

§ 624.6

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(iii) Agree to provide for the operation and maintenance of completed emergency measures.

(c) *Eligible assistance.* (1) In an exigency—

(i) Federal emergency funds may bear up to 100 percent of the construction costs of emergency measures.

(ii) Funds must be obligated within 10 days after receipt of the emergency funds or after the date of the disaster event when conditions permit beginning construction activities, whichever is later.

(iii) Emergency work must be completed within 30 days after funds are obligated.

The NRCS Chief retains discretion to grant extensions for good cause. Documentation must support requests for extensions. Extensions may extend an additional 10 days for the obligation of funds and an additional 30 days for the completion of work.

(2) In a nonexigency—

(i) Federal emergency funds may bear up to 80 percent of the construction costs for emergency measures.

(ii) Funds must be obligated and construction completed within 220 consecutive calendar days after the date of receipt of funds. Extensions are permitted at the discretion of the NRCS Chief if unforeseen or uncontrollable events cause delays. A request for such an extension must be documented.

(3) Sponsors may provide their share of construction costs in the form of cash; in-kind services such as labor, equipment, etc.; or a combination of cash and in-kind services. Cost sharing is waived for measures to be installed on Federal lands such as national forests or national grasslands.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

§ 624.6 Eligible measures.

(a) *Eligibility.* To be eligible for assistance a measure must—

(1) Retard runoff, prevent flooding, or prevent soil erosion;

(2) Reduce threats to life or property resulting from a watershed emergency;

(3) Be economically and environmentally defensible and sound from an engineering standpoint;

(4) Be limited to the minimum that will reduce applicable threats to a level

not to exceed that which existed before the impairment of the watershed;

(5) Yield beneficial effects to more than one individual except in an exigency; and

(6) Conform to rules and regulations published by NRCS for complying with Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Floodplain Management.

(b) *Documentation.* (1) When an exigency does not exist, the economic rationale of proposed measures must be submitted in appropriate detail with the request for funds. Generally, the expected value of imminent damages (amount of damages multiplied by the near-term probability of their occurrence) must exceed the cost of emergency measures. Information provided in the request for emergency funds to support economic defensibility of the measures must include but is not limited to—

(i) Number and extent of values at risk because of the watershed impairment;

(ii) Estimated damages to the values at risk if the threat is realized;

(iii) Events that must occur for the threat to be realized and the estimated probability of their occurrence both individually and collectively; and

(iv) Estimates of the nature, extent, and cost of emergency measures to be constructed to relieve the threat.

(2) In nonexigency situations, the state conservationist shall also submit adequate information to substantiate the environmental defensibility the emergency measures proposed for installation. This must include but is not limited to—

(i) Thorough descriptions of beneficial and adverse effects on environmental resources including fish and wildlife habitat;

(ii) Descriptions of water quality and water conservation impacts as appropriate; and

(iii) Analysis of effects on downstream water rights.

The Chief shall issue instructions as are necessary to determine the economic and environmental defensibility of measures proposed for installation consistent with this rule.

(c) *Implementation.* (1) When planning emergency measures, emphasis should

be placed on measures that are the least expensive and most environmentally sound. The measures are to be accomplished by using the least damaging construction techniques and equipment that will retain as much of the existing characteristics of the channel and riparian habitat as possible. Emergency measure construction practices may include but are not limited to such things as seasonal construction, minimum clearing, reshaping soil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

(2) Measures needed to offset adverse impacts should be planned for installation concurrent with installation of the emergency measures. If they cannot be installed then, plans should be included to ensure their installation within 30 days. Cost sharing for these measures is at the same rate as for the original emergency construction.

(3) An EWP team consisting of NRCS personnel from the National Office and the technical service center shall determine the eligibility of all permanent, enduring, or long-life measures or practices proposed for construction. The team shall determine the need for funds before any commitments are made.

(4) Where lands under jurisdiction of FS are involved, the team will be assisted by FS representatives of the National Office and area or regional offices. The team shall also be available, at the request of the state conservationists, regional foresters, and area directors, to help determine the eligibility of other EWP measures or practices and to assist with administrative details.

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§ 624.7 Limitations on use of emergency funds.

Emergency watershed protection funds may not be used to:

(a) Perform operation or maintenance (periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed).

(b) Solve watershed problems that existed before the disaster.

(c) Repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(d) Perform work on features of projects installed under the authority of Pub. L. 83-566, Pub. L. 78-534, Resource Conservation and Development, or measures installed by other Federal agencies. Exceptions may be made at the discretion of the Chief of NRCS.

(e) Construct works that would adversely affect downstream water rights.

(f) Make improvements to public or private property not essential to the reduction of threats caused by watershed improvement.

(g) Perform any work not determined to be economically and environmentally defensible under the provisions of this rule.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

§ 624.8 Environment.

Environmental aspects of emergency work are to be given careful consideration. A program environmental impact statement (EIS) for EWP work has been developed in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190, 83 Stat. 852 (42 U.S.C. 4321 et seq.)). An environmental evaluation is to be prepared for all nonemergency situations. State conservationists shall notify concerned area and field offices of the Fish and Wildlife Service, the Environmental Protection Agency, and, through existing coordination mechanisms of State clearinghouses, the State fish and game and other appropriate agencies of anticipated EWP work. They shall invite the assistance of these agencies in preparing the environmental evaluation and in planning and implementing the emergency work. Archeological, historical, or other special expertise needed is to be solicited from appropriate agencies and groups. Environmental and other considerations are to be integrated into emergency work by using an interagency and interdisciplinary planning approach.

[48 FR 4448, Feb. 1, 1983]