

§ 245.60 Reimbursement for removal costs.

The Corps of Engineers will seek reimbursement from the owner, operator, or lessee, if identified, for all removal and disposal costs in excess of the value of the recovered vessel (or other obstruction) and cargo.

PART 263—CONTINUING AUTHORITIES PROGRAMS**Subpart A—General**

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APPENDIX B TO PART 263—APPLICATION OF MULTIOBJECTIVE PLANNING FRAMEWORK TO CONTINUING AUTHORITIES PROGRAM

AUTHORITY: See § 263.13.

SOURCE: 40 FR 51134, Nov. 3, 1975, unless otherwise noted.

Subpart A—General**§ 263.10 Purpose.**

This regulation provides policies and procedures for seven legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design and construct certain types of water resource improvements without specific Congressional authorization.

§ 263.11 Applicability and effective date.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities. This regulation is effective December 1, 1975, as published in the FEDERAL REGISTER on November 3, 1975 and codified as 33 CFR part 263. The provisions of this regulation are fully applicable to studies commenced and projects initiated after the effective date. For studies underway on the effective date, reporting and approving officers shall fully consider the requirements of this regulation and shall take those actions as necessary to insure that projects are approved on the basis of criteria established by this regulation.

§ 263.12 References.

- (a) ER 11-2-201, Civil Works Activities, Funding, Work Allowances and Transfers.
- (b) ER 405-2-680 Local Cooperation Projects.
- (c) ER 1105-2-10 Intensive Management.
- (d) ER 1105-2-402 Organization and General Content of Feasibility Reports.
- (e) ER 1105-2-403 Format and Appearance of Feasibility Reports.
- (f) ER 1105-2-502 Public Meetings (33 CFR 209.405).
- (g) ER 1105-2-507 Preparation and Coordination of Environmental Statements (33 CFR 209.410).
- (h) ER 1105-2-800 Public Involvement: General Policies (33 CFR 380).
- (i) ER 1105-2-811 A-95 Clearinghouse Coordination (33 CFR 384).
- (j) ER 1110-2-1150 Post-Authorization Studies.
- (k) ER 1165-2-18 Reimbursement for Advance Non-Federal Participation in Civil Works Projects.

§ 263.13 Program scope.

The Continuing Authorities Program (hereafter referred to as the “Program”), consists of the following legislative authorities, which are reproduced and accompanied by policy interpretation in subparts B, C and D of this part.

(a) *Small Flood Control Project Authority.* Section 205, Flood Control Act of 1948, as amended (33 U.S.C 701s).

(b) *Authority for snagging and clearing for flood control.* Section 208, Flood Control Act of 1954, as amended (33 U.S.C. 701g).

(c) *Authority for emergency streambank and shoreline protection of Public Works and nonprofit public services.* Section 14, Flood Control Act of 1946, as amended (33 U.S.C 701r).

(d) *Small navigation project authority.* Section 107, River and Harbor Act of 1960, as amended (33 U.S.C 577).

(e) *Authority for snagging and clearing for navigation.* Section 3, River and Harbor Act of 1945 (33 U.S.C 603a).

(f) *Small beach erosion control project authority.* Section 103, River and Harbor Act of 1962, as amended (33 U.S.C. 426g).

(g) *Authority for mitigation of shore damages attributable to navigation projects.* Section 111, River and Harbor Act of 1968 (33 U.S.C. 426i).

§ 263.14 Program eligibility requirements.

Work funded under this Program must meet the requirements of Federal interest and Corps responsibility set forth in one of the legislative authorities referenced in § 263.13. Any project recommended must be justified under established Federal planning criteria, must be complete in itself and must not obligate the Federal government to future work except for those cases in which maintenance by the Federal government is provided by applicable provisions of general law. Eligibility is not permitted for the following:

(a) *Projects specifically authorized by Congress.* The Program will not be used to implement any portion of a project specifically authorized by Congress, including postauthorization changes to such projects. However, once a project has been completed to the full extent permitted by its Congressional author-

ization, this Program could be utilized to provide for a new, complete-in-itself improvement which will not impair or substantially change the purposes of the specifically authorized project.

(b) *Existing non-Federal responsibility.* This Program may not be utilized for a project that would in effect nullify or change an existing condition of non-Federal responsibility required for a project specifically authorized by Congress, whether constructed or not. Such changes would require Congressional action.

(c) *Operation and maintenance of non-Federal projects.* This Program may not be used for adoption of a non-Federal project for future maintenance at Federal expense.

§ 263.15 Program policies.

(a) *Designation of authority.* One of the referenced legislative authorities must be designated as the primary purpose of the project for allocation of Program funds and for determining legislative funding limitations. However, other authorized project purposes are not precluded to meet related needs as determined appropriate by the Chief of Engineers. The cost limitation of Corps participation for the designated authority will prevail regardless of the number of project purposes served. Normally, only one authority will be used for each study accomplished and each project recommended. Certain authorizations specify individual project allotment ceilings “from the appropriations for any one fiscal year.” It is the intent of Congress that such specified amount be the maximum limit for Corps of Engineers expenditures at each location or individual project undertaken, without regard to time.

(b) *Applicability of costs to Federal and non-Federal shares.* Unless otherwise specified in a legislative authority (§ 263.13), cost sharing policies applicable to Congressionally authorized projects are applicable to projects recommended under this Program. Any legislative limitation on Corps participation in project costs, however, takes precedence over the apportionment of costs resulting from established cost sharing policies.

(1) *Project first costs.* Project first costs include all Corps of Engineers

costs for investigations, design, and construction (including costs of supervision and administration) incurred subsequent to the Division Engineer's transmittal of a Detailed Project Report or Recon Report to OCE for approval. These costs are normally those related to preparation of plans and specifications and project construction.

(2) *Federal cost limitation.* All Corps of Engineers costs of investigations, planning, design and construction, to include those incurred prior to transmittal of the DPR or Recon Report to OCE for approval are to be included within the cost limitation established by Congress for a particular Program authority. Expenditures of other Federal agencies under their own authorities are not to be included within this cost limitation.

(3) *Costs for economic analysis.* Costs to be considered as a part of the economic analysis (i.e., determination of a benefit-cost ratio), are the same as those considered in feasibility reports transmitted to Congress for authorization. In this regard, all costs incurred prior to the Division Engineer's transmittal of the Detailed Project or Recon Report to OCE for approval are considered "preauthorization study costs" and are excluded from the economic analysis.

(4) *Use of Federal funds to satisfy local cooperation requirements.* Where the law requires that lands, easements and rights-of-way be furnished by local interests "without cost to the United States", direct contributions of other Federal agencies may not be accepted by local interests to satisfy such local cooperation requirements once local interests have furnished a letter of intent (see §263.17(e)(5)) to the reporting officer.

(5) *Non-Federal costs.* Local interests must agree to assume responsibility for designated items of local cooperation and for all project costs in excess of the specified Corps cost limitation, or as otherwise apportioned, to insure that expenditure of Corps funds will result in a project that is integrally complete and fully effective. If the project cost exceeds the Corps cost limit, the difference is provided by local cash contributions. Local participation require-

ments will not be reduced, offset, or otherwise credited for local expenditures prior to the approval of a project by the Chief of Engineers. The scope of the project may be increased, including the addition of project purposes, if local interests are willing to pay the additional costs.

(c) *The planning process.* Planning will be conducted generally in accordance with the 1105-2-200 series of planning regulations, adapted to this Program, as discussed in paragraphs (c)(1) through (c)(3) of this section and in Appendix B.

(1) *Stage 1—Reconnaissance.* The reporting officer is delegated the authority to conduct a Reconnaissance (Recon) upon the request of a non-Federal governmental entity or official, to determine if a detailed feasibility study is warranted. Charges not to exceed \$5,000 may be made against the District revolving fund. The results of the Recon will be reported to the Division Engineer in a brief letter report; the Division Engineer will require of a reporting officer only information considered essential for approval of proceeding with the feasibility study, as provided in paragraph (e)(2) of this section.

(2) *Stage 2—Feasibility study (Plan formulation).* The Division Engineer is delegated the authority to authorize the reporting officer to conduct a feasibility study, subject to availability of funds from OCE.

(i) The criteria for Division Engineer approval for initiating a feasibility study are: there is a Federal interest in the problem identified in the Recon, there exists solutions for which Federal participation may be justified under one of the Program authorities, there are existing non-Federal entities which are legally and financially capable of satisfying the typical local cooperation requirements for such solutions, and a feasibility study can be accomplished at a reasonable cost compared to the prospective benefits from solving the problems identified in the Recon.

(ii) Where a significant question arises concerning the Federal interest in a problem, the applicability of one of the Program authorities, or other

policy matters, the case should be referred to DAEN-CWP or DAEN-CWO prior to authorization of a feasibility study.

(iii) The feasibility study should complete the plan formulation process, including the selection of a plan. The study should be terminated if any of the above criteria are not satisfied, if there is a lack of public support, or in the case of obtaining local assurances, that a reasonable length of time (as determined by the reporting officer) has passed without satisfactory assurances from local interests. (See also § 263.17(e)(5)).

(3) *Stage 3—Development of Recommended Plan.* This stage corresponds to Phase II AE&D for projects specifically authorized by Congress. Authority to continue the planning process from plan formulation to development of a recommended plan is delegated to the reporting officer, unless otherwise provided by implementing instructions issued by the Division Engineer, in accordance with Division responsibilities for intensive management of the program (§ 263.16(b)).

(d) *Review of planning reports.* The primary responsibility for review of all aspects of Recon reports and DPR's rests with the Division Engineer. Division Engineers (with the exception of New England and Pacific Ocean) are delegated the authority to approve the plan formulation aspects of the study and the engineering design of recommended plans, in order that the reporting officer may proceed with work on plans and specifications pending formal approval of the project by the Chief of Engineers. Review of DPRs and Recon reports by OCE will be limited to conformance of recommended plans to existing policy.

(e) *Public involvement.* General policy and guidance on public involvement is contained in ER 1105-2-800. Requirements for public meetings are discussed further in § 263.17(e)(1). There is essentially no difference in the Corps' objectives for involving and informing the public for studies and projects in this Program than for projects planned and constructed under specific Congressional authority. Since plans formulated under this Program are usually smaller in scope than those spe-

cifically authorized by Congress, planners should be able to more readily identify the affected and interested public early in the planning process and initiate a public involvement program that can be continued through plan implementation.

(f) *State and agency coordination.* Reporting officers should generally follow the same procedures for agency coordination as in the case of a Congressionally authorized study. Coordination with A-95 clearinghouses is discussed in ER 1105-2-811.

(1) *Section 205, 107, 103, 111 and 208 Authorities.* The views of Governors of affected States, or their designated representatives, and regional offices of appropriate Federal agencies must accompany the DPR when submitted to OCE for approval. Division Engineers shall insure that coordination letters are current and have been adequately considered in the plan formulation and review process. Letters obtained by reporting officers from the coordination of draft or final reports are to be considered current only if the dates on such letters are no more than 360 days prior to the date of submittal of the DPR to OCE, and if no significant changes have been made to the DPR which should be reviewed by the originators of such letters. Reporting officers will normally accomplish any required recoordination of reports to meet the above criteria. Division Engineers may elect, however, to obtain the views of States or Federal agencies, as deemed appropriate. The Chief of Engineers will not normally coordinate DPRs with Governors or Federal Department heads.

(2) *Section 14 and 3 Authorities.* The provisions of paragraph (f)(1) of this section shall apply to the extent determined feasible by the Division Engineer. To be responsive to emergency conditions and to avoid undue delays, Division Engineers may permit coordination with States and regional offices of Federal agencies to be effected concurrently with the review of the DPR or Recon report by OCE.

(g) *Project approval.* With the exception of projects requiring the personal attention of the Chief of Engineers, the Director of Civil Works is authorized to approve or disapprove projects under

this Program, for the Chief of Engineers. Projects will be approved on the basis of a Detailed Project Report (DPR), except in the case of emergencies under Section 14 or 3 Authorities, for which a Recon report (developed for the recommended work) may be utilized, (see §263.17(b)(3)). Prior to approving a project for construction, requirements for filing an EIS with CEQ must be satisfied, if an EIS has been prepared (ER 1105-2-507), a letter of intent for local cooperation must be obtained from non-Federal interests in accordance with §263.17(e)(5), and views received from affected States and regional offices of Federal agencies must be considered.

(h) *Project construction.* Division Engineers may authorize District Engineers to commence work on plans and specifications pending project approval; however, contracts for construction shall not be entered into, nor shall funds be allocated for construction, until the Chief of Engineers has approved the project. Procedures for constructing approved projects, including the preparation of plans and specifications are generally the same as employed for Congressionally authorized projects.

(i) *Hold and save provision.* As provided by sec. 9, Pub. L. 93-251 (88 Stat. 16), "The requirement * * * that non-Federal interests hold and save the United States free from damages due to construction, operation, and maintenance of the project, does not include damages due to the fault or negligence of the United States or its contractors." This provision will be reflected in all "hold and save" requirements of local cooperation.

(j) *Withdrawal of project approval.* The Chief of Engineers may withdraw approval of a project under the Continuing Authorities Program at any time prior to the signing of a written agreement under section 221, Pub. L. 91-611 (§263.17(k)).

(1) Reporting officers shall at least annually review approved projects on which construction has not been initiated and shall determine if such projects should remain on the backlog awaiting construction funds. A recommendation for withdrawal of project

approval shall be based on the following criteria:

(i) Local interests are unwilling or unable to provide the necessary local cooperation,

(ii) The project is no longer considered the best solution to the problems of the area, considering economic, social, and environmental factors, or

(iii) The project is no longer justified under applicable Federal planning criteria.

(2) Findings which indicate that the project should remain in the backlog shall not be reported to OCE. Recommendations for withdrawal of project approval shall be transmitted to DAEN-CWP-E, C, or W, or DAEN-CWO, depending on the project authority.

(i) Recommendations shall be coordinated with local, State and Federal interests consistent with Corps public involvement objectives, prior to transmittal to OCE.

(ii) Recommendations shall be accompanied by a brief Project Information Sheet, as required under procedures for recommending project deauthorization under section 12, Pub. L. 93-251.

(3) Reporting officers shall notify appropriate local, State and Congressional interests of any final action taken by OCE on recommendations for withdrawal of project approval.

(4) As in the case of project approval, withdrawal of approval may be accomplished by the Director of Civil Works, for the Chief of Engineers.

§ 263.16 Program management responsibilities.

(a) *Office, Chief of Engineers.* Two OCE elements will have primary responsibility for program management: DAEN-CWP (Sections 205, 208, 14, 107 and 103 Authorities) and DAEN-CWO (Section 3 and 111 Authorities). These elements are responsible for the staffing of all actions required of OCE by this regulation, maintaining a list of Division and District Program coordinators (as required by paragraphs (b) and (c) of this section), and evaluating the performance of the Program.

(b) *Division Engineers.* Divisions are responsible for intensive management of the Program in accordance with ER

1105-2-10, and are delegated certain approval authorities by the Chief of Engineers, as given in §§ 263.15 and 263.17 of this part. Division Engineers are responsible for insuring, through intensive management, that studies are initiated and terminated at the appropriate time, and funded at the appropriate level, for efficient use of Program funds. Division Engineers are to specifically designate an individual, or individuals, within the Division office, to manage and coordinate activities under the Continuing Authorities Program.

(c) *District Engineers/Operating Division Engineers.* Reporting officers are to specifically designate individuals to coordinate and manage activities under the Continuing Authorities Program. Reporting officers are responsible for insuring that the Reconnaissance investigations are conducted only to the extent required to achieve the objective established by this regulation.

§ 263.17 Planning, design and construction procedures.

This paragraph prescribes procedures to be followed from the initiation of a Recon to completion of construction of a project. Division Engineers are to establish milestones as deemed appropriate, in accordance with ER 1105-2-10. Unless otherwise stated, all correspondence with OCE relating to the procedures in this paragraph will be addressed to HQDA (DAEN-CWP-E, C or W) WASH DC 20314 or HQDA (DAEN-CWO) WASH DC 20314, depending on the study authority, as provided for in § 263.16(a).

(a) *Initiation of Reconnaissance.* As outlined in § 263.15(c) Recon stage is designed to provide the Division Engineer with sufficient justification for authorizing a feasibility study. Reporting officers are to notify the Division Engineer and either DAEN-CWP-A or DAEN-CWO by letter when commencing a Recon. Such letter or teletype should give the date the Recon began and an identifying name. Charges may be made against the District revolving fund in amounts not to exceed \$5,000. Exceptions to this limitation will require prior approval from DAEN-CWP or DAEN-CWO, depending on the study authority. Requests for

such exceptions shall be justified by the reporting officer. The suggested scope of a Recon is more fully discussed in Appendix B. (See also ER 1105-2-811 for A-95 clearinghouse coordination requirements.)

(b) *Approval for initiation of feasibility study.* The Division Engineer is the approving authority for initiation of a feasibility study, and as such, will provide reporting offices with appropriate guidance on submission of a Recon letter report in accordance with the general policy stated in § 263.15(c).

(1) Once the Recon is completed, no further work may be accomplished without a work allowance and allotment from OCE.

(2) The recommendations from a Recon may be released by reporting officers to interested parties after action has been taken by the Division Engineer on the Recon report.

(3) In the case of emergencies under Section 14 or 3 Authorities, the Division Engineer may approve a Recon Report for immediate transmittal to OCE (in five copies) for approval and funding of recommended work. In such cases, the Chief of Engineers may approve exceptions to the requirements stated in paragraphs (e)(2) through (e)(5) of this section, as deemed advisable in the public interest.

(4) Except as provided in paragraph (b)(3) of this section, or when the Division Engineer desires OCE views, Recon reports will be transmitted to OCE for information only (in two copies).

(c) *Request for funding of feasibility study.* Reporting officers will request funding of an approved feasibility study, through Division Engineers, to DAEN-CWP-E, C or W or from DAEN-CWO in accordance with § 263.16(a). Requests will include the total estimated funding requirement by fiscal year for the feasibility study (including expenditures previously incurred in the Reconstage), consistent with the capability of the District to conduct the study. Requests for reimbursement for Recon expenditures when a feasibility study has not been approved will be made in a similar manner.

(d) *Issuance of work allowance.* Work allowances will be issued by DAEN-CWP or DAEN-CWO, as appropriate, based on available funds. Work on a

feasibility study will not proceed until such work allowance has been issued. (See also part 384 of this chapter for A-95 clearinghouse coordination requirements.)

(e) *Completion of feasibility study.* Studies will be conducted in accordance with the policies given in §263.15 and the planning process discussed in Appendix B. Division Engineers may request guidance from OCE, or schedule a Plan Formulation Review Conference with OCE, as they deem appropriate.

(1) *Public meetings.* Public meetings are not to be considered the only technique for informing the public of the results of feasibility studies or for soliciting input from the public. However, as a matter of policy, at least one public meeting is to be held during the feasibility study, as discussed in §209.405 of this chapter. In certain instances, the reporting officer may feel that the Corps' objectives on public involvement have been achieved without holding a public meeting. Omission of the minimum requirement of one public meeting is to be an exception to policy and will require prior approval from the Division Engineer.

(2) *Application of Federal planning criteria.* In general, all Federal planning criteria applicable to studies specifically authorized by Congress are also applicable to studies conducted under this Program. Particular attention shall be given to the consideration of nonstructural solutions, consideration of a "no development" plan, and the assessment of impacts of alternative plans. Plans are to be formulated to provide the same independent and complete-within-itself project as recommended under regular authorization procedures.

(3) *Environmental Impact Statement (EIS) requirements.* Requirements for preparation, coordination and submittal of the EIS are contained in ER 1105-2-507. Studies conducted under Section 14 and 3 Authorities may not require an EIS, as provided in §209.410(h) of this chapter.

(4) *Cultural resources survey.* A cultural resources survey shall be accomplished for the consideration of historic and cultural resources as part of the preparation of the DPR.

(5) *Assurances of local cooperation.* In addition to involvement of local interests throughout the planning process, a letter of intent shall be requested for specific items of local cooperation near the completion of Stage 2 planning (§263.15(c)(2)). The letter of intent must be received from the non-Federal entities which will be ultimately signing a Section 221 agreement (paragraph (k) of this section), and will be transmitted with the DPR, or Recon report in the case of emergencies under Section 14 or 3 Authorities, together with an analysis of the reporting officer to demonstrate that such non-Federal entities are legally constituted, and have sufficient financial capabilities to satisfy all requirements of local cooperation.

(i) The reporting officer shall review draft local cooperation and repayment agreements with affected non-Federal interests, advising them of currently estimated costs, anticipated timing of costs, all typical provisions of the agreement or contract, and the timing of process of entering into a final, signed agreement or contract.

(ii) The letter of intent shall include verbatim all local cooperation requirements set forth in the Detailed Project Report, or the Recon report, if utilized for project approval; shall state that a review has been made of draft agreements or contracts; shall indicate an understanding of when final project costs are to be determined by the reporting officer; and shall include the following statement:

In carrying out the specified non-Federal responsibilities for the (*identification of work or project*), (*appropriate entity*) agrees to comply with the provisions of the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970", Pub. L. 91-646, approved 2 January 1971; and Section 221, Pub. L. 91-611, approved 31 December 1970, as amended.

(iii) The letter of intent shall be signed or cosigned by the chief legal officer of the political subdivision furnishing the letter to the reporting officer. When a State or a department thereof is to be the sponsor, the Attorney General of that State is the approving authority.

(f) *Submittal of Termination Letters or DPR to OCE.* (1) If a feasibility study is terminated prior to the completion of a DPR, the Division Engineer will notify by letter DAEN-CWP-E, C or W or DAEN-CWO-M, depending on the study authority; such notification is to include reasons for termination, an accounting of expenditure of study funds, and the amount of funds to be returned to OCE. Release of unobligated funds will be effected as soon as possible. Revocation of funds by OCE officially terminates the study. The reporting officer shall notify Congressional delegations and local interests when the study has been officially terminated.

(2) If the feasibility study results in a DPR, ten (10) copies of the report, and related documentation required by §263.15(e), will be transmitted with recommendations of the Division Engineer to DAEN-CWP or DAEN-CWO, depending on the study authority (reference §263.16(a)). Exceptions to the requirements of paragraph (e) of this section should be noted in the letter of transmittal. In the review of a DPR, Division Engineers may refer any major disagreements with reporting officers on planning matters to DAEN-CWP-E, C or W, or on technical engineering matters to DAEN-CWE-B, for resolution prior to release of public notice and submittal of the final report to OCE.

(3) Upon submittal of a Detailed Project Report to OCE, the District Engineer shall release a public notice informing the public of the proposed action. This requirement may be accomplished by the Division Engineer, at his discretion. The notice need not invite comments but will include the address of the District and Division Engineer in the event that interested parties desire to request further information or comment on the recommendations. Public notices are not required when a feasibility study is terminated without submittal of a DPR (paragraph (f)(1) of this section), or when a Recon report is submitted to OCE for project approval (paragraph (b)(3) of this section).

(g) *Work on plans and specifications.* Division Engineers are delegated the authority to allow District Engineers to commence work on plans and speci-

fications pending approval of a project by the Chief of Engineers, provided a satisfactory letter of intent (§263.17(e)(5)) has been received from local interests. Such work may be stopped, however, if review of the DPR by OCE reveals a policy problem affecting the project or the report recommendations. Work on plans and specifications should utilize all remaining funds from allocations for the feasibility study. Additional funds may be requested by separate letter, or included with the Division Engineer's favorable indorsement of a DPR.

(h) *OCE review and approval of DPR or Recon Report.* As indicated in paragraph 7a, designated OCE elements are responsible for review, staffing and coordination of the DPR, or Recon report when transmitted to OCE for approval. Maximum reliance will be placed on the review conducted by the Division Engineer. Comments will be solicited from DAEN-CWP, DAEN-CWR, and DAEN-GCC, only as required for approval of the recommended project. In all cases, a copy of the DPR will be forwarded to DAEN-CWE-B for information, and to DAEN-REA-P for review of local cooperation requirements, upon receipt from the Division Engineer. Review of DPR's by the BERH staff may be requested at the discretion of DAEN-CWP. In such instances, the Resident Member, BERH, will be requested to submit comments on the DPR to DAEN-CWP. Project approval normally will be accomplished by the Director of Civil Works, for the Chief of Engineers, in accordance with §263.15(g).

(i) *Notification of interested parties of action by the Chief of Engineers.* Reporting officers are responsible for notification of all interested parties, including Congressional Delegations, States and local interests, of action taken by the Chief of Engineers on DPR's. Division Engineers may prescribe procedures for such notification as deemed necessary.

(j) *Request for construction funds.* Following receipt of DPR approval from OCE, reporting officers may submit a request for construction funds to DAEN-CWP or DAEN-CWO, depending on the Program authority, including

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an updated schedule of funding requirements by fiscal year based on an estimated date by which plans and specifications for the first construction contract will be completed. (See also §263.20(a) concerning inclusion of these requests in budget submissions.)

(k) *Approval of Local Cooperation Agreement.* Prior to issuance of a work allowance by OCE for construction funds, a signed written agreement for local cooperation must be obtained and approved by the Secretary of the Army, or his designated representative, in accordance with ER 405-2-680. The signed agreement shall be transmitted to DAEN-REA-P together with a copy of the DPR or Recon report which approved the project or work.

(1) As required by ER 405-2-680, requirements of local cooperation are to be stated in the agreement verbatim from the approved project document. Any deviation shall be submitted to DAEN-CWP for approval by the Director of Civil Works, for the Chief of Engineers, prior to the reporting officer obtaining signatures on the agreement.

(2) After OCE approval of the agreement, a work allowance will be issued by DAEN-CWP or DAEN-CWO depending on the Program authority, based on availability of funds.

(1) *Completion of Project Construction (RCS DAEN-CWB-16).* Policies and procedures for projects constructed under specific Congressional authority, with the exception of budgetary submissions and funding matters, are applicable to projects constructed under this Pro-

gram. At the completion of project construction, reporting officers shall:

(1) Notify DAEN-CWO and DAEN-CWP-A by letter, including a brief description of the completed project, the estimated requirements for operation and maintenance (Federal and non-Federal), the final Federal and non-Federal project costs, and the date on which the project was considered operational.

(2) Notify local interests that project construction has been completed and inform them of their operation and maintenance responsibilities and the operational characteristics of the project.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.18 Program completion-time objectives.

To provide a Program responsive to local needs, the following target (maximum) completion time objectives are established and should be used to the extent feasible, in scheduling work and programming funds. Shortening of these objectives is encouraged for specific studies and projects when appropriate. However, high standards of planning, design and construction are not to be sacrificed. Attainment of completion-time objectives through intensive management is to be a major concern for those elements and individuals given Program management responsibilities in §263.16 of this regulation.

PROGRAM AUTHORITIES, COMPLETION TIMES IN MONTHS

| | 205, 107, 103, and 111 | 208 and 14 | Emergency 14 and 3 ¹ |
|-----------------------------------------------------------------------------------------------------------|------------------------|------------|---------------------------------|
| (a) Completion of recon and submission of funding request or negative report to OCE ... | 2 | 1 | 2 |
| (b) Completion of feasibility study by reporting officer and preparation of DPR | 16 | 9 | (2) |
| (c) Review of DPR or recon report by division engineer, (including provisions of §263.15(f)) | 2 | 1 | .5 |
| (d) Review of DPR or recon report by OCE | 2 | 1 | .5 |
| (e) Completion of project construction (including plans and specifications), after project approval | 18 | 12 | 3 |
| (f) Total completion-time objective | 40 | 24 | 6 |

¹The decision to utilize a recon report or DPR for recommending a project under sec. 14 authority is delegated to the division engineer (§263.17(b)(3)).
²Not applicable.

§ 263.19 Detailed project reports.

(a) The Detailed Project Report serves a dual purpose: the report serves both as basis for approval of a project for construction by the Chief of Engineers and it serves as a basis for preparation of plans and specifications. (See exception for emergencies, § 263.17(b)(3)). The main report should reflect the plan formulation, generally in accordance with ER 1105-2-402 and ER 1105-2-403. A Design Appendix will be provided as appropriate, for more detailed information on the development of the plan, or elements of the selected plan, recommended for implementation as a Federal project by the Corps of Engineers. The Design Appendix of the report will generally meet the requirements of ER 1110-2-1150, as it pertains to Phase II AE&D studies for projects specifically authorized by Congress, except that it need not duplicate material on plan formulation covered in the main report. Other appendices should be included as required.

(b) It is anticipated that DPR's submitted for projects under Section 208 Authority will be less extensive than reports submitted under Sections 205, 107, 103 and 111 Authorities, and that DPR's submitted for projects under Section 14 Authority will be further abbreviated due to simplicity of the project. The important point is that the planning process should be generally considered the same for studies conducted under all Program authorities; the plan formulation portion of the DPR should reflect this process and the rationale for arriving at the selected plan and recommendations for Federal participation.

(c) The level of detail and extent of engineering work reflected in the Design Appendix must be sufficient to proceed directly to plans and specifications. In the event that the need arises for feature design memoranda on selected aspects of the project, such requirements should be identified in the letter of transmittal accompanying the DPR when submitted to OCE.

§ 263.20 Program funding.

(a) *Program budget.* Initial consideration of estimated project construction requirements (including funds for plans and specifications), should be given in

the first Program budget submission following completion of Stage 2 planning (§ 263.15(c)(2)). OCE elements designated in § 263.16(a) are responsible for issuing Program budget guidance to field operating agencies, formulating appropriate program budgets from field submissions, and submitting such budgets to DAEN-CWB.

To expedite budget preparation, field operating agencies should insure that budgetary data on the Continuing Authorities Program are sent directly to DAEN-CWP-A or DAEN-CWO, depending on the authority.

(b) *Use of Program funds.* Funds appropriated by Congress under the legislative authorities of this Program will be utilized by the Corps of Engineers in conducting studies approved by Division Engineers, and in constructing projects approved by the Chief of Engineers. This does not preclude the use of private architect-engineer firms or other consultant services in Program implementation. No grants of Program funds will be made to local interests for conducting studies or constructing projects, nor shall contributions be made for features or benefits of projects constructed by another agency or by local interests. Reimbursement to local interests for work undertaken by them on an approved project normally will not be authorized; however, if the situation warrants consideration of such a provision, the procedures contained in ER 1165-2-18 may be followed to request OCE approval in advance of such action by local interests.

(c) *Requests for funds.* Procedures for requesting Program funds are contained in § 263.17. Generally, requests will be made in four instances: After approval by Division Engineer to proceed with a feasibility study, after submission of a DPR to OCE and approval of the Division Engineer to proceed with plans and specifications, after OCE approval of a DPR for proceeding with project construction, and in other cases as required to revise the preceding requests. In the case of requesting funds for plans and specifications and project construction, deviations from amounts estimated in previous budget submissions, or contained in current approved Program budgets, will be briefly explained.

(d) *Retention, revocation and transfer of funds.* Unobligated funds will be reported to DAEN-CWP-A or DAEN-CWO, depending on the study authority under which the funds were allotted, as soon as final costs for studies or construction are determined. When work on a study, plans and specifications, or project construction must be suspended for an unknown period of time, or suspended for an extended period, the above OCE elements are to be notified immediately by letter with the Division Engineer's recommendation regarding retention or revocation of unobligated funds held in that particular account. The authority for transfers and reporting requirements are contained in ER 11-2-201.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

Subpart B—Navigation Policy

§ 263.21 Small navigation project authority.

(a) *Legislative authority.* Section 107 of the River and Harbor Act of 1960, as amended by Section 310 of the River and Harbor Act of 1965, section 112 of the River and Harbor Act of 1970, and section 133(a) of the Water Resources Development Act, approved 22 October 1976, states:

(a) The Secretary of the Army is authorized to allot from any appropriations hereafter made for rivers and harbors not to exceed \$25,000,000 for any one fiscal year for the construction of small river and harbor improvement projects not specifically authorized by Congress which will result in substantial benefits to navigation and which can be operated consistently with appropriate and economic use of the waters of the Nation for other purposes, when in the opinion of the Chief of Engineers such work is advisable, if benefits are in excess of the costs.

(b) Not more than \$2,000,000 shall be allotted for the construction of a project under this section at any single locality and the amount allotted shall be sufficient to complete the Federal participation in the project under this section.

(c) Local interests shall provide without cost to the United States all necessary lands, easements and rights-of-way for all projects to be constructed under the authority of this section. In addition, local interests may be required to hold and save the United States free from damages that may result from the construction and maintenance of the project,

and may be required to provide such additional local cooperation as the Chief of Engineers deems appropriate. A State, county, municipality or other responsible local entity shall give assurance satisfactory to the Chief of Engineers that such conditions of cooperation as are required will be accomplished.

(d) Non-Federal interests may be required to share in the cost of the project to the extent that the Chief of Engineers deems that such cost should not be borne by the Federal Government in view of the recreational or otherwise special or local nature of the project benefits.

(e) Each project for which money is allotted under this section shall be complete in itself and not commit the United States to any additional improvement to insure its successful operation other than routine maintenance, and except as may result from the normal procedure apply to projects authorized after submission of survey reports and projects constructed under the authority of this section shall be considered as authorized projects.

(f) This section shall apply to, but not be limited to, the provision of low water access navigation channels from the existing channel of the Mississippi River to harbor areas heretofore or now established and located along the Mississippi River.

(b) *Operation and maintenance responsibility.* Projects for navigation constructed under the authority of Section 107 will be considered the same as authorized projects and are operated and maintained by the Corps of Engineers at Federal cost under the same procedures and policies as applied to projects specifically authorized by Congress. (Reference section 6, Pub. L. 93-251).

(c) *Aids to navigation.* Planning and design of channel and other navigation improvements should give full consideration to the feasibility and costs of establishment by the Coast Guard of suitable aids to navigation. The costs for navigation aids to be provided by the Corps of Engineers, Coast Guard, State, and local interests, and similar project-associated costs, will be included in the economic analysis. Project associated expenditures by the Corps of Engineers for aids to navigation are included within the cost limitation under the Section 107 authority, but expenditures by the U.S. Coast Guard are not. The report appendix should reproduce the letter from the Coast Guard stating the estimated

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number, type and cost of navigation aids and their maintenance cost.

(d) *Local cooperation.* Local cooperation requirements for projects under the Sec. 107 authority are those normally recommended for similar work authorized by Congress.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.22 Authority for snagging and clearing for navigation (Section 3).

(a) *Legislative authority.* Section 3 of the River and Harbor Act approved 2 March 1945, states:

The Secretary of the Army is hereby authorized to allot not to exceed \$300,000 from any appropriations made prior to or after March 2, 1945, for any one fiscal year for improvement of rivers and harbors, for removing accumulated snags and other debris, and for protection, clearing and straightening channels in navigable harbors and navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of navigation or flood control.

(b) *Policy—(1) Eligible work.* It is the policy of the Chief of Engineers to utilize this authority primarily for emergency work to benefit navigation. Work pursuant to this authority is undertaken as an emergency measure to clear or remove unreasonable obstructions to navigation in navigable portions of rivers, harbors and other waterways of the United States, or tributaries thereof, in order to provide existing traffic with immediate and significant benefit. When recurring maintenance work will be required to secure enduring benefits from the initial work, local interests should be informed that they will have to bear the costs of such recurring maintenance until such time as maintenance at that location may become part of a project specifically authorized by Congress and subsequently funded.

(2) *Ineligible work.* In addition to the ineligible work listed in para 5 of the basic regulation, the following work is also ineligible under this authority:

(i) *Normal shoaling process.* When the condition for which the remedial work is requested resulted from the normal shoaling process associated with that particular reach of waterway and not from a sudden occurrence.

(ii) *Work within the limits of authorized projects.* This restriction applies where authorized new work remains to be accomplished unless an emergency results from aggravated conditions arising subsequent to the authorization of the project. In that event, corrective measures will be limited to restoration of conditions existing at the time of such authorization.

(iii) *General widening or deepening.* No general widening or deepening will be accomplished to meet the desires of navigation interests to use larger vessels.

(c) *Local cooperation.* Local cooperation requirements for projects under the Section 3 authority are those normally recommended for similar work authorized by Congress.

Subpart C—Flood Control Policy

§ 263.23 Small flood control project authority (Section 205).

(a) *Legislative authority.* Section 205 of the Flood Control Act approved 30 June 1948, as amended by section 205 of the Flood Control Act approved 23 October 1962, section 61 of the Water Resources Development Act approved 7 March 1974, and section 133(b) of the Water Resources Development Act approved 22 October 1976, states:

The Secretary of the Army is authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed \$30,000,000 for any one fiscal year, for the construction of small projects for flood control and related purposes not specifically authorized by Congress, which come within the provisions of Section 1 of the Flood Control Act of June 22, 1936, when in the opinion of the Chief of Engineers such work is advisable. The amount allotted for a project shall be sufficient to complete Federal participation in the project. Not more than \$2,000,000 shall be allotted under this section for a project at any single locality, except that not more than \$3,000,000 shall be allotted under this section for a project at a single locality if such project protects an area which has been declared to be a major disaster area pursuant to the Disaster Relief Act of 1966 or the Disaster Relief Act of 1970 in the five-year period immediately preceding the date the Chief of Engineers deems such work advisable. The provisions of local cooperation specified in Section 3 of the Flood Control Act of June 22, 1936, as amended, shall apply. The work shall be complete in itself and not commit the United States to any additional

improvement to insure its successful operation, except as may result from the normal procedure applying to projects authorized after submission of preliminary examination and survey reports.

(b) *Non-Federal responsibilities for dam and reservoir project.* All new projects under this authority, including dams and reservoirs, are considered local protection projects. Non-Federal responsibilities for such dams and reservoirs will thus include the usual lands, easements, right-of-way, and other requirements of local protection projects. Similarly, non-Federal interests must operate the flood control features of any dam or reservoir in accordance with regulations prescribed under the authority contained in section 7 of the Flood Control Act of December 1944.

(c) *Major disaster area.* Determination of a "major disaster area" can be made only by the President, pursuant to the Disaster Relief Acts cited above.

(d) *Local cooperation.* As stated in para 1a of this part, the provisions of section 3, Flood Control Act of 1936, as amended (33 U.S.C. 701c), are applicable. Other requirements shall be recommended by reporting officers to insure the long-term viability of the plan and the attainment of benefits from the plan. Consideration of land enhancement shall be in accordance with EM 1120-2-109.

(e) *Limitation on erosion protection.* This authority shall not be used for protecting against bank erosion. However, bank stabilization may be included as an integral part of a plan for preventing flood damage.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

§ 263.24 Authority for snagging and clearing for flood control (Section 208).

(a) *Legislative authority.* Section 208 of the Flood Control Act approved 3 September 1954 and as further amended by Section 26 of the Water Resources Development Act approved March 7, 1974 states:

The Secretary of the Army is authorized to allot not to exceed \$5,000,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris,

and clearing and straightening of the channels in navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than \$250,000 shall be expended for this purpose for any single tributary from the appropriations for any one fiscal year.

(b) *Policy.* Work under this authority is limited to clearing and snagging or channel excavation and improvement with limited embankment construction by use of materials from the channel excavation. If investigation indicates that placement of revetment is needed to provide a complete and fully effective project, the local interests should provide for the item of construction either by work or by cash contribution.

(c) *Local cooperation.* The provisions of § 263.23(d) are applicable.

§ 263.25 Authority for emergency streambank and shoreline protection of public works and nonprofit public services (Section 14).

(a) *Legislative authority.* Section 14 of the Flood Control Act approved July 24, 1946, as amended by section 27 of the Water Resources Development Act approved March 7, 1974, states:

The Secretary of the Army is authorized to allot from any appropriations heretofore or hereinafter made for flood control, not to exceed \$10,000,000 per year, for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damage to highways, bridge approaches, public works, churches, hospitals, schools, and other nonprofit public services, when in the opinion of the Chief of Engineers such work is advisable: *Provided*, That not more than \$250,000 shall be allotted for this purpose at any single locality from the appropriations for any one fiscal year.

(b) *Policy.* Work under the Section 14 authority shall serve to prevent flood or erosion damages to endangered highways, highway bridge approaches, public works, and nonprofit public facilities by the construction or repair of emergency streambank and shoreline protection works. Eligible highways consist of major highway systems of national importance, and principal highways, streets, and roads of importance to the local community, such as arterial streets, important access

routes to other communities and adjacent settlements, and roads designated as primary farm-to-market roads.

(1) Work under this authority is not limited in engineering scope but the design must be an integrally complete within itself project that does not require additional work for effective and successful operation. The cost limitation on Federal participation may require that local interests supplement the Federal funds, so that combined Federal and local efforts will produce a complete, useful improvement.

(2) Reporting officers must be satisfied that the protection of eligible public works and non-profit public services are justified on the basis of the National Economic Development and Environmental Quality objectives.

(c) *Legislative interpretations.* (1) “Public Works” are considered to be those important and essential public facilities which serve the general public and are owned and operated by the Federal, State, or local governments, such as municipal water supply systems and sewage disposal plants.

(2) “Churches, hospitals, schools” includes churches, and public and private non-profit hospitals and schools.

(3) “Non-profit public services” are considered to be facilities or structures which serve the general public and are not intended to earn a profit. Although they may be publicly used, privately owned, profit-making facilities located along streambanks or shore lines are not eligible for protection.

(4) “Shoreline” includes, but is not limited to, oceans, gulfs, and the Great Lakes.

(d) *Local cooperation.* The provisions of § 263.23(d) are applicable.

Subpart D—Shore Protection Policy

§ 263.26 Small beach erosion control project authority (Section 103).

(a) *Legislative authority.* Section 103(a) of the River and Harbor Act of 1962, as amended by section 310 of the River and Harbor Act of 1965 and by section 112 of the River and Harbor Act of 1970, amends section 3 of Pub. L. 826, 84th Congress to read as follows:

The Secretary of the Army is authorized to undertake construction of small shore and

beach restoration and protection projects not specifically authorized by Congress, which otherwise comply with Section 1 of this Act, when he finds that such work is advisable, and he is further authorized to allot from any appropriations hereafter made for civil works, not to exceed \$25,000,000 for any one fiscal year for the Federal share of the costs of construction of such projects: *Provided*, That not more than \$1,000,000 shall be allotted for this purpose for any single project and the total amount allotted shall be sufficient to complete the Federal participation in the project under this section including periodic nourishment as provided for under section 1(c) of this Act: *Provided further*, That the work shall be complete in itself and shall not commit the United States to any additional improvements to insure its successful operation, except for participation in periodic beach nourishment in accordance with section 1(c) of this Act, and, as may result from the normal procedure applying to projects authorized after submission of survey reports.

(b) *Periodic nourishment.* When it can be demonstrated as being part of the best plan to meet project objectives and a more economical remedial measure than others, provision for periodic nourishment may be recommended. The recommended Federal participation in periodic nourishment will be limited to a specific period of time. The total project costs shall include both initial construction and periodic nourishment.

(c) *Local cooperation.* The provisions of ER 1120-2-110 and ER 1165-2-19 are applicable.

§ 263.27 Authority for mitigation of shore damage attributable to navigation works (Section 111).

(a) *Legislative authority.* Section 111 of the River and Harbor Act of 1968 (Pub. L. 90-483, approved August 13, 1968) states:

The Secretary of the Army, acting through the Chief of Engineers is authorized to investigate, study, and construct projects for the prevention or mitigation of shore damages attributable to Federal navigation works. The cost of installing, operation and maintaining shall be borne entirely by the United States. No such projects shall be constructed without specific authorization by Congress if the estimated first cost exceeds \$1,000,000.

(b) *Definitions*—(1) *Federal navigation works* is defined as a project or feature thereof that has been specifically authorized by the Congress in a River and

Harbor Act or authorized under the continuing authorities granted by section 201 or the Flood Control Act of 1965, or by section 107 of the River and Harbor Act of 1960, as amended. These shall include projects or project features built by others but which have been adopted as a Federal Navigation project.

(2) *Beach erosion control project* is defined as a project that has been specifically authorized by the Congress in a River and Harbor Act or authorized under the continuing authorities granted by section 201 of the Flood Control Act of 1965 or by section 103 of the River and Harbor Act of 1962. This is considered to include the beach erosion control portion of combined beach erosion and hurricane protection projects.

(3) *Mitigation of shore damages* is defined as the construction of works or procedures to reduce erosion-type damages by shoreline stabilization. The degree of mitigation is the reduction of erosion or accretion to the level which would be obtained without the influence of navigation works at the time navigation works were accepted as a Federal responsibility. It is not intended that shorelines be restored to historic dimensions, but only to lessen the damages by an action that can be justified, the entire costs of which are Federal regardless of shore ownership.

(c) *General policies.* (1) This Act authorizes the study, construction and maintenance of work for prevention or mitigation of damages to both public and privately owned shores to the extent of the damages that can be directly identified and attributed to Federal navigation work located along the coastal and Great Lakes shorelines of the United States. This authority will not be used:

(i) For construction of works for prevention or mitigation of shore damages such as those caused by river bank erosion or vessel generated wave wash.

(ii) To modify navigation projects authorized, but not constructed, that contain features for prevention or mitigation of shore damages or to change the responsibility for maintenance or to modify portions of constructed navigation projects that contain features

for prevention or mitigation of shore damages.

(iii) For prevention or mitigation of shore damages caused by non-Federal navigation projects.

(iv) To construct, maintain, modify or change the cost sharing of authorized beach erosion or combined beach erosion and hurricane protection projects, or portions thereof, located adjacent to Federal navigation projects. Except, when it is determined that shore damage to a portion of an authorized beach erosion project is attributable to the navigation project, mitigation measures may be accomplished under this authority, only to the extent of damages that can be directly identified and attributed to the navigation project.

(2) Where the erosion attributable to the Federal navigation project consists of only a portion of the total erosion problem in a specific area and cannot be considered as a separable reach for effective mitigation measures then a section 111 project cannot be considered for authorization unless,

(i) There is an authorized beach erosion control or combined beach and hurricane protection project for the area with which the section 111 mitigation measures could be combined to become effective, or

(ii) A general study of the entire problem area is made and leads to the development of an authorized beach erosion control project, (specific authority must be obtained to conduct a general study of the entire problem area) or

(iii) Local interests indicate a willingness to have the erosion problem outside the scope of section 111 remedied at local cost.

(d) *Cost limitations.* Section 111 provides that the Chief of Engineers has authority to authorize projects for which the estimated first costs will not exceed \$1,000,000. The first costs will be the cost of the initial preventive or mitigative measures only. The limitation on costs does not include the cost of project maintenance. The project must be planned as a complete unit and not broken into reaches or stages for cost limitation purposes.

(e) *Reports.* The Recon Report required by §263.15(c)(1) will:

(1) Determine whether or not Federal navigation works are responsible for causing or contributing to the erosion problem.

(2) Determine the extent of the area affected by the navigation works.

(3) Determine total area experiencing significant erosion.

(4) Determine the approximate percentage of the total erosion problem in a specific area that is attributable to the navigation works.

(5) Recommend whether further study of the specific area affected by the Federal navigation works is justified and whether study of the entire area is desirable.

(f) *Evaluation of mitigation measures.* The objective of section 111 is to provide mitigation measures for shore damages attributable to Federal navigation projects, when equitable and in the public interest. All practicable alternatives, structural and non-structural should be identified and considered. Work recommended for construction should provide the most practicable and economical means of mitigating existing damages or the prevention of subsequent damages. Justification of mitigation measures should be made by comparing their costs with the values represented by the damages preventable. Any intangible values should be described and given due weight along with the tangible values in this justification. Exercise of the authority of section 111 to provide mitigation measures at Federal expense is not mandatory. A finding for or against its use should fully consider the pre-project conditions and the justification of incurring mitigation costs.

(g) *Criteria for a Favorable Recommendation.* A recommendation favorable to adoption and construction of work to prevent or mitigate shore damage attributable to a Federal navigation project under the authority of section 111 of the River and Harbor Act of 1968 may be considered warranted when both of the following conditions exist:

(1) The navigation project has been determined to be the cause of the damage.

(2) Analysis based on sound engineering and economic principles clearly

demonstrates the feasibility of the proposed work.

(h) *Cost sharing—(1) Construction.* (i) If the work recommended in the report is confined to mitigation work only under section 111, i.e., erosion totally attributable to the navigation works, costs will be 100 percent Federal.

(ii) If the work recommended is a combination of mitigation under section 111 and restoration of beaches eroded due to other causes and there is no authorized beach erosion project, mitigation work under section 111 will be 100 percent Federal and the remaining work will be 100 percent local.

(iii) If the work recommended in the report is a combination of mitigation under section 111 and the restoration of beaches under an authorized beach erosion project or combination beach erosion-hurricane protection project, the mitigation work under section 111 will be 100 percent Federal and the remainder in accordance with the cost sharing procedures as specified in project authorization documents.

(2) *Maintenance.* (i) If the initial work is confined to mitigation under section 111, all maintenance costs are 100 percent Federal.

(ii) If the work is a combination of mitigation under section 111 and restoration of beaches eroded due to other causes, and there is no authorized beach erosion project, maintenance costs will be shared in the same proportion as recommended for initial construction, i.e., the section 111 portion will be 100 percent Federal and remaining work 100 percent local.

(iii) If the work is a combination of mitigation under section 111 and an authorized beach erosion control project or combination beach erosion-hurricane protection project, the Federal maintenance cost for the mitigation work under section 111 will be in the same proportion as the damage attributed to the Federal navigation work is to the total damage. For the remaining work the cost sharing procedures of the authorized beach erosion or combined beach erosion-hurricane protection project will apply.

(i) *Local cooperation.* (1) The law as written provided that the cost of installing, operating and maintaining projects under this authority shall be

borne entirely by the United States; therefore there are no requirements for local cooperation. The cost of any lands, easements or rights-of-way required for construction or subsequent maintenance will be borne entirely by the United States.

(2) Where section 111 projects are to be accomplished in conjunction with other works (§263.15(a)(2)) local interests will be required to furnish assur-

ance of local cooperation similar to those required for regularly authorized projects for their assigned portion of the work.

(3) Where section 111 projects are to be accomplished in conjunction with authorized projects, the requirements of local cooperation specified in the authorizing document or report will apply.

APPENDIX A TO PART 263—HISTORY OF PROGRAM AND PROJECT LIMITATIONS
CONTINUING AUTHORITIES PROGRAM

| Section/law | Date | Public law No. | Federal cost limitation per project | Annual program limit |
|-------------------------------------------------------------------------------------------------------------------------|---------------------|----------------|--------------------------------------------------|----------------------|
| (1) Small Flood Control Project Authority (Sec. 205) | | | | |
| Sec. 205 of 1948 FCA | June 30, 1948 | 80-858 | \$100,000 | \$2,000,000 |
| Sec. 212 of 1950 FCA | May 17, 1950 | 81-516 | 150,000 | 3,000,000 |
| Public Law 685/84th Congress, 2d Sess | July 11, 1956 | 84-685 | 400,000 | 10,000,000 |
| Sec. 205 of 1962 FCA | Oct. 23, 1962 | 87-874 | 1,000,000 | 25,000,000 |
| Sec. 61 of WRDA of 1974 | Mar. 7, 1974 | 93-251 | ¹ 1,000,000 | 30,000,000 |
| Sec. 133(6) WRDA of 1976 | Oct. 22, 1976 | 94-587 | ² 2,000,000 ³ 3,000,000 | 30,000,000 |
| (2) Authority for Snagging and Clearing for Flood Control (Sec. 208) | | | | |
| Sec. 2 of 1937 FCA | Aug. 28, 1937 | 75-406 | \$25,000 | \$300,000 |
| Sec. 13 of 1946 FCA | July 24, 1946 | 79-526 | 50,000 | 1,000,000 |
| Sec. 208 of 1954 FCA | Sept. 3, 1954 | 83-780 | 100,000 | 2,000,000 |
| Sec. 26 of WRDA of 1974 | Mar. 7, 1974 | 93-251 | 250,000 | 5,000,000 |
| (3) Authority for Emergency Streambank and Shoreline Protection of Public Works and Nonprofit Public Services (Sec. 14) | | | | |
| Sec. 14 of 1946 FCA | July 24, 1946 | 79-526 | \$50,000 | \$1,000,000 |
| Sec. 27 of WRDA of 1974 | Mar. 7, 1974 | 93-251 | 250,000 | 10,000,000 |
| (4) Small Navigation Project Authority (Sec. 107) | | | | |
| Sec. 107 of 1960 R. & H. Act | July 14, 1960 | 86-645 | \$200,000 | \$2,000,000 |
| Sec. 310 of 1965 R. & H. Act | Oct. 27, 1965 | 89-298 | 500,000 | 10,000,000 |
| Sec. 112 of 1970 R. & H. Act | Dec. 31, 1970 | 91-611 | 1,000,000 | 25,000,000 |
| Sec. 133(a) of WRDA of 1976 | Oct. 22, 1976 | 94-587 | 2,000,000 | 25,000,000 |
| (5) Authority for Snagging and Clearing for Navigation (Sec. 3) | | | | |
| Sec. 3 of 1945 R. & H. Act | Mar. 2, 1945 | 79-14 | None | \$300,000 |
| (6) Small Beach Erosion Control Project Authority (Sec. 103) | | | | |
| Sec. 103 of 1962 R. & H. Act | Oct. 23, 1962 | 87-874 | \$400,000 | \$3,000,000 |
| Sec. 310 of 1965 R. & H. Act | Oct. 27, 1965 | 89-298 | 500,000 | 10,000,000 |
| Sec. 112 of 1970 R. & H. Act | Dec. 31, 1970 | 91-611 | 1,000,000 | 25,000,000 |
| (7) Authority for Mitigation of Shore Damages Attributable to Navigation Projects (Sec. 111) | | | | |
| Sec. 111 of 1968 R. & H. Act | Aug. 13, 1968 | 90-483 | ² \$1,000,000 | None |

¹ Project cost may go to \$2,000,000 if project is located in a major disaster area designated by the President.

² A project exceeding \$1 million will be transmitted to Congress for specific authorization.

³ Federal cost may go to higher amount if project is located in a major disaster area designated by the President.

[40 FR 51134, Nov. 3, 1975, as amended at 41 FR 56943, Dec. 30, 1976]

APPENDIX B TO PART 263—APPLICATION OF MULTIOBJECTIVE PLANNING FRAMEWORK TO CONTINUING AUTHORITIES PROGRAM

1. *General.* The planning process described in the ER 1105-2-200 series of regulations including the implementation of Federal planning and evaluation criteria, are generally applicable to studies conducted under the Continuing Authorities Program. However, due to the limited scope of many of the plans and projects considered under this program, modification of the *process* is appropriate. Specific modification of the requirements of the planning criteria is not appropriate since the legislative and executive authorities setting forth these criteria do not differentiate between various types of level C implementation studies. Discretion must be employed by reporting officers and reviewers of Detailed Project Reports to insure that projects recommended for implementation by the Corps have been selected on the basis of information and analyses consistent with the WRC Principles and Standards, while at the same time keeping the requirements for information and analyses consistent with the scope of the study, solutions recommended, and the Program completion-time objectives outlined in §263.18 of this regulation.

2. *Plan Formulation Stages.*

a. *Stage 1—Reconnaissance Study (Recon).* As presented in para. 6c, a Reconnaissance will replace the Development of a Plan of Study as the primary element of Stage 1 planning. As a general rule, a Recon should be conducted by a study team consisting of an engineer, an economist, and an environmentalist. A one-to-two day field reconnaissance should be sufficient to analyze the need for a project, to develop sketch plans, discuss views and capabilities of local interests, and identify the economy of the potential project area and possible environmental issues that would need to be addressed if a feasibility study were to be conducted. Additional effort should pinpoint all data deficiencies, types of investigations required for the feasibility study, and the estimated cost of the study. The latter identification process can be developed as a Plan of Study for the feasibility study, if approved and funded. To accomplish the intended purpose of the Recon, within the time and cost objectives given in this regulation, reporting officers are not required to develop a specific project (except for emergency situations under Section 14 or 3 Authorities), but should only provide the information required to make a decision as to whether there is a Federal interest in conducting a feasibility study. Mature, seasoned judgment is a prime requisite.

b. *Stage 2—Development of Alternative Plans.* While the ER 1105-2-200 series of regulations

provides for a three-stage development of plans, studies under Continuing Authorities may consolidate these two final stages (intermediate and detailed), into a single stage, if appropriate. This consolidation does not eliminate any of the planning tasks, as discussed in para 3 below, nor does it diminish the concept of screening a full array of alternatives including nonstructural measures, with increasing levels of detail in the assessment of impacts and evaluation as planning progresses to plan selection. The primary emphasis in making the consolidation of these two stages is that the plan selection is normally made on the basis of more limited data and analyses than appropriate for studies conducted under the Level C Survey Program or the Phase I AE&D Program.

c. *Stage 3—Development of Recommended Plan.* The feasibility study under the Continuing Authorities Program will include the design of a recommended plan to the extent necessary to proceed directly from the Detailed Project Report to preparation of plans and specifications. While studies under the Level C Survey Program would complete plan formulation prior to accomplishing detailed project design, the nature of this Program necessitates a flexible design phase, wherein changes in scope of the selected plan, with accompanying changes in project impacts and evaluation, are to be expected and handled by planning personnel in order that the DPR will reflect a selected plan consistent with completed detailed design and a plan justified under the current Federal evaluation criteria for recommending Federal participation.

3. *Planning Tasks.*

a. *Problem Identification.* While planning under Continuing Authorities is to be on a multi-objective basis, the range of problems that can be addressed under a particular Program authority is more limited than normally considered in the conduct of studies specifically authorized by Congress. A good effort to focus the study on relevant problems should be made in the Recon phase of the study, while more intense efforts at data collection and definition of the problems and associated needs should be accomplished during Stage 2 planning.

b. *Formulation of Alternatives.* There are no fundamental differences in the process of formulating alternatives under these Program authorities than in Level C Survey studies, with the exception that the array of alternatives will normally be more limited based on the discussion in para 3a above. The level of detail to which the alternatives are formulated, with associated assessments of impacts and evaluation of beneficial and adverse contributions, will vary greatly depending on the study authority. In some cases, alternatives will be screened and eliminated for various reasons without full development of a tentative plan which can be

assessed and evaluated. Such screening is consistent with the nature of this Program; however, good judgment and interdisciplinary participation should be emphasized in such preliminary screenings. The guidance in the ER 1105-2-200 series of regulations with regard to consideration of non-structural measures and formulation of NED and EQ plans, is fully applicable to studies conducted under this Program.

c. *Impact Assessment.* There is no difference in the requirements for the assessment of impacts for studies conducted under Continuing Authorities and those under the Level C Survey Program. As in all studies, the extent to which information is obtained to adequately assess impacts of alternative plans is a matter of discretion of the reporting officer, bearing in mind the requirements of the National Environmental Policy Act of 1969 (NEPA) and Section 122, Public Law 91-611.

d. *Evaluation.* The processes, analyses and displays for evaluation of alternative plans as prescribed in the ER 1105-2-200 series of regulations are generally applicable to studies conducted under Continuing Authorities. Again, the level of detail, and not the process itself, is to be consistent with the study authority and the needs of the decision-making process.

PART 273—AQUATIC PLANT CONTROL

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AUTHORITY: Sec. 302, Title III, Pub. L. 89-298, River and Harbor Act of 1965 (33 U.S.C. 610), October 27, 1965.

SOURCE: 41 FR 22346, June 3, 1976, unless otherwise noted.

§ 273.10 Purpose.

This regulation prescribes policies, procedures and guidelines for research, planning and operations for the Aquatic Plant Control Program under authority of section 302 of the Rivers and Harbors Act of 1965.

§ 273.11 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having civil works responsibilities.

§ 273.12 References.

- (a) Section 302, Pub. L. 89-298, (79 Stat. 1092), Rivers and Harbors Act of 1965, (Appendix A).
- (b) Pub. L. 92-516, Federal Insecticide, Fungicide and Rodenticide Act of 1972, (86 Stat. 973), 21 October 1972.
- (c) 40 CFR 180, Tolerances and exemptions from tolerances for pesticide chemicals, 2,4-D, subpart C (F) 16 December 1975.
- (d) Pub. L. 91-596, Occupational Safety and Health Act of 1970, (84 Stat. 1609, 29 U.S.C. 668), 29 December 1970.
- (e) 29 CFR 1960, Safety and Health Provisions for Federal Employees, FEDERAL REGISTER, Vol. 39, No. 9, 9 October 1974.
- (f) ER 11-2-240, "Civil Works Activities, Construction and Design."
- (g) ER 70-2-3, "Civil Works Research and Development Management System."
- (h) ER 1105-2-507, "Preparation and Coordination of Environmental Statements." (33 CFR 209.410)¹
- (i) ER 1105-2-811.

§ 273.13 Program policy.

(a) *Program orientation.* The Aquatic Plant Control Program is designed to deal primarily with weed infestations of major economic significance including those that have reached that stage (such as water-hyacinth) and those that have that potential (such as alligatorweed and Eurasian watermilfoil) in navigable waters, tributaries, streams, connecting channels and allied waters. This does not imply

¹33 CFR 209.410 was removed at 45 FR 56761, Aug. 25, 1980.