

as Public Law 84–99), the Corps is revising 33 CFR part 203, which implements Public Law 84–99. A notice of proposed rulemaking was published in the **Federal Register** on February 26, 2002 (67 FR 8748). Public Law 84–99 authorizes the Corps to undertake preparedness, response, and recovery activities for natural disasters. The Water Resources Development Act of 1996 amended Public Law 84–99 to add the authority to provide, at the option of the non-Federal sponsor, nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and also added the requirement to provide a levee owner's manual. Other significant changes include expansion of investigation ability for potential Advance Measures activities, and a streamlined approach for requests for assistance from federally recognized Native American Tribes and Alaska Native Corporations. In addition, these changes modify and streamline policy involving the Corps policy concerning assistance for ice jams, and the Corps policy requiring reimbursement in kind or in cash for certain loaned supplies and materials. Subpart D clarifies the definition and inspection of "Active" flood control works (*i.e.*, those flood control works eligible for consideration to receive Corps assistance when damaged in a flood, hurricane, or coastal storm), provides clarification concerning Corps inspections of non-Federal flood control works, and adds a new section that addresses inspections and rehabilitation of Federal flood control works that merely incorporates existing Corps policy. A new section (§ 203.49) incorporates existing Corps policy on the use of Public Law 84–99 funds for rehabilitation of Hurricane/Shore Protection Projects, and, when undertaking such a rehabilitation effort, requires incorporation of the existing Project Cooperation Agreement to have the project sponsor cost share the renourishment/repair effort. In addition, Corps policy is revised to specify that, during droughts, water is provided for human consumption only, not for livestock. The revised rule will go into effect 30 days after publication of the final rule in the **Federal Register**, except that all requests for assistance received by the Corps, for emergencies declared by the appropriate District Engineer prior to the effective date of the final rule, will be "grandfathered" under the previous rule for any assistance provided if this is more advantageous to the non-Federal entity involved and in accordance with prior Corps policy.

Electronic Access and Filing Addresses. You may submit comments

by E-mail to Jeffrey.D.Jensen@usace.army.mil. Comments should be in one of the following formats: Word, WordPerfect, or ASCII. The subject line for submission of comments should begin with "33CFR203 Final Rule Comments from (insert name of agency, organization, or individual)."

Procedural Requirements

a. *Review under the National Environmental Policy Act.* This revision is not a major Federal action. There are no significant changes to any aspects of this regulation that may impact on the human environment. When a specific action (*e.g.*, a proposal to rehabilitate a damaged levee) occurs, appropriate environmental documentation, to include an Environmental Assessment/Environmental Impact Statement when required, is prepared by the Corps.

b. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate, and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The Corps has also found, under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

Comments

Interested parties have been afforded the opportunity to participate in the making of this rule. Due consideration has been given to the comments received.

Cost Sharing

Over ninety percent of the commenters addressed the proposal to change the cost share provisions for rehabilitation of damaged flood control works, both Federal and non-Federal. We agree with the commenters. The Corps will maintain the status quo for cost sharing rehabilitation of damaged flood control works. Therefore, rehabilitation of Federal flood control works will remain at 100 percent Federal cost, and rehabilitation of non-Federal flood control works will remain at 80 percent Federal cost and 20% local cost.

Non-Structural Alternative Projects

WRDA 96 added the statutory authority to undertake Non-Structural Alternative Projects in lieu of structural levee rehabilitation efforts. Several commenters complimented the Corps for its implementation policy. Several commenters opposed the

implementation of any policy for non-structural alternative projects.

Because of the statutory language amending Public Law 84–99, including the provision that any nonstructural alternative project would be undertaken solely at the request of the affected project sponsor, we disagree that this policy should not be implemented. Every project sponsor maintains the ability to request or decide against a nonstructural alternative Project, which effectively gives the commenters against the policy the same capabilities as they would have if the policy were not implemented.

Scope of Levee Rehabilitation Projects

One commenter suggested that Section 203.15(g) be changed to add language saying that projects should be rehabilitated to their original design level of protection rather than the level of protection that existed prior to the storm or flood causing the damage. The commenter states that such work should not be considered a "betterment" for which the sponsor is responsible.

We do not agree with the commenter on this point. The affected section is almost verbatim taken from statutory language. The effort necessary to preserve the design level of protection is not a betterment; it is maintenance, regardless of when it is undertaken. Congress and the Corps have long recognized that sponsors are responsible for operations and maintenance of flood control projects, and long term settlement/erosion that may affect the current day level of protection has historically been considered sponsor maintenance.

Work in Kind

Several commenters submitted comments about credit for work in kind being undertaken by the local sponsor. The actual commenters' references were to several different sections. Specifically, the commenters wanted the Corps to be more liberal in allowing local sponsors to pay the local cost share using work in kind, to include work traditionally done by the Corps.

We disagree with this idea. Because of the emergency nature of most work undertaken under Public Law 84–99, the generally lower cost of the emergency work (compared to that work done by the Corps for specifically authorized projects under other authorities), and the principle that work by the Corps is intended to supplement State and local efforts, no change in the final rule was made. There was no work in kind allowance change deemed to be, in the net, more cost effective for the