PL 84-99 – The USACE Emergency Management Authority

Program Authority
- Public Law 84-99 provides an emergency fund to be expended for:
  - Preparation for emergency responses to any natural disaster
  - Flood fighting
  - Repair & restoration of flood control works and hurricane shore protection projects
  - Executed through the Flood Control and Coastal Emergencies (FCCE) appropriation

Program Activities:
- Preparedness
- Response
- Rehabilitation
- Water Assistance
- Advance Measures
- Hazard Mitigation
Background: PL 84-99

- Section 5 of the Flood Control Act of 1941
  - 33 USC 701n (Law)
  - 33 CFR Part 203
    - Federal Regulation
    - Emergency Employment of Army and Other Resources, Natural Disaster Procedures.
  - ER 500-1-1
    - USACE Policy
    - Civil Emergency Management Program

- Part 203 and ER 500-1-1 typically updated once every 10-15 years
  - Part 203 last revised in 2003
  - ER 500-1-1 last revised in 2001
Recent History

- **Nov 2011**: Publication of System Wide Improvement Framework (SWIF) interim policy

- **Fall 2011**: HQUSACE began developing revisions to ER/EP 500-1-1 and 33 CFR 203.

- **Fall 2013**: USACE Senior Leadership / ASA(CW) briefed on COAs to revise rehabilitation eligibility criteria.

  - **Selected COA**: Change rehabilitation program eligibility determinations from inspection condition rating of levee to evaluation of risk reduction activities performed by non-federal sponsors.
Recent History (cont’d)

- **March 21, 2014:** Interim policy was issued focusing on a subset of inspection items for eligibility while the final policy is developed. This guidance provided sponsors an option to continue/adjust their SWIF for the interim policy.

- **June 2014:** WRRDA 2014 signed into law; requires USACE to perform a detailed review of its vegetation-related policies and requirements for eligibility in the Rehabilitation Program.
Interim Policy and SWIFs
USACE Major Inspection Deficiencies

Interim Policy: Inspection Items Linked to Eligibility
Purpose and Intent of SWIFs

- Sponsor developed SWIF lays out the path for restoring a levee system or systems to USACE O&M standards.

- SWIF allows time for system wide improvements which incorporate O&M corrective actions.

- Active status for PL 84-99 rehabilitation assistance is retained through SWIF implementation, subject to continued eligibility approval every two years.

- SWIF is a living document that can be changed when justified.
Interim Policy and SWIFs

- System Wide Improvement Framework (SWIF) status:
  - 60 Letters of Intent (LOIs) approved
  - 53 LOIs/SWIFs in progress
  - 2 final SWIF plans approved

- Primary inspection items necessitating SWIFs
  - Encroachments
  - Culverts
  - Discharge Pipes
  - Sluice Gates
Future Direction
Background: Change Drivers

- Better understanding risk drivers and responsibilities for managing risk.
- Challenges with environmental concerns highlighted limitations of standards-based approach.
- Lessons learned from flood events.
- Need to synchronize implementation of USACE programs to deliver coordinated support to sponsors and communities.
- Part of regular update cycle for CFR and ER/EP
- Requirements of WRRDA 2014.
Previous Focus
Rehabilitation Program Eligibility

- USACE conducts levee inspection with public sponsor
- Conditional assessment made based on visual observations
- Levee system rating determined
- Program eligibility based on levee system rating only
New Direction

- Changes to the Rehabilitation Program are needed to synchronize USACE’s strategic direction and evolving policies in the Flood Risk Management (FRM) and levee safety programs:
  - Encourages broader FRM actions
  - Informs prioritization of actions & decision making based on risk.
  - Provides flexibility considering requirements to protect and restore natural resources.

\[ \text{Risk} = f(\text{Hazard, Performance, Consequences}) \]

- What are the hazards and how likely are they to occur?
- How will the levee perform in the face of these hazards?
- Who and what are in harm's way?
Principles of Change

1. Effective risk management and levee safety includes working with non-federal sponsors and stakeholders to assess, communicate, and manage life-safety risks.

2. Federal assistance under authority of PL 84-99 supplements tribal, state, and local efforts, and does not replace them.

3. Non-federal sponsors have primary responsibility for operations and maintenance (O&M) of flood control works and risk communication activities associated with their projects.
Principles of Change (cont’d)

4. 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.

5. USACE will encourage a collaborative approach to address complex natural resources issues, tribal treaty rights, and complex systemic deficiencies.

6. USACE will work to develop policies and procedures that maintain the benefits of any federal investment(s).
Eligibility Criteria Concepts

- **To Gain Entrance into Rehabilitation Program**
  - Verifying ‘basic’ eligibility (meets definition of public sponsor, no exclusive benefits, minimum acreage and population)
  - Sponsor submits application documenting the features, design, and condition of the levee

- **To Maintain Eligibility for Rehabilitation Assistance**
  - Conduct Screening Level Risk Assessments
  - Suite of risk-informed activities
  - Inspection Rating ≠ Eligibility
  - Requirements synchronized with Levee Safety EC
Risk Results

- Risk Drivers:
  - >50% Risk is from Overtopping
  - Other Major Drivers Include:
    - Internal Erosion
    - Culverts
    - Consequences
  - Non-Breach Risk

LSACs to Date

Total Remaining, 1563, 54%
- LSAC 1, 15, 1%
- LSAC 2, 97, 3%
- LSAC 3, 280, 10%
- LSAC 4, 932, 32%
Informing Eligibility

- Sponsor Semi-Annual Inspection
- USACE Routine Inspections
- USACE Periodic Inspections
- Risk Assessments (scalable)
- Documentation during/after flood events
  - Performance
  - Intervention
  - Needs for repair/rehabilitation
Anticipated Changes

- **OMIP** – Operations, Maintenance, & Inspection Plan
- **EPP** – Emergency Preparedness Plan
- **PEO** – Public Education and Outreach
- **LSP** – Participate in Levee Safety Program
A COPY OF THE ELEVATOR INSPECTION PERMIT IS LOCATED IN THE GENERAL MANAGER’S OFFICE.
A COPY OF THE LEVEE INSPECTION AND RISK ASSESSMENT RESULTS ARE LOCATED IN THE PUBLIC SPONSOR’S OFFICE
Desired Outcome

- Encourage a community discussion and engagement in a broader set of flood risk management actions to manage risk.
- Encourage dialogue and problem solving between USACE and sponsors.
- Promote risk-informed, cost effective prioritization of risk management activities.
- Change the role of USACE from “compliance inspector” to provider of risk advice and technical assistance.
- Provide flexibility to align flood risk management actions with requirements to:
  - Protect and restore natural resources
  - Address Tribal treaty rights.
Stakeholder Input

- Stakeholder input sought through:
  - Advance Notice of Proposed Rulemaking
  - Publication of Proposed Rule 33 CFR Part 203
- USACE internal review
  - Initial Review – June 2012
  - ER/EP Chapters 5 and 6 – December 2015
- Participated in Tribal conferences
- Conducted USACE internal listening sessions
USACE Internal Review

- ER and EP 500-1-1 underwent internal USACE review March – June 2012.
- ~2,000 comments received and considered.
- Concerns identified:
  - Potential need for increased funding
  - Need for clarification of roles and responsibilities
  - Impacts of changes to the RIP
- Chapter 5 (Rehabilitation) has since been significantly modified and will be sent out for another internal review.
Advance Notice of Proposed Rulemaking (ANPR)

- Public comment period
- Received 367 comments from 47 submissions.

# of Comments Received by Organization Type

- Tribe
- State
- Sponsor
- NGO
- Individual
- Association

0 20 40 60 80 100 120 140 160 180

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General concerns identified were:

► Sponsor burden will increase based on proposed changes
► Need for regional flexibility
► Concern of being evaluated on items that may be the responsibility of another organization/entity (e.g., evacuation planning)
► Challenges meeting environmental obligations and flood risk management objectives
► Definitions of ‘system’ and challenges of relying on others not meeting obligations
► Updated USACE policies should align with the new Principles & Guidelines, EO 11988, and WRRDA 2014
► Support for the continuation of the SWIF policy
► Concern there will be less emphasis on inspections in the future
► Incorporate/encourage broader floodplain management activities
Challenges

- Perception that new requirements will be too burdensome to sponsors and USACE Districts.
- Perception that decoupling inspection rating from eligibility will reduce the importance/weight of inspections.
- Concern that new eligibility requirements are subjective.
- Consistency in implementation.
Next Steps

- Publish Proposed Rule 33 CFR Part 203 for public comment
- ER/EP Chapters 5 & 6 to be sent out for internal USACE review
- Review and incorporate comments
- Publish final 33 CFR Part 203
- Publish final ER/EP 500-1-1
## Next Steps

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<tr>
<th>Date</th>
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<tbody>
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<td>15 NOV 2015</td>
<td>Internal Review of ER and EP Chapters 5 &amp; 6</td>
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<tr>
<td>02– 23 DEC 2015</td>
<td>Comments Analysis of Internal Review of Chapters 5 &amp; 6</td>
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<tr>
<td>15 DEC 2015</td>
<td>Publish Proposed 33 CFR Part 203 for Public Review</td>
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<td>15 FEB – 15 MAR 2016</td>
<td>33 CFR Part 203 Comment Analysis</td>
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<td>15 MAR – 01 APR 2016</td>
<td>Finalize CFR and ER/EP Documents</td>
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<td>01 APR – 01 MAY 2016</td>
<td>Headquarters Review of CFR and ER/EP</td>
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<td>Senior Leaders Briefings</td>
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<td>15 – 30 MAY 2016</td>
<td>Implement Rollout Activities</td>
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<tr>
<td>30 May 2016</td>
<td>Publish Final 33 CFR Part 203</td>
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Questions?