

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

Rule Title:

Rule No:

Community Development Block Grant Disaster Recovery Initiative

9BER07-1

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE:

The expenditure of the funds in the declared disaster areas where housing, infrastructure, and businesses were severely damaged or destroyed is essential to the health, safety and welfare of the public.

REASONS FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES:

Promulgation of Rule Chapter 9BER07-1, using emergency rule procedures, is the only available mechanism that adequately provides for the expeditious disbursement and use of the federal funds to provide disaster relief, long-term recovery and infrastructure restoration.

SUMMARY:

This rule enables the Department of Community Affairs to distribute and administer CDBG disaster recovery funds as expeditiously as possible.

THE PERSON TO BE CONTACTED REGARDING THIS EMERGENCY RULE IS:

Esrone McDaniels, Administrator, Division of Housing and Community Development, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, telephone (850) 487-3644.

THE FULL TEXT OF THE EMERGENCY RULE IS:

9BER07-1 Community Development Block Grant Disaster Recovery Funding.

(1) The objective of this emergency rule is to address disaster relief, long-term recovery and infrastructure restoration of communities, particularly for those persons who are of low and moderate income, that suffered damage or loss as a result of Hurricane Wilma. This emergency rule applies to all grant recipients receiving funding under this Disaster Recovery Program. This rule supplements the information provided in the state's Action Plan, which is herein incorporated by reference and available upon request to the Department.

(2) In order to expedite recovery measures, all portions of Rule Chapter 9B-43, F.A.C., are abrogated by this emergency rule, except the following: Rule 9B-43.0031 (Definitions) and Rule 9B-43.0051 (2), (4), and (8) (Selected portions of Grant Administration and Project Implementation).

(3) The following definitions are provided for clarification:

(a) "Action Plan" is the plan submitted by the Department to, and approved by, the U.S. Department of Housing and Urban Development (HUD) in response to the Federal Register Notice dated October 30, 2006, which outlines basic requirements relating to the allocation of the disaster recovery funding.

(b) "Service area" means the total geographical area to be served by an activity. A service area will encompass all beneficiaries who are reasonably served or would be reasonably served by an activity.

(c) Other definitions may be found in 24 CFR 570 and the Action Plan.

(4) Eligible subgrantees, as defined in the Action Plan, may allocate funding to third party organizations for the purpose of carrying out activities funded by the subgrant to the Recipient. In such cases, a subrecipient agreement must be executed by the local government and the organization and approved by the Department. The Recipient retains the legal responsibility for ensuring that applicable federal and state laws, rules and regulations are followed.

(5) Interlocal Cooperation. Eligible subgrantees proposing to conduct eligible activities in other eligible jurisdictions must submit documentation to the Department of an established relationship between the jurisdictions or provide an acknowledgement letter agreeing to the tasks to be performed in the jurisdiction which affirms that all activities are consistent with each local government's comprehensive plan and provides documentation which includes applicable excerpts of each local government's comprehensive plan.

(6) Eligible subgrantees may use up to 3% of the funds allocated for administrative costs as specified in 24 CFR 570.206 and the Action Plan applicable to this rule. Costs directly related to carrying out activities eligible under 24 CFR 570 are not included in the 3% allowance.

(7) Expenditures and Limitations.

(a) Subgrantees must submit at least one request for funds each quarter which reflects actual project expenditures for the quarter via the process described by the Department.

(b) Escrow Accounts. Subgrantees may draw down CDBG funds and deposit them into an interest-bearing escrow account for restoration of affordable housing, including housing rehabilitation and activities associated with hardening and mitigation. The subgrantee must track the requirements for and receipt and disbursement of all funds for each housing unit addressed. The following provisions apply:

1. Funds may be requested only after execution of a contract for services. If funds are received by the subgrantee prior to the execution of a contract that obligates those funds, those funds must be returned to the Department within seven (7) days of receipt by the subgrantee.

2. Funds requested and escrowed for use on housing units shall not be used for any other purpose.

3. Funds requested and escrowed for a particular housing unit must be expended on that housing unit within one hundred twenty (120) days from date of deposit in the escrow account or be returned to the Department.

4. Interest earned on escrow accounts shall be reported quarterly to the Department.

(8) Program Income. Any program income earned as a result of activities funded under this grant must be reported to the Department, but may be retained for the life of the subgrant by the subgrantee and used to continue the CDBG disaster recovery activity.

(9) Subgrantees and/or beneficiaries must provide documentation of funds received from other sources which were applied toward the costs of the project funded by these disaster recovery funds.

(10) Beneficiaries of Public Improvements.

(a) For activities where hookups or connections are required for beneficiary access to CDBG-funded public improvement, low and moderate income benefit shall be determined by the number of low and moderate income persons in households connected to and able to use the water, sewer or other infrastructure at the time of administrative closeout.

(b) For activities where hookups or connections are required as a condition for beneficiary access to a CDBG-funded public improvement, no hookup or connection fees shall be charged to very-low, low or moderate-income beneficiaries.

(c) Beneficiaries of activities funded under this emergency rule shall not be expected to pay for, or reimburse, the subgrantee for any portion of the project costs, whether impact fees, connection charges, or otherwise.

(11) Housing Rehabilitation Standards.

(a) Upon completion of a housing rehabilitation activity, all housing units addressed with CDBG funds must be in compliance with the subgrantee's local housing code. This requirement does not apply if the construction activity is limited to water hookups, sewer hookups, the abandonment of wells, or the abandonment of septic systems with no internal or external modifications to the housing structure.

(b) The subgrantee should rely on its local housing assistance plan to determine the maximum amount of CDBG disaster recovery funding that can be expended on any one housing unit.

(12) If manufactured housing units are used for replacement housing, they must meet the following specifications:

(a) Manufactured housing units must be built to HUD post-1994 construction standards.

(b) The units must be new, previously uninstalled manufactured housing units.

(c) Units must bear HUD compliance certification meeting HUD wind resistance construction standards for wind zone 3.

(d) A certified building code inspector employed by the local government shall inspect and approve the installation of all manufactured housing units to ensure compliance with the local building code.

(e) Units must be installed to the manufacturer's installation instructions.

(f) These funds may not be used for furniture or interior design costs, insurance, financing points, or add-on structures.

(g) Replacement units may be placed on leased land or resident-owned land.

(h) Units must be owner-occupied.

(i) The cost of each manufactured housing unit must not exceed the appraised value of the unit per the Fannie Mae/Freddie Mac manufactured housing appraisal guidelines currently in effect (e.g., Fannie Mae, Announcement 03-06, Appraisal Guidelines for Manufactured Housing.)

(13) Amendments. All proposed amendments to the Agreement must be approved by the Department.

(a) Documentation Required. All requests for amendments to the subgrant agreement shall include the following written documentation for review by the Department:

1. A cover letter signed by the Chief Elected Official or designee, which describes the need for the proposed changes and the impact on the approved project.

2. If applicable, a revised activity work plan.

3. If applicable, a revised budget showing the current and amended budget.

4. If there is a change in activity location, a legible map which indicates the proposed change.

5. If applicable, a copy of the public notice for the public hearing at which the amendment was approved.

6. Signature of the Chief Elected Official or other authorized individual on the Modification to Agreement form, which is provided by the Department upon request.

(a) If the subgrantee requests administrative closeout prior to the termination date of the subgrant agreement, any amendment affecting closeout and requiring Department approval must be included with the closeout.

(b) Time Extensions to Subgrant Agreements. Any proposed amendment extending the termination date of the subgrant agreement must be approved by the Department. The subgrantee must explain any delay affecting project completion and must justify the need for the extension. An amendment extending the subgrant agreement period must be received by the Department at least ninety (90) days prior to the end of the subgrant agreement. Extensions may be granted on a case-by-case basis, not to exceed 12 months.

(14) Subgrant Closeout.

(a) At the time of submission of the closeout report, the subgrantee must have documentation which verifies its certification that all construction has been completed, inspected and approved by all parties prior to the end of the subgrant agreement and submission of the administrative closeout.

(b) An administrative closeout may be submitted only when the subgrantee has no more than \$25,000 in total funds on hand. All funds in excess of \$25,000 drawn from the Department and not expended must be returned to the Department prior to or with the submission of the closeout. If the subgrantee has transferred funds from the regular CDBG administrative account

or the escrow account and these funds remain under the control of the subgrantee, the funds are not considered expended for purposes of administrative closeout.

(c) Upon completion of the activities contained in the subgrantee's CDBG subgrant agreement, including any amendments, the subgrantee shall submit to the Department a closeout which gives the final statement of costs, certifies that the project and all administrative activities have been completed and accepted (except submission of the final audit), that all costs except those reflected on the closeout have been paid, and that reports the demographics of the program's beneficiaries.

(d) If any change has been made since the last map amendment, the closeout shall also contain a revised map of the activities completed during the term of the CDBG contract.

(e) Subgrantees administering subgrant agreements with housing activities shall include the physical address of all households assisted under the subgrant agreement and certify that they were within the jurisdiction(s) served by the subgrantee, either as provided in any interlocal agreements or in the subgrant agreement. Additional information required by HUD may be requested.

(f) For activities where hookups or connections are required for beneficiary access to the public improvement, the closeout must show:

1. The total number of persons in all households in the service area; and
2. The number of low and moderate income persons in households connected to the infrastructure.

(g) Projects meeting the LMI national objective must document that the number of LMI persons in households connected to the infrastructure divided by the total number of beneficiaries in the service area equals at least 51 percent or higher.

(h) The closeout must contain original signatures. Facsimile (FAX) submissions are not acceptable.

(i) If a subgrantee fails to meet contractual requirements on time, the Department reserves the right to require that a subgrantee financially (not administratively) close out a subgrant agreement in order to meet federal requirements for the timely distribution of funds set by HUD.

(j) The subgrantee must notify the Department of all liens placed on privately owned properties (as in the case of residential rehabilitation, etc.). Such information shall include the name of the property owner and the physical location of the property (i.e., street address).

(15) This emergency rule applies to the Single-family/Multifamily Housing Repair and Mitigation and Infrastructure Repair/Improvement categories as described in the Action Plan submitted to and approved by HUD on DATE. It does not apply to the Multifamily Rental Housing Repair and Mitigation funding described in the Action Plan. The Department will work with other housing related entities to design a funding process for the Multifamily Rental Housing Repair and Mitigation funding.

Specific Authority: 290.044, FS. Law Implemented: 290.0401-.048, FS. History -- New.

THIS RULE SHALL TAKE EFFECT IMMEDIATELY UPON BEING FILED WITH THE DEPARTMENT OF STATE.

Effective Date: _____.

CERTIFICATION OF THE DEPARTMENT OF COMMUNITY AFFAIRS
EMERGENCY RULES FILED WITH THE
DEPARTMENT OF STATE

I hereby certify that an immediate danger to the public health, safety or welfare requires emergency action and that the attached rule is necessitated by the immediate danger. I further certify that the procedures used in promulgation of this emergency rule were fair under the circumstances and the rule otherwise complies with subsection 120.54(4), Florida Statutes. The adoption of the rules was authorized by me as the head of the agency and this rule is hereby adopted upon its filing with the Department of State, pursuant to the provision of section 120.54(4)(d), Florida Statutes.

Rule No. 9BER07-1

Under the provision of section 120.54(4)(d), Florida Statutes, this rule takes effect upon filing unless a later time and date less than 20 days from filing is set out below:

Effective Date: _____ (Month) ____ (Day) 2007 (Year)

Thomas G. Pelham, Secretary

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