



USACE Considers Changes for PL 84-99 Program

U.S. ARMY CORPS OF ENGINEERS

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Background on Public Law 84-99. The U.S. Army Corps of Engineers (USACE) has authority under Public Law 84-99 (PL 84-99) to undertake activities including disaster preparedness and advance measures, emergency operations including flood response and post-flood response, and the rehabilitation of flood risk management projects damaged or destroyed by floods. PL 84-99 authorities also include the protection or repair of federally-authorized Coastal Storm Damage Reduction projects.

USACE Considering Changes to the Implementation of PL 84-99. USACE is considering changes to policies and procedures for activities administered under authority of PL 84-99. These changes will update USACE policies to align with national preparedness and response frameworks, encourage broader flood risk management activities by sponsors, reduce repetitive damage to projects and incorporate a life cycle risk management approach to Civil Works disaster preparedness, response and recovery. These changes support the agency's strategic direction and advances in risk-informed decision making, increased risk awareness communications, improved relationships with non-federal sponsors and enhanced long-term sustainability and resiliency of projects.

The USACE will implement policies in accordance with the following guiding principles:

- Effective risk management and levee safety includes working with non-federal sponsors and stakeholders to assess, communicate, and manage life-safety risks.
- Federal assistance under PL 84-99 supplements tribal, state, and local efforts, and does not replace them.
- Non-federal sponsors have primary responsibility for operations and maintenance (O&M) of flood control works and risk communication activities associated with their projects.
- USACE will promote the use of a risk-informed decision making process to guide non-federal sponsors' O&M activities and inspection activities for flood control projects.
- USACE will encourage a collaborative approach to address complex natural resources issues, Tribal Treaty Rights, and complex systemic deficiencies.

Highlights of Specific Policy Changes Being Considered

- ◆ **Developing Additional Guidance for Advance Measures.** Specific guidance for the development of improvements to structures or other Advance Measures will address increased short term flood risk in areas downstream of areas denuded by wild land fire. Consider adjusting cost share requirements to align with permanent structure construction policy. Consider additional types of Advance Measures and related performance requirements for non-federal sponsors.
- ◆ **Revising Eligibility for Rehabilitation Program.** Consider changes to eligibility criteria for rehabilitation assistance from a strict condition-based assessment to a set of requirements that encourage flood risk management activities such as emergency preparedness planning, risk communication and prioritizing maintenance activities based on risk. Overall system rating will no longer be the determining factor for eligibility. However, USACE will continue to conduct inspections and risk assessments and provide results to non-federal sponsors. Inspection results should guide operations and maintenance activities, identify potential problem areas early, and provide information for sponsors to use when prioritizing and sequencing risk management activities.
- ◆ **Improving Collaboration to Address Complicated Natural Resources Challenges and System-Wide Repairs.** Formally incorporate System-Wide Improvement Framework tenets, which allow sponsors to retain

eligibility for rehabilitation assistance while conducting longer-term, system-wide improvement activities beyond usual operations and maintenance. This includes activities related to addressing complex natural resources challenges or treaties with tribes that require additional time and coordination. The purpose is to ensure the imperatives of public safety, Tribal Treaty Rights, and environmental requirements are adequately met.

- ◆ ***Mitigating Impacts to Threatened or Endangered Species and Tribal Treaty Rights During Project Rehabilitation.*** Incorporate additional guidance on types of features and approaches that can be incorporated into project repairs (i.e., planting berms, set-back levees) to mitigate impacts to threatened and endangered species and Tribal Treaty Rights.
- ◆ ***Early identification of Potential Nonstructural Alternative Projects (NSAPs).*** Expand the ability to investigate non-structural alternatives to a structural repair where sponsors are willing. This will allow non-structural alternatives to receive more consideration in the tight timeframes associated with rehabilitation assistance.

Stakeholder Feedback on Advance Notice of Proposed Rulemaking. USACE is soliciting stakeholder feedback on the overall policy concepts being considered through an Advance Notice of Proposed Rulemaking (ANPR). The ANPR is available at <http://www.regulations.gov>. The ANPR provides background information on PL 84-99 authority, objectives of the policy changes under consideration, summary of the policy concepts, and targeted questions to help focus public comments. The ANPR has a 60-day comment period through which interested parties can provide input prior to the development of the Proposed Rule for 33 CFR Part 203. Comments may be submitted:

- Electronically at www.regulations.gov
- Via email to 33CFR203@usace.army.mil
- By mail to HQ, US Army Corps of Engineers, ATTN: 33CFR203/CECW-HS/3D64, 441 G Street NW, Washington DC 20314-1000

Future Opportunities to Provide Input. Following the ANPR comment review, USACE will update and publish the Proposed Rule for a 60-day comment period, revise the document based on comments received, publish the Final Rule, and then revise USACE internal guidance for 33 CFR Part 203 implementation.

For Additional Information. If you are interested in learning more about the PL 84-99 Program and/or your opportunities to provide input to changes to this program please contact Jeffrey Jensen Jeffrey.D.Jensen@usace.army.mil.