

# National Dam Safety Program

Progress Through Partnerships

## Public Law 104-303, Section 215

### The National Dam Safety Program Act

#### SEC. 215. National Dam Safety Program.

- a. **PURPOSE** - The purpose of this section is to reduce the risks to life and property from dam failure in the United States through the establishment and maintenance of an effective national dam safety program to bring together the expertise and resources of the Federal and non-Federal communities in achieving national dam safety hazard reduction. It is not the intent of this section to preempt any other Federal or State authorities nor is it the intent of this section to mandate State participation in the grant assistance program established under this section.
- b. **EFFECT ON OTHER DAM SAFETY PROGRAM** - Nothing in this section (including the amendments made by this section) shall preempt or otherwise affect any dam safety program of a Federal agency other than the Federal Emergency Management Agency, including any program that regulates, permits, or licenses any activity affecting a dam.
- c. **DAM SAFETY PROGRAM** - This Act entitled "An Act to authorize the Secretary of the Army to undertake a national program of inspection of dams," approved August 8, 1972 (33 U.S.C. 467 et seq.) is amended [as follows.]
- d. **CONFORMING AMENDMENT** - Section 3(2) of the Indian Dams Safety Act of 1994 (25 U.S.C. 3802(2); 108 Stat. 1560) is amended by striking "the first section of Public Law 92-367 (33 U.S.C. 467)" and inserting "section 2 of the National Dam Safety Program Act."

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- SEC. 2. DEFINITIONS.
- SEC. 3. INSPECTION OF DAMS
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#### SEC. 1. SHORT TITLE.

This Act may be cited as the 'National Dam Safety Program Act.'

#### SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

1. **BOARD**.-The term 'Board' means a National Dam Safety Review Board established under section 8(h)."
2. **DAM**.-The term 'dam'-
  - A. means any artificial barrier that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water, that-
    - i. is 25 feet or more in height from-

- I. the natural bed of the stream channel or watercourse measured at the downstream toe of the barrier; or
    - II. if the barrier is not across a stream channel or watercourse, from the lowest elevation of the outside limit of the barrier; to the maximum water storage elevation; or
  - ii. has an impounding capacity for maximum storage elevation of 50 acre-feet or more; but
- B. does not include-
  - i. a levee; or
  - ii. a barrier described in subparagraph (A) that-
    - I. is 6 feet or less in height regardless of storage capacity; or
    - II. has a storage capacity at the maximum water storage elevation that is 15 acre-feet or less regardless of height; unless the barrier, because of the location of the barrier or another physical characteristic of the barrier, is likely to pose a significant threat to human life or property if the barrier fails (as determined by the Director).
- 3. **DIRECTOR.**-The term 'Director' means the Director of FEMA.
- 4. **FEDERAL AGENCY.**-The term 'Federal agency' means a Federal agency that designs, finances, constructs, owns, operates, maintains, or regulates the construction, operation, or maintenance of a dam.
- 5. **FEDERAL GUIDELINES FOR DAM SAFETY.**-The term 'Federal Guidelines for Dam Safety' means the FEMA publication, numbered 93 and dated June 1979, that defines management practices for dam safety at all Federal agencies.
- 6. **FEMA.**-The term 'FEMA' means the Federal Emergency Management Agency.
- 7. **HAZARD REDUCTION.**-The term 'hazard reduction' means the reduction in the potential consequences to life and property of dam failure.
- 8. **ICODS.**-The term 'ICODS' means the Interagency Committee on Dam Safety established by section 7.
- 9. **PROGRAM.**-The term 'Program' means the national dam safety program established under section 8.
- 10. **STATE.**-The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.
- 11. **STATE DAM SAFETY AGENCY.**-The term 'State dam safety agency' means a State agency that has regulatory authority over the safety of non-Federal dams.
- 12. **STATE DAM SAFETY PROGRAM.**-The term 'State dam safety program' means a State dam safety program approved and assisted under section 8(f).
- 13. **UNITED STATES.**-The term 'United States,' when used in a geographical sense, means all of the States.

### SEC. 3. INSPECTION OF DAMS

- a. **IN GENERAL.**-As soon as practicable, the Secretary of the Army, acting through the Chief of Engineers, shall carry out a national program of inspection of dams for the purpose of protecting human life and property. All dams in the United States shall be inspected by the Secretary except (1) dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, or the International Boundary and Water Commission, (2) dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, (3) dams which have been inspected within the twelve-month period immediately prior to the enactment of this Act by a State agency and which the Governor of such State requests be excluded from inspection, and (4) dams which the Secretary of the Army determines do not pose any threat to human life or property. The Secretary may inspect dams that have been licensed under the Federal Power Act upon request of the Federal Power Commission and dams under the jurisdiction of the International Boundary and Water Commission upon request of such Commission.
- b. **STATE PARTICIPATION.**-On request of a State dam safety agency, with respect to any dam the failure of which would affect the State, the head of a Federal agency shall-
  - 1. provide information to the State dam safety agency on the construction, operation, or maintenance of the dam; or
  - 2. allow any official of the State dam safety agency to participate in the Federal inspection of the dam.

### SEC. 4. INVESTIGATION REPORTS TO GOVERNORS.

As soon as practicable after inspection of a dam, the Secretary shall notify the Governor of the State in which such dam is located of the results of such investigation. The Secretary shall immediately notify the Governor of any hazardous conditions found during the inspection. The Secretary shall provide advice to the Governor, upon request, relating to the timely remedial measures necessary to mitigate or obviate any hazardous condition found during an inspection.

#### **SEC. 5. DETERMINATION OF DANGER TO HUMAN LIFE AND PROPERTY.**

For the purpose of determining whether a dam (including the waters impounded by such dam) constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the dam might be endangered by overtopping, seepage, settlement, erosion, sediment, cracking, earth movement, earthquakes, failure of bulkheads, flashboards, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam. [Section 5]

#### **SEC. 6. NATIONAL DAM INVENTORY.**

The Secretary of the Army, acting through the Chief of Engineers, may maintain and periodically publish updated information on the inventory of dams in the United States.

#### **SEC. 7. INTERAGENCY COMMITTEE ON DAM SAFETY.**

- a. **ESTABLISHMENT.**-There is established an Interagency Committee on Dam Safety-
  1. comprised of a representative of each of the Department of Agriculture, the Department of Defense, the Department of Energy, the Department of Interior, the Department of Labor, FEMA, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Tennessee Valley Authority, and the United States Section of the International Boundary and Water Commission; and
  2. chaired by the Director.
- b. **DUTIES.**-ICODS shall encourage the establishment and maintenance of effective Federal and State programs, policies, and guidelines to enhance dam safety for the protection of human life and property through-
  1. coordination and information exchange among Federal agencies and State dam safety agencies;
  2. and information exchange among Federal agencies concerning implementation of the Federal Guidelines for Dam Safety.

#### **SEC. 8. NATIONAL DAM SAFETY PROGRAM.**

- a. **IN GENERAL.**-The Director, in consultation with ICODES and State dam safety agencies, and the Board shall establish and maintain, in accordance with this section, a coordinated national dam safety program. The Program shall-
  1. be administered by FEMA to achieve the objectives set forth in subsection (c);
  2. involve, to the extent appropriate, each Federal agency; and
  3. include-
    - A. each of the components described in subsection (d);
    - B. the implementation plan described in subsection (e); and
    - C. (C) assistance for State dam safety programs described in subsection (f).
- b. **DUTIES.**-The Director shall-
  1. not later than 270 days after the date of enactment of this paragraph, develop the implementation plan described in subsection (e); and
  2. not later than 300 days after the date of enactment of this paragraph, submit to the appropriate authorizing committees of Congress the implementation plan described in subsection (e); and
  3. by regulation, not later than 360 days after the date of the enactment of this paragraph-
    - A. develop and implement the Program;
    - B. establish goals, priorities, and target dates for implementation of the Program; and
    - C. to the extent feasible, provide a method for cooperation and coordination with, and assistance to, interested governmental entities in all States.
- c. **OBJECTIVES.**-The objectives of the Program are to:

1. ensure that new and existing dams are safe through the development of technologically and economically feasible programs and procedures for national dam safety hazard reduction;
  2. encourage acceptable engineering policies and procedures to be used for dam site investigation, design, construction, operation and maintenance, and emergency preparedness;
  3. encourage the establishment and implementation of effective dam safety programs in each State based on State standards;
  4. develop and encourage public education and awareness projects to increase public acceptance and support of State dam safety programs;
  5. develop technical assistance materials for Federal and State dam safety programs;
  6. develop mechanisms with which to provide Federal technical assistance for dam safety to the non-Federal sector.
- d. **COMPONENTS.-**
1. **IN GENERAL.-**The program shall consist of-
    - A. a Federal element and a non-Federal element; and
    - B. leadership activity, technical assistance activity, and public awareness activity.
  2. **ELEMENTS.-**
    - A. **FEDERAL.-**The Federal element shall incorporate the activities and practices carried out by the Federal agencies under section 7 to implement the Federal Guidelines for Dam Safety.
    - B. **NON-FEDERAL.-**The non-Federal element shall consist of-
      - i. the activities and practices carried out by States, local governments, and the private sector to safety build, regular, operate, and maintain dams; and
      - ii. Federal activities that foster State efforts to develop and implement effective programs for the safety of dams.
  3. **FUNCTIONAL ACTIVITIES.-**
    - A. **LEADERSHIP.-**The leadership activity shall be the responsibility of FEMA and shall be exercised by chairing ICODS to coordinate Federal efforts in cooperation with State dam safety officials.
    - B. **TECHNICAL ASSISTANCE.-**The technical assistance activity shall consist of the transfer of knowledge and technical information among the Federal and non-Federal elements described in paragraph (2).
    - C. **PUBLIC AWARENESS.-**Public awareness activities shall provide for the education of the public, including State and local officials, in the hazards of dam failures and related matters.
- e. **IMPLEMENTATION PLAN.-**The Director shall-
1. develop an implementation plan for the Program that shall set, through fiscal year 2002, year-by-year targets that demonstrate improvements in dam safety; and
  2. recommend appropriate roles for Federal agencies and for state and local units of government, individuals, and private organizations in carrying out the implementation plan.
- f. **ASSISTANCE FOR STATE DAM SAFETY PROGRAMS.-**
1. **IN GENERAL.-**To encourage the establishment and maintenance of effective State dam safety programs, to protect human life and property, and to improve State dam safety programs, the Director shall provide assistance with amounts made available under section 12 to assist States in establishing and maintaining dam safety programs-
    - A. in accordance with the criteria specified in paragraph (2); and
    - B. in accordance with more advanced requirements and standards established by the Board and the Director with the assistance of established criteria such as the Model State Dam Safety Program published by FEMA, numbered 123 and dated April 1987, and amendments to the Model State Dam Safety Program.
  2. **CRITERIA AND BUDGETING REQUIREMENT.-**For a State to be eligible for primary assistance under this subsection, a State dam safety program must be working toward meeting the following criteria and budgeting requirement, and for a State to be eligible for advanced assistance under this subsection, a State dam safety program must meet the following criteria and budgeting requirement and be working toward meeting the advanced requirements and standards established under paragraph (1)(B):
    - A. **CRITERIA.-**For a State to be eligible for assistance under this subsection, a State dam safety program must be authorized by State legislation to include substantially, at a minimum-
      - i. the authority to review and approve plans and specifications to construct, enlarge, modify, remove, and abandon dams;
      - ii. the authority to perform periodic inspections during dam construction to ensure compliance with approved plans and specifications;

- iii. a requirement that, on completion of dam construction, State approval must be given before the operation of the dam;
  - iv. (I) the authority to require or perform the inspection, at least once every 5 years, of all dams and reservoirs that would pose a significant threat to human life and property in case of failure to determine the continued safety of the dams and reservoirs; and (II) a procedure for more detailed and frequent safety inspections;
  - v. a requirement that all inspections be performed under the supervision of a State-registered professional engineer with related experience in dam design and construction;
  - vi. the authority to issue notices, when appropriate, to require owners of dams to perform necessary maintenance or remedial work, revise operating procedures, or take other actions, including breaching dams, when necessary;
  - vii. regulations for carrying out the legislation of the State described in this subparagraph;
  - viii. provisions for necessary funds-
    - I. to ensure timely repairs or other changes to, or removal of, a dam in order to protect human life and property; and
    - II. if the owner of the dam does not take action described in subclause (I), take appropriate action as expeditiously as practicable;
  - ix. a system of emergency procedures to be used if a dam fails or if the failure of a dam is imminent; and
  - x. identification of-
    - I. each dam the failure of which could be reasonably expected to endanger human life;
    - II. the maximum area that could be flooded if the dam failed; and
    - III. necessary public facilities that would be affected by the flooding.
- B. **BUDGETING REQUIREMENT.**-For a State to be eligible for assistance under this subsection, State appropriations must be budgeted to carry out the legislation of the State under subparagraph (A).
3. **WORK PLANS.**-The Director shall enter into a contract with each State receiving assistance under paragraph (2) to develop a work plan necessary for the State dam safety program to reach a level of performance specified in the contract.
4. **MAINTENANCE OF EFFORT.**-Assistance may not be provided to a State under this subsection for a fiscal year unless the State enters into such agreement with the Director as the Director requires to ensure that the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure dam safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the 2 fiscal years preceding the fiscal year.
5. **APPROVAL OF PROGRAMS.**-
- A. **SUBMISSION.**-For a State to be eligible for assistance under this subsection, a plan for a State dam safety program shall be submitted to the Director for approval.
  - B. **APPROVAL.**-A State dam safety program shall be deemed to be approved 120 days after the date of receipt by the Director unless the Director determines within the 120-day period that the State dam safety programs fails to meet the requirements of paragraph (1) through (3).
  - C. **NOTICE OF DISAPPROVAL.**-If the Director determines that a State dam safety program does not meet the requirements for approval, the Director shall immediately notify the State in writing and provide the reasons for the determination and the changes that are necessary for the plan to be approved.
6. **REVIEW OF STATE DAM SAFETY PROGRAMS.**-Using the expertise of the Board, the Director may periodically review State dam safety programs. If the Board finds that a State dam safety program has proven inadequate to reasonably protect human life and property and the Director concurs, the Director shall revoke approval of the State dam safety program, and withhold assistance under this subsection, until the State dam safety program again meets the requirements for approval.
- g. **DAM SAFETY TRAINING.**-At the request of any State that has or intends to develop a State dam safety program, the Director shall provide training for State dam safety staff and inspectors.
- h. **BOARD.**-
- 1. **ESTABLISHMENT.**-The Director may establish an advisory board to be known as the 'National Dam Safety Review Board' to monitor State implementation of this section.
  - 2. **AUTHORITY.**-The Board may use the expertise of Federal agencies and enter into contracts for necessary studies to carry out this section.

3. **MEMBERSHIP.**-The Board shall consist of 11 members selected by the Director for expertise in dam safety, of whom-
  - A. 1 member shall represent the Department of Agriculture
  - B. 1 member shall represent the Department of Defense
  - C. 1 member shall represent the Department of Interior
  - D. 1 member shall represent FEMA
  - E. 1 member shall represent the Federal Energy Regulatory Commission
  - F. 5 members shall be selected by the Director from among dam safety officials of the States; and
  - G. 1 member shall be selected by the Director to represent the United States Committee on Large Dams
4. **COMENSATION OF MEMBERS.-**
  - A. **FEDERAL EMPLOYEES.**-Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to compensation received for the services of the member as an officer or employee of the United States.
  - B. **OTHER MEMBERS.**-Each member of the Board who is not an officer or employee of the Unites States shall serve without compensation.
5. **TRAVEL EXPENSES.**-Each member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 6, United States Code, while away from home or regular place of business of the member in the performance of services for the Board.
6. **APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**-The Federal Advisory Committee Act (5 U.S.C.App.) shall not apply to the Board.

#### **SEC.9. RESEARCH.**

- a. **IN GENERAL.**-The Director, in cooperation with ICODS, shall carry out a program of technical and archival research to develop-
  1. improved techniques, historical experience, and equipment for rapid and effective dam construction, rehabilitation, and inspection; and
  2. devices for the continued monitoring of the safety of dams.
- b. **CONSULTATION.**-The Director shall provide for State participation in research under subsection (a) and periodically advise all States and Congress of the results of the research.

#### **SEC. 10. REPORTS.**

- a. **REPORT ON DAM INSURANCE.**-Not later than 180 days after the date of the enactment of this subsection, the Director shall report to Congress on the availability of dam insurance and make recommendations concerning encouraging greater availability.
- b. **BIENNIAL REPORT ON DAM SAFETY.**-Not later than 90 days after the end of each odd-numbered fiscal year, the Director shall submit a report to Congress that-
  1. describes the status of the Program;
  2. describes the progress achieved by Federal agencies during the 2 preceding fiscal years in implementing the Federal Guidelines for Dam Safety;
  3. describes the progress achieved in dam safety by States participating in the Program; and
  4. includes any recommendations for legislative and other action that the Director considers necessary.

#### **SEC. 11. STATUTORY CONSTRUCTION.**

Nothing in this Act and no action or failure to act under this Act shall-

1. create any liability in the United States or its officers or employees for the recovery of damages caused by such action or failure to act;

2. relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam; or
3. preempt any other Federal or State law.

## SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

### a. NATIONAL DAM SAFETY PROGRAM.-

1. **ANNUAL AMOUNTS.**-There are authorized to be appropriated to FEMA to carry out sections 7, 8, and 10 (in addition to any amounts made available for similar purposes included in any other Act and amounts made available under subsections (b) through (e)), \$1,000,000 for fiscal year 1998, \$2,000,000 for fiscal year 1999, \$4,000,000 for fiscal year 2000, \$4,000,000 for fiscal year 2001, and \$4,000,000 for fiscal year 2002.
  2. **ALLOCATION.**-
    - A. **IN GENERAL.**-Subject to subparagraphs (B) and (C), for each fiscal year, amounts made available under this subsection to carry out section 8 shall be allocated among the states as follows:
      - i. One-third among States that qualify for assistance under section 8(f).
      - ii. Two-thirds among States that qualify for assistance under section 8(f), to each State in proportion to-
        - I. the number of dams in the State that are listed as State-regulated dams on the inventory of dams maintained under section 6; as compared to
        - II. the number of dams in all States that are listed as State-regulated dams on the inventory of dams maintained under section 6.
    - B. **MAXIMUM AMOUNT OF ALLOCATION.**-The amount of funds allocated to a State under this paragraph may not exceed 50 percent of the reasonable cost of implementing the State dam safety program.
    - C. **DETERMINATION.**-The Director and the Board shall determine the amount allocated to States needing primary assistance and States needing advanced assistance under section 8(f).
- b. **NATIONAL DAM INVENTORY.**-There is authorized to be appropriated to carry out section 6 \$500,000 for each fiscal year.
  - c. **DAM SAFETY TRAINING.**-There is authorized to be appropriated to carry out section 8(g) \$500,000 for each fiscal years 1998 through 2002.
  - d. **RESEARCH.**-There is authorized to be appropriated to carry out Section 9 \$1,000,000 for each of fiscal years 1998 through 2002.
  - e. **STAFF.**-There is authorized to be appropriated to FEMA for the employment of such additional staff personnel as are necessary to carry out sections 6 through 9 \$400,000 for each of fiscal years 1998 through 2002.
  - f. **LIMITATION ON USE OF AMOUNTS.**- Amounts made available under this Act may not be used to construct or repair any Federal or non-Federal dam.

<http://www.fema.gov/fima/damsafe/ndspact.shtm>