



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

**I. TITLE: Eligibility Criteria for Limited Exception for Retroactive Approvals under the Hazard Mitigation Grant Program for Louisiana and Mississippi**

**II. DATE: January 15, 2008**

**III. PURPOSE:**

On October 16 2007, based on unique circumstances in Louisiana and Mississippi after Hurricanes Katrina and Rita, the Executive Office of the President/Office of Management and Budget (OMB) granted a waiver to the Federal Emergency Management Agency (FEMA) from requirements of *OMB Circular A-87 (2 CFR, Part 225), Cost, Principles for States, Local, and Indian Tribal Governments*, pertaining to pre-award costs to allow for approval of costs incurred prior to award of the Hazard Mitigation Grant Program (HMGP) funds. This waiver permits FEMA to establish a limited exception for retroactive approvals under the HMGP of certain mitigation actions in Louisiana and Mississippi following Hurricanes Katrina and Rita. This guidance establishes the parameters to implement the limited exception.

**IV. SCOPE AND AUDIENCE:**

This guidance applies to the HMGP in Louisiana for disasters DR-1603 and DR-1607 and Mississippi for disaster DR-1604. FEMA may consider retroactive approvals for certain mitigation activities for which implementation was initiated after the date of the declaration but prior to March 16, 2008 and that FEMA determines comply with all program requirements, as well as additional requirements identified in this guidance. Mitigation activities not initiated by March 16, 2008 would be subject to normal HMGP procedures, which require HMGP grant award approval before implementation costs may be incurred.

The State of Louisiana has until March 1, 2008 to submit HMGP applications, and the HMGP application submission deadline for the State of Mississippi is March 2, 2008. The purpose of the exception is to allow state and local governments to include in those applications certain eligible mitigation actions initiated prior to March 16, 2008 as well as prospective measures to mitigate at-risk properties. For actions that have not been initiated, State and local governments should include any properties proposed for mitigation in an application for HMGP assistance consistent with normal program procedures. In addition, State and local governments should take steps to ensure that property owners are aware of whether their properties might be included in the HMGP project application or used to meet the non-Federal match requirement. If property owners are to be included in an application, the State and local government should advise property owners that to be considered under the award, they should not start mitigation work until after they are informed that the application in which the property has been included is approved for award by FEMA.



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

#### V. AUTHORITY:

Sections 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Stafford Act), 42 U.S.C.5170c.

44 CFR Part 206-Federal Disaster Assistance for Disasters Declared on or after November 23, 1988.

OMB Waiver of A-87 (2 CFR, Part 225), Appendix B, Item 31 Pre-award costs and related definition at Appendix A, Item B. for Agency approvals.

#### VI. DESCRIPTION:

Hurricanes Katrina and Rita produced severe flooding and wind damage that resulted in catastrophic physical and economic impacts in the States of Louisiana and Mississippi. The President declared major disasters in Louisiana (DR-1603 and DR-1607) and Mississippi (DR-1604). The dynamics and magnitude of the catastrophic events in these States presented immense challenges which do not normally exist following smaller disaster events. These disasters have affected the ability of the States Louisiana and Mississippi to implement delivery of the HMGP assistance within routine timeframes and administrative processes.

In the aftermath of Hurricanes Katrina and Rita, some individual property owners and communities in the impacted areas of Louisiana and Mississippi proactively engaged in hazard mitigation activities in an effort to recover from the damages and mitigate at-risk properties against future damage. Such activities may have been eligible for funding under the HMGP or could have been used to meet the non-Federal cost share requirement of the program had they obtained FEMA approval before the activities started. However, under federal requirements, projects initiated or completed prior to FEMA approval are not eligible for funding.

Under the HMGP, a State with a major disaster declaration identifies and submits hazard mitigation proposals from eligible applicants, typically state and local government entities, to FEMA for approval. FEMA reviews these proposals to determine if they meet the program's eligibility requirements including: conforming to the State Hazard Mitigation Plan and the applicable local mitigation plan, providing a beneficial impact to the disaster area, solving a problem independently or constituting a functional portion of a solution, being cost-effective, being feasible, and meeting the hazard mitigation program objectives. After FEMA determines the project is eligible and awards the grant, the applicant initiates project implementation. HMGP is available to achieve mitigation beyond what would occur without the federal grant. Projects initiated before FEMA approval and grant award are typically ineligible for HMGP funding.



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

Hurricanes Katrina and Rita decimated the capability of local governments in the impacted areas of Louisiana and Mississippi and left communities without resources to assign to the identification, development, and timely application and implementation of hazard mitigation initiatives under the HMGP. Communities in these impacted areas were not in a position to engage in the required HMGP application process until more than two years after the catastrophic hurricanes. These unique circumstances did not occur in any other Gulf Coast States in the aftermath of the hurricanes, and FEMA is not aware of any other situations where virtually all communities affected by a major disaster were impacted to such an extent as to be unable to develop and submit hazard mitigation applications within the established HMGP timeframes.

In light of these unique circumstances, FEMA has requested and received a waiver from the Executive Office of the President/ Office of Management and Budget (OMB) allowing it to develop a framework for implementing a limited exception to federal program requirements. The costs of the mitigation activities described in this guidance may count towards the State's non-federal match requirements or may be reimbursed under the HMGP when all other program and federal requirements are met.

#### **VII. GUIDANCE:**

FEMA will consider retroactive approvals for certain mitigation activities for which implementation was initiated after the date of declaration but prior to March 16, 2008 and that FEMA determines comply with all program requirements, as well as additional requirements identified in this guidance.

This guidance establishes the parameters to implement the limited exception for retroactive approvals under the HMGP for certain eligible mitigation activities implemented in Louisiana and Mississippi for the disasters declared as a result of Hurricanes Katrina and Rita. These parameters are consistent with the legal justification and purpose of the waiver warranting the exception. Not all mitigation activities are eligible under this exception. The guidance defines the parameters and requirements for this exception which include:

- HMGP Requirements;
- Mitigation of property damaged by the events;
- Eligible mitigation activities;
- Work initiated within eligible timeframe;
- Compliance with cost documentation and other allowable cost requirements; and
- Environmental compliance screening.



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

The costs of the mitigation activities described in this guidance may count towards the State's non-Federal match requirement or may be reimbursed under the HMGP when all other program and federal requirements are met.

#### **HMGP Requirements**

To be eligible for retroactive approval the mitigation activities must meet all applicable HMGP and federal requirements. This guidance does not waive any requirements of the HMGP regarding completeness of applications and eligibility criteria (e.g., elevation to the Advisory Base Flood Elevation (ABFE) or preliminary Digital Flood Insurance Rate Maps (pre-DFIRM) base flood elevations if applicable, cost-effectiveness, voluntary participation, and compliance with all applicable Federal, State and local laws, executive orders, regulations and ordinances, including applicable environmental and historic preservation (EHP) compliance requirements). All information typically required in a HMGP project application must still be submitted, and the Grantee is responsible for ensuring all HMGP requirements are met.

FEMA recognizes that HMGP project applications may include some structures that are eligible for consideration under this exception because mitigation activities were initiated or completed prior to project approval. Other structures within the same application must meet all of the normal HMGP requirements prior to award. The structures in the project application that meet the requirements of this exception must be identified. This information must be included with the application when it is submitted for approval.

#### **Properties Affected by the Events**

The types of properties for which this exception is available include residential and commercial structures, and public and eligible private non-profit (PNP) structures and facilities. All mitigation activities must have been undertaken as a direct result of the events and in conjunction with the repair or restoration of a structure or facility damaged during Hurricanes Katrina and Rita. This does not include activities associated with a structure or facility that was not damaged by the event.

The structures that meet the requirements of this waiver must be identified in the project application submitted for approval and include documentation that the structure was damaged by the event.

Verification that the structure or facility was damaged from the event may be documented by items such as:

- Insurance claims;
- Inspection report completed after the event;
- Proof of assistance through FEMA's Individual Assistance or Public Assistance Program;
- Dated photographs; and/or



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

- Flood data verifying inundation.

#### **Mitigation Activities Eligible under this Exception**

Activity types for consideration under this exception are:

- Mitigation of damaged structures implemented by residential property owners or commercial property owners for structural elevation, mitigation reconstruction, retrofitting the structure for hazard protection, and demolition of a damaged residential or commercial structure where prospective open space acquisition or mitigation reconstruction is proposed;
- Mitigation measures to public and eligible private non-profit (PNP) buildings or facilities for structural elevation, mitigation reconstruction, construction of associated safe rooms, retrofitting the damaged building, facility, or infrastructure for hazard protection, demolition or relocation of damaged facility for open space, and minor structure-specific flood protection measures. These activities are eligible under the exception if they were not eligible under the Public Assistance Program (Section 406 mitigation); and
- Activities associated with the extraordinary need following the declared disasters for the implementation and enforcement of building codes.

#### **Ineligible Mitigation Activities under this Exception**

The following are examples of ineligible activities under this exception:

- Retroactive property acquisitions for the purpose of open space;
- New flood protection projects;
- Vegetation management and soil stabilization;
- New stormwater management facilities such as drainage projects and culverts;
- New coastal property protection measures including seawalls, beach nourishment, and revetments; and
- Purchase and/or installation of stand-alone generators.

#### **Work Initiated within Eligible Timeframe**

This exception is available for mitigation activities that were initiated after the date of the declaration but prior to March 16, 2008. The period between the date of this guidance and March 16, 2008 is intended to provide State, local government, and property owners with sufficient notice of the HMGP requirements and to allow for those who at the time of the announcement have taken significant steps toward initiation of physical work on-site, including receipt of permits and execution of contracts, to be considered under this exception. For the purpose of this guidance, initiation of a mitigation activity is defined as actual physical work, such as groundbreaking, demolition, and construction of raised foundation occurring prior to March 16,



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

2008. Mitigation activities that are planned for implementation after March 16, 2008 remain eligible for consideration under the HMGP, but must be submitted for review and approval prior to work being initiated.

Work initiated on HMGP eligible public and PNP facilities that FEMA determines are listed or eligible for listing on the National Register for Historic Places (historic properties) are eligible under this exception to the extent work was done prior to the date of this guidance. Proposed mitigation activities may remain eligible for consideration under the HMGP at all times, including during the 60 day grace period, if submitted for review and approval prior to work being initiated as required under the normal HMGP process.

FEMA, at its discretion, will determine whether documentation submitted is acceptable to verify that mitigation work was initiated between the dates of the events and by March 16, 2008. Documentation may include:

- Invoices showing the actual dates of physical work of the mitigation activities;
- Signed statement from a contractor certifying the date the mitigation activity was initiated on-site;
- Property owner's statement certifying that mitigation activity was performed by self and the date the mitigation activity was initiated. This statement must be accompanied by a copy of the building permit obtained for the activity; and
- Inspection report by the local building official dated no later than March 16, 2008.

Those activities submitted for consideration without the appropriate documentation provided in the application are not eligible under this exception.

#### **Cost Documentation Requirements**

OMB Circular A-87 (2 CFR Part 225) outlines the requirements for documenting eligible costs for reimbursement or meeting the non-Federal match for all HMGP projects including those qualifying for this exception. In-kind services are eligible to be applied to the non-Federal match, but are not eligible for direct reimbursement using Federal disaster funds. The costs and in-kind services must have occurred after the date of the disaster and must be directly related to eligible mitigation activities. All costs and in-kind services must be determined reasonable and necessary to accomplish the mitigation activities. Increased Cost of Compliance funds provided to eligible property owners may be considered as part of the non-Federal match contribution as long as all requirements of the HMGP and this policy are met. All expenditures must be supported by appropriate documentation such as dated receipts, dated invoices marked paid, cancelled checks accompanied by corresponding invoices, and payroll records. It is the Grantee's responsibility to ensure that all costs are appropriately documented.



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

#### **Duplication of Benefits**

HMGP grants may not duplicate benefits received by or available to the Grantee and subgrantee including participating persons or entities, from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Because costs have been incurred prior to award of the grant, for properties qualifying for this exception, duplication of benefits must be addressed in the application. It is the Grantees responsibility to ensure that duplication of benefits has been addressed.

Funds available from other sources for the same activity constitute a duplication of benefits, whether specifically used or not for the activity (e.g. other payments for elevating a house and insurance payment for loss). The eligible project costs will be the amount of eligible costs less the duplication of benefits.

#### **Environmental & Historic Preservation Compliance**

FEMA has prepared a Programmatic Environmental Assessment evaluating the environmental impacts of this limited exception in accordance with the National Environmental Policy Act (NEPA). FEMA has also executed a Programmatic Agreement (PA) to meet its responsibilities under Section 106 of the National Historic Preservation Act (NHPA) for this limited exception. The PA establishes a framework for further Section 106 consultation on a State-specific basis to address the adverse effects of this exception on historic properties. The requirements below are based on the outcomes of these analyses and consultations.

All grant applicants engaging in activities that required EHP permits or other requirements regardless of FEMA funding, will be expected to verify that these permits were obtained and any other requirements fulfilled.

FEMA will conduct an environmental compliance screening of certain types of projects that had the potential to cause substantial adverse impacts to floodplains and biological resources, or may have had disproportionate high and adverse effects to minority and low-income populations. In particular, FEMA will screen the following types of hazard mitigation activities:

- Relocation of public facilities;
- Minor, structure-specific flood control projects, such as floodgates or floodwalls;
- Retrofit of stormwater management facilities;
- Infrastructure protection measures; and
- Construction of associated safe rooms.

No other project types will be screened on a project by project basis for environmental and historic preservation compliance. However, FEMA will not provide assistance to property owners who intentionally adversely affect historic properties during the grace period.



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

During this screening process, FEMA will evaluate whether the above initiated projects had substantial impacts to the human environment that cannot be addressed or were initiated in violation of an applicable Federal or State environmental requirement. Projects with substantial impacts to the human environment that cannot be addressed or that violated Federal or State environmental requirements will be considered ineligible for this limited HMGP exception.

Mitigation projects for historic public and PNP facilities are excluded from eligibility under this exception if work is initiated after the date of this guidance, including those initiated during the grace period.

In order to develop appropriate programmatic treatment measures for adverse effects to historic properties caused by this exception, FEMA will ensure that quantitative information is organized and assembled for projects under this exception to better understand and evaluate the nature and extent of adverse effects on historic properties.

#### **FEMA and State Responsibilities**

The State is the Grantee to which HMGP funds are awarded and has primary responsibility for project management and accountability of funds. The State is responsible for ensuring that subgrantees adhere to all program and administrative requirements, including additional documentation necessary to support this exception for mitigation activities that are initiated by March 16, 2008. The State is required to conduct final site visits to ensure that the mitigation activity has been accomplished according to program requirements and State and local building codes.

FEMA reviews and either approves or denies project applications submitted by the Grantee based on HMGP requirements. FEMA is working to implement streamlined review processes for HMGP applications submitted under these events with specific focus on demonstrating cost effectiveness and ensuring EHP compliance. For those projects submitted for consideration under this exception, FEMA will review the additional documentation required to verify eligibility.

FEMA will also monitor the implementation of this exception to ensure compliance with the requirements outlined in this guidance. This may include conducting site visits and verifying documentation required to be maintained at the Grantee and subgrantee level. The scope of this monitoring will be established based on the type and number of projects the Grantee submits for consideration under this exception.

FEMA is responsible for satisfying Federal EHP compliance requirements, including all applicable laws, implementing regulations and executive orders. As the HMGP Grantee, the State is responsible for:

- Ensuring that applicants and subgrantees are made aware of the EHP requirements.





# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

- Assisting FEMA on the public outreach and education effort to provide information and guidance to property owners who initiate activities during the grace period, which includes preservation-sensitive tools, techniques, and approaches whose adoption would result in the avoidance or minimization of adverse effects on historic properties.
- Cooperating with FEMA in the collection of information to better understand and evaluate the nature and extent of adverse effects on historic properties, so that FEMA can negotiate appropriate programmatic treatment measures to compensate for these adverse effects.
- Assisting FEMA in the environmental compliance screening by making FEMA aware of the projects to which the screening applies and providing adequate information regarding their impacts to floodplains, biological resources, and low-income or minority populations surrounding the project.
- Ensuring that the grantee/subgrantee obtained and complied with all applicable EHP permits. FEMA will accept the Grantee's project certification as proof that it has verified that applicable permits were obtained. (Subject to monitoring as noted above.)

#### **Summary of Application and Documentation Requirements**

In addition to the required documents of a normal HMGP application, other documentation to support HMGP funding under this exception must be included in the application for FEMA to verify eligibility. The application must include identification of the specific properties meeting this exception, documentation that the property or facility was damaged by the event, documentation that work was initiated prior to the deadline for this exception, certification that applicable permits were obtained, and documentation regarding duplication of benefits review. Examples of acceptable documentation for some of these specific requirements are included below.

The following are examples of documentation that the property was affected by the event:

- Insurance claims;
- Inspection report completed after the event;
- Proof of assistance through FEMA's Individual Assistance or Public Assistance Program;
- Dated photographs; and/or
- Flood data verifying inundation.

The following are examples of documentation that work was initiated after the date of declaration but prior to March 16, 2008:

- Invoices showing the actual dates of physical work of the mitigation activities;



# FEMA

## Mitigation

### DISASTER-SPECIFIC GUIDANCE

- Signed statement from a contractor certifying the date the mitigation activity was initiated on-site;
- Property owner's statement certifying that mitigation activity was performed by self, the date the mitigation activity was initiated, and a copy of the building permit obtained for the activity; and/or
- Inspection report by the local building official dated no later than March 16, 2008.

Certification must be provided for each activity to demonstrate that the required environmental or historic preservation permits were obtained at the time it was initiated. This certification must identify specific permits obtained. Examples include:

- Clean Water Act Section 404 permits;
- Rivers and Harbors Act Section 10 permits;
- Storm Water Pollution Prevention Plan;
- Endangered Species Act Section 10 permits;
- Floodplain building or construction permits;
- Coastal Use Permit (Louisiana); and
- Permits from local historic board or commission.

FEMA may request additional documentation to verify eligibility under this exception and to complete the required environmental compliance screening.

#### **Reporting Requirements**

- Grantees are required to submit a quarterly financial and performance status report within 30 days after the end of each calendar quarter.
- Grantees are required to adhere to the audit requirements as outlined in OMB Circular A-133.

#### **VIII. ORIGINATING OFFICE:**

Risk Reduction Division, Grants Implementation Branch and Grants Policy Branch

#### **IX. REVIEW DATE:** One year from the date of publication.

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Mitigation Directorate