



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.3

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

II. DATE: FEB 25 2009

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.

V. AUTHORITY:

Sections 403 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford 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 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, PL 84-99, 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.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.3

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 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. 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 eligibility requirements. Additional EWP criteria are available in Final Rule, 7 CFR Part 624.

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. This is codified in 44 CFR §206.226(a). If a facility is not eligible under the RIP or EWP program, then FEMA may provide assistance.

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 that USACE designates "Acceptable" or "Minimally Acceptable," following an inspection, are assigned an Active Status in the USACE RIP.

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.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.3

4. Flood Fighting: Activities that are intended to prevent or stop flooding, e.g., sand-bagging, buttressing.
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.
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. These structures are not flood control works.

B. Eligible:

FEMA may fund repairs to flood control works that are not eligible to participate in the USACE RIP program because they were constructed or repaired with funding from a Federal agency other than USACE. FEMA may also fund repairs to flood control works that are not eligible to receive funding from NRCS because they were not constructed with Federal funding (See Attachment). Eligible work may include:

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 debris 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.



FEMA

DISASTER ASSISTANCE POLICY

DAP9524.3

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.

3. Flood control works that are eligible under NRCS' authority are ineligible for assistance from FEMA.

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

VIII. RESPONSIBLE 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.

James A. Walke
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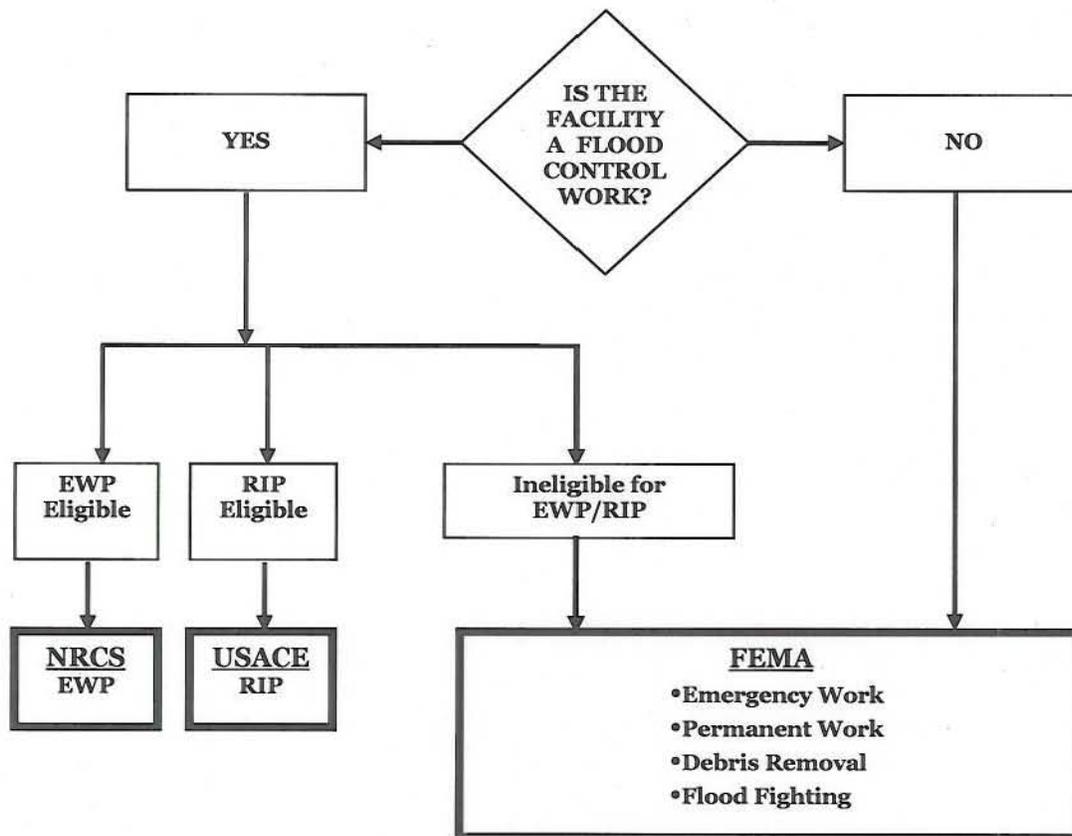
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DISASTER ASSISTANCE POLICY

DAP9524.3

ATTACHMENT

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



EWP: Emergency Watershed Program
RIP: Rehabilitation and Inspection Program