



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

**I. TITLE: Hazard Mitigation Funding Under Section 406
(Stafford Act)**

II. DATE: JUL 30 2007

III. PURPOSE:

Provide guidance on the appropriate use of hazard mitigation discretionary funding available under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206. This will ensure national consistency in the use of Section 406 mitigation funds and promote measures that reduce future loss to life and property, protect the federal investment in public infrastructure and ultimately, help build disaster resistant communities.

IV. SCOPE AND AUDIENCE:

This policy applies to all disasters declared after publication of this document. It is intended to guide all personnel responsible for the administration of the FEMA Public Assistance Grant Program.

V. AUTHORITIES AND REFERENCES:

Section 406 (e) of the Stafford Act and Title 44 Code of Federal Regulations (CFR) §206.226.

VI. BACKGROUND:

A. The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides FEMA the authority to fund the restoration of eligible facilities that have sustained damage due to a Presidentially declared disaster. Section 406 of the Stafford Act contains a provision for the consideration of funding additional measures (further described in 44 CFR §206.226) that will enhance a facility's ability to resist similar damage in future events.

1. In providing discretionary authority for the addition of hazard mitigation measures to permanent work restoration, Congress recognized that during the repair of damaged components of facilities there would be a unique opportunity to prevent recurrence of similar damage from future, similar disaster events. Such measures are in addition to any



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

measures undertaken to comply with applicable codes and standards, although such compliance, itself, could be considered a form of mitigation.

2. Section 406 hazard mitigation funding and Section 404 hazard mitigation funding are distinct. Section 406 is applied on the parts of the facility that were actually damaged by the disaster and the mitigation measure provides protection from subsequent events. The mitigation work must be cost effective and be reasonably performed as part of the work or measure which will reduce the potential for damage to a facility from a disaster event. Sometimes, a combination of Section 406 and 404 funding may be appropriate, where Section 406 hazard mitigation funding is used to provide protection to the parts of the facility that were damaged and Section 404 hazard mitigation funding is used to provide protection to the undamaged parts of the facility. In these instances, the application for Section 404 hazard mitigation funding must be submitted in a timely manner, consistent with State and local hazard mitigation plans, and approved by the State Hazard Mitigation Officer.

3. FEMA may provide discretionary hazard mitigation funding under Section 406 of the Stafford Act. FEMA, Grantee and subgrantee's interests in disaster resistance must be balanced with the supplemental nature of disaster assistance and FEMA's obligation for the prudent stewardship of Federal disaster funds.

4. Only FEMA is authorized to interpret and implement the Stafford Act and regulations issued pursuant to the Stafford Act. Accordingly, only FEMA has the authority to determine which hazard mitigation measures it will fund. The Stafford Act and applicable regulations do not authorize State or local building officials or agencies to determine the amount of hazard mitigation funding FEMA will contribute to a project.

VII. POLICY:

A. Section 406 provides discretionary authority to fund mitigation measures in conjunction with the repair of the disaster-damaged facilities. These opportunities usually present themselves during the repair efforts. The mitigation measures must be related to eligible disaster-related damages and must directly reduce the potential of future, similar disaster damages to the eligible facility. This work is performed on the parts of the facility that were actually damaged by the disaster and the mitigation measure provides protection from subsequent events. Exceptions to this provision will be reviewed on a case-by-case basis.

B. Mitigation measures must be determined to be cost-effective. Any one of the following means may be used to determine cost-effectiveness:



FEMA

DISASTER ASSISTANCE POLICY

DAP9526.1

1. Mitigation measures may amount to up to 15% of the total eligible cost of the eligible repair work on a particular project.

2. Certain mitigation measures (see Appendix A) determined cost-effective, as long as the mitigation measure does not exceed 100% of the eligible cost of the eligible repair work on the project.

3. For measures that exceed the above costs, the Grantee or subgrantee must demonstrate through an acceptable benefit/cost analysis methodology that the measure is cost-effective. FEMA's Benefit Cost Analysis (BCA) software provides appropriate benefit/cost analysis methodologies. You can obtain the software from FEMA by contacting the BCA helpline at 1-866-222-3580, e-mail (bchelpline@dhs.gov), or the applicable FEMA Regional Office. Alternative benefit/cost methodologies will only be considered acceptable if the Grantee or subgrantee receives and submits written approval from the FEMA Regional Office and FEMA Headquarters prior to the submission of the mitigation proposal. The benefit/cost analysis will be based on a comparison of the total project cost to the total cost of the following benefits: 1) damage to the facility and its damaged contents, 2) emergency protective measures required as a result of that damage, and 3) temporary facilities required due to the damage.

C. If a facility has Section 406 hazard mitigation funding included in the approved scope of work (SOW) and the subgrantee wishes to restore the facility to its pre-disaster condition and function without the Section 406 hazard mitigation SOW, then the subgrantee must request a change of SOW prior to completion of the project. Section 406 hazard mitigation funds must be de-obligated when the subgrantee does not use the funds as approved in the SOW.

D. Proposed hazard mitigation projects must be approved by FEMA prior to funding. They will be evaluated for cost effectiveness, technical feasibility, and compliance with statutory, regulatory and executive order requirements. In addition, the evaluation must ensure that the mitigation measures do not cause a negative impact to the facility's operation, surrounding areas, or susceptibility to damage from another hazard.

E. The costs of meeting applicable codes/standards in accordance with 44 CFR § 206.226 (d) and minimum National Flood Insurance Program requirements are regulatory requirements that are distinct from hazard mitigation. Funding for these costs is considered separately.



FEMA

DISASTER ASSISTANCE POLICY

F. When the cost of proposed replacement material for a damaged component is more than the original material, the proposed material must be shown to be cost effective.

G. There may be no duplication in hazard mitigation funding between Sections 404 and 406. Therefore, the Grantee and subgrantee must be able to identify specific hazard mitigation work that will be accomplished with funding through Section 406. Section 404 funding may not duplicate that work, although Section 404 may be additive and accomplished on Section 406 facilities. The appropriate split on a project between funds under Sections 404 and 406 is a FEMA decision. Sections 404 and 406 funding cannot be used to meet the non-federal cost share of the other grant.

H. Funds recommended for mitigation measures may be approved for an improved project if the original facility and its function will be restored and the mitigation work is still needed, is technically feasible, and will be performed as part of the overall project. Facilities eligible for replacement under 44 CFR 206.226(f) - *Repair vs. replacement* are not eligible for mitigation measures.

1. If mitigation measures are approved for the repair of a disaster-damaged facility and the subgrantee requests an improved project which will instead involve the replacement of the facility, on the same site or an alternate site, the cost of the mitigation measures is not eligible.

2. The cost of mitigation measures approved under Section 406 for the repair of a facility may not be applied towards an Alternate Project.

I. Early in a disaster the FEMA and State PA Officers, in consultation with the Hazard Mitigation Group Supervisor, should issue a Memorandum of Understanding outlining how 406 mitigation will be addressed for the disaster, including what measures will be emphasized, making linkages to codes and standards and availability and integration of other mitigation programs.



DAP9526.1

FEMA

DISASTER ASSISTANCE POLICY

VIII. RESPONSIBLE OFFICE: Disaster Assistance Directorate (Public Assistance Division).

IX. SUPERSESION: This policy updates and replaces RP9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act), published August 13, 1998.

X. REVIEW DATE: Five years from date of publication.

A handwritten signature in black ink, appearing to read "C. Castillo", written over a horizontal line.

Carlos J. Castillo
Assistant Administrator
Disaster Assistance Directorate