,246	2	1.2 hours	8,492	10,190.0 hours.
FF 20-16, A, B, C	4,246	1	1.7 hours	4,246	7,218.0 hours.
FF 20-10	4,246	2	1 hour	8,492	8,492.0 hours.
FF 20-17	4,246	1	17.2 hour	4,246	73,031.0 hours.
FF 20-18	4,246	1	4.2 hours	4,246	17,833.0 hours.
FF 20-19	4,246	1	5 minutes	4,246	340.0 hours.
SF LLL	4,246	1	10 minutes	4,246	705.0 hours.
Subtotal	4,246	.....	36 hours	50,952	203,366 hours.
SAFER*:					
SF 424	243	1	45 minutes	243	182.0 hours.
FF 20-20	243	2	9.7 hours	486	4,714.0 hours.
FF 76-10A	243	2	1.2 hours	486	583.0 hours.
FF 20-16, A, B, C	243	1	1.7 hours	243	413.1 hours.
FF 20-10	243	4	1 hour	972	972 hours.
FF 20-17	243	1	17.2 hours	243	4,179.6 hours.
FF 20-18	243	1	4.2 hours	243	1,020.6 hours.
FF 20-19	243	1	5 minutes	243	20.2 hours.
SF LLL	243	1	10 minutes	243	40.5 hours.
Subtotal	243	.....	36 hours	3,402	12,125.7 hours.
Non-Disaster Grants Total .....	.....	.....	359	55,378	248,312.
Grand Total .....	.....	.....	469	59,178	2,100,433.

* AFG and SAFER grants are awarded directly to individual Fire departments.

3. Collection of Information

The information collection activity under the approved OMB information collection 1660-0072, Mitigation Grant Program/e-Grants (previous named Flood Mitigation Assistance (e-Grants)) and Grant Supplemental Information is an electronic system used to meet the intent of the eGovernment initiative. This collection does not supersede the paper-based collection for Grants (OMB No. 1660-0025). Applicants may apply using the e-Grants (1660-0072) application accessible on the Internet at <https://portal.fema.gov>. The OMB

approved collection 1660-0072 have been combined with OMB No. 1660-0071, Pre-Disaster Mitigation (PDM) Grant Program/e-Grants to streamline and simplify documentation of the same information collected for all mitigation e-Grants program. Because of this change OMB No. 1660-0071 has been discontinued as a separate collection. This collection also includes the authorized SRL program.

Title: Mitigation Grant Program/e-Grants.
OMB Number: 1660-0072.
Abstract: The States will utilize the Mitigation Grant Program/e-Grants,

automated application to report to FEMA on a quarterly basis, certify how funding is being used and to report on the progress of mitigation activities funded under grant awards, made to grantees by FEMA who will use the system to review the grantees quarterly reports to ensure that mitigation grant activities are progressing on schedule and to track the expenditures of funds.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

Project/activity (survey, forms(s), focus group, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
FMA: Benefit-Cost Determination	56	2	5	112	560

Project/activity (survey, forms(s), focus group, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
Environmental Review	56	2	7.5	112	840
Project Narrative—Sub-grant Application	56	4	12	224	2,688
Subtotal FMA	56	.....	24.5	448	4,088
RFC:					
Benefit-Cost Determination	56	1	5	56	280
Environmental Review	56	1	7.5	56	420
Project Narrative—Sub-grant Application	56	2	12	112	1,344
Subtotal RFC	56	.....	24.5	224	2,084
PDM:					
Benefit-Cost Determination	56	20	5	1,120	5,600
Environmental Review	56	20	7.5	1,120	8,400
Project Narrative—Sub-grant Application (including PDM Evaluation Information Questions ⁵)	56	20	12	1,120	13,440
Subtotal PDM	56	.....	24.5	3,360	27,440
SRL:					
Benefit-Cost Determination	56	7	5	392	1,960
Environment Review	56	7	7.5	392	2,940
Project Narrative—Sub-grant Application	56	8	12	448	5,376
Subtotal SRL	56	.....	24.5	1,232	10,276
Total	56	.....	98	5264	43,888

4. Collection of Information

The Property Acquisition and Relocation for Open Space (part 80) will govern property acquisitions for the creation of open space under all of FEMA mitigation grant programs authorized under both the Stafford Act and the National Flood Insurance Act of 1968, as amended. Acquisition and relocation of property for open space use is one of the most common mitigation activities, and is an eligible activity type authorized for Federal grant funds under all of FEMA mitigation grant programs. FEMA mitigation grant programs require all properties acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity. This ensures that no future risks from hazards occur

to life or structures on that property, and no future disaster assistance or insurance payments are made as a result of damages to that property. This new collection of information is necessary to establish uniform requirements for State and local implementation of acquisition activities, and to enforce open space maintenance and monitoring requirements for properties acquired with FEMA mitigation grant funds. This interim rule includes a conforming amendment to the HMGP to refer to the new part 80 for acquisition and relocation activities, and deletes § 206.434(f).

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: New Collection.

OMB Number: 1660–New23.

Form Numbers: None.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected under the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local, or Indian tribal government and individuals or households.

Estimated Total Annual Burden Hours:

Data collection activity	Number of respondents	Frequency of responses	Number of responses	Hour burden per response	Total burden hours
Voluntary Participation Statement	56	40	1	2240	2440
Deed Restriction Requirements	56	40	4	2240	8960
Monitoring and Reporting Requirements	56	1	4	56	224
Transfer Certification .....	.....	.....	.....	.....	.....
Enforcement Notices .....	.....	.....	.....	.....	.....
Total	56	.....	9	4,536	11,424

5. Collection of Information

The appeals process in § 79.7(d) outlines the process by which any owner of a severe repetitive loss property may appeal the decision of FEMA to increase the chargeable insurance premium rate on property.

The legislation that created the SRL program provides that any owner of a severe repetitive loss property who refuses an offer of mitigation may appeal the decision of FEMA to increase the chargeable insurance premium rate on that property. The process requires

the owner to submit a written appeal, including any supporting documentation for their appeal to FEMA within 90 days of the notice of the insurance rate increase. This new collection of information is necessary to ensure that the property owner is given

opportunity to provide additional documentation that support one of the six allowable bases for appeal, outlined in the authorizing legislation, and implemented at § 79.7(d).

Title: Severe Repetitive Loss (SRL) Appeals Process.

Type of Information Collection: New Collection.
OMB Number: 1660–New36.
Form Numbers: None.
 Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an

offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Federal Government, and individuals or households.

Estimated Total Annual Burden Hours:

Data collection activity	Number of respondents	Frequency of responses	Number of responses	Hour burden per response	Total burden hours
Appeal written request and supporting documentation	10	1	10	10	100
Total	10	.....	10	10	100

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses. FEMA will continue to accept comments from interested persons through December 31, 2007. Submit comments by one of the methods provided in the **ADDRESSES** section at the beginning of this rule.

Requests for additional information regarding FEMA’s Paperwork Reduction Act requirements or copies of the information collection should be made to Chief, Records Management and Privacy, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

G. Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent

practicable, must consult with State and local officials before implementing any such action.

FEMA published a **Federal Register** notice on September 15, 2004, 69 FR 55642, to initiate consultation with State and local officials, as well as members of the public in the formulation of this rule. Interested parties initially had until November 30, 2004, to submit written comments in response to the notice. FEMA extended the deadline for comments until December 7, 2004, and received 23 written comments from States, communities, and associations.

On November 17, 2004, as part of the consultation process, FEMA held a meeting in Washington DC with representative officials of State and local governments; organizations representing emergency management, floodplain management, and insurance professions; and other interested parties.

Both the written comments received and the oral comments presented at the meeting addressed aspects of the SRL program, including the circumstances affecting severe repetitive loss property owners, the mitigation offer process, the effects of insurance premium increases on individuals who refuse mitigation offers, and the appeals process. In the context of preparing this rule, FEMA reviewed and addressed all of the comments received in response to the **Federal Register** notice including the oral presentations made on November 17, 2004.

FEMA has reviewed this rule under Executive Order 13132 and has concluded that the rule, which implements statutory requirements for a new SRL program as well as a potential increase in the Federal share for the FMA program, simplifies the planning requirements, and reflects a statutorily mandated change to the HMGP allocation, does not have federalism implications as defined by the Executive Order. FEMA has determined that the

rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

FEMA will continue to evaluate the new SRL and FMA programs, as well as the planning requirements, and will work with interested parties as FEMA implements the requirements of 44 CFR parts 59, 61, 78, 79, 80, 201, and 206. In addition, FEMA actively encourages and solicits comments on this interim rule from interested parties, and FEMA will consider those comments in preparing the final rule.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this interim rule under Executive Order 13175. In reviewing the portion of the interim rule which streamlines the mitigation planning requirements affecting Indian tribal governments, FEMA finds that, while it does have “tribal implications” as defined in Executive Order 13175, it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FEMA has worked with Indian tribal governments while implementing its programs, and has modified its procedures to accommodate some of the issues relating to the tribal governments. This rule clarifies those procedures and streamlines the roles and responsibilities of Indian tribal governments in mitigation planning. In the February 26, 2002 interim rule, Indian tribal governments were given the option of preparing either a State-level Mitigation Plan, or a Local-level Mitigation Plan depending on whether or not they intended to apply directly to FEMA as a grantee, or whether they

would apply through the State as a subgrantee. Neither of these options has sufficiently met the needs of the Indian tribal governments. The new interim rule establishes a specific planning requirement for Indian tribal governments that recognizes some of the unique aspects of these governments. The rule establishes requirements for Tribal Mitigation Plans for plans prepared and approved after December 3, 2007. The rule provides that plans prepared and approved under the preexisting rule, either under the State or local requirements, would also be recognized as Tribal Mitigation Plans. These older plans, however, would be required to meet the revised criteria when the original plan approval expires. This rule combines the appropriate aspects of State and local planning requirements into one section for Indian tribal governments. Prior to the preparation of this rule, FEMA discussed the planning requirements with many of the Indian tribal governments as they were developing their own plans, or while attending tribal training courses, and heard the concerns regarding the planning requirements.

In conclusion, the interim rule does not impose substantial direct compliance costs on Indian tribal governments, nor does it preempt tribal law, impair treaty rights nor limit the self-governing powers of Indian tribal governments.

I. Congressional Review of Agency Rulemaking

FEMA has sent this interim rule to the Congress and to the General Accountability Office under the Congressional Review of Agency Rulemaking Act, (Congressional Review Act), Public Law 104–121. This interim rule is not a “major rule” within the meaning of the Congressional Review Act. It implements statutory requirements creating the SRL program and statutory amendments providing for an increased Federal share for FMA projects affecting severe repetitive loss properties; streamlines and makes consistent the planning requirements for FMA and Indian tribal governments; and makes a technical update to reflect a statutory change in the HMGP allocation.

The interim rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have “significant adverse effects” on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

J. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) mandates that an agency conduct a RFA analysis when an agency is “required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule * * * 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

K. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. In fact, § 80.5(a) states that

[e]ligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

L. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects

44 CFR Part 59

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Parts 78 and 79

Flood insurance, Grant programs.

44 CFR Part 80

Acquisition and relocation for open space.

44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Federal Emergency Management Agency amends 44 CFR chapter I as set forth below:

PART 59—GENERAL PROVISIONS

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Section 59.1 is amended by revising the definition of *State* as follows:

§ 59.1 Definitions.

* * * * *
State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.
 * * * * *

PART 61—INSURANCE COVERAGE AND RATES

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 4. In § 61.9 add paragraphs (d) and (e) as follows:

§ 61.9 Establishment of chargeable rates.

* * * * *
 (d) Properties that meet the definition of Severe Repetitive Loss properties as defined in § 79.2(g) of this subchapter, and who refuse an offer of mitigation pursuant to § 79.7 of this subchapter are not eligible for the rates identified in paragraphs (a) through (c) of this section.

(e) Properties leased from the Federal Government and located either on the

river-facing side of a dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure are not eligible for the rates identified in paragraphs (a) through (c) of this section.

PART 78—FLOOD MITIGATION ASSISTANCE

■ 5. The authority citation for part 78 is revised to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; 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; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 6. Revise § 78.1(a) to read as follows:

§ 78.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) program, authorized by Sections 1366 and 1367 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c and 4104d. The rules in this part apply to the administration of funds awarded under the FMA program for which the application period opened prior to December 3, 2007. On or after that date, the administration of funds awarded under FMA program shall be subject to the rules in part 79 of this subchapter.

* * * * *

■ 7. Remove the undesignated center heading FEDERAL CRIME INSURANCE PROGRAM which precedes RESERVED PARTS 80–149.

■ 8. Add part 79 to read as follows:

PART 79—FLOOD MITIGATION GRANTS

Sec.

- 79.1 Purpose.
- 79.2 Definitions.
- 79.3 Responsibilities.
- 79.4 Availability of funding.
- 79.5 Application process.
- 79.6 Eligibility.
- 79.7 Offers and appeals under the SRL program.
- 79.8 Allowable costs.
- 79.9 Grant administration.

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; 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; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

§ 79.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and

requirements for administration of the hazard mitigation grant programs made available under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.* The Severe Repetitive Loss (SRL) and Flood Mitigation Assistance (FMA) grant programs mitigate losses from floods, minimizing impacts to the National Flood Insurance Fund (NFIF). The rules in this part apply to the administration of funds under the SRL and FMA programs for which the application period opens on or after December 3, 2007. Prior to this date, the administration of funds under the FMA program shall be subject to the rules in part 78 of this subchapter.

(b) The purpose of the SRL program is to:

(1) Assist State and local governments in funding actions that reduce or eliminate the risk of flood damage to residential properties insured under the National Flood Insurance Program (NFIP) that meet the definition of severe repetitive loss property;

(2) Reduce the need to increase flood insurance premiums of NFIP policyholders that would otherwise be required to pay for potential future repetitive claims associated with severe repetitive loss properties; and

(3) Reduce loss of life, property damage, outlays for the NFIF, and Federal disaster assistance by reducing or eliminating the risk of flood damage to those insured properties that have historically experienced the most severe flood losses.

(c) The purpose of the FMA program is to assist State and local governments in funding cost-effective actions that reduce or eliminate the risk of flood damage to buildings, manufactured homes, and other structures insured under the NFIP.

§ 79.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in section 59.1 of this subchapter are applicable to this part.

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Community* means:

(1) A political subdivision, including any Indian tribe, authorized tribal organization, Alaskan native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State, or other authority that is designated by

a political subdivision to develop and administer a mitigation plan.

(d) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of the entity is designated in the grant award document.

(e) *Market Value* is generally defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

(f) *Multifamily Property* means a property consisting of 5 or more residences.

(g) *Severe Repetitive Loss Properties* are defined as single or multifamily residential properties that are covered under an NFIP flood insurance policy and:

(1) That have incurred flood-related damage for which 4 or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(2) For which at least 2 separate claims payments (building payments only) have been made under such coverage, with cumulative amount of such claims exceeding the market value of the building.

(3) In both instances, at least 2 of the claims must be within 10 years of each other, and claims made within 10 days of each other will be counted as 1 claim.

(h) *Subapplicant* means a State agency, community, or Indian tribal government submitting an application for planning or project activity to the applicant for assistance under the FMA or SRL programs. Upon grant award, the subapplicant is referred to as the subgrantee.

(i) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(j) *Subgrantee* means the State agency, community, or Indian tribal government or other legal entity to which a subgrant is awarded and which is accountable for the use of the funds provided.

(k) *Administrator* means the head of the Federal Emergency Management

Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

(1) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

§ 79.3 Responsibilities.

(a) *Federal Emergency Management Agency (FEMA)*. Administer and provide oversight to all FEMA-related hazard mitigation programs and grants, including:

(1) Issue program implementation procedures, as necessary, which will include information on availability of funding;

(2) Allocate funds to States for the FMA and for the SRL programs;

(3) Award all grants to the grantee after evaluating subgrant applications for eligibility and ensuring compliance with applicable Federal laws, giving priority to such properties, or to the subset of such properties, as the Administrator may determine are in the best interest of the NFIF;

(4) Provide technical assistance and training to State, local and Indian tribal governments regarding the mitigation and grants management process;

(5) Review and approve State, Indian tribal, and local mitigation plans in accordance with part 201 of this chapter;

(6) Comply with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, the environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;

(7) Establish and maintain an updated list of SRL properties and make such information available to States and communities; and

(8) Notify owners of SRL properties that their properties meet the definition of a severe repetitive loss property and provide a summary of the opportunities and implications of being identified as such.

(b) *State*. The State will serve as the applicant and grantee through a single Point of Contact (POC) for the FMA and SRL programs. The POC is a State agency that must have working

knowledge of NFIP goals, requirements, and processes and ensure that the programs are coordinated with other mitigation activities at the State level. States will:

(1) Have a FEMA approved Mitigation Plan in accordance with part 201 of this chapter;

(2) Review and submit local mitigation plans to the FEMA Regional Administrator for final review and approval;

(3) Provide technical assistance and training to communities on mitigation planning, mitigation project activities, developing subgrant applications, and implementing approved subgrants;

(4) Prioritize and recommend subgrant applications to be approved by FEMA, based on the State Mitigation Plan, other State evaluation criteria and the eligibility criteria described in § 79.6;

(5) Award FEMA-approved subgrants; and

(6) Comply with program requirements under this part, grant management requirements identified under part 13 of this chapter, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

(c) *Indian tribal governments*. The Indian tribal government will coordinate all tribal activities relating to hazard evaluation and mitigation including:

(1) Have a FEMA approved Tribal Mitigation Plan in accordance with § 201.7 of this chapter;

(2) A Federally Recognized Indian tribal government as defined by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, applying directly to FEMA for mitigation grant funding will assume the responsibilities of the “State” as the term is used in this part, as applicant or grantee, described in paragraphs (b)(3) through (6) of this section; and

(3) A Federally Recognized Indian tribal government as defined by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, applying through the State, will assume the responsibilities of the community (as the subapplicant or subgrantee) described in paragraphs (d)(2) through (4) of this section.

(d) *Community*. The community (referred to as both subapplicant and subgrantee) will:

(1) Prepare and submit a FEMA-approved Local Mitigation Plan, consistent with the requirements of part 201 of this chapter;

(2) Complete and submit subgrant applications to the State POC for FMA planning, project and management cost

subgrants, and for SRL project and management cost subgrants;

(3) Implement all approved subgrants; notifying each holder of a recorded interest in severe repetitive loss properties when an offer of mitigation assistance has been made under the SRL program, and when such offer has been refused; and

(4) Comply with program requirements under this part, grant management requirements identified under part 13 of this chapter, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

§ 79.4 Availability of funding.

(a) *Allocation*. (1) For the amount made available for the SRL program, the Administrator will allocate the available funds to States each fiscal year based upon the percentage of the total number of severe repetitive loss properties located within that State. Ten percent of the total funds made available in any fiscal year will be made available to States and Indian tribal applicants that have at least 1 SRL property and that receive little or no allocation.

(2) For the amount made available for the FMA program, the Administrator will allocate the available funds each fiscal year. Funds will be distributed based upon the number of NFIP policies, repetitive loss structures, and any other such criteria as the Administrator may determine are in the best interests of the NFIF.

(i) A maximum of 7.5 percent of the amount made available in any fiscal year may be allocated for FMA planning grants nationally. A planning grant will not be awarded to a State or community more than once every 5 years, and an individual planning grant will not exceed \$150,000 to any State agency applicant, or \$50,000 to any community subapplicant. The total planning grant made in any fiscal year to any State, including all communities located in the State, will not exceed \$300,000.

(ii) The total amount of FMA project grant funds provided during any 5-year period will not exceed \$10,000,000 to any State agency(s) or \$3,300,000 to any community. The total amount of project grant funds provided to any State, including all communities located in the State will not exceed \$20,000,000 during any 5-year period. The Administrator may waive the limits of this subsection for any 5-year period when a major disaster or emergency is declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act for flood conditions.

(b) *Redistribution*. Funds allocated to States who choose not to participate in

either the FMA or SRL program in any given year will be reallocated to participating States and Indian tribal applicants. Any funds allocated to a State, and the communities within the State, which have not been obligated within the timeframes established by the Administrator, shall be redistributed by the Administrator to other States and communities to carry out eligible activities in accordance with this part.

(c) *Cost share.* All mitigation activities approved under the State's grant will be subject to the following cost-share provisions:

(1) FEMA may contribute up to 75 percent of the eligible cost of activities for grants approved for funding; or

(2) FEMA may contribute up to 90 percent of the cost of the eligible activities for each severe repetitive loss property for which grant amounts are provided if the State has an approved State Mitigation Plan meeting the repetitive loss requirements identified in § 201.4(c)(3)(v) of this chapter at the time the project application is submitted;

(3) For the FMA program only, of the non-Federal contribution, not more than one half will be provided from in-kind contributions.

§ 79.5 Application process.

(a) *Applicant or grantee.* (1) States will be notified of the amount allocated to them for the SRL and FMA programs each fiscal year, along with the application timeframes.

(2) The State will be responsible for soliciting applications from eligible communities, or subapplicants, and for reviewing and prioritizing applications prior to forwarding them to FEMA for review and award.

(3) Participation in these flood mitigation grant programs is voluntary, and States may elect not to participate in either the SRL or FMA program in any fiscal year without compromising their eligibility in future years.

(4) Indian tribal governments interested in applying directly to FEMA for either the FMA or SRL program grants should contact the appropriate FEMA Regional Administrator for application information.

(b) *Subapplicant or subgrantee.* Participation in the SRL and the FMA program is voluntary, and communities may elect not to apply. Communities or other subapplicants who choose to apply must develop applications within the timeframes and requirements established by FEMA and must submit applications to the State.

§ 79.6 Eligibility.

(a) *Eligible applicants and subapplicants.* (1) States, Indian tribal governments, and communities participating in the NFIP may apply for FMA planning and project grants and associated management costs.

(2) States, Indian tribal governments, and communities participating in the NFIP may apply for SRL project grants and associated management costs.

(3) Communities withdrawn, suspended, or not participating under part 60 of this subchapter of the NFIP are not eligible for either the FMA or SRL programs.

(b) *Plan requirement.* (1) States must have an approved State Mitigation Plan meeting the requirements of §§ 201.4 or 201.5 of this chapter in order to apply for grants through the FMA or SRL programs. Indian tribal governments must have an approved plan meeting the requirements of part 201 of this chapter at the time of application.

(2) In order to be eligible for FMA and SRL project grants, subapplicants must have an approved mitigation plan at the time of application in accordance with part 201 of this chapter that, at a minimum, addresses flood hazards.

(c) *Eligible activities.* (1) *Planning.* FMA planning grants may be used to develop or update State, Indian tribal and/or local mitigation plans which meet the planning criteria outlined in part 201 of this chapter. FMA planning grants are limited to those activities necessary to develop or update the flood portion of any mitigation plan. Planning grants are not eligible for funding under the SRL program.

(2) *Projects.* Projects funded under the SRL program are limited to those activities that specifically reduce or eliminate flood damages to severe repetitive loss properties. Projects funded under the FMA program are limited to activities that reduce flood damages to properties insured under the NFIP. For either program, applications involving any activities for which implementation has already been initiated or completed are not eligible for funding, and will not be considered. Eligible activities are:

(i) Acquisition of real property from property owners, and demolition or relocation of buildings to convert the property to open space use in perpetuity, in accordance with part 80 of this subchapter;

(ii) Demolition or relocation of structures to areas outside of the floodplain;

(iii) Elevation of existing structures to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in

accordance with criteria established by the Administrator;

(iv) Floodproofing of existing non-residential structures in accordance with the requirements of the NFIP or higher standards if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(v) Floodproofing of historic structures as defined in § 59.1 of this subchapter;

(vi) For SRL only, demolition and rebuilding of properties to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator; and

(vii) Minor physical localized flood reduction measures that lessen the frequency or severity of flooding and decrease predicted flood damages, and that do not duplicate the flood prevention activities of other Federal agencies. Major flood control projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible.

(d) *Minimum project criteria.* In addition to being an eligible project type, mitigation grant projects must also:

(1) Be in conformance with mitigation plans approved under part 201 of this chapter for the State and community where the project is located;

(2) Be in conformance with part 9 of this chapter, Floodplain management and protection of wetlands, part 10 of this chapter, Environmental considerations, § 60.3 of this subchapter, Flood plain management criteria for flood-prone areas, and other applicable Federal, State, tribal, and local laws and regulations;

(3) Be technically feasible;

(4) Solve a problem independently, or constitute a functional portion of a long-term solution where there is assurance that the project as a whole will be completed. This assurance will include documentation identifying the remaining funds necessary to complete the project, and the timeframe for completing the project;

(5) Be cost-effective and reduce the risk of future flood damage;

(6) Consider long-term changes to the areas and entities it protects, and have manageable future maintenance and modification requirements. The subgrantee is responsible for the continued maintenance needed to preserve the hazard mitigation benefits of these measures; and

(7) Not duplicate benefits available from another source for the same purpose or assistance that another Federal agency or program has more primary authority to provide.

§ 79.7 Offers and appeals under the SRL program.

(a) *Consultation.* States and communities shall consult, to the extent practicable, and in accordance with criteria determined by the Administrator, with owners of the severe repetitive loss properties to select the most appropriate eligible mitigation activity. These consultations shall be initiated in the early stages of the project development, and shall continue throughout the process. After FEMA awards the project grant, the subgrantee shall continue to consult with the property owners to determine the specific conditions of the offer.

(b) *Mitigation offer.* After FEMA awards the grant and the subgrantee completes final consultations with the property owners, the subgrantee shall develop and present official offers to the property owners participating in the mitigation activities.

(1) The offer shall include all pertinent information regarding the mitigation activity, including a detailed description of the activity (e.g. property acquisition, elevation), the responsibilities of and benefits to the property owner, a summary of the consultation process, timeframes, and the consequences of refusing such offer. For open space acquisitions, it will also include the market value of the property, the basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the SRL program is voluntary.

(2) The subgrantee will send the written offer to the property owner's current mailing address as a certified letter, along with a copy to the appropriate FEMA Regional Administrator. In addition, the subgrantee will notify each holder of a recorded interest on the property when such offer is extended, along with the identification of the mitigation assistance being offered.

(3) The property owner will have 45 days from the date of the letter to accept or refuse the offer of mitigation assistance in writing. Failure to respond in writing within this time period will be deemed a refusal of the offer.

(c) *Insurance increases due to refusal of offer.* In any case in which the property owner refuses an offer of mitigation assistance made through the SRL program, the Administrator shall provide written notice that the

chargeable insurance rates with respect to the property will increase effective on the next renewal of the policy.

(1) The chargeable insurance premium rate shall be increased to the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property. Each time there is another claim payment in excess of \$1,500, the chargeable premium rate for that property shall be the amount equal to 150 percent over the chargeable rate at the time of every such claim, as adjusted by any other premium adjustments otherwise applicable to the property. The increases shall end when the actuarial rate is reached.

(2) Upon each renewal or modification of the flood insurance coverage, the property owner will be able to accept the original mitigation offer, if the community, through the State, forwards the request to FEMA, and if sufficient funds are available.

(d) *Appeals of insurance rate increases.* Any owner of a severe repetitive loss property may appeal the decision to increase the chargeable insurance premium rate as described in paragraph (c) of this section by submitting a written appeal, including supporting documentation that is postmarked or delivered to the appropriate FEMA Regional Administrator within 90 days of the date of the notice of the insurance increase. The increase in the amount of chargeable premium rate for flood insurance coverage for the property will be suspended pending the outcome of the appeal.

(1) Appeals must be based upon one or more of the following grounds. The property owner must include documentation to support each ground serving as a basis for the appeal:

(i) The offered mitigation activity is an acquisition and the property owner would be unable to purchase a replacement of the primary residence that is of comparable value and that is functionally equivalent. The property owner must document the actions taken to locate such replacement dwelling and demonstrate that no such dwelling is available.

(ii)(A) The amount of Federal funds offered for a mitigation activity, when combined with funds from the required non-Federal sources, would not cover the actual eligible costs of the mitigation activity contained in the mitigation offer, based on independent information. In the case of an acquisition, the purchase offer is not an accurate estimation of the market value

of the property, based on independent information.

(B) For a mitigation activity other than acquisition, the property owner must submit independent estimates from professional engineers or registered architects to support this claim. For an acquisition, the property owner must submit an appraisal from a qualified appraiser to support this claim, and valuations will be considered by a review appraiser.

(iii) The offered mitigation activity would diminish the integrity of a historic district, site, building, or object's significant historic characteristics to the extent where the historic resource would lose its status as listed or eligible for inclusion on the National Register of Historic Places. The property owner must submit appropriate documentation from the State Historic Preservation Officer/ Tribal Historic Preservation Officer to support this claim.

(iv) For a multifamily property: Each of the flood insurance claims payments that served as the basis for its designation as a severe repetitive loss property must have resulted directly from the actions of a third party in violation of Federal, State, or local law, ordinance, or regulation. The property owner(s) must submit appropriate evidence, documentation, or data to support this claim.

(v) The property owner relied upon FEMA Flood Insurance Rate Maps (FIRMs) that were current at the time the property was purchased, and the effective FIRM and associated Flood Insurance Study (FIS) did not indicate that the property was located in an area having special flood hazards. The property owner must produce the dated FIRM and FIS in effect at the time the property was purchased to support this claim.

(vi) An alternative mitigation activity would be at least as cost effective as the offered mitigation activity. The property owner must submit documentation of the costs for a technically feasible and eligible alternative mitigation activity based on estimates from qualified appraisers, professional engineers, or registered architects, and information and documentation demonstrating the cost effectiveness using a FEMA approved methodology to support this claim.

(2) The FEMA Regional Administrator will conduct an initial review of each appeal that is filed on a timely basis to determine if the appeal complies with this section and includes sufficient documentation to be evaluated. The Regional Administrator may reject an appeal on initial review if it is made on

a basis other than those listed in paragraph (d)(1) of this section; if the property owner does not provide sufficient documentation, including, if applicable, supplemental information requested by the Regional Administrator by the deadline established by the Regional Administrator, which shall not exceed the timeframe described in paragraph (d) of this section; or if the appeal otherwise fails to comply with this section.

(3) If, upon initial review, the Regional Administrator determines that the basis for the offered mitigation activity was erroneous on its face and the appeal can be resolved in favor of the property owner, the appeal will be closed and no insurance increase will apply to the property. All other cases will be referred to the Administrator for assignment to an independent third party for review. The independent third party shall make a final determination on each appeal within 90 days of the date on which FEMA receives the appeal. As a low cost option, the property owner may request that the Administrator substitute a reviewer from FEMA's Alternative Dispute Resolution Office for the independent third party.

(4) A property owner who brings an appeal will be responsible for paying his/her attorneys' fees and costs to gather the necessary documentation and data to demonstrate the ground(s) for the appeal. Attorneys' fees and costs cannot be awarded by the independent third party.

(5) If the property owner prevails on appeal, the independent third party shall require the Administrator to charge the risk premium rate for flood insurance coverage of the property at the amount paid prior to the mitigation offer, as adjusted by any other premium adjustments otherwise applicable to the property. If the independent third party hearing the appeal is compensated for such service, the NFIF shall bear the costs of such compensation.

(6) If the property owner loses the appeal, the Administrator shall promptly increase the chargeable risk premium rate for flood insurance coverage of the property to the amount established pursuant to paragraph (c) of this section, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates while the appeal was pending. If FEMA does not receive the additional premium by the date it is due, the amount of coverage will be reduced to match the amount of premium payment received. If the independent third party hearing the appeal is compensated for such service,

the property owner shall bear the costs of such compensation.

§ 79.8 Allowable costs.

(a) *General.* General policies for determining allowable costs are addressed in §§ 13.4, 13.6, and 13.22 of this chapter. Allowable costs are explained in this paragraph.

(1) *Eligible Management Costs—(i) Grantee.* States are eligible to receive management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the State, each fiscal year under FMA and SRL, respectively. These costs must be included in the application to FEMA. An Indian tribal government applying directly to FEMA is eligible for management costs consisting of a maximum of 10 percent of grants awarded for planning and project activities under the SRL and FMA programs respectively.

(ii) *Subgrantee.* Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the State.

(2) *Indirect costs.* Indirect costs of administering the FMA and SRL programs are eligible as part of the 10 percent management costs for the grantee or the 5 percent management costs of the subgrantee, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of part 13 of this chapter and Office of Management and Budget Circular A-87.

(b) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other

source to address the same purpose. Such individual or entity must notify the grantee and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA grant funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 79.9 Grant administration.

(a) The Grantee must follow FEMA grant requirements, including submission of performance and financial status reports, and shall follow adequate competitive procurement procedures. In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the requirements contained in part 13 of this chapter.

(b) During the implementation of an approved grant, the State POC may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the State POC to pay for such overruns if:

(1) Funds are available to meet the requested increase in funding;

(2) The amended grant award meets the cost-share requirements identified in this section; and

(3) The total amount obligated to the State does not exceed the maximum funding amounts set in § 79.4(a)(2).

(c) Grantees may use cost underruns from ongoing subgrants to offset overruns incurred by another subgrant(s) awarded under the same grant. All costs for which funding is requested must have been included in the original application's cost estimate.

(d) For all cost overruns that exceed the amount approved under the grant,

and which require additional Federal funds, the State POC shall submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator shall increase the grant through an amendment to the original award document.

(e) At the time of closeout, FEMA will recapture any funds provided to a State or a community under these programs if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

■ 9. Add part 80 to read as follows:

PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

Subpart A—General

- Sec.
80.1 Purpose and scope.
80.3 Definitions.
80.5 Roles and responsibilities.

Subpart B—Requirements Prior to Award

- 80.7 General.
80.9 Eligible and ineligible costs.
80.11 Project eligibility.
80.13 Application information.

Subpart C—Post-Award Requirements

- 80.15 General.
80.17 Project implementation.
80.19 Land use and oversight.

Subpart D—After the Grant Requirements

- 80.21 Closeout requirements.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any

FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at <http://www.fema.gov>. This part, with the exception of § 80.19 Land use and oversight, applies to projects for which the funding program application period opens or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program (available at <http://www.fema.gov>) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

§ 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of the entity is designated in the grant award document.

(d) *Market Value* is generally defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. section 1101(a)(22).

(f) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(g) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(h) “Qualified conservation organization” means a qualified

organization with a conservation purpose pursuant to 26 CFR 1.170A–14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(i) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian tribal applicant/grantee. With respect to open space acquisition projects under the Hazard Mitigation Grant Program (HMGP), this term has the same meaning as given to the term “applicant” in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subgrantee.

(j) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(k) *Subgrantee* means the State agency, community, or Indian tribal 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.

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

§ 80.5 Roles and responsibilities.

The roles and responsibilities of FEMA, the State, the subapplicant/subgrantee, and participating property owners in the particular context of mitigation projects for the purpose of creating open space include the activities in this section. These are in addition to grants management roles and responsibilities identified in regulations and guidance of the program funding the project (available at <http://www.fema.gov>) and other responsibilities specified in this part.

(a) *Federal roles and responsibilities.* Oversee property acquisition activities undertaken under FEMA mitigation grant programs, including:

(1) Providing technical assistance to the applicant/grantee to assist in implementing project activities in compliance with this part;

(2) Reviewing applications for eligibility and compliance with this part;

(3) Reviewing proposals for subsequent transfer of a property interest and approving appropriate transferees;

(4) Making determinations on the compatibility of proposed uses with the open space purpose, in accordance with § 80.19;

(5) Complying with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;

(6) Providing no Federal disaster assistance, flood insurance claims payments, or other FEMA assistance with respect to the property or any open-space related improvements, after the property interest transfers; and

(7) Enforcing the requirements of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity.

(b) *State (applicant/grantee) roles and responsibilities.* Serve as the point of contact for all property acquisition activities by coordinating with the subapplicant/subgrantee and with FEMA to ensure that the project is implemented in compliance with this part, including:

(1) Providing technical assistance to the subapplicant/subgrantee to assist in implementing project activities in compliance with this part;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Reviewing the application to ensure that the proposed activity complies with this part, including ensuring that the property acquisition activities remain voluntary in nature, and that the subgrantee and property owners are made aware of such;

(4) Submitting to FEMA subapplications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(5) Reviewing proposals for subsequent transfer of property interest

and obtaining FEMA approval of such transfers; and ensuring that all uses proposed for the property are compatible with open space project purposes;

(6) Making no application for, nor providing, Federal disaster assistance or other FEMA assistance for the property or any open-space related improvements, after the property interest transfers;

(7) Enforcing the terms of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity; and

(8) Reporting on property compliance with the open space requirements after the grant is awarded.

(c) *Subapplicant/Subgrantee roles and responsibilities.* Coordinate with the applicant/grantee and with the property owners to ensure that the project is implemented in compliance with this part, including:

(1) Submitting all applications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable the applicant/grantee and FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Coordinating with the property owners to ensure they understand the benefits and responsibilities of participating in the project, including that participation in the project is voluntary, and that the property owner(s) are made aware of such;

(4) Developing the application and implementing property acquisition activities in compliance with this part, and ensuring that all terms of the deed restrictions and grant award are enforced;

(5) Ensuring fair procedures and processes are in place to compensate property owners and tenants affected by the purchase of property; such as determining property values and/or the amount of the mitigation offer, and reviewing property owner disputes regarding such offers;

(6) Making no application for Federal disaster assistance, flood insurance, or other FEMA benefits for the property or any open-space related improvements, after the property interest transfers;

(7) Taking and retaining full property interest, consistent with this part; or if transferring such interest, obtaining approval of the grantee and FEMA;

(8) Submitting to the grantee and FEMA proposed uses on the property for open space compatibility determinations; and

(9) Monitoring and reporting on property compliance after the grant is awarded.

(d) *Participating property owner roles and responsibilities.* Notify the subapplicant/subgrantee of its interest to participate, provide information to the subapplicant/subgrantee, and take all required actions necessary for the completion of the grant application and the implementation of property acquisition activities in accordance with this part.

Subpart B—Requirements Prior to Award

§ 80.7 General.

A project involving property acquisition or the relocation of structures for open space is eligible for hazard mitigation assistance only if the subapplicant meets the pre-award requirements set forth in this subpart. A project may not be framed in a manner that has the effect of circumventing the requirements of this subpart.

§ 80.9 Eligible and ineligible costs.

(a) *Allowable costs.* Eligible project costs may include compensation for the value of structures, for their relocation or demolition, for associated land, and associated costs. For land that is already held by an eligible entity, compensation for the land is not an allowable cost, but compensation for development rights may be allowable.

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the

same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA acquisition funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA mitigation grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 80.11 Project eligibility.

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

(b) *Acquisition of improved properties.* Eligible properties are those with at-risk structures on the property, including those that are damaged or destroyed due to an event. In some cases, undeveloped, at-risk land adjacent to an eligible property with existing structures may be eligible.

(c) *Subdivision restrictions.* The land may not be subdivided prior to acquisition except for portions outside the identified hazard area, such as the Special Flood Hazard Area or any risk zone identified by FEMA.

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest) as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

(e) *Hazardous materials.* Eligible properties include only those that are not contaminated with hazardous materials, except for incidental demolition and household hazardous waste.

(f) *Open space restrictions.* Property acquired or from which a structure is removed must be dedicated to and maintained as open space in perpetuity consistent with this part.

§ 80.13 Application information.

(a) An application for acquisition of property for the purpose of open space must include:

(1) A photograph that represents the appearance of each property site at the time of application;

(2) Assurances that the subapplicant will implement the project grant award in compliance with subparts C and D of this part;

(3) The deed restriction language, which shall be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of General Counsel;

(4) The documentation of voluntary interest signed by each property owner, which must include that the subapplicant has informed them in writing that it will not use its eminent domain authority for the open space purpose; and

(5) Assurance that the subject property is not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and that local and State governments have no intention to use the property for any public or private facility in the future inconsistent with this part;

(6) If the applicant is offering pre-event value: certification that the property owner is a National of the United States or qualified alien; and

(7) Other information as determined by the Administrator.

(b) *Consultation regarding other ongoing Federal activities.* (1) The subapplicant must demonstrate that it has consulted with the United States Army Corps of Engineers (USACE) regarding the subject land's potential future use for the construction of a levee system. The subapplicant must also demonstrate that it has, and will, reject any future consideration of such use if it accepts FEMA assistance to convert the property to permanent open space.

(2) The subapplicant must demonstrate that it has coordinated with its State Department of Transportation to ensure that no future, planned modifications, improvements, or enhancements to Federal aid systems are under consideration that will affect the subject property.

(c) *Restriction on alternate properties.* Changes to the properties in an approved mitigation project will be considered by FEMA but not approved automatically. The subapplicant must identify the alternate properties in the project application and each alternate

property must meet eligibility requirements in order to be considered.

Subpart C—Post-Award Requirements

§ 80.15 General.

A project involving property acquisition or the relocation of structures for open space must be implemented consistent with the requirements set forth in this subpart.

§ 80.17 Project implementation.

(a) *Hazardous materials.* The subgrantee shall take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA mitigation grant funds may not be used for clean up or remediation of contaminated properties.

(b) *Clear title.* The subgrantee will obtain a title insurance policy demonstrating that fee title conveys to the subgrantee for each property to ensure that it acquires only a property with clear title. The property interest generally must transfer by a general warranty deed. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition.

(c) *Purchase offer and supplemental payments.* (1) The amount of purchase offer is the current market value of the property or the market value of the property immediately before the relevant event affecting the property ("pre-event").

(i) The relevant event for Robert T. Stafford Disaster Relief and Emergency Assistance Act assistance under HMGP is the major disaster under which funds are available; for assistance under the Pre-disaster Mitigation program (PDM) (42 U.S.C. 5133), it is the most recent major disaster. Where multiple disasters have affected the same property, the grantee and subgrantee shall determine which is the relevant event.

(ii) The relevant event for assistance under the National Flood Insurance Act is the most recent event resulting in a National Flood Insurance Program (NFIP) claim of at least \$5000.

(2) For acquisition of properties under the Severe Repetitive Loss program under part 79 of this subchapter, the purchase offer is not less than the

greatest of the amount in paragraph (c)(1) of this section; the original purchase price paid by the participating property owner holding the flood insurance policy; or the outstanding amount of any loan to the participating property owner, which is secured by a recorded interest in the property at the time of the purchase offer.

(3) The grantee should coordinate with the subgrantee in their determination of whether the valuation should be based on pre-event or current market value. Generally, the same method to determine market value should be used for all participants in the project.

(4) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subgrantees will ask each participating property owner to certify that they are either a National of the United States or qualified alien before offering pre-event market value for the property.

(5) Certain tenants who must relocate as a result of the project are entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services) in accordance with 49 CFR part 24.

(6) If a purchase offer for a residential property is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the hazard-prone area in the same community, the subgrantee for funding under the Severe Repetitive Loss program implemented at part 79 of this subchapter shall make available a supplemental payment to the homeowner-occupant to apply to the difference. Subgrantees for other mitigation grant programs may make such a payment available in accordance with criteria determined by the Administrator.

(7) The subgrantee must inform each property owner, in writing, of what it considers to be the market value of the property, the method of valuation and basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the project is voluntary.

(d) *Removal of Existing Buildings.* Existing incompatible facilities must be removed by demolition or by relocation outside of the hazard area within 90 days of settlement of the property transaction. The FEMA Regional Administrator may grant an exception to

this deadline only for a particular property based upon written justification if extenuating circumstances exist, but shall specify a final date for removal.

(e) *Deed Restriction.* The subgrantee, upon settlement of the property transaction, shall record with the deed of the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

§ 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address flood hazards. If the Administrator determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

(a) *Open space requirements.* The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

(1) These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

(i) Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

(ii) In the rare circumstances where the Administrator has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with § 60.3 of this subchapter or higher standards, the Administrator may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

(2) No new structures or improvements will be built on the property except as indicated below:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public restroom; or

(iii) A structure that is compatible with open space and conserves the natural function of the floodplain, which the Administrator approves in

writing before the construction of the structure begins.

(3) Any improvements on the property shall be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

(b) *Subsequent transfer.* After acquiring the property interest, the subgrantee, including successors in interest, shall convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subgrantee, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subgrantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the subgrantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

(i) The subgrantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

(ii) At the time of title transfer, the subgrantee shall retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the subgrantee or grantee in the event that the transferee ceases to exist or loses its eligible status under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the grantee shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subgrantee, grantee, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the grantee, the subgrantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

(1) The grantee will notify the subgrantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

(i) If the subgrantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the grantee shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(ii) FEMA, its representatives, and assignees may enforce the terms of the

grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(A) Withholding FEMA mitigation awards or assistance from the State and subgrantee; and current holder of the property interest.

(B) Requiring transfer of title. The subgrantee or the current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the grant; or

(C) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the grantee, the subgrantee, and their respective successors.

Subpart D—After the Grant Requirements

§ 80.21 Closeout requirements.

Upon closeout of the grant, the subgrantee, through the grantee, shall provide FEMA, with the following:

(a) A copy of the deed recorded for each property, demonstrating that each property approved in the original application was mitigated and that the deed restrictions recorded are consistent with the FEMA model deed restriction language to meet the requirements of this part;

(b) A photo of each property site after project completion;

(c) The latitude-longitude coordinates of each property site;

(d) Identification of each property as a repetitive loss property, if applicable; and

(e) Other information as determined by the Administrator.

PART 201—MITIGATION PLANNING

■ 10. The authority citation for part 201 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 11. Section 201.2 is amended by revising the definition of “Hazard Mitigation Grant Program” and by adding the following definitions to the alphabetical list of definitions:

§ 201.2 Definitions.

Administrator means the head of the Federal Emergency Management Agency, or his/her designated representative, appointed under section

503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

Flood Mitigation Assistance (FMA) means the program authorized by section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c, and implemented at parts 78 and 79.

* * * * *

Hazard Mitigation Grant Program (HMGP) means the program authorized under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, and implemented at part 206, subpart N of this chapter.

* * * * *

Pre-Disaster Mitigation Program (PDM) means the program authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133.

* * * * *

Repetitive Flood Claims (RFC) program means the program authorized under section 1323 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4011, which provides funding to reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Program (NFIP) in the shortest period of time.

Severe Repetitive Loss (SRL) program means the program authorized under section 1361(a) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4102a, and implemented at part 79 of this chapter.

Severe Repetitive Loss properties are defined as single or multifamily residential properties that are covered under an NFIP flood insurance policy and:

(1) That have incurred flood-related damage for which 4 or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(2) For which at least 2 separate claims payments (building payments only) have been made under such coverage, with cumulative amount of such claims exceeding the market value of the property.

(3) In both instances, at least 2 of the claims must be within 10 years of each

other, and claims made within 10 days of each other will be counted as 1 claim.
* * * * *

■ 12. Revise paragraphs (c)(1), (c)(3), (d)(2) and (e) of § 201.3 to read as follows:

§ 201.3 Responsibilities.

* * * * *

(c) * * *

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. In addition, a State may choose to address severe repetitive loss properties in their plan as identified in § 201.4(c)(3)(v) to receive the reduced cost share for the Flood Mitigation Assistance (FMA) and Severe Repetitive Loss (SRL) programs, pursuant to § 79.4(c)(2) of this chapter.
* * * * *

(3) At a minimum, review and update the Standard State Mitigation Plan every 3 years from the date of the approval of the previous plan in order to continue program eligibility.
* * * * *

(d) * * *

(2) At a minimum, review and update the local mitigation plan every 5 years from date of plan approval of the previous plan in order to continue program eligibility.

(e) *Indian tribal governments.* The key responsibilities of the Indian tribal government are to coordinate all tribal activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Tribal Mitigation Plan following the criteria established in § 201.7 as a condition of receiving non-emergency Stafford Act assistance as a grantee. This plan will also allow Indian tribal governments to apply through the State, as a subgrantee, for any FEMA mitigation project grant. Indian tribal governments with a plan approved by FEMA on or before October 1, 2008 under § 201.4 or § 201.6 will also meet this planning requirement. All Tribal Mitigation Plans approved after that date must follow the criteria identified in § 201.7. In addition, an Indian tribal government may choose to address severe repetitive loss properties as identified in § 201.4(c)(3)(v) as a condition of receiving the reduced cost share for the FMA and SRL programs, pursuant to § 79.4(c)(2) of this chapter.

(2) Review and update the Tribal Mitigation Plan at least every 5 years from the date of approval of the previous plan in order to continue program eligibility.

(3) In order to be considered for the increased HMGP funding, the Tribal Mitigation Plan must meet the Enhanced State Mitigation Plan criteria identified in § 201.5. The plan must be reviewed and updated at least every 3 years from the date of approval of the previous plan.

■ 13. Revise paragraphs (a) and (c)(7) and add paragraph (c)(3)(v) of § 201.4 to read as follows:

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* States must have an approved Standard State Mitigation Plans meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the Pre-disaster Mitigation (PDM) program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.
* * * * *

(c) * * *

(3) * * *

(v) A State may request the reduced cost share authorized under § 79.4(c)(2) of this chapter for the FMA and SRL programs, if it has an approved State Mitigation Plan meeting the requirements of this section that also identifies specific actions the State has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the State intends to reduce the number of such repetitive loss properties. In addition, the plan must describe the strategy the State has to ensure that local jurisdictions with severe repetitive loss properties take actions to reduce the number of these properties, including the development of local mitigation plans.
* * * * *

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c) of this chapter. The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations as

required in 44 CFR 13.11(d) of this chapter.
* * * * *

■ 14. Revise paragraphs (a)(1), (a)(2), (c)(2)(ii) introductory text, (d)(1), and (d)(3) and add a sentence to the end of paragraph (c)(3)(ii) of § 201.6 to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) * * *

(1) A local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. The Administrator may, at his discretion, require a local mitigation plan for the Repetitive Flood Claims Program. A local government must have a mitigation plan approved pursuant to this section in order to apply for and receive mitigation project grants under all other mitigation grant programs.

(2) Plans prepared for the FMA program, described at part 79 of this chapter, need only address these requirements as they relate to flood hazards in order to be eligible for FMA project grants. However, these plans must be clearly identified as being flood mitigation plans, and they will not meet the eligibility criteria for other mitigation grant programs, unless flooding is the only natural hazard the jurisdiction faces.
* * * * *

(c) * * *

(2) * * *

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:
* * * * *

(3) * * *

(ii) * * * All plans approved by FEMA after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.
* * * * *

(d) * * *

(1) Plans must be submitted to the State Hazard Mitigation Officer (SHMO) for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval. Where the State point of contact for the FMA program is different from the SHMO, the SHMO will be responsible for

coordinating the local plan reviews between the FMA point of contact and FEMA.

* * * * *

(3) A local jurisdiction must review and revise its plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for mitigation project grant funding.

* * * * *

■ 15. Add § 201.7 to read as follows:

§ 201.7 Tribal Mitigation Plans.

The Indian Tribal Mitigation Plan is the representation of the Indian tribal government's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards.

(a) *Plan requirement.* (1) Indian tribal governments applying to FEMA as a grantee must have an approved Tribal Mitigation Plan meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the PDM program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available.

(2) An Indian tribal government may choose to address severe repetitive loss properties in their plan, as identified in § 201.4(c)(3)(v), to receive the reduced cost share for the FMA and SRL programs.

(3) Indian tribal governments applying through the State as a subgrantee must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGP project grants. The Administrator, at his discretion may require a local mitigation plan for the Repetitive Flood Claims Program. A tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants, under all other mitigation grant programs.

(4) Multi-jurisdictional plans (e.g. county-wide or watershed plans) may be accepted, as appropriate, as long as the Indian tribal government has participated in the process and has officially adopted the plan. Indian tribal governments must address all the elements identified in this section to

ensure eligibility as a grantee or as a subgrantee.

(b) An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other tribal agencies, appropriate Federal agencies, adjacent jurisdictions, interested groups, and be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved. This shall include:

(i) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval, including a description of how the Indian tribal government defined "public;"

(ii) As appropriate, an opportunity for neighboring communities, tribal and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia, and other private and nonprofit interests to be involved in the planning process;

(iii) Review and incorporation, if appropriate, of existing plans, studies, and reports; and

(iv) Be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA programs and initiatives.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Tribal risk assessments must provide sufficient information to enable the Indian tribal government to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the tribal planning area. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the Indian tribal government's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the tribe. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(i)(A) of this section and a description of the methodology used to prepare the estimate;

(C) A general description of land uses and development trends within the tribal planning area so that mitigation options can be considered in future land use decisions; and

(D) Cultural and sacred sites that are significant, even if they cannot be valued in monetary terms.

(3) A *mitigation strategy* that provides the Indian tribal government's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(2)(ii) of this section will be prioritized, implemented, and administered by the Indian tribal government.

(iv) A discussion of the Indian tribal government's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of tribal laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; and a discussion of tribal funding capabilities for hazard mitigation projects.

(v) Identification of current and potential sources of Federal, tribal, or private funding to implement mitigation activities.

(vi) An Indian tribal government may request the reduced cost share authorized under § 79.4(c)(2) of this chapter of the FMA and SRL programs if they have an approved Tribal Mitigation Plan meeting the requirements of this section that also identify actions the Indian tribal government has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the Indian tribal government intends to

reduce the number of such repetitive loss properties.

(4) A plan maintenance process that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A process by which the Indian tribal government incorporates the requirements of the mitigation plan into other planning mechanisms such as reservation master plans or capital improvement plans, when appropriate.

(iv) Discussion on how the Indian tribal government will continue public participation in the plan maintenance process.

(v) A system for reviewing progress on achieving goals as well as activities and projects identified in the mitigation strategy.

(5) Plan Adoption Process. The plan must be formally adopted by the governing body of the Indian tribal government prior to submittal to FEMA for final review and approval.

(6) Assurances. The plan must include assurances that the Indian tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with § 13.11(c) of this chapter. The Indian tribal government will amend its plan whenever necessary to reflect changes in tribal or Federal laws and statutes as required in § 13.11(d) of this chapter.

(d) Plan review and updates. (1) Plans must be submitted to the appropriate FEMA Regional Office for formal review and approval. Indian tribal governments who would like the option of being a subgrantee under the State must also submit their plan to the State Hazard Mitigation Officer for review and coordination.

(2) The Regional review will be completed within 45 days after receipt from the Indian tribal government, whenever possible.

(3) Indian tribal governments must review and revise their plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for non-emergency Stafford Act assistance and FEMA mitigation grant funding, with the exception of the Repetitive Flood Claims program.

PART 206—FEDERAL DISASTER ASSISTANCE

■ 16. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 17. Section 206.432 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) Amounts of Assistance. The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, and 5183 of the Stafford Act for the major disaster (less associated administrative costs), and shall be as follows:

(1) Standard percentages. Not to exceed 15 percent for the first \$2,000,000,000 or less of such amounts; not to exceed 10 percent of the portion of such amounts over \$2,000,000,000 and not more than \$10,000,000,000; and not to exceed 7.5 percent of the portion of such amounts over \$10,000,000,000 and not more than \$35,333,000,000.

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■ 18. Section 206.433 is amended by revising paragraph (c) to read as follows:

§ 206.433 State responsibilities.

* * * * *

(c) Hazard Mitigation Officer. The State must appoint a Hazard Mitigation Officer who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

* * * * *

■ 19. Revise paragraphs (a)(2), (c)(5)(ii), (e) introductory text; add a sentence after the first sentence of (d)(2); remove paragraph (f); and redesignate current paragraphs (g) and (h) as (f) and (g) of § 206.434 to read as follows:

§ 206.434 Eligibility.

(a) * * *

(2) Private nonprofit organizations that own or operate a private nonprofit facility as defined in § 206.221(e). A qualified conservation organization as defined at § 80.3(h) of this chapter is the only private nonprofit organization

eligible to apply for acquisition or relocation for open space projects;

* * * * *

(c) * * *

(5) * * *

(ii) 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,

* * * * *

(d) * * *

(2) * * * Activities for which implementation has already been initiated or completed are not eligible for funding. * * *

* * * * *

(e) Property acquisitions and relocation requirements. Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter. For major disasters declared prior to December 3, 2007, a project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters into an agreement with the FEMA Regional Director that provides assurances that:

* * * * *

■ 20. Add new paragraph (c) to § 206.439 to read as follows:

§ 206.439 Allowable costs.

* * * * *

(c) Pre-award costs. FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

Dated: October 24, 2007.

Harvey E. Johnson, Jr., Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.

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