
United States
Department of
Agriculture

**Soil
Conservation
Service**

**National
Watershed
Manual**

Part 509

**Emergency Watershed
Protection**

Part 509

Emergency Watershed Protection

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Subpart 509A General**509.00 Purpose**

Part 509 sets forth the requirements and procedures for Federal assistance administered by the Soil Conservation Service (SCS) under section 216, Public Law 81-516 and section 403 of Title IV of the Agricultural Credit Act of 1978, Public Law 95-334. Codified rules for administration of the Emergency Watershed Protection (EWP) Program are set forth in 7 CFR 624.

509.01 Objective

The objective of the EWP Program is to assist in relieving imminent hazards to life and property from floods and the products of erosion created by natural disasters that are causing a sudden impairment of a watershed.

509.02 Scope

Authorized EWP technical and financial assistance may be made available when an emergency exists. Emergency watershed protection consists of emergency measures to reduce hazards to life and property from floods, drought, and the products of excessive runoff or erosion on any watershed impaired by a natural occurrence.

509.03 Administration

Administration of the EWP Program has been delegated to SCS who shall provide overall administrative direction and guidance for the program. SCS will transfer funds to the Forest Service (FS) at the national level for work to be installed by FS or its cooperators. Under general program criteria and procedures established by SCS, FS is responsible for administering EWP measures in National Forests and National Grasslands. FS is also responsible for emergency measures on all forested lands or rangelands within the National Forests, on adjacent rangelands that are administered under formal agreement with FS, and on other forest lands. On these lands, emergency work is done by either SCS or FS as mutually agreed.

In carrying out their responsibilities, FS and SCS work cooperatively with other Federal, State, and local government agencies. Details on FS operations are in FS Manual 3540.

State conservationists are to administer the program within their respective states. This includes all coordination with other agencies.

509.04 Definitions**(a) Watershed emergency**

A watershed emergency exists when a natural occurrence causes a sudden impairment of a watershed that creates an imminent threat to life or property. For the watershed to be eligible for assistance, the imminent threat to life or property must significantly exceed that which existed before the impairment.

(b) Natural occurrence

A natural occurrence includes, but is not limited to, floods, fires, windstorms, hurricanes, typhoons, earthquakes, volcanic actions, slides, tornadoes, and drought.

(c) Watershed impairment

A watershed impairment exists when the ability of a watershed to carry out its natural function is reduced to the extent of creating an imminent threat to life or property.

(d) Sudden watershed impairment

A sudden watershed impairment results from a single natural occurrence or a short-term combination of occurrences. Watershed impairments resulting from long-term combinations or series of natural or other occurrences are not considered sudden watershed impairments.

(e) Exigency

An exigency situation is defined as an immediate threat of damage to life or property. An exigency continues to exist as long as the probability of damage continues at such a high level.

(f) Nonexigency

A nonexigency situation is defined as the near-term probability of damage to life or property high enough to constitute a continued hazard, but not an immediate threat to life or property. A nonexigency situation

continues to exist as long as the probability of damage remains high enough to be considered an emergency.

(g) Emergency measures

Emergency measures are those undertaken to remove or reduce hazards created by the disaster to safeguard life and property from flooding or the products of erosion.

(h) Federal-aid highway

A Federal-aid highway is any public highway, roadway, or other road eligible for the Emergency Relief Program administered by the Federal Highway Administration of the Department of Transportation. The Emergency Relief Program will help State and local highway agencies pay the unusually heavy expenses of repairing serious damage to the Federal-aid system resulting from natural disasters or catastrophic failure.

(i) Long-life structures

Debris basins and reservoir and channel protection measures containing grouted rock, concrete, pile and lagging, gabions, or any practice whose life expectancy is more than 10 years are considered long-life structures.

Subpart 509B Program administration

509.10 General

Emergency watershed protection assistance is made available when a watershed emergency is determined to exist by the state conservationist. Procedures for providing assistance vary according to whether the watershed emergency is classified as an exigency or a nonexigency. Guidance for managing the program and providing assistance is given in the National Emergency Watershed Protection Handbook.

The classification of an emergency may be changed if the situation changes. If the near-term probability that the threat to life or property is reduced because of emergency assistance or other factors, an exigency may be reclassified as a nonexigency. Similarly, as occurrences increase the probability of threats to life or property, a nonexigency will be appropriately reclassified as an exigency. If warranted, a situation previously considered a nonemergency will be appropriately reclassified as a nonexigency or an exigency.

509.11 Criteria for assistance

(a) Eligible persons

Assistance is available to those public or private landowners, land managers, land users, or others who have a legal interest in or responsibility for the values threatened by a watershed emergency and have exhausted or have insufficient funds or other resources available to provide adequate relief from the applicable hazards.

Interested persons other than Federal agencies must be represented by a project sponsor. The sponsor must:

- Be a legal subdivision of a State government or a State itself, a local unit of government, or qualified Indian tribe or tribal organization;
- Have legal authority and agree to use such authority to obtain needed real property rights, water rights, and permits; and
- Agree to provide for the operation and maintenance of completed emergency measures.

(b) Eligible measures

To be eligible for assistance, a measure must retard runoff to prevent flooding or prevent soil erosion, reduce threats to life or property (permanent improvements) resulting from a watershed emergency, and yield beneficial effects to more than one individual except in an exigency situation where single beneficiaries are permitted.

All measures must be economically and environmentally defensible and technically sound. They must be limited to what is necessary to reduce applicable threats to a level not to exceed that which existed before the watershed was impaired. All work is to be carried out according to National Engineering Manual 210-501.24(c).

The work must conform to rules and regulations published by SCS for complying with Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Flood Plain Management.

Measures used must be the most cost effective ones that will provide immediate, adequate, and safe relief from the hazard causing the emergency.

509.12 Cost sharing

Federal funds may bear up to 75 percent of the construction costs of emergency measures. In an exigency situation, this requirement may be waived by the director of the Watershed Protection Division (WPD). In the case of immediate need or extreme hardship on the part of the sponsors, Federal funds may provide up to 100 percent of the cost. Sponsors are responsible for obtaining any needed real property rights.

Cost sharing for the construction of eligible measures of \$200,000 or less is waived for measures to be installed in American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands (48 U.S.C. 1469(d)).

Sponsors may provide their share of construction costs in the form of cash, in-kind services, such as labor or equipment, or a combination of cash and in-kind services.

509.13 Funding

The Chief allots funds to state conservationists to carry out emergency assistance within their respective states. NTC directors are allotted funds to coordinate emergency assistance activities and to ensure consistent and efficient operations for the states served. State conservationists are to establish procedures for charging time to EWP work as required by the SCS Time and Progress Reporting System.

Funds for work to be carried out on National Forest lands by the FS or by their cooperators are to be transferred to the FS at the national level. If additional funds are needed for FS work, the FS is to notify the WPD and arrange for appropriate transfer of funds at the national level.

509.14 Time limits

In an exigency situation, funds must be obligated within 10 days after the receipt of emergency funds, 2 days after the date of the disaster event, or when conditions permit beginning construction activities, whichever is later. All work must be completed within 30 days after the funds are obligated. A 10-day extension may be granted by the director, WPD, with justification based on unusual circumstances.

In a nonexigency situation, funds must be obligated and construction completed within 220 consecutive calendar days after the date of receipt of funds. The director, WPD, may grant extensions if unforeseen or uncontrollable events cause delays. Requests must be adequately supported by documentation.

509.15 Limitations

Emergency funds must not be used to perform normal operation or maintenance or to solve watershed problems that existed before the disaster-causing event. These funds are not to be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

Emergency funds must not be used for installing rock riprap, gabions, or similar measures to provide protection to land, crops, or pastures; constructing a new channel or doing work that increases predisaster

capacity of a channel; removing floating debris and sediment from reservoirs or debris basins (this is operation and maintenance regardless of ownership); or repairing beaches, dunes, and shorelines damaged by erosion as a result of wave action.

Work may not be done on any measures installed under an SCS project agreement or on measures installed by other Federal agencies unless an exception is granted by the director, WPD. Documentation for an exception must include a certification that all operation and maintenance responsibilities of the sponsors have been performed and no engineering deficiency existed before the disaster.

Long-life measures, such as floodwater retarding dams, channel modification, sediment basins, grade stabilization structures, and channel stabilization measures (such as gabions), may not be installed as emergency measures unless they are the most cost effective way to safely obtain emergency protection.

Emergency funds are not to be used to remove threats to Federal-aid highways except where the Federal-aid highway protection would be incidental to other eligible protection.

Subpart 509C Assistance

509.20 Application

Sponsors may apply to any SCS office for EWP assistance. SCS shall help sponsors prepare their applications. Information supplied should include the nature, location, and scope of the problems and the assistance needed.

509.21 Investigations

Upon receipt of an application for EWP, the state conservationist and regional forester or area director, as appropriate, shall immediately investigate the emergency situation to determine if EWP is applicable. The FS will coordinate investigations with SCS. When carrying out the investigation, state conservationists must classify the degree of emergency. This determination considers two broad types or degrees of emergency situations:

- An imminent situation of unusual urgency—an exigency.
- An emergency requiring action, but of less urgency than an imminent situation—a nonexigency.

When an exigency exists, prompt remedial action to eliminate an imminent threat to loss of life is to be provided.

If an exigency does not exist, but the impairment justifies emergency assistance, the state conservationist shall submit a request for funds to the director, WPD, within 60 days after the disaster event. Neither SCS nor the FS may commit funds until notified by the National Headquarters that the funds are available.

509.22 Request for funding

(a) Exigencies

The state conservationist shall notify WPD and indicate the nature of the emergency and the estimate of funds needed within 10 days of the disaster event or within 2 days after conditions permit access to the damaged areas, whichever is later. If funds are made

available, the state conservationist shall confirm the situation in a memorandum to the director, WPD, that explains the nature of the emergency, the location of the emergency, the kind of remedial work and funds needed, who the sponsors are, and a description of potential damage. Where an exigency exists, the memorandum from the state conservationist constitutes the request for funds.

(b) Nonexigencies

Requests for nonexigency projects shall be in writing to the director, WPD, within 60 days of the disaster event. A report must accompany the request. It must be concise, but adequate to support the need for and eligibility of emergency assistance. The scope and detail of the report should correspond with the scope of the emergency. The request for funds is to include at least the following information:

- Total amount of funds needed for SCS and FS.
- Endorsement by the regional forester or area director if there is to be any input for forest lands.
- Event date and cause of watershed impairment. When applicable, use event date designated by Federal Emergency Management Agency (FEMA).
- Date of funding request.
- Members of the investigation team.
- Location (county, parish, other) of watershed impairment.
- Description of impairment and of potential damages from flooding and the products of erosion including:
 - Environmental impact.
 - Types of health hazards anticipated and number of people concerned.
 - Land use of property endangered.
- Map showing:
 - Land ownership or management of endangered area (National Forest, private, other).
 - Location of potential damage that would be prevented or alleviated by emergency treatment.
 - Area to receive emergency treatment.
- Estimated kind, quantity, and cost of emergency measures recommended.
- Economic, environmental, and other social effect defensibility of the proposed measures.

- Description of the environmental impact expected from installation of the recommended measures. Include a summary of substantive comments from other agencies.
- Identification of sponsors requesting assistance.
- List of other Federal, State, and local organizations that are involved. Show type and extent of involvement for each organization.
- A statement that:
 - FEMA has been consulted if the disaster is major,
 - The assistance recommended is being coordinated with other emergency assistance programs,
 - Other sources of funds are committed, and
 - An environmental evaluation will be made before measures are installed.
- Additional maps, tables, charts, or photographs as determined necessary.

Subpart 509D Planning and implementation

509.30 Coordination

The state conservationist is to notify the State and regional clearing houses, FEMA, regional offices of the United States Fish and Wildlife Service, the Environmental Protection Agency, the State Fish and Game agency, and other appropriate agencies of the expected emergency assistance and invite their assistance in planning and implementing the emergency work. Need for early action is to be stressed. Telephone contacts are acceptable, but are to be confirmed by a written notification and request for assistance.

As appropriate, an entity or entities of State government, such as conservation districts and county governments, are to be asked to assist the state conservationist in setting priorities for installation of measures.

The state conservationist is to coordinate work with other agencies administering emergency programs, including those administered by the Agricultural Stabilization and Conservation Service, Farmers Home Administration, U.S. Army Corps of Engineers, Small Business Administration, FEMA, and other appropriate agencies. Such coordination may include specific agreements about the tasks each agency is to perform.

If the area is declared a "major disaster area" by the President under Public Law 93-288, the emergency assistance is to be coordinated through FEMA. If FEMA transfers this responsibility to the Federal Regional Council during the recovery period, SCS is to be responsive to the council.

509.31 Planning considerations

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 to preserve as much of the existing wildlife habitat as possible.

Emergency construction practices may include, but are not limited to, such measures as seasonal construction, minimum clearing, reshaping spoil, limiting excavation to one bank (on alternate sides where appropriate), and prompt revegetation of disturbed areas. Concurrent installation of measures needed to offset adverse impacts of the emergency measures should be planned. If this is not practicable, plans should be included to ensure installation within 30 days of the other measures.

Eligibility of all long-life measures or practices proposed for construction shall be determined by a team consisting of SCS personnel from the National Headquarters, the NTC, and the State. The team shall determine the need for funds before any commitments are made. This team is also available for assistance in determining eligibility under adverse or questionable circumstances and applicable design standards.

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

509.32 Environmental considerations

Environmental aspects of emergency work are to be considered as carefully as possible under the given emergency situation. A program environmental impact statement for EWP work has been developed in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852 (42 U.S.C. 4321 et seq.)).

An environmental evaluation is to be prepared for all nonemergency situations. 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.

509.33 Methods of accomplishing work

SCS generally does emergency work by construction contract, equipment rental contract, supply contract, purchase order (small purchases only), and/or employed labor. However, emergency work may be done by the sponsors. Procurement for emergency work, even in an exigency, is to be consistent with the National Contracts, Grants, and Cooperative Agreements Manual (120-V-510), Federal Procurement Regulations, and USDA and SCS supplements.

Real property rights must be acquired, reviewed, and certified as provided in parts 511 and 512 of the National Contracts, Grants, and Cooperative Agreements Manual.

Real property rights should be obtained in writing. Oral permits should be documented as soon as possible by the person making contact with the landowner.

An agreement is required for all emergency watershed protection work. Agreements are to be prepared according to instructions in the National Contracts, Grants, and Cooperative Agreements Manual (120-V-514). These agreements will include requirements for needed operation and maintenance, which is the sponsor's responsibility.

The agreement can be used to record a disclaimer if the remedial work does not meet SCS standards. This disclaimer may be used only if the sponsor agrees to bring the measure up to reasonable standards by other means or authorities after the elimination of the threat.

509.34 Post installation review

Post installation reviews should be made to determine if the measures installed are according to policy and are effective. Reviews are to include spot checking of individual measures by the appropriate state office staff members.

Subpart 509E Reports

509.40 Project code numbers

Records of obligations, expenditures, and unobligated balances shall be recorded by project number. WPD will assign the number at the time funds are authorized for EWP. Each project will be numbered consecutively in each state (i.e., 5001, 5002, . . .).

509.41 Final report

A final report describing the measures installed and the benefits achieved shall be prepared within 60 days after all work is completed. The report will summarize the emergency operations of the SCS and the Forest Service separately. It will include:

- The assigned project code number and completion date.
- A brief description of the disaster and affected area.
- A description of any unusual situation or problems.
- A description of beneficial effects accrued, such as sediment reduction, property protected, or threat to loss of life reduced. Estimate dollar values where possible.
- A summary of measures installed and their cost. Show local and Federal cost. Federal cost shall include technical and financial assistance (TA & FA). If final accounts are not available within 60 days, use best estimate of cost.
- A statement as to whether set aside or small business contractors were employed for SCS activities and the dollar amount of such contracts or procurements.
- A statement that emergency work is completed and that EWP is terminated. At this time, all remaining EWP funds are to be released.

The final report is sent to the SCS Chief with copies to WPD and the NTC.

