

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Regional Administrators
FEMA Regions I-X
FCOs and TRO Directors

ATTENTION: Mitigation Division Directors
Disaster Assistance Division Directors

FROM: David I. Maurstad
Assistant Administrator
Mitigation Directorate

DATE: 14-NOV-07

SUBJECT: Obligation of Grants to States, Territories and Indian Tribal
Governments with Expired Hazard Mitigation Plans

This memorandum provides direction regarding implementation of FEMA regulatory requirements for states, territories and Indian tribal governments to have FEMA-approved State Mitigation Plans (SMP) in order to receive certain types of assistance. It reviews the implications of not having an approved SMP and explains procedures for FEMA administration of funds in such cases.

Expired SMP and Grant Obligations

FEMA regulations at 44 C.F.R. §201.3(c)(1) and (3) and §201.3(a) and (d) require that State Mitigation Plans (SMPs) be updated and resubmitted to FEMA for approval every three (3) years. Because the first SMPs were approved in 2004, we are now experiencing the first transition between previously approved plans and new, updated plans. Unfortunately, we are finding that a number of SMPs are experiencing before the state receives FEMA approval of an updated plan. During the period between the expiration of an approved SMP and approval of the updated plan, the state no longer has an approved SMP in effect (i.e., their plan has lapsed).

In accordance with FEMA regulations and program guidance, states, the District of Columbia, territories, and Indian tribal governments acting as grantee, must have a FEMA approved SMP in order to apply for and/or receive the following assistance:

- Public Assistance – Categories C-G
- Fire Management Assistance Grants
- Hazard Mitigation Grant Program (HMGP)
- Pre-Disaster Mitigation (PDM)

- Repetitive Flood Claims (RFC)
- Flood Mitigation Assistance (FMA)
- Severe Repetitive Loss (SRL)

The fact that the State had an approved SMP when a declaration occurred, or when a PDM, FMA, SRL or RFC grant application was submitted, is not sufficient to receive funds after the plan has expired. The requirements are that a State must also have an approved SMP at the time it **receives** the grant.

During the period that a SMP is lapsed, FEMA may not obligate grant funds for any of the program grants identified above.

The period the SMP has lapsed is defined as beginning on the first day after the SMP expires and ending on the last date before the updated plan is approved. This is not a permanent stop to obligations and loss of funding, but it is a temporary hold on obligations until the updated SMP is approved.

Because an SMP must be updated and resubmitted to FEMA for review and approval every three years, these procedures will be implemented at any time in the future that a SMP lapses.

Immediate Notification Procedures

To ensure notice of this requirement, Regions are directed to **immediately communicate** this information to all of your states, territories, and Indian tribal governments that have a lapsed SMP, or that have an SMP that will expire within 30 days of the date of this memorandum. Regions are to use the **next 30 days** to continue to provide technical assistance with the goal of being able to approve the revised SMP as soon as possible for currently lapsed Plans, and no later than the date by which current SMPs will expire.

After 30 days from the date of this memorandum, FEMA will not make any obligations of funds for the affected program grants while a SMP is lapsed. Where obligations may have occurred during a plan lapse prior to that date, FEMA will **not recoup** those obligations, so long as an updated SMP is approved before the respective program obligation periods end.

Please ensure that all Regional staff involved in obligating grant funds under the above programs are fully aware of these requirements. Please also include this information in your written correspondence to States, Territories and Indian tribal governments regarding upcoming SMP expiration dates.

Advance Notification to Governors

We fully recognize that you and your staff are in regular contact with your counterparts at State emergency management and other related agencies in your Region, as part of your daily work. However, we believe that the subject of this memorandum is important that it must be communicated to the highest level.

Therefore, effective with the date of this memorandum, Regional Administrators are required to **send a letter immediately for any SMP expiring within the next 6 months, and otherwise six (6) months in advance of each SMP expiration date**, to the appropriate State Governor, Mayor of the District of Columbia or senior executive official of territories and Indian tribal governments with a SMP. Sample language to include in the letter is attached to this memorandum. The letter must provide the following information for the affected state, territory or Indian tribal government:

1. The forthcoming expiration date of the SMP
2. The importance of having an approved updated SMP before the current SMP expires in order to avoid the following consequences of not having an approved SMP with respect to the eligibility for hazard mitigation and certain public assistance grants:
 - a. No grants awards will be made for proposals submitted or already under consideration at the time the SMP is lapsed, and
 - b. Such grant assistance will not be authorized under any new declaration during the time that the SMP is lapsed. [For detailed information regarding new declarations while a SMP is lapsed, regional staff should refer to memoranda dated April 12, 2005 and May 2, 2005 regarding declaration procedures for states without an approved SMP].
3. FEMA can provide technical assistance with the goal of achieving an approved updated SMP by the time the current Plan expires.

If you have any questions regarding this memorandum, please contact us, or have a member of your staff contact the following staff at Headquarters for specific areas of responsibility:

Mitigation Plans: Terry Baker at (202) 646-4648

Mitigation Grants Policy: Jeff Herd at (202) 646-2917

Mitigation Grants Implementation: Tony Hake at (202) 646-3428

Public Assistance and Fire Management Assistance: Chuck Stuart at (202) 646-3691

Attachment: Sample language for letters to governors

Attachment: Sample Language to include in Letter to Governor about Expiring State Plans

(Regions should adapt or customize underlined text as appropriate)

I am writing to inform you of some important information regarding (name of state or other entity)'s Hazard Mitigation Plan that will expire on (date).

FEMA regulations at 44 C.F.R. §201.3(c)(1) and (3) and §201.4(a) and (d) require that State Mitigation Plans (SMPs) be updated and resubmitted to FEMA for approval every three (3) years.

Please be aware that (name of state or other entity) must have an updated, FEMA approved SMP in order to be eligible to apply for and/or receive the following types of FEMA assistance:

- Public Assistance - Categories C-G
- Fire Management Assistance Grants
- Hazard Mitigation Grant Program (HMGP)
- Pre-Disaster Mitigation (PDM)
- Repetitive Flood Claims (RFC)
- Flood Mitigation Assistance (FMA)
- Severe Repetitive Loss (SRL)

To maintain its eligibility for these grants, regulations require that a State [territory] [Indian tribal government acting as grantee] must have an approved SMP at the time it **receives** the grants. Therefore, if your plan lapses, i.e., it expires before you have an updated SMP approved by FEMA, (State) will no longer be eligible for, and FEMA will not award, any of the above grants during the lapse. This is not a permanent stop to and loss of funding, but it is a temporary hold on awards and funding until the updated SMP is approved.

Failing to have an approved updated SMP will affect funds for which you are applying, including proposals under consideration, under any annual FEMA mitigation grant program (except PDM planning grants). It also will affect awards and obligations of categories C-G Public Assistance, HMGP, and FMAG available under declarations that were made before your plan expired. In the event that your State receives a new declaration under the Stafford Act while your SMP is lapsed, these forms of assistance will not be authorized unless and until the (name of state or entity) submits an updated SMP that meets FEMA requirements within thirty (30) days of the disaster declaration, and the State formally adopts and FEMA approves the adopted plan within 45 days of FEMA's notice that the plan meets all requirements short of formal adoption. Individual assistance and categories A-B public assistance are not affected.

This FEMA Regional office will continue to provide all the technical assistance we can to your staff, with the goal of approving your updated SMP as soon as possible (for

currently lapsed Plans) or no later than (date), when your current approved SMP will expire.

Please contact me at (phone number) or have a member of your staff contact (name/title) at (phone number) if we can provide further information.

Sincerely,

Regional Administrator

cc: David I. Maurstad, Assistant Administrator, Mitigation Directorate, FEMA
Carlos Castillo, Assistant Administrator for Disaster Assistance, FEMA