

Talking Points

Changes to Eligibility Criteria for Determining Status of Flood Risk Management Systems for the Rehabilitation Program March 21, 2014

Top Level Messages:

AS A RESULT OF PUBLIC FEEDBACK AND INTEREST, USACE INITIATED A COMPREHENSIVE REVIEW OF THE REHABILITATION PROGRAM. USACE IS REVISING THE PROGRAM TO BETTER SYNCHRONIZE FLOOD RISK MANAGEMENT AND LEVEE SAFETY.

- 1) USACE Flood Risk Management and Levee Safety Programs;**
 - Emphasize that life safety is paramount.
 - Incorporate and improve processes for risk-informed decision making, transparent communication and long-term sustainability.
 - Promote the approach that managing, communicating and reducing flood risk is a shared responsibility among federal, state, and local government agencies.

- 2) USACE is changing parts of the Rehabilitation Program to synchronize with USACE's strategic direction and advances in flood risk management and levee safety.**
 - As a result of public feedback and interest, USACE initiated a comprehensive review of the Rehabilitation Program.
 - One of the changes to the Rehabilitation Program includes revising its eligibility criteria to promote broader flood risk management activities.
 - The future eligibility criteria for the Rehabilitation Program will focus on encouraging flood risk management activities such as emergency preparedness planning, risk communication and prioritizing maintenance activities based on risk.

- 3) USACE has issued interim policy for making eligibility determinations for the Rehabilitation Program while it completes the final policy.**
 - The purpose of the interim policy is to allow eligibility determinations in the Rehabilitation Program to continue to be implemented while the new policy is developed and to do so in a manner that avoids potentially incentivizing public sponsors to take actions that may negatively impact natural resources or tribal rights.
 - Considerations for the development of the interim policy included –
 - Interim eligibility criteria would be drawn from information currently collected during inspections.
 - No new eligibility criteria would be created without a rulemaking process.
 - Vegetation on levees is no longer a criteria for determining eligibility in the Rehabilitation Program.
 - Implementing final changes to the Rehabilitation Program will require USACE to change 33 Code of Federal Regulations, Section 203 through a rulemaking process.

Background - Specific Points Based on Topic

Interim policy provides revised eligibility criteria for levee systems.

- Overall levee system inspections and ratings will continue, but those ratings will not be used to determine eligibility status in the Rehabilitation Program.
- Interim eligibility will be based on a subset of the inspection items drawn from the existing levee inspection checklist. An Unacceptable rating on any of the subset of items will result in a levee system being put in Inactive status. As such, it is possible for a system to:
 - Receive an Unacceptable system rating but determined to be Active in the Rehabilitation Program, or
 - Receive a Minimally Acceptable system rating but determined to be Inactive in the Rehabilitation Program.
- The subset of inspection items were selected because:
 - 1) The items chosen link directly to performance of the levee system (based on the current inspection rating description). Therefore an Unacceptable rating on any item would likely lead to an Unacceptable overall system rating; and
 - 2) The items chosen do not create an incentive for public sponsors to take actions that might negatively impact natural resources or Tribal rights.
- If a levee system comprises more than one levee segment, all segments must meet the interim eligibility criteria for the levee system to be Active.
- Channels that are integral to a levee system will be inspected as part of that levee system, using existing channel-related inspection items. If a levee system is deemed Active based on the subset of inspection items that determine eligibility, the associated channel is also considered to be Active and eligible for rehabilitation assistance.

Role of Levee Inspections during Interim Period

- Inspections will continue during interim period. Public sponsors will be informed of full inspection results including the overall system rating.
- Inspections will continue to play an important role in levee safety – they are important to verify operations and maintenance, identify potential problems early and provide information for sponsors to use when prioritizing and sequencing risk management activities.
- No changes to the current inspection checklist or Levee Inspection System (LIS) will be made until the final policy for the Rehabilitation Program is issued.

Role of System-Wide Improvement Frameworks (SWIFs) during Interim Period

- If it is determined that a levee system does not meet the interim eligibility criteria, the SWIF policy is an option for public sponsors to maintain eligibility for rehabilitation assistance.
- For projects with an ongoing SWIF or Letter of Intent (LOI), public sponsors will be given a choice to:
 - a) address all system-wide issues in current plan;
 - b) reprioritize to focus on the interim eligibility criteria; or
 - c) cancel the SWIF/LOI and follow interim policy.
- The SWIF policy reflects the broader flood risk management approach that USACE plans to incorporate into the future of the Rehabilitation Program. Therefore, public sponsors engaged in SWIFs will be aligned with this future approach.

Other types of infrastructure (besides levee systems) related to the Rehabilitation Program

- Eligibility determinations for channels, dams, tunnels, and debris basins will remain suspended and their status (either Active or Inactive) will remain unchanged until the final policy is issued.

- This interim policy does not impact federal coastal storm damage reduction projects (also known as hurricane and shore protection projects). For these projects, applicable current policies still apply.
- This interim policy does not impact flood fighting policies. USACE will continue to provide flood fighting assistance regardless of status in the Rehabilitation Program.

Next steps to develop the Final Policy for the Rehabilitation Program

- In 2014 USACE will host a variety of activities, both internal and external, to solicit ideas for new eligibility criteria for the Rehabilitation Program.
- Major milestones for developing the final policy for the Rehabilitation Program include:
 - 1) Develop concepts for new eligibility requirements including all types of infrastructure eligible for Rehabilitation Program;
 - 2) Incorporate concepts and implementation detail into updated version of ER/EP 500-1-1 and send out pertinent chapters for internal review;
 - 3) Review and incorporate internal comments into ER/EP 500-1-1 and relevant changes into revised 33 CFR Part 203;
 - 4) Publish a proposed rule for 33 CFR Part 203 in the Federal Register and solicit public comments;
 - 5) Review public comments and incorporate necessary changes to the draft 33 CFR Part 203 and ER/EP 500-1-1;
 - 6) Publish the final rule for 33 CFR Part 203 in the Federal Register;
 - 7) Issue final ER/EP 500-1-1 for implementation.

Linkages to other policies (Background)

- *Levee Owner's Manual (latest version March 2006)* – provides public sponsors detail on how to meet eligibility requirements for the Rehabilitation Program. This document has been undergoing revision for the past few years, but has been paused because of changes to the Rehabilitation Program. The intent is to finish revision to this document in conjunction with revisions to ER/EP 500-1-1.
- *Levee Safety Engineer Circular (development underway)* – comprehensive policies and procedures for implementing the USACE Levee Safety Program will undergo an internal review while the final eligibility requirements for the Rehabilitation Program are being developed. The teams for both efforts will closely coordinate over the next several months to ensure areas of overlap are aligned, including an updated inspection checklist.
- *Vegetation Variance Policy (sometimes referred to as “PGL” for policy guidance letter)* – will be updated in conjunction with the future revisions to the eligibility requirements for the Rehabilitation Program.
- *Engineer Technical Letter (ETL) No. 1110-2-571 Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures (10 April 2009)* – expires in April 2014. It is the intent to issue a new ETL with a new publication number containing the same vegetation management standards, but clarifying that these standards no longer apply to the Rehabilitation Program eligibility.
- *Section 408 Engineer Circular (development underway)* – is a single consolidated guidance document for processing requests by others (e.g., private, public, tribal, or other federal entities) to modify USACE projects pursuant to 33 USC Section 408. This guidance will address how modifications would be treated related to the Rehabilitation Program.