

was to allow NRCS to respond quickly to only those situations that needed immediate attention and that could be addressed within 30 days. Current regulations tie cost-sharing to this designation, although NRCS has not applied the higher cost-sharing rate originally set for exigencies for the past 7 years. Instead, NRCS has applied a single cost-share rate of 75 percent to exigent and non-exigent situations. However, NRCS recognizes there may be unique situations that require a waiver from this cost-sharing rate. We had added *Section 624.11 Waivers* which allows the NRCS Deputy Chief for Programs to waive any provision of these regulations to the extent allowed by law. Examples may include allowing up to 100 percent cost-sharing with limited resource areas or communities, or situations involving environmental justice.

Under the proposed action, the term exigency would be clarified and the term non-exigency would be eliminated since all eligible sites would be considered watershed emergencies and the purpose of the current and proposed exigency classification is to expedite EWP recovery measures where an immediate threat exists. NRCS believes this clarification would result in more uniform delivery of the EWP Program. Clarification of exigency and removal of the term non-exigency would ensure consistent interpretation, and the change should not affect program funding.

Recognizing that certain situations require immediate attention, this proposed section would modify the current regulation to add language that clarifies "exigency" situations that require immediate attention. Exigency situations typically exhibit an extremely high potential for loss of life or significant property damage unless immediate action is taken.

Occasionally, a site affected by a natural disaster demands immediate action to minimize potential threats of life and/or property, including when another event may occur shortly thereafter. Two examples of such a situation are (1) debris jamming into a bridge or culvert, causing water to back up and possibly endanger nearby buildings or the bridge and associated road; and (2) a streambank undercutting a building that, if not stabilized immediately, could result in the loss of the building.

This proposed clarification to the regulations still ensures immediate action when no reasonable alternative is available. The NRCS State conservationist would be authorized to carry out the needed recovery work to

alleviate the exigency situation immediately when:

- A damage survey report is completed
- Procurement authority is secured
- EWP funds are available
- A sponsor is selected and local funds are available
- Necessary land rights have been acquired

The clarification proposed by this section would limit the number of situations where immediate action is taken to those that are of an extremely critical nature, which was the intent of the existing regulations. The proposed changes would save time by focusing on actions requiring immediate attention during emergency recovery efforts and allowing NRCS state offices to be more responsive to local needs.

*Section 624.6(b)(2) Limitations.* NRCS is proposing to add this new paragraph to describe the number of times an impacted location may be eligible for EWP assistance. This proposed paragraph also contains limitations found in the current regulations at § 624.7. Repeat disasters may strike an area and require EWP recovery assistance frequently at one location. Under this proposed rulemaking, NRCS would limit repairs under EWP to twice within a 10-year period for the same cause (*i.e.*, flooding) at the same site. If a site already has been restored twice with EWP assistance and less than 10 years has elapsed between the disaster that triggered the first repair and the disaster triggering a third repair, the only option available under EWP would be purchasing a floodplain easement on the damaged site. Under this proposed regulation, The Department of Agriculture (USDA) would review the prospective site to ascertain the frequency of EWP recovery assistance at the location.

For example, if a structure was protected from destruction twice using EWP assistance for two separate events, regardless of the practice used or the location of the protection efforts, EWP funds would not be available for a third protection effort within the 10-year period for the same cause. However, for repairs of dikes, levees, berms, and similar structures, because these structures can run contiguously for miles, a specific location on a structure is considered one EWP site to determine whether future impacts to this site on the structure are eligible for EWP funds. Thus, repairs can be made repetitively so long as the same location is not repetitively repaired more than twice within 10 years.

EWP focuses upon disaster recovery efforts while other USDA programs, as

well as programs administered by other Federal and State agencies, are available to plan and implement protective practices to solve recurring problems. This proposed EWP Program change would encourage individuals and project sponsors to seek more appropriate programs to solve existing long-term and recurring resource problems.

NRCS believes the impacts of limiting the number of times EWP funds can be used to repair the same site will be minimal, but the change is necessary to avoid those cases where funds may be used for repetitive repairs.

*Section 624.6(b)(2)(iv).* This proposed paragraph would clarify that NRCS can only provide EWP assistance on Federal lands in situations where safeguards are followed to avoid inappropriate augmentation of appropriations.

*Section 624.6(b)(3).* This proposed paragraph describes those sites that will be eligible for EWP where structural/enduring/long-life conservation practices exist. This proposed change to the regulations currently found in § 624.7(d) would provide for a blanket policy exception first established by the NRCS Chief in 1996 for NRCS-assisted flood control structures. The EWP Program regulations currently prohibit providing assistance for these projects unless the NRCS Chief grants an exception. In 1996, the Chief granted a blanket exception to this requirement, and assistance has been provided as needed. This proposal section would allow repair of NRCS-assisted structural practices, such as dams and channels, constructed under the Small Watershed Protection and Flood Control Program (authorized by the Watershed Protection and Flood Prevention Act of 1954, Public Law 83-566, 16 U.S.C. 1001-1008), Flood Prevention Program (authorized by the Flood Control Act of 1944, Public Law 78-534), Resource Conservation and Development Program, and the Pilot Watershed Program.

When a disaster strikes, NRCS-assisted flood control structures may be damaged beyond the level that would normally be expected to be repaired under routine operation and maintenance activities and may be beyond the sponsor's ability to make necessary repairs. For example, when an auxiliary spillway is damaged, extensive repairs may be required to prevent catastrophic failure that could result in loss of life or property and to provide an opportunity for the dam to function properly in the future.

Under the proposed action, existing structural/enduring/long-life conservation practices that are damaged