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Title 33 — Navigation and Navigable Waters

Chapter II — Corps of Engineers, Department of the Army, Department of Defense

Part 203 Emergency Employment of Army and Other Resources, Natural Disaster Procedures

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PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

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Subpart A—Introduction

§ 203.11 Purpose.

This part prescribes administrative policies, guidance, and operating procedures for natural disaster preparedness, response, and recovery activities of the United States Army Corps of Engineers.

§ 203.12 Authority.

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n) (69 Stat. 186), commonly and hereinafter referred to as Public Law 84-99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood, or nonstructural alternatives thereto; emergency protection of federally authorized hurricane or shore protection projects which are threatened, when such protection is warranted to protect against imminent and substantial loss to life and property; and repair and restoration of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature. The law includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality, and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. This law authorizes the Secretary of the Army (Secretary) to construct wells and to transport water within areas determined by the Secretary to be drought-distressed. The Secretary of the Army has delegated the authority vested in the Secretary under Public Law 84-99 through the Assistant Secretary of the Army (Civil Works) to the Chief of Engineers, subject to such further direction as the Secretary may provide.

§ 203.13 Available assistance.

Corps assistance provided under authority of Public Law 84-99 is intended to be supplemental to State and local efforts. The principal assistance programs and activities of the Corps are described in this section.

- (a) **Disaster preparedness.** Technical assistance for many types of disasters is available to State and local interests. Primary Corps efforts are focused on technical assistance for, and inspections of, flood control works, and related flood fight preparedness and training activities. Technical assistance for specialized studies, project development, and related activities, and requirements for long term assistance, are normally beyond the scope of disaster preparedness assistance, and are appropriately addressed by other Corps authorities and programs. Subpart B addresses disaster preparedness responsibilities and activities.
- (b) **Emergency operations.** Emergency operations, consisting of Flood Response (flood fight and rescue operations) and Post Flood Response assistance, may be provided to supplement State and local emergency operations efforts. Subpart C of this part addresses emergency operations assistance.
- (c) **Rehabilitation.** The Corps may rehabilitate flood control works damaged or destroyed by floods and coastal storms. The Corps Rehabilitation and Inspection Program (RIP) incorporates both disaster preparedness activities and Rehabilitation Assistance. The RIP consists of a process to inspect flood control works; a status determination, *i.e.*, an inspection-based determination of qualification for future potential Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event. Subpart D addresses Rehabilitation Assistance and the RIP.
- (d) **Emergency water supplies due to contaminated water source.** The Corps may provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality. Subpart E addresses emergency water supply assistance.
- (e) **Drought assistance.** Corps assistance may be provided to drought-distressed areas (as declared by the Secretary of the Army or his delegated nominee) to construct wells and to transport water for human consumption. Subpart E addresses drought assistance.
- (f) **Advance Measures.** Advance Measures assistance may be provided to protect against imminent threats of predicted, but unusual, floods. Advance Measures projects must be justified from an engineering and economic standpoint, and must be capable of completion in a timely manner. Advance Measures assistance may be provided only to protect against loss of life and/or significant damages to improved property due to flooding. Subpart F of this part addresses Advance Measures assistance.

§ 203.14 Responsibilities of non-Federal interests.

Non-Federal interests, which include State, county and local governments; federally recognized Indian Tribes; and Alaska Native Corporations, are required to make full use of their own resources before Federal assistance can be furnished. The National Guard, as part of the State's resources when it is under State control, must be fully utilized as part of the non-Federal response. Non-Federal responsibilities include the following:

- (a) **Disaster preparedness.** Disaster preparedness is a basic tenet of State and local responsibility. Disaster preparedness responsibilities of non-Federal interests include:
 - (1) Operation and maintenance of flood control works;
 - (2) Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations;
 - (3) Training personnel to operate, maintain, and patrol projects during crisis situations, and preparation of plans to address emergency situations;

- (4) Taking those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part; and,
 - (5) Responsible regulation, management, and use of floodplain areas.
- (b) **Emergency operations.** During emergency operations, non-Federal interests must commit available resources, to include work force, supplies, equipment, and funds. Requests for Corps emergency operations assistance will be in writing from the appropriate State, tribal, or local official. For flood fight direct assistance and Post Flood Response assistance, non-Federal interests must furnish formal written assurances of local cooperation by entering into Cooperation Agreements (CA's), as detailed in subpart G of this regulation. (For Corps work authorized under Public Law 84-99, the term "Cooperation Agreement" is used to differentiate this agreement from a Project Cooperation Agreement (PCA) that addresses the original construction of a project.) Following Flood Response or Post Flood Response assistance, it is a non-Federal responsibility to remove expedient flood control structures and similar works installed by the Corps under Public Law 84-99.
- (c) **Rehabilitation of non-Federal flood control projects.** Prior to Corps rehabilitation of non-Federal flood control projects, non-Federal interests must furnish formal written assurances of local cooperation by entering into a CA, as detailed in subpart G of this part. Requirements of local participation include such items as provision of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD's), applicable cost-sharing, and costs attributable to deficient and/or deferred maintenance.
- (d) **Rehabilitation of Federal flood control projects.** Sponsors of Federal flood control projects are usually not required to furnish written assurances of local cooperation, if the PCA for the original construction of the project is sufficient. (NOTE: The PCA may also be referred to as a local cooperation agreement (LCA), cooperation and participation agreement (C&P), or similar terms.) In lieu of a new PCA, the Corps will notify the sponsor of the sponsor's standing requirements, including such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, relocations, and any cost-sharing requirements contained in subpart G of § 203.82. Modifications to the existing Operation and Maintenance Manual may be required based on the Rehabilitation Assistance required.
- (e) **Emergency water supplies due to contaminated water source.** Except for federally recognized Indian Tribes or Alaska Native Corporations, Non-Federal interests must first seek emergency water assistance through the Governor of the affected State. If the State is unable to provide the needed assistance, then the Governor or his or her authorized representative must request Corps assistance in writing. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.
- (f) **Drought assistance.** Except for federally recognized Indian Tribes or Alaska Native Corporations, non-Federal interests must first seek emergency drinking water assistance through the Governor of the affected State. Requests for Corps assistance will be in writing from the Governor or his or her authorized representative. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Assistance can be provided to those drought-distressed areas (as declared by the Secretary of the Army) to construct wells and to transport water for human consumption. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

- (g) **Advance Measures.** Advance Measures assistance should complement the maximum non-Federal capability. Requests for assistance must be made by the Governor of the affected State, except requests for assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. A CA (see subpart G of this part) is required prior to assistance being rendered. Non-Federal participation may include either financial contribution or commitment of non-Federal physical resources, or both.

§ 203.15 Definitions.

The following definitions are applicable throughout this part:

Federal project. A project constructed by the Corps, and subsequently turned over to a local sponsor for operations and maintenance responsibility. This definition also includes any project specifically designated as a Federal project by an Act of Congress.

Flood control project: A project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multipurpose project, only those components that are necessary for the flood control function are considered eligible for Rehabilitation Assistance.

Governor. All references in part 203 to the Governor of a State also refer to: the Governors of United States commonwealths, territories, and possessions; and the Mayor of Washington, D.C.

Hurricane/Shore Protection Project (HSPP). A flood control project designed and constructed to have appreciable and predictable effects in preventing damage to developed areas from the impacts of hurricanes, tsunamis, and coastal storms. These effects are primarily to protect against wave action, storm surge, wind, and the complicating factors of extraordinary high tides. HSPP's include projects known as shore protection projects, shore protection structures, periodic nourishment projects, shore enhancement projects, and similar terms. Components of an HSPP may include both hard (permanent construction) and soft (sacrificial, *i.e.*, sand) features.

Non-Federal project. A project constructed with non-Federal funds, or a project constructed by tribal, State, local, or private interests, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Public Law 84-99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, *et seq.*) (hereinafter referred to as the Stafford Act), is a non-Federal project unless it repairs or replaces an existing Federal project. Works Progress Administration (WPA) projects, and projects funded completely or partially by other (non-Corps) Federal agencies, are considered non-Federal projects for the application of Public Law 84-99 authority.

Non-Federal sponsor. A non-Federal sponsor is a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A non-Federal sponsor may be a State, County, City, Town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and LERRD's necessary for the project.

Repair and rehabilitation. The term "repair and rehabilitation" means the repair or rebuilding of a flood control structure, after the structure has been damaged by a flood, hurricane, or coastal storm, to the level of protection provided by the structure prior to the flood, hurricane, or coastal storm. "Repair and rehabilitation" does not include improvements (betterments) to the structure, nor does "repair and rehabilitation" include any repair or rebuilding of a flood control structure that, in the normal course of usage, has become structurally unsound and is no longer fit to provide the level of protection for which it was designed.

§ 203.16 Federally recognized Indian Tribes and the Alaska Native Corporations.

Requests for Public Law 84-99 assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State.

Subpart B—Disaster Preparedness

§ 203.21 Disaster preparedness responsibilities of non-Federal interests.

Disaster preparedness is a basic tenet of State and local responsibility. Assistance provided under authority of Public Law 84-99 is intended to be supplemental to the maximum efforts of State and local interests. Assistance under Public Law 84-99 will not be provided when non-Federal interests have made insufficient efforts to address the situation for which assistance is requested. Assistance under Public Law 84-99 will not be provided when a request for such assistance is based entirely on a lack of fiscal resources with which to address the situation. Non-Federal interests' responsibilities are addressed in detail as follows:

- (a) *Operation and maintenance of flood control works.* Flood control works must be operated and maintained by non-Federal interests. Maintenance includes both short-term activities (normally done on an annual cycle, or more frequently) such as vegetation control and control of burrowing animals, and longer term activities such as repair or replacement of structural components (e.g., culverts) of the project.
- (b) *Procurement/stockpiling.* Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations is a non-Federal responsibility. The Corps is normally a last resort option for obtaining such materials. Local interests should request such materials from State assets prior to seeking Corps assistance. Local interests are responsible for reimbursing (either in kind or in cash) the Corps for expendable flood fight supplies and materials, and returning items such as pumps. When a flood is of sufficient magnitude to receive a Stafford Act emergency or disaster declaration, then the District Engineer may waive reimbursement of expendable supplies.
- (c) *Training and plans.* Training personnel to operate, maintain, and patrol flood control projects during crisis situations is a non-Federal responsibility. Specific plans should be developed and in place to address known problem areas. For instance, the non-Federal sponsor of a levee reach prone to boils should have personnel specifically trained in flood fighting boils. In addition, contingency plans must be made when needed to address short term situations. For instance, if a culvert through a levee is being replaced, then the contingency plan should address all actions needed should a flood event occur during the construction period when levee integrity is lacking.
- (d) *Corps Rehabilitation and Inspection Program for Flood Control Works.* To be eligible for Rehabilitation Assistance under Public Law 84-99, it is a non-Federal responsibility to take those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part.

Subpart C—Emergency Operations

§ 203.31 Authority.

Emergency operations under Public Law 84-99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane/shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

- (a) **Flood Response.** Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, State, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures (except technical assistance) are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or State and local interests, may include the following: technical advice and assistance; lending of flood fight supplies, e.g., sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.
- (b) **Post Flood Response.** The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days (the statutory limitation) from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for Post Flood Response assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include the following: provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy.

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement State and local activities. Corps assistance is limited to the preservation of life and property, *i.e.*, residential/commercial/industrial developments, and public facilities/services. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of State or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84-99, and will not prevent State or local governments from receiving other Federal assistance for which they are eligible.

- (a) **Flood Response.** Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, State, or local official will be accepted, followed by a written confirmation.
 - (1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, State, or local official. However, legal responsibility always remains with the tribal, State, and local officials.
 - (2) Corps assistance will be terminated when the flood waters recede below bankfull, absent a short term threat (e.g., a significant storm front expected to arrive within a day or two) likely to cause additional flooding.
 - (3) Removal of ice jams is a local responsibility. Corps technical advice and assistance, as well as assistance with flood fight operations, can be provided to supplement State and local efforts. The Corps will not perform ice jam blasting operations for local interests.
- (b) **Post Flood Response.** A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement State and local efforts. Corps assistance is limited to 10 days following receipt of the Governor's written request, or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period, or trigger a new 10-day period. The Corps will deny any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.
- (c) **Loan or issue of supplies and equipment.**
 - (1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.
 - (2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Stafford Act Presidential emergency or disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.
 - (3) Expendable supplies that are lent, such as sandbags, will be replaced in kind, or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

§ 203.41 General.

- (a) **Authority.** Public Law 84-99 authorizes repair and restoration of the following types of projects to ensure their continued function:
 - (1) Flood control projects.
 - (2) Federally authorized and constructed hurricane/shore protection projects.
- (b) **Implementation of authority.** The Rehabilitation and Inspection Program (RIP) implements Public Law 84-99 authority to repair and rehabilitate flood control projects damaged by floods and coastal storm events. The RIP consists of a process to inspect flood control work; a status determination, *i.e.*, an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event.
- (c) **Active status.** In order for a flood control work to be eligible for Rehabilitation Assistance, it must be in an Active status at the time of damage from a flood or coastal storm event. To gain an Active status, a non-Federal flood control work must meet certain engineering, maintenance, and qualification criteria, as determined by the Corps during an Initial Eligibility Inspection (IEI). To retain an Active status, Federal and non-Federal flood control works must continue to meet inspection criteria set by the Corps, as determined by the Corps during a Continuing Eligibility Inspection (CEI). All flood control works not in an Active status are considered to be Inactive, regardless of whether or not they have previously received a Corps inspection, or Corps assistance.
- (d) **Modification of flood control projects.** Modification of a flood control project to increase the level of protection, or to provide protection to a larger area, is beyond the scope of Public Law 84-99 assistance. Such modifications to Federal projects are normally accomplished under congressional authorization and appropriation, or under Continuing Authorities Programs of the Corps. Such modifications to non-Federal projects are normally accomplished by the non-Federal sponsor and local interests. Modifications necessary to preserve the structural integrity of an existing non-Federal flood control project may be funded by the RIP, but such work must meet the criteria established in § 203.47 to be eligible for funding under Public Law 84-99.

§ 203.42 Inspection of non-Federal flood control works.

- (a) **Required inspections.** The Corps will conduct inspections of non-Federal flood control works. These inspections are IEI's and CEI's. Conduct of IEI's and CEI's will be as provided for in § 203.48.
 - (1) Corps involvement with any non-Federal flood control work normally begins when the sponsor requests an IEI. The Corps will conduct an IEI to determine if the flood control work meets minimum engineering and maintenance standards and is capable of providing the intended degree of flood protection. An Acceptable or Minimally Acceptable rating (see § 203.48) on the IEI is required to allow the project to gain an Active status in the RIP.
 - (2) CEI's are conducted periodically to ensure that projects Active in the RIP continue to meet Corps standards, and to determine if the sponsor's maintenance program is adequate. A rating of Acceptable or Minimally Acceptable (see § 203.48) on a CEI is required in order to retain an Active status in the RIP.
- (b) **Advice and reporting.** Information on the results of IEI and CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices.

- (1) Non-Federal sponsors will be informed that an IEI rating of Unacceptable will cause the flood control work to remain in an Inactive status, and ineligible for Rehabilitation Assistance.
- (2) Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and ineligible for Rehabilitation Assistance.
- (3) Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.43 Inspection of Federal flood control works.

- (a) **Required inspections.** A completed Federal flood control project, or completed functional portions thereof, is granted Active status in the RIP upon transfer of the operation and maintenance of the project (or functional portion thereof) to the non-Federal sponsor. Federal flood control works will be periodically inspected in accordance with 33 CFR 208.10 and Engineer Regulation (ER) 1130-2-530, Flood Control Operations and Maintenance Policies. These periodic inspections of Federal flood control works are also, for simplicity, known as CEI's. If a Federal project is found to be inadequately maintained on a CEI, then it will be placed in an Inactive status in the RIP. [NOTE: This is a separate and distinct action from project deauthorization, which is not within the scope of PL 84-99 activities.] A Federal project will remain in an Inactive status until such time as an adequate maintenance program is restored, and the project is determined by the Corps to be adequately maintained.
- (b) **Advice and reporting.** Information on the results of CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices. Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and not eligible for Rehabilitation Assistance. Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Rehabilitation of non-Federal flood control works.

- (a) **Scope of work.** The Corps will provide assistance in the rehabilitation of non-Federal projects only when repairs are clearly beyond the normal physical and financial capabilities of the project sponsor. The urgency of the work required will be considered in determining the sponsor's capability.
- (b) **Eligibility for Rehabilitation Assistance.** A flood control project is eligible for Rehabilitation Assistance provided that the project is in an Active status at the time of the flood event, the damage was caused by the flood event, the work can be economically justified, and the work is not otherwise prohibited by this subpart D.
- (c) **Work at non-Federal expense.** At the earliest opportunity prior to commencement of or during authorized rehabilitation work, the Corps will inform the project sponsor of any work that must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies, and any modifications that are necessary to preserve the integrity of the project.
- (d) **Nonconforming works.** Any non-Federal project constructed or modified without the appropriate local, State, tribal, and/or Federal permits, or waivers thereof, will not be rehabilitated under Public Law 84-99.
- (e) **Cooperation Agreements.** A Cooperation Agreement is required in accordance with subpart G of this part.

§ 203.45 Rehabilitation of Federal flood control works.

Rehabilitation of Federal flood control projects will be identical to rehabilitation of non-Federal projects (§ 203.44), except for those conditions contained in subpart G of this part concerning cooperation agreements, when the original PCA for the Federal project is sufficient. Additional requirements for Hurricane/Shore Protection Projects are covered in § 203.49.

§ 203.46 Restrictions.

- (a) **Restrictions to flood control works.** Flood control works are designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels. Structures built primarily for the purposes of channel alignment, navigation, recreation, fish and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection are generally ineligible for Public Law 84-99 Rehabilitation Assistance.
- (b) **Non-flood related rehabilitation.** Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms will generally not be provided under Public Law 84-99.
- (c) **Maintenance and deterioration deficiencies.** Rehabilitation under Public Law 84-99 will not be provided for either Federal or non-Federal flood control projects that, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by, or at the expense of, the non-Federal sponsor, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred or deficient maintenance, the estimated deferred or deficient maintenance cost will not be included as contributed non-Federal funds, and will be in addition to cost-sharing requirements addressed in § 203.82. Failure of project sponsors to correct deficiencies noted during Continuing Eligibility Inspections may result in ineligibility to receive Rehabilitation Assistance under Public Law 84-99.
- (d) **Economic justification.** No flood control work will be rehabilitated unless the work required satisfies Corps criteria for a favorable benefit-to-cost ratio, and the construction cost of the work required exceeds \$15,000. Construction costs greater than \$15,000 do not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for Corps Rehabilitation Assistance.

§ 203.47 Modifications to non-Federal flood control works.

Modifications necessary to preserve the structural integrity of existing non-Federal projects may be constructed at additional Federal and non-Federal expense in conjunction with approved rehabilitation work. The additional Federal cost will be limited to not more than one-third of the estimated Federal construction cost of rehabilitation to pre-flood level of protection, or \$100,000, whichever is less. The modification work must be economically justified. Non-Federal interests are required to contribute a minimum of 25% of the total construction costs of the modification, LERRD's, and any additional funds necessary to support the remaining cost of the modification beyond what the Corps can provide. Engineering and design costs will be at Corps cost.

- (a) **Cash contributions.** Non-Federal contributions will be only in cash. In-kind services are not permitted for modification work.
- (b) **Protection of additional areas.** Modifications designed to provide protection to additional area are not authorized.

§ 203.48 Inspection guidelines for non-Federal flood control works.

- (a) **Intent.** The intent of these guidelines is to facilitate inspections of the design, construction, and maintenance of non-Federal flood control works. The guidelines are not intended to establish design standards for non-Federal flood control works, but to provide uniform procedures within the Corps for conducting required inspections. The results of these inspections determine Active status in the RIP, and thus determine eligibility for Rehabilitation Assistance. The contents of this section are applicable to both IEI's and CEI's.
- (b) **Level of detail.** Evaluations of non-Federal flood control works will be made through on site inspections and technical analyses by Corps technical personnel. The level of detail required in an inspection will be commensurate with the complexity of the inspected project, the potential for catastrophic failure to cause significant loss of life, the economic benefits of the area protected, and other special circumstances that may occur. Technical evaluation procedures are intended to establish the general capability of a non-Federal flood control work to provide reliable flood protection.
- (c) **Purposes.** The IEI assesses the integrity and reliability of the flood control work. In addition, other essential information required to help determine the Federal interest in future repairs/rehabilitation to the flood control work will be obtained. The IEI will establish the estimated level of protection and structural reliability of the existing flood control work. Subsequent CEI's will seek to detect changed project conditions that may have an impact on the reliability of the flood protection provided by the flood control work, to include the level of maintenance being performed on the flood control work.
- (d) **Inspection components –**
 - (1) **Hydrologic/hydraulic analyses.** The level of protection provided by a non-Federal flood control work will be evaluated and expressed in terms of exceedence frequency (e.g., a 20% chance of a levee being overtopped in any given year). These analyses also include an evaluation of existing or needed erosion control features for portions of a project that may be threatened by stream flows, overland flows, or wind generated waves.
 - (2) **Geotechnical analyses.** The Geotechnical evaluation will be based primarily on a detailed visual inspection. As a minimum, for levees, the IEI will identify critical sections where levee stability appears weakest and will document the location, reach, and cross-section at these points.
 - (3) **Maintenance.** Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.
 - (4) **Other structural features.** Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

- (e) **Ratings.** Inspected flood control works will receive a rating in accordance with the table below. The table below provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.
M—Minimally Acceptable	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

- (f) **Sponsor reclama.** If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, preferably certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane and Shore Protection Projects.

- (a) **Authority.** The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engineers, such rehabilitation is warranted for the adequate functioning of the project.
- (b) **Policies.**
- (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.
 - (2) To be eligible for Rehabilitation Assistance, HSPP's must be:
 - (i) A completed element of a Federally authorized project; or,
 - (ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, Headquarters, U.S. Army Corps of Engineers (HQUSACE), or his designated representative; or,
 - (iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and
 - (3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.
 - (4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Director of Civil Works, and may be delegated to the Chief, Operations Division, Directorate of Civil Works.

- (5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.
- (6) **Definition of extraordinary storm.** An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. "Prolongation or severity" means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. "Significant amounts of damage" have occurred when:
 - (i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds \$1 million and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,
 - (ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds \$6 million; or,
 - (iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.
- (c) **Procedural requirements.** Rehabilitation of HSPP'S will be done in accordance with § 203.45, except as modified by this section.
- (d) **Combined rehabilitation and periodic nourishment.** In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Director of Civil Works.

§ 203.50 Nonstructural alternatives to rehabilitation of flood control works.

- (a) **Authority.** Under Public Law 84-99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.
- (b) **Policy.**
 - (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of such non-Federal sponsors.
 - (2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in § 203.15, or another Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.
 - (3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.
 - (4) The Corps may, in its sole discretion, reject any request for an NSA that would:
 - (i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

- (ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,
 - (iii) Lead to increased risk of loss of life or property during flood events.
- (5) The principal purposes of an NSAP are for:
- (i) Floodplain restoration;
 - (ii) Provision or restoration of floodways; and,

Note to paragraphs (b)(5)(i) and (ii): Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under PL 84-99 authority.

- (iii) Reduction of future flood damages and associated flood control works repair costs.
- (c) **Limitation on Corps expenditures.** Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Director of Civil Works or the Chief, Operations Division, Directorate of Civil Works when compelling reasons exist.
- (d) **Responsibilities of the NSAP non-Federal sponsor.**
- (1) Operate and maintain the NSAP;
 - (2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.
 - (3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.
- (e) **Responsibilities of other Federal agencies acting as NSAP sponsor.** The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (See paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (1) of this section.
- (f) **Responsibilities of the requesting flood control work project sponsor.**
- (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.
 - (2) If not also the NSAP sponsor, the flood control work project sponsor must:

- (i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and
- (ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) **Allowable Public Law 84-99 expenses for NSAP's.**

- (1) Acquisition of land or interests in land.
- (2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.
- (3) Demolition and removal of structures, including utility connections and related items.
- (4) Debris removal and debris reduction.
- (5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.
- (6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.
- (7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.
- (8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection features and/or riprap.
- (9) Protection/floodproofing of essential structures and facilities.
- (10) Supervision, administrative, and contract administration costs of other expenses allowed in this subparagraph.

(h) **Time limitation.** Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) **Participation and involvement of other Federal, State, tribal, local, and private agencies.** Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency's authorities and regulations.

(j) **Future assistance.** After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84-99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) **Environmental considerations.** NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) **Requirements for Cooperation Agreement (CA)/Items of Local Cooperation –**

- (1) **Requirement for Local Cooperation.** In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraphs (l)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraphs (l)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.
 - (2) The CA requirements of subpart G of this part are not applicable to NSAP's.
 - (3) **Items of Local Cooperation.** For NSAP's, non-Federal interests shall:
 - (i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;
 - (ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and
 - (iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.
 - (4) **Cost sharing.** The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.
 - (5) **Eligibility under other Federal programs.** NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.
 - (6) **Contributed funds.** Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.
 - (7) **Obligation of contributed funds.** In accordance with OMB Circular A-34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds.
 - (8) **Prohibition of future assistance.** The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.
 - (9) **Assurance of compliance with Executive Order 11988.** NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.
 - (10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.
- (m) **Acquisition of LERRD's.**
- (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in (c) of this section, and availability of appropriations.

- (2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

§ 203.51 Levee owner's manual.

- (a) **Authority.** In accordance with section 202(f) of Public Law 104-303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.
- (b) **Policies —**
 - (1) **Active non-Federal projects.** A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.
 - (2) **Federal projects.** The Operation and Maintenance Manual specified by 33 CFR 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.
- (c) **Procedural requirements.** Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

§ 203.52 [Reserved]

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

§ 203.61 Emergency water supplies due to contaminated water source.

- (a) **Authority.** The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.
- (b) **Policies.**
 - (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.
 - (2) Eligibility for assistance will be based on one or more of the following factors:
 - (i) The maximum contaminant level or treatment technique for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (see 40 CFR 141), is exceeded.
 - (ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.
 - (iii) An emergency (e.g., a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.
 - (iv) The presence of a contaminant is indicated on the basis of other information available.

- (3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.
 - (4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.
 - (5) Loss of water supply is not a basis for assistance under this authority.
 - (6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.
 - (7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.
 - (8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (See subpart G of this part.) Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the State and the Corps. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.
 - (9) State, tribal, and local governments must make full use of their own resources, including National Guard capabilities.
- (c) **Governor's request.** A letter signed by the Governor, or his or her authorized representative, requesting Corps assistance and addressing the State's commitments and capabilities in response to the emergency situation, is required. All requests should identify the following information:
- (1) Describe the local and State efforts undertaken. Verify that all reasonably available resources have been committed.
 - (2) Identify the specific needs of the State, and the required Corps assistance.
 - (3) Identify additional commitments to be accomplished by the State.
 - (4) Identify the project sponsor(s).
- (d) **Non-Federal responsibilities.** Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination. If assistance is furnished by the Corps, local interests must furnish the basic requirements of local cooperation as detailed in the Cooperation Agreement. In all cases, reasonable water conservation measures must be implemented. Local interests will be required to operate and maintain any loaned equipment, and to remove and return such equipment to Federal interests, in a fully maintained condition, after the situation is resolved.

§ 203.62 Drought assistance.

- (a) **Authority.** The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells for farmers, ranchers, political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) **General policy.**

- (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.
- (2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) **Governor's request.** A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

- (1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.
- (2) Identification of the specific needs of the State, and the required Corps assistance.
- (3) Identification of the additional commitments to be accomplished by the State.
- (4) Identification of the project sponsor(s).

(d) **Definitions applicable to this section –**

- (1) **Construction.** This term includes initial construction, reconstruction, or repair.
- (2) **Drought-distressed area.** An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.
- (3) **Eligible applicant.** Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.
- (4) **Farmer or rancher.** An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.
- (5) **Political subdivision.** A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.
- (6) **Reasonable cost.** In connection with the Corps construction of a well, means the lesser of:
 - (i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:
 - (A) The cost of transporting equipment used in the construction of wells, and
 - (B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) **State.** Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(e) **Guidance—construction of wells.**

(1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84-99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(f) **Guidance—transport of water.**

(1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

- (2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.
- (3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.
- (4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.
- (5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.
- (g) **Request for assistance.** A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

[68 FR 36468, June 18, 2003]

Subpart F—Advance Measures

§ 203.71 Policy.

Advance Measures consists of those activities performed prior to a flood event, or potential flood event, to protect against loss of life and/or significant damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an imminent threat of unusual flooding. Corps assistance will be to complement the maximum efforts of tribal, State, and local authorities. Projects will be designed for the specific threat, normally of expedient-type construction, and typically temporary in nature.

§ 203.72 Eligibility criteria and procedures.

- (a) **Threat of flooding.** An *imminent* threat of *unusual* flooding must exist before Advance Measures projects can be approved. The threat may be established by National Weather Service predictions, or by Corps of Engineers determinations of unusual flooding from adverse or unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.
- (b) **Governor's request.** A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:
 - (1) Describe the non-Federal efforts undertaken. Verify that all available resources have been committed.
 - (2) Identify the specific needs, and the required Corps assistance.
 - (3) Identify additional commitments to be accomplished by the non-Federal interests.
 - (4) Identify the non-Federal sponsor(s).

- (c) **Feasibility.** The proposed work should be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages.
- (d) **Economic justification.** All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.
- (e) **Local cooperation/responsibilities.** Subpart G of this part provides requirements for a Cooperation Agreement needed to provide local assurances. The project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.
- (f) **Contingency planning efforts for potential Advance Measures activities.** Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to tribal, State, and local agencies, commensurate with the predicted weather phenomenon, based on requests for assistance from such tribal, State, and local agencies. Specific Advance Measures projects must be addressed as specified in paragraph (b) of this section.
- (g) **Definitions —**
 - (1) **Imminent threat.** A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in a given geographical location. Implicit in the timing aspect can be considerations of available time (when the next flood or storm event is likely to occur), season (e.g., a snowpack that will melt in the coming spring runoff), or of known cyclical activities.
 - (2) **Unusual flooding.** A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/Cooperation Agreements

§ 203.81 General.

- (a) **Requirements for Cooperation Agreements.** In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.
- (b) **Request for assistance.**
 - (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

- (2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of local cooperation.

It is Corps policy that provision of assistance under Public Law 84-99 will, insofar as feasible, require local interests to: provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84-99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

- (a) **Furnishing of LERRD's.** This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.
- (b) **Hold and save clause.** This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.
- (c) **Maintain and operate clause.** This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: "It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of (insert name of sponsor, and owner if appropriate)."
- (d) **Removal of temporary works.** Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.
- (e) **Request for retention of temporary flood control works.** Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84-99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects

which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84-99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) **Cost sharing.**

- (1) The Federal Government may assume up to 80 percent of the eligible construction costs for rehabilitation of non-Federal flood control projects, and up to 100 percent of the eligible construction costs for rehabilitation of Federal flood control projects. The Federal Government may assume up to 100 percent of the eligible construction costs for rehabilitation of HSPP's. Sponsors will provide their share of costs as provided for in § 203.84. The sponsor's share is in addition to providing costs for LERRD's, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.
- (2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD's.

§ 203.83 Additional requirements.

- (a) **Maintenance deficiencies.** Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.
- (b) **Areas of minor damage, flood control works.** Separable areas with minor damage will be included in the maintenance program of local interests.
- (c) **Minor completion items.** Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.
- (d) **Adequacy of requirements of local cooperation.** In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a "Contingency Fund" to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a "Capital Improvement Fund" to meet future costs of capital improvement projects such as replacement of culverts in levees, pump station equipment, etc.
- (e) **Eligibility under other Federal programs.** The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84-99 assistance, but will not be "at no cost to the United States." Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of local participation—cost sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

- (a) **Contributed funds.** Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.
- (b) **Obligation of contributed funds.** Per OMB Circular A-34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84-99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance (see subpart G of this part) must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant. Public Law 84-99 limits the term to a maximum of 30 years.
- (c) **Provision of work or services in kind.** To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal flood control projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in § 203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84-99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the "Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR 208)" or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal sponsor will vary according to organization and other circumstances.