

## CHAPTER 2 IMPLEMENTATION OF THE CIVIL EMERGENCY MANAGEMENT PROGRAM

### 2-1. Authorities.

a. PL 84-99. The authority for USACE to provide emergency response/ disaster assistance is PL 84-99 (33 U.S.C. 701n). The appropriation for this authority is Flood Control and Coastal Emergencies, 96x3125. Under PL 84-99, the Chief of Engineers is authorized to undertake activities, including disaster preparedness, Advance Measures, emergency operations (Disaster Response and Post Flood Response), rehabilitation of flood control works (FCW) threatened or destroyed by flood, protection or repair of Federally authorized shore protective works threatened or damaged by coastal storm, provision of emergency water due to drought or contaminated source, emergency dredging, and flood-related rescue operations. Most USACE preparedness activities in support of the Federal Response Plan (FRP) are funded under FCCE appropriations. Appendix B provides a copy of PL 84-99.

b. The Stafford Act. PL 93-288, The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)(The Stafford Act). In accordance with The Stafford Act and the FRP, FEMA may direct Federal agencies to use available personnel, supplies, facilities, and other resources to provide assistance in the event of a major disaster or emergency declaration. Under the FRP, the Department of Defense (DOD) has responsibility for Emergency Support Function (ESF) #3, Public Works and Engineering. DOD has designated USACE as its operating agent for ESF #3, to include planning, preparedness, and response, with assistance to be provided by other branches of DOD as needed. See ER 500-1-28 for USACE FRP activities.

(1) In accordance with the Stafford Act, FEMA may direct USACE (as the operating agent for DOD) to use its available personnel, supplies, facilities and other resources to provide assistance in case of a major disaster or emergency declaration by the President.

(2) At any time before a Presidential disaster declaration is made, FEMA may direct DOD (which in turn may direct USACE) to perform any emergency work necessary, with or without reimbursement of agency costs.

(3) Hazard Mitigation Teams (HMT's). Under the Interagency Agreement for Non-structural Flood Damage Reduction Measures as Applied to Common Flood Disaster Planning and Post Flood Recovery Practices, USACE has a standing mission to participate on interagency HMT's.

c. AR 500-60.

(1) Under AR 500-60, USACE commanders may provide USACE resources and assistance when required by imminently serious disasters or emergencies. Provision of resources is generally limited to those actions necessary to save human life, prevent immediate human suffering, or lessen major property damage or destruction. No contracting is permitted for AR 500-60 support, unless the requesting agency provides the funds needed to award and administer the contract. The USACE commander providing AR 500-60 assistance to civil authorities is not required to obtain an agreement for reimbursement from the requesting agency before providing assistance.

(2) Under AR 500-60 and The National Oil and Hazardous Substance Pollution Contingency Plan (NCP), USACE is responsible for responding to oil or hazardous substance releases as part of the Federal effort. This effort is coordinated by the USCG for coastal and inland waterway systems and the EPA for all other areas.

**2-2. Funding for the CEM Program.** The Commander, USACE has promulgated ER 11-1-320 to address funding policies and issues for Emergency Management.

a. Reprogramming. Reprogramming will be done in accordance with ER 11-2-201. Only Category 100 funds may be reprogrammed.

b. Cost Accounts. Refer to ER 37-2-10, Chapter 8 for establishment of appropriate cost accounts.

c. Elimination of Delegation of Authority. The concept of "delegation of authority" for the FCCE appropriation has been eliminated.

**2-3. General CEM Program Policies.**

a. Priority of USACE Emergency Assistance. USACE must be responsive to the public need in case of disasters or emergencies to provide assistance to save human life, prevent immediate human suffering, and/or mitigate property damage. It is the policy of the United States Army Corps of Engineers that all commanders will always give emergency assistance requirements first priority. Commanders will provide immediate response using all available resources and expedited procedures, to include emergency contracting actions when appropriate.

b. Application of Policy. MSC's and districts will apply Corps policy as contained in this regulation without deviation, unless an exception to policy has been granted by HQUSACE. All USACE actions will be undertaken with cognizance of the principle that Federal assistance is supplemental to State and local efforts.

c. Limitations on USACE Assistance Under PL 84-99. USACE emergency/disaster assistance is limited to the preservation of life and the protection of residential and commercial developments, to include public and private facilities that provide public services.

(1) Exclusive direct assistance to individual homeowners, property owners, or businesses (to include agricultural businesses), is not permitted.

(2) Exclusive direct assistance to a single public or publicly owned facility (e.g., a municipal water treatment plant) is permitted.

(3) USACE assistance may not be provided to or on military installations, or on other Federal lands, except on a cost reimbursable (e.g., Support for Others) basis. This limitation does not apply to those lands held in trust by the Federal Government for Federally recognized Indian tribes.

d. Lead Districts and Emergency Management Boundaries.

(1) The established Civil Works boundaries will be adhered to in defining areas of responsibility for PL 84-99 emergency management response and recovery activities.

(2) MSC's will designate a lead district for each state and territory for PL 84-99-related activities, under the "one door to the Corps philosophy." In those situations where a state is within the boundaries of more than one MSC, the MSC's will coordinate to designate the lead district. Response planning efforts for FRP activities will be done in accordance with ER 500-1-28.

(3) MSC commanders may mutually agree to temporary realignment of boundaries for emergency management purposes. HQUSACE will be notified of any realignments.

e. Interdivisional Assistance. MSC commanders may request interdivisional assistance in the event their resources are insufficient to cope with an emergency. Requests for assistance involving positions the supported MSC has been unable to fill with Division resources/volunteers will be coordinated through the UOC. The UOC will task other MSC's as needed.

f. Reporting. Higher headquarters will be notified of actual or potential emergency situations as soon as possible. Procedures and formats of EP 500-1-1 and ENGLink will be followed. Refer to EP 500-1-1, Chapter 4, Section V, for reporting procedures and formats.

g. Use of Funds from Other Federal Agencies. A public sponsor may use funds from other Federal agencies for meeting all or part of the local cost share for assistance under PL 84-99,

provided the granting agency confirms in writing that such use of the funds is not prohibited by law.

h. Other USACE Authorities. Where other Federal agencies have applicable emergency authorities, or other USACE authorities are more appropriate, USACE assistance under PL 84-99 is not permitted.

i. Release of Information.

(1) All information released to the media and the public must be cleared through the Public Affairs Office of the echelon employing current Department of Defense Principles of Information.

(2) Any information about the approval-disapproval status of any PL 84-99 project will not be released until a decision is made by the approving command.

(3) Information about the status of ongoing projects, schedules, and information obtained in the field may be released, if available.

(4) Information regarding damage estimates prepared by USACE elements for FEMA for Stafford Act related activities, will not be released outside USACE unless the information has been coordinated with, and approval has been obtained from, FEMA.

j. Cost Sharing. USACE activities, except loaned supplies and equipment, FCW rehabilitation work, and Advance Measures projects involving a permanent standard of construction, will normally be 100 percent Federally funded. FCCE funds will not be used to reimburse state or local governments for their costs in a disaster response.

k. Environmental Documentation.

(1) Emergency flood control, shore protection, and other disaster activities performed by USACE under PL 84-99, and USACE response and recovery actions requested by FEMA under The Stafford Act, are not subject to the National Environmental Policy Act (NEPA) documentation requirements of ER 200-2-2 if risk to life, health, property, or severe economic losses is imminent.

(a) District commanders shall consider the probable environmental consequences when determining appropriate emergency measures and describe proposed NEPA documentation or exclusion, as appropriate.

(b) Actions taken to restore facilities to pre-disaster conditions will not be construed to be either major Federal actions or as having significant effects.

(2) On occasion, emergency activities will occur which are considered major in scope and for which potentially significant environmental impacts are anticipated (e.g., comparable to the 1980 Mt. St. Helens eruption.) When the situation does not allow time to observe the provisions of NEPA, the Council on Environmental Quality will be consulted through HQUSACE for alternate arrangements in accordance with ER 200-2-2. The Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency situation. (Reference: Section 1506.11, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.)

I. Flood Plain Management (Executive Order (EO) 11988). ER 1165-2-26 implements EO 11988 for USACE.

(1) PL 84-99 Activities. Emergency activities under PL 84-99 are generally exempt from the provisions of EO 11988. However, the spirit and intent of the Order shall prevail, to the extent practicable, dependent on the urgency of the situation. Documentation for recommended projects shall include steps taken toward compliance or reasons for noncompliance.

(2) The Stafford Act, as amended. USACE will follow the guidance of FEMA in the performance of Stafford Act activities. Decisions on whether the requirements of EO 11988 are applicable to any particular action are the responsibility of FEMA.

m. Safety. All CEM Program activities will be conducted in accordance with Engineer Manual (EM) 385-1-1.

n. Requesting Authority. Any reference to "Governor" of a state will also mean:

(1) The governor of United States commonwealths, territories, and possessions.

(2) The mayor, as it pertains to the City of Washington, D.C.

(3) The chief executive (e.g., president, governor) or governing council of a Federally recognized Indian tribe or Alaska Native Corporation.

o. Work for Other Federal Agencies. Authority to provide services to other Federal agencies is provided in 31 USC 1535 (the Economy Act) and in 10 USC 3036(d). ER 1140-1-211 provides additional guidance.

p. Work for State and Local Governments.

(1) Authority to provide services to state and local governments is provided in 31 USC 6505 (the Intergovernmental Cooperation Act) and 10 USC 3036(d). ER 1140-1-211 provides detailed instructions.

(2) USACE may provide personnel to assist communities with public information programs for awareness and knowledge of flood hazards and flood fighting methods.

(3) The policy guidance that governs USACE acceptance of contributed funds for PL 84-99 approved projects is ER 1165-2-30.

q. Security. In disaster and contiguous areas, USACE depends upon duly constituted authorities (e.g., state and local police, U.S. Marshals Service, etc.) for the control of personnel circulation, vehicular traffic, and the maintenance of law and order. The HQUSACE Security Office and MSC/district security officers are responsible for coordinating activities to ensure the security of Government property and work sites, and unimpeded deployment of USACE personnel.

r. Definition of a Public Sponsor. A public sponsor must be a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A public sponsor may be a State, county, city, town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas (LERRD's) necessary for the project.

s. Contingency Amounts for Initial Funding for Contracting. For all types of construction contracting using PL 84-99 funds (Categories 200-500), contingency amounts are limited. For dredging contracts, the maximum allowable contingency percentage is 15 percent of the construction cost of the project. For all other types of contracts, the maximum allowable contingency percentage is 10 percent of the construction cost of the project.

#### **2-4. Policy on Cooperation Agreements.**

a. General. In providing emergency assistance (to include flood fight assistance, Rehabilitation Assistance, Emergency Water Assistance, and Advance Measures) to a public sponsor under this regulation, a Cooperation Agreement (CA) is required to assure a firm understanding between USACE and the public sponsor. CA formats are provided in EP 500-1-1. CA's that contain special or unusual conditions, that may obligate USACE to undertake

actions that are not specifically addressed in ER 500-1-1/EP 500-1-1, or that waive any rights or legal protections (e.g., a deference to a state law) require HQUSACE approval. Model CA's and typical provisions are in EP 500-1-1.

b. CA Signature Authority. The CA will be executed with the public sponsor. The district engineer or deputy district engineer will sign the CA for USACE.

ER 500-1-1  
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