

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

Subpart A—Introduction

Sec.

203.11 Purpose.

203.12 Authority.

203.13 Non-Federal interests responsibilities.

Subpart B—Disaster Preparedness

203.21 Inspection of non-Federal flood control works.

Subpart C—Emergency Operations

203.31 Authorities.

203.32 Policy.

Subpart D—Rehabilitation

203.41 General.

203.42 Restrictions.

203.43 Project development.

203.44 Non-Federal flood control projects.

Subpart E—Emergency Water Supplies and Drought Assistance

203.51 Clean drinking water.

203.52 Drought assistance.

Subpart F—Advance Measures

203.61 Policy.

203.62 Eligibility criteria.

Subpart G—Local Interests Cooperation and Participation

203.81 General.

203.82 Requirements of local cooperation.

203.83 Additional requirements.

203.84 Forms of local participation.

203.85 Transfer of completed work to local interests.

Subpart H—Non-Federal Levee Rehabilitation Eligibility Guidelines

203.91 General.

203.92 Procedures.

203.93 Inspections.

203.94 Evaluation of eligibility based on the Rating Guide.

203.95 Rehabilitation investigation.

AUTHORITY: Pub. L. 84-99, 69 Stat. 186; 33 U.S.C. 701n.

SOURCE: 48 FR 56373, Dec. 21, 1983, unless otherwise noted.

Subpart A—Introduction

§ 203.11 Purpose.

This regulation prescribes administrative policies, guidance, and operating procedures for natural disaster activities of the Corps of Engineers.

§ 203.12 Authority.

Flood and coastal storm emergencies (33 U.S.C. 701n (69 Stat. 186) (Pub. L. 84-99). An emergency fund is authorized to be expended at the discretion of the Chief of Engineers for: flood emergency preparation; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood; emergency protection of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than an ordinary nature. The law, as amended, 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. The law, as amended, authorizes the Secretary of the Army to construct wells and to transport water within areas he determines to be drought-distressed.

[54 FR 3028, Jan. 23, 1989]

§ 203.13 Non-Federal interests responsibilities.

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

(a) *Disaster preparedness.* Normal maintenance of flood control projects in preparation for possible disasters is a non-Federal responsibility. Local maintenance includes procurement and stockpiling of sandbags and/or other materials or equipment which might be needed during flood situations. Preparedness includes training personnel

§ 203.21

to operate and maintain projects during crisis situations.

(b) *Emergency operations.* During emergency operations, including flood response (flood fight and rescue operations) and post flood response, non-Federal interests must commit available resources to include: manpower, supplies, equipment, and funds. Requests for Corps assistance will be in writing from the Governor or his/her authorized representative. Non-Federal interests must furnish formal written assurances of local cooperation which are detailed in subpart G of this regulation. Following a flood response, it is a non-Federal responsibility to remove expedient flood control structures installed by the Corps under Pub. L. 84-99.

(c) *Rehabilitation.* Prior to Corps rehabilitation of non-Federal projects, non-Federal interests must furnish formal written assurances of local cooperation. (The local cooperation requirements are detailed in subpart G of this regulation.) Sponsorship by a public entity is required. Additional requirements of local participation include such items as cost-sharing and costs attributable to deficient or deferred maintenance.

(d) *Emergency water supplies and drought assistance.* Non-Federal interests must seek emergency drinking water assistance through the Governor of the affected State. The Bureau of Indian Affairs may request aid for Indian tribal lands. Corps assistance can be provided to drought-distressed areas, to construct wells and to transport water, at the request of the Governor. Requests for assistance for either program must include information concerning the criteria prescribed by subpart E of this regulation.

(e) *Advance measures.* Advance measures to protect against predicted flooding are designed to complement the maximum non-Federal capability, must be justified from an engineering and economic standpoint and be capable of completion in a timely manner. Non-Federal participation can include either financial contribution or commitment of non-Federal physical resources. The assurance of local cooperation and participation (subpart H) must be furnished to the Corps prior to

33 CFR Ch. II (7-1-01 Edition)

construction. Requests for assistance must be made by the Governor of the affected State. (Bureau of Indian Affairs for Indian tribal lands.)

[48 FR 56373, Dec. 21, 1983, as amended at 51 FR 25691, July 16, 1986; 53 FR 2841, Feb. 2, 1988; 54 FR 3028, Jan. 23, 1989]

Subpart B—Disaster Preparedness

§ 203.21 Inspection of non-Federal flood control works.

(a) *Required inspections.* Regular inspections will be conducted at non-Federally constructed flood control works that have received Corps assistance under Pub. L. 84-99. These are conducted to establish whether the flood control works will continue to provide the intended degree of flood protection and to determine if the maintenance program is adequate.

(b) *Local requests.* If requested by non-Federal interests, inspection of flood control works may be performed even though there has been no previous Corps assistance provided under Pub. L. 84-99.

(c) *Advice and reporting.* Information on the results of inspection will be furnished to non-Federal interests and will be maintained in Corps district offices. Non-Federal interests will be informed that a record of continued maintenance deficiencies may negatively impact on eligibility of future rehabilitation work and the degree of local cost-sharing participation in any proposed work. Follow-up inspections will be made by the Corps to monitor progress in correcting deficiencies. Liaison with local interests will include suggestions on required remedial maintenance and other measures to prepare for flood and coastal emergencies.

Subpart C—Emergency Operations

SOURCE: 54 FR 3028, Jan. 23, 1989, unless otherwise noted.

§ 203.31 Authorities.

This authority applies to flood response and post flood response activities. Flood response activities include flood fighting, rescue operations, and

protection of Corps constructed hurricane and shore protection projects. Flood fighting measures are applicable to any flood control structure (Federal, state, local, and private) where assistance in supplemental to state and local efforts. Corps assistance is not appropriate to protect flood control structures constructed and/or maintained by other Federal agencies where those agencies have emergency authority.

(a) *Flood response.* Corps assistance in support of other Federal agencies or state and local interests may include the following: technical advice and assistance; loaning of flood fight supplies, e.g., sandbags, polyethylene sheeting, lumber, stone; loaning of Corps-owned equipment; hiring of equipment and operators for flood fight operations; emergency contracting.

(b) *Post flood response.* Corps divisions/districts are provided authority to furnish assistance for a period not to exceed 10 days in response to a Governor's request. This assistance may include the following: Provision of technical advice and assistance; clearing of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; removal of minimum debris necessary to reopen critical transportation routes; temporary construction to restore critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or public property.

§ 203.32 Policy.

During or immediately following a flood or coastal storm, emergency operations may be undertaken by the Corps to supplement state and local activities. Corps assistance is limited to the preservation of life and improved property, i.e., residential/commercial developments and public facilities/services. Direct assistance to individual homeowners or businesses is not permitted. Assistance will be temporary, meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Office of Emergency Services or equivalent. Reimbursement of state or local emer-

gency costs is not authorized. The assurances required for the provision of Corps assistance apply only to the work performed under Pub. L. 84-99 and will not prevent state or local governments from receiving other Federal assistance.

(a) *Flood response.* Request for Corps assistance will be in writing from the Governor or his/her authorized representative. When time does not permit a written request, a verbal request from either a responsible state or local official will be accepted followed by a written confirmation from the state. Corps assistance may include operational control of flood response activities, if requested by the responsible state official. However, legal responsibility remains with state and local officials. Corps assistance will be terminated when the flood waters recede below bankfull. Removal of ice jams is a local responsibility; however, 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 normally not perform ice jam blasting operations.

(b) *Post flood response.* A written request from the Governor to the district or operating division commander is required to receive Corps assistance. Corps assistance will be limited to major flood or coastal storm disasters resulting in life threatening situations. The Governor's request should include: verification that the Federal Emergency Management Agency (FEMA) has been requested to initiate Preliminary Damage Assessments (PDA); statement that assistance required is beyond the State's capability; specific damage locations; extent of Corps assistance required to supplement state and local efforts. The Governor's request should be transmitted concurrently with the request to FEMA for PDA. 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 a Governor's request if it is received subsequent to a Presidential declaration or denial. Shoreline or beach erosion damage reduction/prevention will not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* Issuance of Government owned equipment or materials to non-Federal interests is authorized only in actual emergencies. Providing Government supplies is authorized only after local resources have been fully committed. Equipment which is loaned should be returned to the Corps immediately after the flood operation ceases in a fully maintained condition. Expendable supplies such as sandbags will be replaced in kind or paid for by local interests to the extent considered feasible and practicable by the division or district commander. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation

§ 203.41 General.

(a) *Scope of rehabilitation.* (1) Pub. L. 84-99 authorizes repair and restoration of the following projects to ensure their continued function:

- (i) All flood control projects.
- (ii) Federally authorized and constructed hurricane flood protection projects.
- (iii) Federally authorized and constructed beach erosion control projects.

(2) Modification of works to increase the degree of protection, or to provide protection to a larger area, is beyond the scope of Pub. L. 84-99. Such major modifications are normally accomplished under Congressional authorization and appropriation, or under special continuing authorities of the Corps. Modifications to increase the reliability of the existing protection must meet the criteria established in this subpart to be eligible for funding under Pub. L. 84-99.

(b) [Reserved]

§ 203.42 Restrictions.

(a) *Restrictions to flood control works.* Projects must be designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels to be considered flood control works. Structures built primarily for the purpose of channel alignment, navigation, recreation, fish and wild-life enhancement, land reclamation, drainage, or erosion protection are ineligible for Pub. L. 84-99 rehabilitation.

(b) *Non-flood related rehabilitation.* Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms is not authorized under Pub. L. 84-99.

(c) *Maintenance and deterioration deficiencies.* Rehabilitation under Pub. L. 84-99 will not be applied to works which, 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 responsible non-Federal interests, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred maintenance, the estimated deferred maintenance cost will be included as contributed non-Federal funds in addition to the cost-sharing requirement addressed in §203.82(d). Failure of responsible non-Federal interests to correct significant deficiencies noted during regular inspections may result in suspension of any future rehabilitation assistance under Pub. L. 84-99.

(d) *Economic justification.* No project will be repaired unless the work satisfies the Corps criteria for a favorable benefit-to-cost ratio.

[48 FR 56373, Dec. 21, 1983, as amended at 51 FR 25691, July 16, 1986]

§ 203.43 Project development.

At the earliest opportunity, the project sponsor will be informed of any work which must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies and/or any modifications which are necessary to preserve the integrity of the project but are beyond those authorized under Pub. L. 84-99.

§ 203.44 Non-Federal flood control projects.

(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 is considered when determining non-Federal capability.

(b) *Definition.* Non-Federal projects are defined as projects constructed with non-Federal funds, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Pub. L. 84-99 or Pub. L. 93-288, is not considered to be a Federal project unless it repairs or replaces for a damaged Federal project. A flood control project is defined as a project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multi-purpose project, only those components that are necessary for the flood control function are considered eligible for repair.

(c) *Eligibility.* Any flood control project is eligible for rehabilitation provided the work can be economically justified and is not otherwise prohibited by this regulation.

(d) *Modifications.* (1) Modifications designed to preserve the integrity of existing non-Federal structures may be constructed at additional Federal expense in conjunction with post flood rehabilitation. The additional Federal cost will be limited to not more than one-third of the estimated Federal cost of rehabilitation to preflood condition, or \$100,000, whichever is less. Non-Federal interests are required to contribute any additional funds necessary to support the remaining cost of the modification.

(2) Modifications designed to provide an increased degree of flood protection or to provide protection to additional area, are not authorized.

(e) *Nonconforming works.* Any non-Federal project constructed without the appropriate local, State or Federal permits or waivers thereof will not be rehabilitated under Pub. L. 84-99.

Subpart E—Emergency Water Supplies and Drought Assistance**§ 203.51 Clean drinking water.**

(a) *Authority.* The Chief of Engineers is authorized to provide emergency supplies of clean drinking water to any locality which is confronted with a source of contaminated drinking 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 levels established under the Safe Drinking Water Act are exceeded.

(ii) The water supply has been identified as a source of illness by a State or Federal public health official (the specific contaminant does not have to be identified).

(3) The assistance will be directed toward provision of drinking only water. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider both the needs of the individual situation and the cost effectiveness of providing various quantities of water.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, plus reasonable conservation measures, cannot provide adequate 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. Also, 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 safe drinking water supplies is the responsibility of local interests.

§ 203.52

33 CFR Ch. II (7-1-01 Edition)

(8) Corps assistance is limited to 30 days. Extension of this period requires a formal agreement between the State and the Corps, covering specified services and providing a firm schedule for local interests to provide normal supplies.

(9) State and local governments must make full use of their own resources, including National Guard capabilities.

(10) Requests for assistance must be signed by the Governor of the State. For Indian tribal lands, the Bureau of Indian Affairs will normally request assistance.

(c) *Non-Federal responsibilities.* Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations which cause contamination. If assistance is furnished, local interests must furnish the basic requirements of local cooperation. In all cases reasonable water conservation measures must be implemented. Local interest may be required to operate and maintain temporary supply equipment and to remove and return it to Federal interest after the problem is corrected.

§ 203.52 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 and to transport water to farmers, ranchers and political subdivisions within areas he determines to be drought-distressed. This authority was added to Pub. L. 84-99 by Pub. L. 95-51.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to its 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 Pub. L. 95-51, the applicability of other Federal assistance authorities should be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(3) An analysis will be made of costs of the proposed work and of any reasonable alternatives.

(c) *Definitions*—(1) *Construction.* This term includes initial construction, reconstruction or repair.

(2) *Drought-distressed area.* An area which the Secretary of the Army determines, due to drought conditions, has an inadequate water supply which is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the area including 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 1/3 of his/her gross annual income from agricultural sources and is recognized in the community as a farmer or rancher. A farming partnership or corporation engaged in farming or ranching which receives its majority income from such activity may be considered as an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by or pursuant to 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,

(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 Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(d) *Guidance-construction of wells.* (1) Assistance to an eligible applicant by 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 Pub. L. 95-51.

(ii) The applicant is located within an area which has been determined by the Secretary of the Army 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, the well could not be constructed by a private business 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 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. Federally-owned well drilling equipment can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering increased hardships from the effects of an inadequate water supply. Use of equipment owned by non-Federal interests would only be appropriate in the unusual circumstance when both of the above conditions can be met.

(e) *Guidance—transport of water.* (1) Assistance to an applicant in the transportation of water may be provided only if:

(i) It is in response to a written request by a farmer, rancher or political subdivision for transportation of water under Pub. L. 95-51.

(ii) The applicant is located within an area which has been determined by the Secretary of the Army 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 and livestock consumption and water cannot be obtained by the applicant.

(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 and livestock consumption. It will not be provided in connection with water needed for irrigation, recreation or other non-life supporting purposes.

(4) Corps assistance will not include the purchase of water nor the cost of loading or discharging the water into or from Government conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water.

(f) *Request for assistance.* Written request must be made to the district commander or division 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 in accordance with §203.52(b) of this section will continue as appropriate throughout the assistance.

Subpart F—Advance Measures

§203.61 Policy.

“Advance Measures” consists of those activities performed prior to flooding or flood fight to protect against loss of life and 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 immediate threat of unusual flooding. Corps assistance will be to complement

§ 203.62

the maximum efforts of State and local authorities. Projects will be designed for the specific threat, will normally be expedient type construction and temporary in nature.

§ 203.62 Eligibility criteria.

(a) *Threat of flooding.* There must be an immediate threat of *unusual* flooding before advance measures can be considered. The threat may be established by National Weather Service predictions or by Corps of Engineers determinations of unusual flooding from adverse conditions. The threat must be defined to the extent that it is clearly 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 respect to the emergency situation is required. The Bureau of Indian Affairs may request assistance for Indian tribal lands. All requests should identify the following information.

(1) Describe the local and State efforts undertaken. Verify that all 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.

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively with the specific threat, and capable of construction in time to prevent 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.* In addition to requirements of subpart H, temporary works constructed by the Corps must be removed by the project sponsor when the operation is over, at no cost to the Corps.

33 CFR Ch. II (7-1-01 Edition)

**Subpart G—Local Interests
Cooperation and Participation**

§ 203.81 General.

(a) *Requirements for cooperation and participation.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to a natural disaster, division or district commanders should negotiate a local cooperation agreement with local interests whenever assistance is furnished. Non-Federal interests or local interests may be public entities, organizations, or groups. For assistance to other than a public entity, it is required that there be a public agency to sponsor the project and cosign the agreement. Project sponsors must be one of the following:

(1) Legal subdivision of a state or a state government.

(2) Local unit of government.

(3) Qualified Indian tribe or tribal organization.

(4) State chartered organization, such as a levee board.

Agreements do not require approval by HQUSACE unless they contain special or unusual conditions of local cooperation and participation.

(b) *Request for assistance.* For urgent situations, district/division commanders may respond to oral request from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Before furnishing assistance under Advance Measures, or under Clean Drinking Water the district/division commander must obtain a statement, signed by the Governor, stating that the State is aware of the request, identifying the problem verifying that all available State and local resources have been committed and requesting Federal assistance. For Emergency Operations, the statement may be signed by an authorized State official and assistance can be furnished before the statement is received. On Indian tribal lands the Bureau of Indian Affairs may make requests in lieu of the Governor or other State official.

[48 FR 56373, Dec. 21, 1983, as amended at 51 FR 25691, July 16, 1986]

§ 203.82 Requirements of local cooperation.

It is the Corp's policy that authorization of a project will, insofar as feasible, require local interests to furnish items of local cooperation similar to those set forth for flood control project construction in section 3 of the 1936 Flood Control Act Pub. L. 74-738 (33 U.S.C. 701c). These requirements are that local interests (a) provide without cost to the United States all lands, easements, and rights-of-way necessary for the authorized work; (b) 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; (c) 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 Pub. L. 84-99.

(a) *Furnishing of lands, easements, and rights-of-way.* This item provides for sites of structures, for borrow and disposal areas, and for access; also, 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 lands, easements, and rights-of-way 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. Easement should extend to the life of the project.

(b) *Hold and save clause.* Where the property concerned is under tenancy, both the property owner and the tenant should sign the local cooperation agreement.

(c) *Maintain and operate clause.* This clause must include: "It is understood that the foregoing maintenance and operation requirement extends to inter-related features of all protective work under the control of (insert name of owner or sponsor)."

(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 which 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 works.* Local interests may ask to retain a temporary structure for protection from future floods. This *cannot* be authorized unless the works are upgraded to meet all Corps criteria for permanent projects. Pub. L. 84-99 funds cannot be used to upgrade the structure. An upgraded project would have to fully comply with permits, 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. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* The Federal government may bear up to 80 percent of the construction costs for rehabilitation of non-Federal projects. Sponsors may provide their share of construction costs in the form of cash, in-kind services such as labor or equipment, etc., or a combination of cash and in-kind services. The sponsor's share is in addition to providing real estate interests needed for construction and inspection and any deferred maintenance costs. The Corps will determine the dollar value of any in-kind services being provided by the sponsor.

[48 FR 56373, Dec. 21, 1983, as amended at 51 FR 25691, July 16, 1986]

§ 203.83 Additional requirements.

(a) *Maintenance deficiencies.* Rehabilitation 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 other obstructions in adjacent channels, and new construction such as protection against erosion. This does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage.* Separable areas with minor damage should 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 give proper consideration to the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Where a responsible local sponsor entity has not been formed, agreement by the local interests to later form such an entity may be considered for inclusion in the local cooperation agreement. If feasible, provisions should be made by local interests to establish a "Contingency Fund" to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high.

(e) *Privately owned projects.* In certain cases, Pub. L. 84-99 activities may involve flood control or water supply facilities owned by individuals, organization or other non-public entities. In such cases whenever practicable the local cooperation agreement furnished by each property owner should be sponsored collectively by a public entity or other organization fully responsible for maintenance of the structure. This organization in turn is to furnish its own overall local cooperation agreement for acceptance by the district commander.

(f) *Eligibility under other programs.*

The local 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 Pub. L. 84-99 assistance, but will not be "at no cost to the United States."

§ 203.84 Forms of local participation.

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 assurance agreement 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 as the pertinent authority "Pub. L. 99, 84th Congress, approved 28 June 1955 as amended."

(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. Well construction is exempted from this requirement because financing is specifically authorized in Pub. L. 84-99 as amended. However, the assurance agreement must be signed in advance of any obligations. To reduce administrative problems, the agreement should be for no longer than will provide payments within the means of the applicant. The term is limited by Pub. L. 84-99 to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interest should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include lands, easements or right-of-way.

§ 203.85 Transfer of completed work to local interest.

Responsibility for operation and maintenance of completed emergency repair work under Pub. L. 84-99 will be transferred to the responsible local interests in accordance with the applicable procedures for transfer of completed local protection projects (ER 1150-2-301). Detailed instructions and suggestions relative to proper maintenance and operation usually will be furnished as a standard inclosure to a letter notifying the local interests that the work authorized under Pub. L. 84-99 has been completed. The letter must remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the local cooperation agreement. In appropriate cases, use the "Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR part 208). If warranted, a full-scale operation and maintenance manual may be furnished. Reporting requirements placed on the local interests will vary according to organization and other circumstances. Regular inspections will be scheduled to verify local maintenance.

Subpart H—Non-Federal Levee Rehabilitation Eligibility Guidelines

SOURCE: 51 FR 25692, July 16, 1987, unless otherwise noted.

§ 203.91 General.

(a) *Intent.* The intent of these guidelines is to facilitate the evaluation of the design, construction and maintenance of non-Federal flood control facilities to determine eligibility for repair under Pub. L. 84-99. Based on its common use the word "levees" will be used in this text to mean any flood control work.

(b) *Level of detail.* The evaluation will be made through site inspections and technical analyses by trained (experienced) Corps district technical staff. This inspection will assess the general functional and structural integrity of the levee for flood control purposes and will serve as a basis for determining Corps assistance. The guidelines are not intended to establish design stand-

ards for non-Federal levees, but to provide uniform procedures within the Corps for determining eligibility under Pub. L. 84-99. If the results of the Corps study are not acceptable to the levee owner, he may choose to provide his own detailed engineering study (certified by a qualified professional engineer) as a reclama to establish the eligibility of his levee for Corps assistance.

§ 203.92 Procedures.

(a) *General.* Corps involvement with any non-Federal levee normally begins the first time an owner/sponsor requests repairs under Pub. L. 84-99. To evaluate these levees, it is imperative that the initial eligibility investigation assess the integrity and reliability of the levee. In addition, other key information required to determine the Federal interest in repairing the levee will be obtained. Any levee repaired by the Corps will be inspected periodically to assure that the conditions of local cooperation are being fulfilled by the sponsor. These inspections will also be used in determining the eligibility of the levee for possible future Corps assistance under Pub. L. 84-99. The project sponsor will be advised of any work required to maintain project eligibility. The guidelines established herein may also be used where an owner/sponsor who has not previously received levee rehabilitation assistance from the Corps, submits a request for inspection to determine whether his levee meets established eligibility criteria.

(b) *Inspection procedure.* A Rating Guide will be used to establish performance levels for non-Federal levees to be included in the Corps rehabilitation program. This guide will be provided to all non-Federal levee sponsors for their use in maintaining or upgrading their projects as required to remain eligible for the Corps rehabilitation program. (A copy of the Rating Guide will be provided to sponsors by the Corps District in their area.) The inspection will identify all areas where work is required to upgrade the levee to an acceptable performance level, and specify an appropriate time period to sponsors in which to accomplish the work. If a levee sponsor fails to comply

§ 203.93

with identified requirements, notification will be provided that the levee is not eligible for consideration for rehabilitation under Pub. L. 84-99 until the Corps is advised that the work is completed. No further inspections will be made of a levee that is ineligible until the sponsor provides notification by letter indicating that noted deficiencies have been corrected.

(c) *Technical evaluation.* Technical evaluation procedures are intended to establish the general capability of a non-Federal levee to provide reliable flood protection.

§ 203.93 Inspections.

(a) *General.* The initial inspection of any non-Federal levee using these guidelines will establish the estimated level of protection and structural reliability of the existing levee. Subsequent inspections will detect changed project conditions which have an impact on the integrity of the flood protection provided by the levee.

(b) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal levee will be evaluated and expressed in terms of exceedence frequency (e.g., a 20%, 10% etc. chance of the levee being overtopped in any given year.) These analyses also include an evaluation of existing or needed erosion control features for portions of the levee which may be threatened by wind generated waves, stream or surface flows.

(c) *Geotechnical analyses.* The geotechnical evaluation will be based primarily on a detailed visual inspection. The initial inspection will identify critical sections where levee stability appears weakest and will document the location, reach, and cross-section at these points.

(d) *Maintenance.* The Maintenance section of Rating is intended for use in evaluation of maintenance performance and deficiencies to the same scope and degree as is required to determine compliance with assurance agreements entered into pursuant to 33 CFR 208.10. This evaluation should reflect the level of maintenance required to assure the intended degree of flood protection and performance of local cooperation required for a levee to remain eligible for the rehabilitation program under Pub.

33 CFR Ch. II (7-1-01 Edition)

L. 84-99. The Rating Guide is also applicable to levees where no local cooperation agreement exists (i.e., not previously repaired under Pub. L. 84-99), but an eligibility review is requested by the owner/sponsor of the project.

§ 203.94 Evaluation of eligibility based on the Rating Guide.

After the technical evaluation has assessed the integrity of the levee, the current definitive condition of the levee will be evaluated using the Rating Guide as a basis. The following table provides general guidance on appropriate inspection recommendations based on the Rating Guide parameters:

| Condition | Recommendation |
|-------------------------|--|
| A—Acceptable | No immediate work required. |
| M—Minimally Acceptable. | A deficient condition exists which needs to be improved by the levee sponsor/owner. The inspector's evaluation should address the impacts on the original design and/or on operating deficiencies resulting from the condition identified. |
| U—Unacceptable | Items which fall within this category may render the levee ineligible for rehabilitation under Pub. L. 84-99 unless immediate corrective action is taken by the sponsor/owner. The inspector's evaluation will establish specific time periods within which the unacceptable performance items must be upgraded to at least Condition M. |

If the sponsor/owner does not comply with the recommendation for correction of Condition "U" items, within specified time frames a notification will be provided to the sponsor/owner that the levee is ineligible for rehabilitation under Pub. L. 84-99 until the deficiencies are corrected. No further inspections will be made until the sponsor/owner notifies the Corps that this has been completed.

§ 203.95 Rehabilitation investigation.

The inspection program outlined in this subpart is intended to facilitate the completion of rehabilitation investigations when levees in the program are damaged by flood. The most recent inspection report should provide most of the general information required to support a request to rehabilitate a levee under Pub. L. 84-99.