



FEMA

RECOVERY POLICY

SEP 23 2011

RP9524.3

I. TITLE: Rehabilitation Assistance for Levees and other Flood Control Works

II. DATE:

III. PURPOSE:

This policy delineates FEMA's authority to fund emergency protective measures and repairs on levees and other flood control works.

IV. SCOPE AND AUDIENCE:

The policy is applicable to all major disasters and emergencies declared on or after the date of publication of this policy. It is intended for personnel involved in the administration of the Public Assistance Program.

V. AUTHORITY:

Sections 403 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170b and 5172, and 44 CFR §206.226(a).

VI. BACKGROUND:

The United States Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) have primary authority for the repair of flood control works. USACE's authority is contained in the Flood Control and Coastal Emergency Act, Public Law (PL) 84-99 (33 U.S.C. 701n) and Title 33: Navigation and Navigable Waters, and NRCS' authority is contained in Section 216 of the Flood Control Act of 1950, PL 81-516, and Sections 403-405 of the Agriculture Credit Act of 1978, PL 95-334, as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996, PL 104-127.

In 1986, USACE and NRCS signed a Memorandum of Agreement to provide general policy guidance and coordination between the two agencies for the repair of levees and other flood control works. The agencies agreed that, depending on program eligibility, NRCS would generally be responsible for repairing flood control works in watersheds with contributing drainage areas less than 400 square miles and USACE would be responsible for repairs to eligible non-federal flood control works in urban areas regardless of watershed size. The agreement remains in effect.



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The USACE Rehabilitation and Inspection Program (RIP) provides for the inspection and rehabilitation of Federal and non-Federal flood control projects. To be eligible for rehabilitation assistance following a disaster, a flood control work must have a public sponsor, be regularly maintained, and have an Active RIP status prior to the event. USACE can provide flood fighting assistance to applicants during a flood event. However, USACE cannot reimburse applicants for their own flood fighting efforts or for the removal of debris from flood control works. Additional RIP criteria are available in the USACE manual entitled "*Emergency Employment of Army and Other Resources - Civil Emergency Management Program*," ER 500-1-1.

The NRCS Emergency Watershed Protection (EWP) program assists with the implementation of emergency measures for repair and restoration of EWP-eligible facilities where a sudden impairment of a watershed threatens life or property as determined by the NRCS State Conservationist, the benefits associated with repairing the flood control work exceed the cost of repair, and the public sponsor agrees to meet NRCS EWP eligibility requirements. EWP assistance includes: removal of debris deposited by a natural disaster that creates a watershed impairment affecting runoff or erosion; the repair of levees (less than 400 square miles); and other practices associated with restoring the natural environment to the greatest extent practical after a natural disaster. Additional EWP criteria are available in Final Rule, 7 CFR Part 624, as well as in Part 501 of the EWP Program Manual.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act. (See 42 U.S.C. 5122.) FEMA provides assistance for emergency protective measures to eliminate immediate threats to life, public health and safety, or improved property. (See 42 U.S.C. 5170b and 5173). Although such measures may include flood fighting, debris removal, and emergency repairs, the NRCS has specific authority to provide assistance to protect life and property in watersheds from erosion and flooding, and USACE has specific authority to provide assistance for flood fighting activities during flooding.

FEMA will not provide assistance for emergency protective measures under the Stafford Act where NRCS or USACE authority is applicable, as these authorities are more specific than FEMA's. When other Federal agencies have the specific authority to repair facilities that are also eligible under the Stafford Act, FEMA defers to the other Federal agencies. This is codified in 44 CFR §206.226(a), *Assistance under other Federal agency (OFA) programs*.

This policy delineates FEMA's authorities on levees and other flood control works. The policy was coordinated with USACE and NRCS.



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VII. POLICY:

A. Definitions:

1. Active Status: Flood control works that USACE has determined have met initial PL 84-99 rehabilitation assistance eligibility criteria and have been rated "Acceptable" or "Minimally Acceptable," following an inspection, are assigned an Active Status in the USACE RIP.
2. Flood Control Works: Structures such as levees, floodwalls, flood control channels, and water control structures that were designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level.
3. Flood Fighting: Activities or measures (e.g., sandbagging, buttressing) that are intended to prevent or stop flooding, at levels above flood stage, or to prevent structural failure.
4. Inactive Status: Flood control works that USACE has determined have met initial eligibility criteria for PL 84-99 rehabilitation assistance, but have subsequently been rated "Unacceptable" by USACE following an inspection, are assigned an Inactive Status in the USACE RIP.
5. Other Water Control Structures: Structures built for channel alignment, navigation, recreation, fish and wildlife, interior drainage, or to protect against land erosion or saltwater intrusion. These structures are not flood control works.

B. Eligible:

1. FEMA may provide assistance for emergency repairs and permanent repairs to flood control works and other water control structures, if the structures are not eligible for repair assistance from USACE or NRCS.
2. FEMA may provide assistance to remove debris from flood control works that are eligible for USACE's RIP program, if the debris is the direct result of the disaster and presents an immediate threat to life, public health and safety, or improved property.
3. FEMA may provide assistance to remove debris from flood control works and other



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water control structures that are **NOT** eligible for NRCS' EWP program, if the debris is the direct result of the disaster and presents an immediate threat to life, public health and safety, or improved property.

4. FEMA may provide assistance for the placement and removal of flood fighting measures (e.g., sandbags, buttresses) on flood control works that are eligible for USACE's RIP program, if such activity is necessary to eliminate an immediate threat to life, public health and safety, or improved property.

5. FEMA may provide assistance for the placement and removal of flood fighting measures (e.g., sandbags, buttresses) on flood control works and other water control structures that are **NOT** eligible for NRCS' EWP program, if such activity is necessary to eliminate an immediate threat to life, public health and safety, or improved property.

6. FEMA may fund the dewatering of areas behind levees and other water control structures by breaching or pumping if there is an immediate threat to public health and safety, or improved property; or, if required to facilitate the initiation of an eligible FEMA repair project. Deliberate breaches made by an applicant to accomplish such dewatering are eligible for repair assistance.

C. Ineligible:

1. Flood control works that are eligible for USACE's RIP program, either Active or Inactive, are ineligible for assistance from FEMA for emergency repairs and permanent repairs.

2. Flood control works that were pending an Initial Eligibility Inspection by USACE at the time of a disaster are ineligible for assistance for emergency repairs and permanent repairs if USACE determines that the structure is eligible to participate in the RIP.

3. Flood control works and other water control structures that are eligible for assistance from NRCS' EWP program are ineligible for debris removal assistance from FEMA.

4. Flood fighting activities performed after water levels recede below flood stage are ineligible for assistance because an immediate threat to life, public health and safety, or improved property is no longer present.

5. Dewatering areas behind levees and other water control structures for the primary purpose of drying land is ineligible.



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6. Secondary levees riverward of a primary levee are ineligible for emergency repairs and permanent repairs unless the secondary levee protects human life.

7. Generally, increasing the height of a flood control work is ineligible.

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

IX. SUPERSESSION: This policy supersedes Disaster Assistance Policy 9524.3, dated February 25, 2009.

X. REVIEW DATE: This policy does not automatically expire, but will be reviewed 3 years from the date of publication.



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