



# FEMA

## DISASTER ASSISTANCE POLICY

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

### II. DATE:

### III. PURPOSE:

This policy delineates FEMA's authority to fund repairs to certain 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, including applicants.

### V. AUTHORITY:

Sections 403 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206, and 44 CFR §206.226(a).

### VI. BACKGROUND:

The United States Army Corps of Engineers (USACE) and the National Resources Conservation Service (NRCS) have primary responsibility for the repair of flood control works. USACE's authority is contained in the Flood Control and Coastal Emergency Act, PL 84-99, and NRCS's authority is contained in Section 216 of the Flood Control Act of 1950, PL 81-516, and Section 403 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 delineate areas of responsibilities for the repair of flood control works between the two agencies. The agencies agreed that NRCS would be responsible for repairing flood control works with contributing drainage areas less than 400 square miles and USACE would be responsible for repairing flood control works with drainage areas greater than 400 square miles. The agreement remains in effect.

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 RIP



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assistance following a disaster, a flood control work must have a public sponsor, be regularly maintained, and have an Active RIP status. Additional RIP criteria is available in the USACE manual entitled "*Emergency Employment of Army and Other Resources - Civil Emergency Management Program*," ER 500-1-1.

The objective of the NRCS Emergency Watershed Protection (EWP) program is to provide emergency measures for run-off retardation and erosion control to areas where a sudden impairment of a watershed threatens life and property. Levees and other flood control works are eligible for repair under the EWP program when there is a potential for loss of life or property without the repairs, the benefits associated with repairing the flood control work exceed the cost of repair and other flood control work-dependent costs, and the owners agree to meet NRCS eligibility requirements for engineering and maintenance.

The Stafford Act includes flood control facilities (including levees) as public facilities that are eligible for assistance under the Act. When other Federal agencies have the specific authority to repair facilities that are also eligible under the Stafford Act, FEMA generally defers to the other Federal agencies unless there is an immediate threat to life and property. This is codified in 44 CFR 206.226(a).

The following states FEMA policy on levees and other flood control works. The policy was coordinated with USACE and NRCS.

### VII. POLICY:

#### A. Definitions:

1. Active Status: Flood control works designated "Acceptable" or "Minimally Acceptable" by the USACE, following inspection, are assigned an Active Status in the USACE Rehabilitation and Inspection (RIP) program.
2. Emergency Work: Work performed to eliminate an immediate threat to life, public health and safety, or improved property.
3. Flood Control Works: Structures such as levees, floodwalls, flood control channels, and water control structures that the USACE determines were designed and constructed to have appreciable effects in preventing damage by irregular and unusual rises in water level. The NRCS generally follows this definition.



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4. **Flood Fighting:** Activities, such as sand-bagging, buttressing, adding freeboard, intended to prevent or stop flooding.
5. **Inactive Status:** Flood control works that the USACE designates as "Unacceptable" due to lack of maintenance are assigned an Inactive status in the USACE RIP program.
6. **Other Water Control Structures:** Structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, interior drainage, or to protect against land erosion or saltwater intrusion are not flood control works.

### B. Eligible:

Flood Control Works and Other Water Control Structures (including earthen levees) that are ineligible to participate in the USACE RIP and are ineligible to receive assistance from the NRCS EWP may be eligible for the following assistance from FEMA:

1. Emergency and permanent repairs to restore the structure to its pre-disaster condition in accordance with 44 CFR Part 206;
2. The removal of foreign debris, other than silt, deposited in a channel project of a flood control work, 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. The placement and removal of flood fighting measures if such activity is necessary to eliminate a public health and safety threat, to operate the flood control work as a public facility, or to repair the facility; and
4. Dewatering of areas behind levees by breaching or pumping is eligible if there is a threat to public health and safety, or improved property; or, if required to facilitate the initiation of a Federal repair project. Deliberate breaches made by the sponsor to accomplish such dewatering are eligible for repair.

### C. Ineligible:

1. Flood control works enrolled in RIP, either Active or Inactive, are ineligible for assistance from FEMA for emergency and permanent repairs, debris removal, or flood fighting activities.



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2. Flood control works that were pending an Initial Eligibility Inspection by the USACE at the time of a disaster are ineligible if the USACE determines that the structure is eligible to participate in the RIP program.
3. Flood control works that are eligible to participate in the NRCS EWP program are ineligible.
4. Dewatering areas behind levees for the primary purpose of drying land is ineligible.
5. Secondary levees riverward of a primary levee are ineligible for repair unless they protect human life.
6. Increasing the height of a flood control work is ineligible.

**VIII. ORIGINATING OFFICE:** Disaster Assistance Directorate (Public Assistance Division)

**IX. SUPERSESION:** This policy supersedes Response and Recovery Policy 9524.3, dated August 17, 1999.

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

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## Flood Control Works Eligibility for FEMA Public Assistance in Presidentially Declared Disasters

