

Chapter 173-145 WAC

ADMINISTRATION OF THE FLOOD CONTROL ASSISTANCE ACCOUNT PROGRAM

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-145-150	Equipment rental. [Statutory Authority: Chapter 86.26 RCW. 85-14-002 (Order DE 85-10), § 173-145-150, filed 6/21/85.] Repealed by 87-04-022 (Order 86-36), filed 1/28/87. Statutory Authority: Chapter 86.26 RCW.
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WAC 173-145-010 Authority and purpose. RCW 86.26.050 provides that counties and other municipal corporations responsible for flood control maintenance may apply to the department of ecology for financial assistance for the preparation of comprehensive flood control management plans and for flood control maintenance projects. The purpose of those plans is described in RCW 86.26.105. The department shall determine priorities and allocate available funds from the flood control assistance account program (FCAAP) among those counties applying for assistance, and shall adopt rules establishing the criteria by which those allocations must be made. The criteria must be based upon proposals that are likely to bring about public benefits commensurate with the amount of state funds allocated thereto. This chapter describes the manner in which ecology will implement the provisions of the act.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-010, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-010, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-010, filed 6/21/85.]

WAC 173-145-020 Definitions. For the purposes of this chapter, the following definitions are used:

- (1) "Applicant." An eligible municipal corporation seeking matching funds for flood control maintenance work.
- (2) "Appropriate local authority." A county, city, or town that has planning and land use jurisdiction within a given area that is covered by the comprehensive flood control management plan.
- (3) "Certification." Certification is the written confirmation between ecology and the appropriate local authority and

the county engineer who verifies the understanding as to what the comprehensive flood control management plan will contain, the timing and anticipated product, and a reporting schedule that will allow for ecology review and input during the plan development.

(4) "Comprehensive flood control management plan (CFCMP)." A document that determines the need for flood control work, considers alternatives to in-stream flood control work, identifies and considers potential impacts of in-stream flood control work on the state's in-stream resources, and identifies the river's meander belt or floodway, as described in WAC 173-145-040.

(5) "County engineer." The appointed public works director, county engineer, or the person designated to act for the county engineer.

(6) "Eligible municipal corporation." Counties, cities, towns, conservation districts, flood control zone districts, or any special districts subject to flood conditions.

(7) "Emergency fund." That portion of the biennial appropriation allocated to the flood control assistance account which is set aside for emergency projects.

(8) "Emergency project." Flood control work necessary for reasons declared by the appropriate local authority and as authorized and approved by ecology that must be done immediately to protect lives or property.

(9) "Flood compatible land uses." Those uses of the land within the river's meander belt or floodway which comply with the minimum state, federal, and local flood plain management rule requirements.

(10) "Flood plain management activities." Activities described in WAC 173-145-050 performed by local governments through ordinances or other means to reduce the damaging effects of flooding.

(11) "Floodway." The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base (one hundred year frequency) flood without cumulatively increasing the water surface elevation more than a designated height.

(12) "Maintenance project." The work necessary to preserve or restore the natural condition or to restore man-made flood control facilities to their former condition using in-kind replacement materials or acceptable alternatives. This work is necessary due to anticipated or actual damage or destruction from flooding by action of erosion, stream flow, sheet runoff, or other damages by the sea or other bodies of water.

(13) "Meander belt." That portion of the flood plain, that can be identified by the evidence of present and previous meanders. This includes the present stream channel. Where there is no identified floodway, that area which is floodprone and has similar topographic characteristics to present and historic stream channels is considered as a meander belt.

(14) "Public benefit." Benefit to the health, safety, or general welfare of the citizens of the state or community at large that results from a flood control project or plan, or some benefit by which their rights or liabilities are affected such as an effect on public property or facilities owned or maintained by an eligible municipal corporation.

(15) "Special district." A district as defined in chapter 85.38 RCW that is either a:

- (a) Diking district;
- (b) Drainage district;
- (c) Diking, drainage, and/or sewerage improvement district;
- (d) Intercounty diking and drainage district;
- (e) Consolidated diking district, drainage district, diking improvement district, and/or drainage improvement district;
- or
- (f) Flood control district.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-020, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-020, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-020, filed 6/21/85.]

WAC 173-145-030 Eligibility criteria for FCAAP funds. Criteria to be used in determining eligibility for FCAAP funds are as follows:

(1) Eligible municipal corporation. The applicant must be an eligible municipal corporation as defined in WAC 173-145-020(6).

(2) Public benefit. The applicant must demonstrate that their comprehensive flood control management plans and flood control maintenance projects will further the general public and state interest as differentiated from a private interest and that they will bring about public benefits commensurate with FCAAP funds provided.

(3) Comprehensive flood control management plan. The requirements of WAC 173-145-040 must be complied with by the appropriate local authority with flood control jurisdiction over the area where the proposed project is located.

(4) Flood plain management activities. The appropriate local authority within whose jurisdiction projects are located must be engaging in approved flood plain management activities as described in WAC 173-145-050.

(5) Budget report. Any eligible municipal corporation seeking FCAAP funds shall submit its annual budget for flood control purposes to the county engineer within thirty calendar days after its final adoption. The county engineer shall then forward the budget report for eligible municipal corporations and for the county to ecology. The information will provide the basis for preparation of a preliminary plan for the most beneficial and orderly allocation of FCAAP funds. Soil conservation districts are exempt from the provisions of this section.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-030, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-030, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-030, filed 6/21/85.]

WAC 173-145-040 Comprehensive flood control management plan (CFCMP). The county engineer of the county within which the maintenance project is located shall certify that the CFCMP has been completed and adopted by

the appropriate local authority or is being prepared. Comprehensive flood control management plans, and any revisions to the plans, must be approved by ecology, in consultation with the department of fish and wildlife. The CFCMP must be completed and adopted within three years of the date that it is certified as being prepared. If, after the three-year period has elapsed, such a plan has not been completed and adopted, the appropriate local authority may not make grants to the county for flood control maintenance projects until the CFCMP is completed and adopted by the appropriate local authority. During the three-year period, projects within a drainage area, designated as the CFCMP study area, may be funded as part of a phased project plan: Provided, That preliminary studies for the CFCMP have been conducted to identify the one-hundred-year frequency flood plain problem areas and factors contributing to flooding: And provided further, That the proposed projects have been prioritized to achieve the greatest efficiency in flood control for the overall CFCMP study area. These limitations on grants may not preclude allocations for emergency purposes made under RCW 86.26.060. The appropriate local authority may require the applicant to fully or partially fund the preparation of the CFCMP. The plan must include:

- (1) Determination of the need for flood control work.
 - (a) Description of the watershed;
 - (b) Identification of types of watershed flood problems;
 - (c) Location and identification of specific problem areas;
 - (d) Description of flood damage history;
 - (e) Description of potential flood damages;
 - (f) Short-term and long-term goals and objectives for the planning area;
 - (g) Description of rules that apply within the watershed including, but not limited to, local shoreline management master programs, and zoning, subdivision, and flood hazard ordinances;
 - (h) Determination that the instream flood control work is consistent with applicable policies and rules.
- (2) Alternative flood control work.
 - (a) Description of potential measures of instream flood control work;
 - (b) Description of alternatives to instream flood control work.
- (3) Identification and consideration of potential impacts of instream flood control work on the following instream uses and resources.
 - (a) Fish resources;
 - (b) Wildlife resources;
 - (c) Scenic, aesthetic, and historic resources;
 - (d) Navigation;
 - (e) Water quality;
 - (f) Hydrology;
 - (g) Existing recreation;
 - (h) Other impacts.
- (4) Area of coverage for the comprehensive plan shall include, as a minimum, the area of the one-hundred-year frequency flood plain within a reach of the watershed of sufficient length to ensure that a comprehensive evaluation can be made of the flood problems for a specific reach of the watershed. The plan may or may not include an entire watershed. Comprehensive plans shall also include flood hazard areas not subject to riverine flooding such as areas subject to

coastal flooding, flash flooding, or flooding from inadequate drainage. Either the meander belt or floodway must be identified on aerial photographs or maps that will be included with the plan.

(5) Conclusion and proposed solution(s). The CFCMP must be finalized by the following action from the appropriate local authority:

- (a) Evaluation of problems and needs;
- (b) Evaluation of alternative solutions;
- (c) Recommended corrective action with proposed impact resolution measures for resource losses; and
- (d) Corrective action priority.

(6) A certification from the state department of community, trade, and economic development that the local emergency management organization is administering an acceptable comprehensive emergency operations plan.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-040, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-040, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-040, filed 6/21/85.]

WAC 173-145-050 Flood plain management activities. Local jurisdictions within which flood control maintenance projects are located, must be engaging in flood plain management activities. Under chapter 86.26 RCW the director of the department of ecology must approve the flood plain management activities of the county, city, or town that has jurisdiction over the area where the project will be located. To be eligible for FCAAP funding the local jurisdiction must be required to:

- (1) Participate in the National Flood Insurance Program (NFIP) and meet all of the NFIP requirements.
- (2) Restrict land uses within the meander belt or floodway of rivers to only flood compatible uses. Where applicable, adopted shoreline management master programs will be considered a minimum land use measure.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-050, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-050, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-050, filed 6/21/85.]

WAC 173-145-060 FCAAP project application process. The project application process for the eligible municipal corporations' applications includes the following in the general sequence given.

(1) The applicant shall prepare the project application to comply with the provisions of chapter 86.26 RCW and this chapter. The application must be made on a form furnished by ecology. A complete application shall include the following:

- (a) A written description of the project containing the following as a minimum: Name of applicant, name of affected water body, project summary, location, amount of local match, and proposed local funding source;
- (b) A detailed cost estimate identifying major project elements;
- (c) A map to identify water body names, stream river mile, section-township-range;
- (d) Construction plans; and
- (e) A description of the project benefits that describes how the project will mitigate flood damages and describes

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development which exists on adjacent and nearby lands which are protected by the facility.

(2) The applicant shall review the preliminary project proposal with the county engineer, the Washington department of fish and wildlife and the department of natural resources and any affected Indian tribes.

(3) The applicant shall submit a prioritized list of project applications to the county engineer.

(4) The county engineer shall submit a prioritized list of all project applications within the county to ecology.

(5) The county engineer shall furnish evidence to ecology that the comprehensive flood control management plan described in WAC 173-145-040 is being prepared or is completed and adopted by the appropriate local authority and the flood plain management activities described in WAC 173-145-050 are being implemented.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-060, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-060, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-060, filed 6/21/85.]

WAC 173-145-070 FCAAP project approval process.

The project approval process for the eligible municipal corporations' applications includes the following in the general sequence given.

(1) Ecology will review all projects for compliance with the requirements under this chapter and chapter 86.26 RCW.

(2) Ecology shall consult with the state department of fish and wildlife in the development of a project priority list. The state department of natural resources, affected Indian tribes, and other affected parties may review and comment on the proposed project plans before the approval of those plans.

(3) Thirty days public notice must be given that the project priority list will be the subject of a public hearing. Notice of this hearing shall appear in the *Washington State Register* in accordance with chapter 34.08 RCW.

(4) The project priority list will be available at the shorelands and environmental assistance program of the department of ecology, at least fifteen days before the public hearing.

(5) The public comments will be reviewed and ecology shall approve the project priority list as proposed or as revised in accordance with public comments.

(6) Ecology shall prepare and finalize the written agreements with the counties.

(7) The counties shall prepare and finalize the written agreements with the involved eligible municipal corporations within the county.

(8) The applicant shall prepare the construction plans and specifications for approval by the county engineer before submitting them to ecology for review and approval of each project for compliance with all requirements.

(9) The applicant shall acquire the necessary federal, state, and local permits or authorizations along with any other permission required to complete the project.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-070, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-070, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-070, filed 6/21/85.]

WAC 173-145-080 Criteria for allocation of funds.

The priority given to projects by ecology, the counties, and other eligible municipal corporations shall involve consideration of the following criteria:

- (1) The relationship of public benefits to total project costs;
- (2) The priority that has already been established by each county;
- (3) Intensity of local flood control management problems including, but not limited to, their inter-relationships with:
 - (a) Population affected;
 - (b) Property and related development affected;
 - (c) Land management and zoning;
 - (d) Existing flood control management practices.
- (4) Where the CFCMP is completed and adopted, the following will be considered:
 - (a) Consistency with the plan or plan recommendations;
 - (b) Priority of the project as identified in the plan;
 - (c) Implementation of the plan or plan recommendations;
 - (d) Potential impacts of instream uses and resources;
- (5) Where a CFCMP is being developed or has not been initiated, the following will be considered:
 - (a) Evidence of multijurisdictional cooperation necessary for development of a comprehensive county or multi-county comprehensive flood control management plan (CFCMP);
 - (b) Availability of qualified personnel or resources for planning purposes;
 - (c) Availability of qualified personnel or resources for project construction purposes;
 - (d) Other planning efforts undertaken or proposed within the planning jurisdiction and their relationship to flood control management;
 - (e) Ability to make rapid progress toward development of a comprehensive flood control management plan;
 - (f) Existing and proposed participation of community groups, private industry, professional organizations, the general public, and others toward the development and implementation of the proposed comprehensive flood control management plan.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-080, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-080, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-080, filed 6/21/85.]

WAC 173-145-090 Flood control assistance account funding and matching requirements. The flood control assistance account is established at four million dollars at the beginning of each biennium. The following criteria must be used for allocating FCAAP funds:

- (1) The amount of FCAAP funding for any project, except emergency projects described in WAC 173-145-100, may not exceed seventy-five percent of the total project cost, including planning and design costs.
- (2) The amount of FCAAP funds for cost sharing feasibility studies for new flood control projects shall not exceed fifty percent of the matching funds that are required by the federal government, and shall not exceed twenty-five percent of the total cost of the feasibility study.

(3) The amount of FCAAP funds to prepare a CFCMP may not exceed seventy-five percent of the full planning costs.

(4) The amount of FCAAP funds available for all non-emergency projects and CFCMP's in any county may not exceed five hundred thousand dollars per biennium.

(5) In addition to the limits in subsection (4) of this section, an agency formed under chapter 86.13 RCW must be allowed up to one hundred thousand dollars in FCAAP funds per biennium.

(6) In those areas where a designated CFCMP area extends into two or more jurisdictions, costs for a CFCMP may be shared by the involved local authorities.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-090, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-090, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-090, filed 6/21/85.]

WAC 173-145-100 Emergency fund administration.

Funds must be available for flood control projects in response to unusual, unforeseeable [unforeseeable], and emergent flood conditions and must be allocated in amounts adequate for the preservation of life and property. The following criteria must be the basis of allocating the emergency funds:

- (1) Appropriations from the FCAAP fund for emergency projects will require the declaration of an emergency by the appropriate local authority.
- (2) Application for emergency funds must be made on the same form used for nonemergency fund applications.
- (3) Payment of FCAAP funds for emergency projects will be based on project construction costs. Flood fighting costs may be included.
- (4) Payment for emergency work must be allocated on a first-come first-serve basis and may not be based on any priority system.
- (5) At the discretion of ecology, emergency funds may be made available for use on nonemergency projects.
- (6) The maximum amount of emergency funds initially available for any one county is one hundred fifty thousand dollars per biennium. If the total available emergency funds are not needed by other counties, and the amount of emergency funds needed in a county exceeds one hundred fifty thousand dollars, the county can request additional emergency funds.
- (7) The flood control assistance account contribution may not exceed eighty percent of the eligible project cost of an emergency project.

(8) Emergency funds will only be made available to projects that have been given approval for matching funds by the department of ecology before construction work is performed.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-100, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-100, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-100, filed 6/21/85.]

WAC 173-145-110 Multiyear projects. Approval for eligibility by ecology will only be required once for a project that continues more than one biennium, but funding for each subsequent biennium is subject to further FCAAP appropriation by the legislature.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-110, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-110, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-110, filed 6/21/85.]

WAC 173-145-120 Work standards for all FCAAP projects. All work that is funded from the flood control assistance account shall conform to the standards and specifications of the county engineer.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-120, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-120, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-120, filed 6/21/85.]

WAC 173-145-130 Project construction monitoring. The following are the responsibilities and criteria for project construction monitoring and final approval:

(1) County engineer responsibilities. Associated with responsibility for project plan approval and supervision of the project work, the county engineer shall provide inspection to assure that all project work is conducted and completed according to the construction plans and specifications.

(2) Ecology's responsibilities. The authorized representative of the department of ecology has the right to enter at all reasonable times in or upon any property, public or private, for the purpose of monitoring and inspecting the project work as necessary to assure compliance with the terms of the appropriate written agreement. The authorized representative of the department of ecology is the contract officer and must be identified in the written agreement. The county engineer will be informed before any inspection for purposes of construction monitoring and guidance by any representative of ecology other than the contract officer. Representatives of ecology may observe the construction process without prior notification of the county engineer.

(3) Final inspection and approval. Upon completion of the work, the county engineer, along with representatives from ecology and the applicant, shall make a final detailed inspection. Results of the final inspection must be displayed in a written report prepared by ecology and, when appropriate, on "as built" construction plans. "As built" construction plans must be submitted to ecology within thirty days after the final project inspection.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-130, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-130, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-130, filed 6/21/85.]

WAC 173-145-140 Written agreements. Written agreements will be prepared by ecology as a means to reimburse eligible municipal corporations for work done on approved eligible projects or for development of CFCMP's. Written agreements, billing, and payment shall comply with ecology's standard requirements for grants and contracts. Notification is required when written agreements will not be accepted or executed to allow ecology the opportunity to award prioritized, unfunded projects.

[Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-140, filed 1/28/87; 85-14-002 (Order DE 85-10), § 173-145-140, filed 6/21/85.]

(12/21/00)

WAC 173-145-155 Approval of changes to written agreements. All flood control maintenance and comprehensive flood control management planning (CFCMP) projects subject to the provisions of this rule must be conducted in accordance with the plans, specifications, and conditions approved by ecology. Any contemplated changes during construction or planning process that are significant deviations from conditions of the approved agreement, must first be submitted to ecology for approval. Any changes to the total cost of the project following execution of the written agreement must be submitted to ecology for approval before the construction or the completion of the plan.

[Statutory Authority: RCW 86.26.105. 01-02-006 (Order 00-13), § 173-145-155, filed 12/21/00, effective 1/21/01. Statutory Authority: Chapter 86.26 RCW. 87-04-022 (Order 86-36), § 173-145-155, filed 1/28/87.]