

DEPARTMENT OF COMMUNITY AFFAIRS

Division of Housing and Community Development

Rule Title:

Rule No:

Community Development Block Grant Disaster Recovery Funding

9BER05-2

During the 2004 hurricane season, four major hurricanes devastated many areas of the state. Thousands of homes were damaged or destroyed, and residents were severely impacted by flooding, damaged public facilities, downed power lines and debris. Many businesses suffered serious damage or were destroyed, along with governmental service buildings, public housing, nursing homes and hospitals. Other infrastructure was also seriously impacted.

The Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act (the Act), 2005 (Public Law 108–324, approved October 13, 2004) appropriated \$100,915,626 in Community Development Block Grant funds to the State of Florida for disaster relief, long-term recovery, and mitigation directly related to the effects of the disasters that occurred between August 31, 2003 and October 1, 2004 and covered by Presidential disaster declarations. The availability of the funding was formally announced in the Federal Register (Volume 69, No. 237) on December 10, 2004, effective December 15, 2004.

The Act authorized the U.S. Department of Housing and Urban Development (HUD) to waive or specify alternative requirements for any statute or regulation that HUD administers in connection with the funds, except for requirements relating to fair housing, nondiscrimination, labor standards, and the environment, as long as the waiver facilitates the use the funds and is not inconsistent with the overall purpose.

The Act required the State of Florida to develop an Action Plan, to be approved by HUD, that sets out the parameters for allocating funds to areas of the state hit hardest by the hurricanes and related weather events.

Disaster impact data collected by the Federal Emergency Management Agency (FEMA), Florida Agency for Workforce Innovation, and the Governor's Hurricane Housing Workgroup indicated that 15 counties, and the municipalities located therein, suffered the most devastation. These counties were targeted to receive the federal funding made available through HUD. The Action Plan, approved by HUD, specified the manner in which eligible communities could apply for the funding as well as eligible activities and other requirements.

As stated in the Action Plan, every county in the state was covered by one or more state and federal disaster declarations. Federal declarations by number and date that applied to the storms are listed below:

FEMA-1539-DR dated August 13, 2004 - Tropical Storm Bonnie and Hurricane Charley

FEMA-1545-DR dated September 4, 2004 - Hurricane Frances

FEMA-1551-DR dated September 16, 2004 - Hurricane Ivan

FEMA-1561-DR dated September 26, 2004 - Hurricane Jeanne

Counties eligible to receive funding are: Brevard, Charlotte, DeSoto, Escambia, Hardee, Indian River, Martin, Okeechobee, Orange, Osceola, Palm Beach, Polk, Santa Rosa, St. Lucie and Volusia. The Action Plan specifies a cap for each county, including the municipalities located therein, and states that collectively awards shall not exceed the stated cap. The Disaster Recovery Initiative Application for Funding was developed

to correlate with the Action Plan. Applications were due to the Department of Community Affairs on April 4, 2005.

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

(1) The State of Florida, through the Department of Community Affairs, is responsible for the regular administration of the Small Cities CDBG Program under Rule Chapter 9B-43, Florida Administrative Code. This emergency rule is necessary in order to clearly differentiate between the Disaster Recovery Initiative funds and Florida Small Cities CDBG administrative requirements.

(2) The expenditure of these funds in the disaster stricken areas is essential to the health, safety and welfare of the public. This emergency rule enables the Department of Community Affairs to more quickly disburse the funds to affected local governments so that the dire needs of the affected citizens of Florida can be promptly addressed.

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

Promulgation of Rule Chapter 9BER05-2, using emergency rule procedures, is the only available mechanism that adequately provides for the expeditious disbursement and use of the federal funds and addressing the urgent needs of the public.

SUMMARY:

This rule enables the Department of Community Affairs to distribute and administer CDBG disaster recovery funds as expeditiously as possible. All funds must be expended, and activities completed, within four years.

THE PERSON TO BE CONTACTED REGARDING THIS EMERGENCY RULE IS:

Monya Newmyer, Community Program Manager, 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:

9BER05-2 Community Development Block Grant Disaster Recovery Funding.

(1) The primary objective of this emergency rule is to address urgent needs of communities, particularly those persons who are of low and moderate income that suffered damage or loss as a result of the 2004 hurricanes.

(2) Three categories of activities are eligible for funding: Public Assistance/Infrastructure; Economic Development/Business Assistance and Housing. All activities must be eligible under 24 CFR 570, Subpart I, and must meet one of three national objectives: Activities benefiting low and moderate income persons; activities which aid in the prevention or elimination of slums or blight; activities designed to meet community development needs having a particular urgency.

(3) The funds are to be used only to address damage and destruction directly resulting from the hurricanes; to mitigate such future damage; and to alleviate conditions that pose a serious and immediate threat to the health and safety of the citizens of the communities.

(4) The amount of funds awarded to eligible local governments shall be limited to that amount necessary to address the disaster recovery need and is not to exceed the amount allocated by the Department as established in the Action Plan.

(5) All portions of Rule Chapter 9B-43, F.A.C., are abrogated by this emergency rule in order to expedite recovery measures except the following: Rule 9B-43.003, 9B-

43.009 (1), (3), (5), and (6), and 9B-43.014, F.A.C. Procurement of grant application preparation services is subject to 24 C.F.R, Part 85.36 (d) (4) (B).

(6) Administrative costs chargeable to the program shall not exceed fifteen percent (15%) of the total contract amount.

(7) The maximum contract will be for a two-year period from the date of execution of the contract.

(8) Requests for contract amendments to modify the budget, scope of services, or timeframe will be considered on a case-by-case basis by the Department.

(9) Grantees are encouraged to use the funding in a manner that will benefit low and moderate income persons.

(10) Applicants shall demonstrate that no other federal, State, local or private disaster funds are available at this time to address the disaster recovery needs and that the local government is not being reimbursed for the activities by another source (e.g., FEMA). The funds available hereunder shall not be used to supplant any other funding.

(11) The federal regulation, the Action Plan, and any adopted policy statements or procedures are by reference incorporated as a part this rule.

(12) During the administration of the awards made from disaster recovery funding, the Department may prepare Technical Memorandums containing specific instructions or requirements applicable to the Disaster Recovery Initiative funding. These Technical Memorandums shall become official procedures under which disaster recovery subgrant recipients must operate.

(13) Specific Requirements:

(a) Local governments must take the necessary steps to ensure that the public,

particularly eligible individuals, is made aware of the funding and the purposes for which the funding may be used. At a minimum, local governments must provide notice of funding availability through the use of local newspapers and other media.

(b) Local governments will be required to comply with the Environmental Assessment procedures set out in 24 CFR 58 prior to obligating or expending more than \$15,000 in CDBG funding.

(c) Communities conducting projects located within a floodplain and identified by FEMA as nonparticipating, noncompliant communities under the National Flood Insurance Program are not eligible for these funds.

(d) Allocation of funds will be determined by the Department of Community Affairs based upon the priorities set out in the Action Plan and Application.

(e) The eligible counties, and the cities located therein, within the impacted areas will be required to determine the specific uses of these disaster recovery funds within the parameters allowed by this emergency rule, HUD and Title I of the Housing and Community Development Act of 1974, as amended, and the HUD regulations at 24 CFR Part 570, except as they may be waived by HUD and the Florida Department of Community Affairs.

(f) By signing the Application, the local government is certifying that the funds are for a disaster recovery project as described in the federal regulation, Action Plan and Application.

(g) Should the state or a local government determine that a waiver of a federal rule or regulation is necessary in order to complete a disaster recovery project, such waiver will be requested by the Department of Community Affairs.

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

1. Manufactured housing units must be built to HUD post-1994 construction standards.
 2. The units must be new, previously uninstalled manufactured housing units.
 3. Units must bear HUD compliance certification meeting HUD wind resistance construction standards for wind zone 3.
 4. The county shall inspect and approve the installation of all manufactured housing units.
 5. Units must be installed to the manufacturer's installation instructions.
 6. These funds may not be used for furniture or interior design costs, insurance, financing points, or add-on structures.
 7. Replacement units may be placed on leased land or resident-owned land.
 8. Site location must meet minimum safety criteria (e.g., not located in floodplain, not in high velocity wind zone, etc.).
 9. Units must be for owner-occupancy.
 10. The costs 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).
- (14) Additional guidance regarding grant administration, reporting and closeout requirements will be set forth in the contract or other documents as deemed necessary by the Department of Community Affairs.

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. 9BER05-2

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: 4 (Month) (Day) 2005 (Year)

Thaddeus L. Cohen, AIA, Secretary

Number of Pages Certified: 8