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Title 33—Navigation and Navigable Waters

(This book contains part 200 to End)

Part

CHAPTER II—Corps of Engineers, Department of the Army, Department of Defense 203

CHAPTER IV—Saint Lawrence Seaway Development Corporation, Department of Transportation 401

CROSS REFERENCE: For research and development, laboratory research and development and tests, work for others regulations, see 32 CFR part 555.

ABBREVIATION USED IN CHAPTER II:
CE = *Corps of Engineers*.

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY, DEPARTMENT OF DEFENSE

EDITORIAL NOTE: Other regulations issued by the Department of the Army appear in Title 32, Chapter V; Title 33, Chapter II; and Title 36, Chapter III, of the Code of Federal Regulations.

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PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

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Subpart A—Introduction

§ 203.11 Purpose.

This part prescribes administrative policies, guidance, and operating procedures for natural disaster preparedness, response, and recovery activities of the United States Army Corps of Engineers.

§ 203.12 Authority.

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n) (69 Stat. 186), commonly and hereinafter referred to as Public Law 84–99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood, or nonstructural alternatives thereto; emergency protection of federally authorized hurricane or shore protection projects which are threatened, when such protection is warranted to protect against imminent and substantial loss to life and property; and repair and restoration of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature. The law includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality, and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. This law authorizes the Secretary of the Army (Secretary) to construct wells and to transport water

within areas determined by the Secretary to be drought-distressed. The Secretary of the Army has delegated the authority vested in the Secretary under Public Law 84–99 through the Assistant Secretary of the Army (Civil Works) to the Chief of Engineers, subject to such further direction as the Secretary may provide.

§ 203.13 Available assistance.

Corps assistance provided under authority of Public Law 84–99 is intended to be supplemental to State and local efforts. The principal assistance programs and activities of the Corps are described in this section.

(a) *Disaster preparedness.* Technical assistance for many types of disasters is available to State and local interests. Primary Corps efforts are focused on technical assistance for, and inspections of, flood control works, and related flood fight preparedness and training activities. Technical assistance for specialized studies, project development, and related activities, and requirements for long term assistance, are normally beyond the scope of disaster preparedness assistance, and are appropriately addressed by other Corps authorities and programs. Subpart B addresses disaster preparedness responsibilities and activities.

(b) *Emergency operations.* Emergency operations, consisting of Flood Response (flood fight and rescue operations) and Post Flood Response assistance, may be provided to supplement State and local emergency operations efforts. Subpart C of this part addresses emergency operations assistance.

(c) *Rehabilitation.* The Corps may rehabilitate flood control works damaged or destroyed by floods and coastal storms. The Corps Rehabilitation and Inspection Program (RIP) incorporates both disaster preparedness activities and Rehabilitation Assistance. The RIP consists of a process to inspect flood control works; a status determination, *i.e.*, an inspection-based determination of qualification for future potential Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event. Subpart D addresses Rehabilitation Assistance and the RIP.

(d) *Emergency water supplies due to contaminated water source.* The Corps may provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality. Subpart E addresses emergency water supply assistance.

(e) *Drought assistance.* Corps assistance may be provided to drought-distressed areas (as declared by the Secretary of the Army or his delegated nominee) to construct wells and to transport water for human consumption. Subpart E addresses drought assistance.

(f) *Advance Measures.* Advance Measures assistance may be provided to protect against imminent threats of predicted, but unusual, floods. Advance Measures projects must be justified from an engineering and economic standpoint, and must be capable of completion in a timely manner. Advance Measures assistance may be provided only to protect against loss of life and/or significant damages to improved property due to flooding. Subpart F of this part addresses Advance Measures assistance.

§ 203.14 Responsibilities of non-Federal interests.

Non-Federal interests, which include State, county and local governments; federally recognized Indian Tribes; and Alaska Native Corporations, are required to make full use of their own resources before Federal assistance can be furnished. The National Guard, as part of the State's resources when it is under State control, must be fully utilized as part of the non-Federal response. Non-Federal responsibilities include the following:

(a) *Disaster preparedness.* Disaster preparedness is a basic tenet of State and local responsibility. Disaster preparedness responsibilities of non-Federal interests include:

(1) Operation and maintenance of flood control works;

(2) Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations;

(3) Training personnel to operate, maintain, and patrol projects during crisis situations, and preparation of plans to address emergency situations;

(4) Taking those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part; and,

(5) Responsible regulation, management, and use of floodplain areas.

(b) *Emergency operations.* During emergency operations, non-Federal interests must commit available resources, to include work force, supplies, equipment, and funds. Requests for Corps emergency operations assistance will be in writing from the appropriate State, tribal, or local official. For flood fight direct assistance and Post Flood Response assistance, non-Federal interests must furnish formal written assurances of local cooperation by entering into Cooperation Agreements (CA's), as detailed in subpart G of this regulation. (For Corps work authorized under Public Law 84–99, the term ''Cooperation Agreement'' is used to differentiate this agreement from a Project Cooperation Agreement (PCA) that addresses the original construction of a project.) Following Flood Response or Post Flood Response assistance, it is a non-Federal responsibility to remove expedient flood control structures and similar works installed by the Corps under Public Law 84–99.

(c) *Rehabilitation of non-Federal flood control projects.* Prior to Corps rehabilitation of non-Federal flood control projects, non-Federal interests must furnish formal written assurances of local cooperation by entering into a CA, as detailed in subpart G of this part. Requirements of local participation include such items as provision of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD's), applicable cost-sharing, and costs attributable to deficient and/or deferred maintenance.

(d) *Rehabilitation of Federal flood control projects.* Sponsors of Federal flood control projects are usually not required to furnish written assurances of local cooperation, if the PCA for the original construction of the project is sufficient. (NOTE: The PCA may also be referred to as a local cooperation agreement (LCA), cooperation and participation agreement (C&P), or similar terms.) In lieu of a new PCA, the Corps will notify the sponsor of the sponsor's standing requirements, including such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, relocations, and any cost-sharing requirements contained in subpart G of § 203.82. Modifications to the existing Operation and Maintenance Manual may be required based on the Rehabilitation Assistance required.

(e) *Emergency water supplies due to contaminated water source.* Except for federally recognized Indian Tribes or Alaska Native Corporations, Non-Federal interests must first seek emergency water assistance through the Governor of the affected State. If the State is unable to provide the needed assistance, then the Governor or his or her authorized representative must request Corps assistance in writing. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(f) *Drought assistance.* Except for federally recognized Indian Tribes or Alaska Native Corporations, non-Federal interests must first seek emergency drinking water assistance through the Governor of the affected State. Requests for Corps assistance will be in writing from the Governor or his or her authorized representative. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Assistance can be provided to those drought-distressed areas (as declared by the Secretary of the Army) to construct wells and to transport water for

human consumption. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(g) *Advance Measures.* Advance Measures assistance should complement the maximum non-Federal capability. Requests for assistance must be made by the Governor of the affected State, except requests for assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. A CA (see subpart G of this part) is required prior to assistance being rendered. Non-Federal participation may include either financial contribution or commitment of non-Federal physical resources, or both.

§ 203.15 Definitions.

The following definitions are applicable throughout this part:

Federal project. A project constructed by the Corps, and subsequently turned over to a local sponsor for operations and maintenance responsibility. This definition also includes any project specifically designated as a Federal project by an Act of Congress.

Flood control project: A project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multipurpose project, only those components that are necessary for the flood control function are considered eligible for Rehabilitation Assistance.

Governor. All references in part 203 to the Governor of a State also refer to: the Governors of United States commonwealths, territories, and possessions; and the Mayor of Washington, D.C.

Hurricane/Shore Protection Project (HSPP). A flood control project designed and constructed to have appreciable and predictable effects in preventing damage to developed areas from the impacts of hurricanes, tsunamis, and coastal storms. These effects are primarily to protect against wave action, storm surge, wind, and the complicating factors of extraordinary high tides. HSPP's include projects known as shore protection projects, shore protection structures, periodic nourishment projects, shore enhancement projects, and similar terms. Components of an HSPP may include both hard (permanent construction) and soft (sacrificial, *i.e.*, sand) features.

Non-Federal project. A project constructed with non-Federal funds, or a project constructed by tribal, State, local, or private interests, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Public Law 84–99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, *et seq.*) (hereinafter referred to as the Stafford Act), is a non-Federal project unless it repairs or replaces an existing Federal project. Works Progress Administration (WPA) projects, and projects funded completely or partially by other (non-Corps) Federal agencies, are considered non-Federal projects for the application of Public Law 84–99 authority.

Non-Federal sponsor. A non-Federal sponsor is a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A non-Federal sponsor may be a State, County, City, Town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and LERRD's necessary for the project.

Repair and rehabilitation. The term ''repair and rehabilitation'' means the repair or rebuilding of a flood control structure, after the structure has been damaged by a flood, hurricane, or coastal storm, to the level of protection provided by the structure prior to the flood, hurricane, or coastal storm. ''Repair and rehabilitation'' does not include improvements (betterments) to

the structure, nor does ''repair and rehabilitation'' include any repair or rebuilding of a flood control structure that, in the normal course of usage, has become structurally unsound and is no longer fit to provide the level of protection for which it was designed.

§ 203.16 Federally recognized Indian Tribes and the Alaska Native Corporations.

Requests for Public Law 84–99 assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State.

Subpart B—Disaster Preparedness

§ 203.21 Disaster preparedness responsibilities of non-Federal interests.

Disaster preparedness is a basic tenet of State and local responsibility. Assistance provided under authority of Public Law 84–99 is intended to be supplemental to the maximum efforts of State and local interests. Assistance under Public Law 84–99 will not be provided when non-Federal interests have made insufficient efforts to address the situation for which assistance is requested. Assistance under Public Law 84–99 will not be provided when a request for such assistance is based entirely on a lack of fiscal resources with which to address the situation. Non-Federal interests' responsibilities are addressed in detail as follows:

(a) *Operation and maintenance of flood control works*. Flood control works must be operated and maintained by non-Federal interests. Maintenance includes both short-term activities (normally done on an annual cycle, or more frequently) such as vegetation control and control of burrowing animals, and longer term activities such as repair or replacement of structural components (e.g., culverts) of the project.

(b) *Procurement/stockpiling*. Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations is a non-Federal responsibility. The Corps is normally a last resort option for obtaining such materials. Local interests should request such materials from State assets prior to seeking Corps assistance. Local interests are responsible for reimbursing (either in kind or in cash) the Corps for expendable flood fight supplies and materials, and returning items such as pumps. When a flood is of sufficient magnitude to receive a Stafford Act emergency or disaster declaration, then the District Engineer may waive reimbursement of expendable supplies.

(c) *Training and plans*. Training personnel to operate, maintain, and patrol flood control projects during crisis situations is a non-Federal responsibility. Specific plans should be developed and in place to address known problem areas. For instance, the non-Federal sponsor of a levee reach prone to boils should have personnel specifically trained in flood fighting boils. In addition, contingency plans must be made when needed to address short term situations. For instance, if a culvert through a levee is being replaced, then the contingency plan should address all actions needed should a flood event occur during the construction period when levee integrity is lacking.

(d) *Corps Rehabilitation and Inspection Program for Flood Control Works*. To be eligible for Rehabilitation Assistance under Public Law 84–99, it is a non-Federal responsibility to take those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part.

Subpart C—Emergency Operations

§ 203.31 Authority.

Emergency operations under Public Law 84–99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane/shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public

property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

(a) *Flood Response.* Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, State, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures (except technical assistance) are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or State and local interests, may include the following: technical advice and assistance; lending of flood fight supplies, e.g., sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.

(b) *Post Flood Response.* The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days (the statutory limitation) from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for Post Flood Response assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include the following: provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy.

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement State and local activities. Corps assistance is limited to the preservation of life and property, *i.e.*, residential/commercial/industrial developments, and public facilities/services. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of State or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84–99, and will not prevent State or local governments from receiving other Federal assistance for which they are eligible.

(a) *Flood Response.* Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, State, or local official will be accepted, followed by a written confirmation.

(1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, State, or local official. However, legal responsibility always remains with the tribal, State, and local officials.

(2) Corps assistance will be terminated when the flood waters recede below bankfull, absent a short term threat (e.g., a significant storm front expected to arrive within a day or two) likely to cause additional flooding.

(3) Removal of ice jams is a local responsibility. Corps technical advice and assistance, as well as assistance with flood fight operations, can be provided to supplement State and local efforts. The Corps will not perform ice jam blasting operations for local interests.

(b) *Post Flood Response.* A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement State and local efforts. Corps assistance is limited to 10 days following receipt of the Governor's written request, or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period, or trigger a new 10-day period. The Corps will deny any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* (1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.

(2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Stafford Act Presidential emergency or disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.

(3) Expendable supplies that are lent, such as sandbags, will be replaced in kind, or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

§ 203.41 General.

(a) *Authority.* Public Law 84–99 authorizes repair and restoration of the following types of projects to ensure their continued function:

(1) Flood control projects.

(2) Federally authorized and constructed hurricane/shore protection projects.

(b) *Implementation of authority.* The Rehabilitation and Inspection Program (RIP) implements Public Law 84–99 authority to repair and rehabilitate flood control projects damaged by floods and coastal storm events. The RIP consists of a process to inspect flood control work; a status determination, *i.e.*, an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event.

(c) *Active status.* In order for a flood control work to be eligible for Rehabilitation Assistance, it must be in an Active status at the time of damage from a flood or coastal storm event. To gain an Active status, a non-Federal flood control work must meet certain

engineering, maintenance, and qualification criteria, as determined by the Corps during an Initial Eligibility Inspection (IEI). To retain an Active status, Federal and non-Federal flood control works must continue to meet inspection criteria set by the Corps, as determined by the Corps during a Continuing Eligibility Inspection (CEI). All flood control works not in an Active status are considered to be Inactive, regardless of whether or not they have previously received a Corps inspection, or Corps assistance.

(d) *Modification of flood control projects.* Modification of a flood control project to increase the level of protection, or to provide protection to a larger area, is beyond the scope of Public Law 84–99 assistance. Such modifications to Federal projects are normally accomplished under congressional authorization and appropriation, or under Continuing Authorities Programs of the Corps. Such modifications to non-Federal projects are normally accomplished by the non-Federal sponsor and local interests. Modifications necessary to preserve the structural integrity of an existing non-Federal flood control project may be funded by the RIP, but such work must meet the criteria established in § 203.47 to be eligible for funding under Public Law 84–99.

§ 203.42 Inspection of non-Federal flood control works.

(a) *Required inspections.* The Corps will conduct inspections of non-Federal flood control works. These inspections are IEI's and CEI's. Conduct of IEI's and CEI's will be as provided for in § 203.48.

(1) Corps involvement with any non-Federal flood control work normally begins when the sponsor requests an IEI. The Corps will conduct an IEI to determine if the flood control work meets minimum engineering and maintenance standards and is capable of providing the intended degree of flood protection. An Acceptable or Minimally Acceptable rating (see § 203.48) on the IEI is required to allow the project to gain an Active status in the RIP.

(2) CEI's are conducted periodically to ensure that projects Active in the RIP continue to meet Corps standards, and to determine if the sponsor's maintenance program is adequate. A rating of Acceptable or Minimally Acceptable (see § 203.48) on a CEI is required in order to retain an Active status in the RIP.

(b) Advice and reporting. Information on the results of IEI and CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices.

(1) Non-Federal sponsors will be informed that an IEI rating of Unacceptable will cause the flood control work to remain in an Inactive status, and ineligible for Rehabilitation Assistance.

(2) Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and ineligible for Rehabilitation Assistance.

(3) Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.43 Inspection of Federal flood control works.

(a) *Required inspections.* A completed Federal flood control project, or completed functional portions thereof, is granted Active status in the RIP upon transfer of the operation and maintenance of the project (or functional portion thereof) to the non-Federal sponsor. Federal flood control works will be periodically inspected in accordance with 33 CFR 208.10 and Engineer Regulation (ER) 1130–2–530, Flood Control Operations and Maintenance Policies. These periodic inspections of Federal flood control works are also, for simplicity, known as CEI's. If a Federal project is found to be inadequately maintained on a CEI, then it will be placed in an Inactive status in the RIP. [NOTE: This is a separate and distinct action from project deauthorization, which is not within the scope of PL 84–99 activities.] A Federal project will remain in an Inactive status until such

time as an adequate maintenance program is restored, and the project is determined by the Corps to be adequately maintained.

(b) *Advice and reporting*. Information on the results of CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices. Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and not eligible for Rehabilitation Assistance. Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Rehabilitation of non-Federal flood control works.

(a) *Scope of work*. The Corps will provide assistance in the rehabilitation of non-Federal projects only when repairs are clearly beyond the normal physical and financial capabilities of the project sponsor. The urgency of the work required will be considered in determining the sponsor's capability.

(b) *Eligibility for Rehabilitation Assistance*. A flood control project is eligible for Rehabilitation Assistance provided that the project is in an Active status at the time of the flood event, the damage was caused by the flood event, the work can be economically justified, and the work is not otherwise prohibited by this subpart D.

(c) *Work at non-Federal expense*. At the earliest opportunity prior to commencement of or during authorized rehabilitation work, the Corps will inform the project sponsor of any work that must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies, and any modifications that are necessary to preserve the integrity of the project.

(d) *Nonconforming works*. Any non-Federal project constructed or modified without the appropriate local, State, tribal, and/or Federal permits, or waivers thereof, will not be rehabilitated under Public Law 84–99.

(e) *Cooperation Agreements*. A Cooperation Agreement is required in accordance with subpart G of this part.

§ 203.45 Rehabilitation of Federal flood control works.

Rehabilitation of Federal flood control projects will be identical to rehabilitation of non-Federal projects (§ 203.44), except for those conditions contained in subpart G of this part concerning cooperation agreements, when the original PCA for the Federal project is sufficient. Additional requirements for Hurricane/Shore Protection Projects are covered in § 203.49.

§ 203.46 Restrictions.

(a) Restrictions to flood control works. Flood control works are designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels. Structures built primarily for the purposes of channel alignment, navigation, recreation, fish and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection are generally ineligible for Public Law 84–99 Rehabilitation Assistance.

(b) *Non-flood related rehabilitation*. Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms will generally not be provided under Public Law 84–99.

(c) *Maintenance and deterioration deficiencies*. Rehabilitation under Public Law 84–99 will not be provided for either Federal or non-Federal flood control projects that, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by, or at the expense of, the non-Federal sponsor, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred or deficient maintenance, the estimated deferred or deficient maintenance cost will not be included as contributed non-Federal funds, and will be in addition to cost-sharing requirements addressed in § 203.82. Failure of project sponsors to correct deficiencies noted

during Continuing Eligibility Inspections may result in ineligibility to receive Rehabilitation Assistance under Public Law 84–99.

(d) *Economic justification.* No flood control work will be rehabilitated unless the work required satisfies Corps criteria for a favorable benefit-to-cost ratio, and the construction cost of the work required exceeds $15,000. Construction costs greater than $15,000 do not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for Corps Rehabilitation Assistance.

§ 203.47 Modifications to non-Federal flood control works.

Modifications necessary to preserve the structural integrity of existing non-Federal projects may be constructed at additional Federal and non-Federal expense in conjunction with approved rehabilitation work. The additional Federal cost will be limited to not more than one-third of the estimated Federal construction cost of rehabilitation to preflood level of protection, or $100,000, whichever is less. The modification work must be economically justified. Non-Federal interests are required to contribute a minimum of 25% of the total construction costs of the modification, LERRD's, and any additional funds necessary to support the remaining cost of the modification beyond what the Corps can provide. Engineering and design costs will be at Corps cost.

(a) *Cash contributions.* Non-Federal contributions will be only in cash. In-kind services are not permitted for modification work.

(b) *Protection of additional areas.* Modifications designed to provide protection to additional area are not authorized.

§ 203.48 Inspection guidelines for non-Federal flood control works.

(a) *Intent.* The intent of these guidelines is to facilitate inspections of the design, construction, and maintenance of non-Federal flood control works. The guidelines are not intended to establish design standards for non-Federal flood control works, but to provide uniform procedures within the Corps for conducting required inspections. The results of these inspections determine Active status in the RIP, and thus determine eligibility for Rehabilitation Assistance. The contents of this section are applicable to both IEI's and CEI's.

(b) *Level of detail.* Evaluations of non-Federal flood control works will be made through on site inspections and technical analyses by Corps technical personnel. The level of detail required in an inspection will be commensurate with the complexity of the inspected project, the potential for catastrophic failure to cause significant loss of life, the economic benefits of the area protected, and other special circumstances that may occur. Technical evaluation procedures are intended to establish the general capability of a non-Federal flood control work to provide reliable flood protection.

(c) *Purposes.* The IEI assesses the integrity and reliability of the flood control work. In addition, other essential information required to help determine the Federal interest in future repairs/rehabilitation to the flood control work will be obtained. The IEI will establish the estimated level of protection and structural reliability of the existing flood control work. Subsequent CEI's will seek to detect changed project conditions that may have an impact on the reliability of the flood protection provided by the flood control work, to include the level of maintenance being performed on the flood control work.

(d) *Inspection components*—(1) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal flood control work will be evaluated and expressed in terms of exceedence frequency (e.g., a 20% chance of a levee being overtopped in any given year). These analyses also include an evaluation of existing or needed erosion control features for portions of a project that may be threatened by stream flows, overland flows, or wind generated waves.

(2) *Geotechnical analyses.* The Geotechnical evaluation will be based primarily on a detailed visual inspection. As a minimum, for levees, the IEI will identify critical sections where levee stability appears weakest and

will document the location, reach, and cross-section at these points.

(3) *Maintenance*. Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.

(4) *Other structural features*. Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

(e) *Ratings*. Inspected flood control works will receive a rating in accordance with the table below. The table below provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.
M—Minimally Acceptable.	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable ...	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

(f) *Sponsor reclama*. If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, preferably certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane and Shore Protection Projects.

(a) *Authority*. The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engineers, such rehabilitation is warranted for the adequate functioning of the project.

(b) *Policies*. (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.

(2) To be eligible for Rehabilitation Assistance, HSPP's must be:

(i) A completed element of a Federally authorized project; or,

(ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, Headquarters, U.S. Army Corps of Engineers (HQUSACE), or his designated representative; or,

(iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and

(3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.

(4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Director of Civil Works, and may be delegated to the Chief, Operations Division, Directorate of Civil Works.

(5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.

(6) *Definition of extraordinary storm*. An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. ''Prolongation or severity'' means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. ''Significant

amounts of damage'' have occurred when:

(i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds $1 million and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds $6 million; or,

(iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.

(c) *Procedural requirements.* Rehabilitation of HSPP'S will be done in accordance with § 203.45, except as modified by this section.

(d) *Combined rehabilitation and periodic nourishment.* In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Director of Civil Works.

§ 203.50 Nonstructural alternatives to rehabilitation of flood control works.

(a) *Authority.* Under Public Law 84–99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) *Policy.* (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the request of such non-Federal sponsors.

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in § 203.15, or another Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSA that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5) The principal purposes of an NSAP are for:

(i) Floodplain restoration;

(ii) Provision or restoration of floodways; and,

NOTE TO PARAGRAPHS (b)(5)(i) AND (ii): Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under PL 84–99 authority.

(iii) Reduction of future flood damages and associated flood control works repair costs.

(c) *Limitation on Corps expenditures.* Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Director of Civil Works or the Chief, Operations Division, Directorate of Civil Works when compelling reasons exist.

(d) *Responsibilities of the NSAP non-Federal sponsor*. (1) Operate and maintain the NSAP;

(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.

(3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

(e) *Responsibilities of other Federal agencies acting as NSAP sponsor*. The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (*See* paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (1) of this section.

(f) *Responsibilities of the requesting flood control work project sponsor*. (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.

(2) If not also the NSAP sponsor, the flood control work project sponsor must:

(i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and

(ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) *Allowable Public Law 84–99 expenses for NSAP's*. (1) Acquisition of land or interests in land.

(2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.

(3) Demolition and removal of structures, including utility connections and related items.

(4) Debris removal and debris reduction.

(5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.

(6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.

(7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.

(8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection features and/or riprap.

(9) Protection/floodproofing of essential structures and facilities.

(10) Supervision, administrative, and contract administration costs of other expenses allowed in this subparagraph.

(h) *Time limitation*. Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) *Participation and involvement of other Federal, State, tribal, local, and private agencies*. Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency's authorities and regulations.

(j) *Future assistance*. After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84–

99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) *Environmental considerations*. NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirements for Cooperation Agreement (CA)/Items of Local Cooperation*—(1) *Requirement for Local Cooperation*. In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraphs (l)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraphs (l)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.

(2) The CA requirements of subpart G of this part are not applicable to NSAP's.

(3) *Items of Local Cooperation*. For NSAP's, non-Federal interests shall:

(i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;

(ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.

(4) *Cost sharing*. The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.

(5) *Eligibility under other Federal programs*. NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

(6) *Contributed funds*. Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(7) *Obligation of contributed funds*. In accordance with OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds.

(8) *Prohibition of future assistance*. The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.

(9) *Assurance of compliance with Executive Order 11988*. NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.

(10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

(m) *Acquisition of LERRD's*. (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in (c) of this section, and availability of appropriations.

(2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

§ 203.51 Levee owner's manual.

(a) *Authority*. In accordance with section 202(f) of Public Law 104–303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.

(b) *Policies*—(1) *Active non-Federal projects*. A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.

(2) *Federal projects*. The Operation and Maintenance Manual specified by 33 CFR 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.

(c) *Procedural requirements*. Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

§ 203.52 [Reserved]

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

§ 203.61 Emergency water supplies due to contaminated water source.

(a) *Authority*. The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policies*. (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) The maximum contaminant level *or* treatment technique for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (*see* 40 CFR 141), is exceeded.

(ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (e.g., a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated on the basis of other information available.

(3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (*See* subpart G of this part.) Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the

State and the Corps. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.

(9) State, tribal, and local governments must make full use of their own resources, including National Guard capabilities.

(c) *Governor's request.* A letter signed by the Governor, or his or her authorized representative, requesting Corps assistance and addressing the State's commitments and capabilities in response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the local and State efforts undertaken. Verify that all reasonably available resources have been committed.

(2) Identify the specific needs of the State, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the State.

(4) Identify the project sponsor(s).

(d) *Non-Federal responsibilities.* Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination. If assistance is furnished by the Corps, local interests must furnish the basic requirements of local cooperation as detailed in the Cooperation Agreement. In all cases, reasonable water conservation measures must be implemented. Local interests will be required to operate and maintain any loaned equipment, and to remove and return such equipment to Federal interests, in a fully maintained condition, after the situation is resolved.

§ 203.62 Drought assistance.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells for farmers, ranchers, political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section*—(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or

ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision*. A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost*. In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells, and

(B) The cost of investigation and report preparation to determine the suitability to construct a well, or,

(ii) The cost to a private business of constructing such a well.

(7) *State*. Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(e) *Guidance—construction of wells*. (1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(f) *Guidance—transport of water*. (1) Assistance to an applicant in the transportation of water may be provided if:

(i) It is in response to a written request by a political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance,

to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(g) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

[68 FR 36468, June 18, 2003]

Subpart F—Advance Measures

§ 203.71 Policy.

Advance Measures consists of those activities performed prior to a flood event, or potential flood event, to protect against loss of life and/or significant damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an imminent threat of unusual flooding. Corps assistance will be to complement the maximum efforts of tribal, State, and local authorities. Projects will be designed for the specific threat, normally of expedient-type construction, and typically temporary in nature.

§ 203.72 Eligibility criteria and procedures.

(a) *Threat of flooding.* An *imminent* threat of *unusual* flooding must exist before Advance Measures projects can be approved. The threat may be established by National Weather Service predictions, or by Corps of Engineers determinations of unusual flooding from adverse or unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.

(b) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the non-Federal efforts undertaken. Verify that all available resources have been committed.

(2) Identify the specific needs, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the non-Federal interests.

(4) Identify the non-Federal sponsor(s).

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages.

(d) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.

(e) *Local cooperation/responsibilities.* Subpart G of this part provides requirements for a Cooperation Agreement needed to provide local assurances. The project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.

(f) *Contingency planning efforts for potential Advance Measures activities.* Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to tribal, State, and local agencies, commensurate with the predicted weather phenomenon, based on requests for assistance from such tribal, State, and local agencies. Specific Advance Measures projects must be addressed as specified in paragraph (b) of this section.

(g) *Definitions*—(1) *Imminent threat.* A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in a given geographical location. Implicit in the timing aspect can be considerations of available time (when the next flood or storm event is likely

to occur), season (e.g., a snowpack that will melt in the coming spring runoff), or of known cyclical activities.

(2) *Unusual flooding.* A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/ Cooperation Agreements

§ 203.81 General.

(a) *Requirements for Cooperation Agreements.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.

(b) *Request for assistance.* (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

(2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of local cooperation.

It is Corps policy that provision of assistance under Public Law 84–99 will, insofar as feasible, require local interests to: provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84–99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

(a) *Furnishing of LERRD's.* This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.

(b) *Hold and save clause.* This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Maintain and operate clause.* This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: ''It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of (insert name of sponsor, and owner if appropriate).''

(d) *Removal of temporary works.* Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.

(e) *Request for retention of temporary flood control works.* Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84–99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84–99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* (1) The Federal Government may assume up to 80 percent of the eligible construction costs for rehabilitation of non-Federal flood control projects, and up to 100 percent of the eligible construction costs for rehabilitation of Federal flood control projects. The Federal Government may assume up to 100 percent of the eligible construction costs for rehabilitation of HSPP's. Sponsors will provide their share of costs as provided for in § 203.84. The sponsor's share is in addition to providing costs for LERRD's, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.

(2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD's.

§ 203.83 Additional requirements.

(a) *Maintenance deficiencies.* Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage, flood control works.* Separable areas with minor damage will be included in the maintenance program of local interests.

(c) *Minor completion items.* Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.

(d) *Adequacy of requirements of local cooperation.* In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a ''Contingency Fund'' to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a ''Capital Improvement Fund'' to meet future costs of capital

improvement projects such as replacement of culverts in levees, pump station equipment, etc.

(e) *Eligibility under other Federal programs.* The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84–99 assistance, but will not be ''at no cost to the United States.'' Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of local participation—cost sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

(a) *Contributed funds.* Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(b) *Obligation of contributed funds.* Per OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84–99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance (*see* subpart G of this part) must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant. Public Law 84–99 limits the term to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal flood control projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in § 203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84–99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the ''Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR 208)'' or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal

sponsor will vary according to organization and other circumstances.

PART 207—NAVIGATION REGULATIONS

Sec.

207.9 Mystic River, Mass.; dam of Commonwealth of Massachusetts, Metropolitan District Commission.
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207.20 Cape Cod Canal, Mass.; use, administration, and navigation.
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207.100 Inland waterway from Delaware River to Chesapeake Bay, Del. and Md. (Chesapeake and Delaware Canal); use, administration, and navigation.
207.160 All waterways tributary to the Atlantic Ocean south of Chesapeake Bay and all waterways tributary to the Gulf of Mexico east and south of St. Marks, Fla.; use, administration, and navigation.
207.169 Oklawaha River, navigation lock and dam at Moss Bluff, Fla.; use, administration and navigation.
207.170 Federal Dam, Oklawaha River, Moss Bluff, Fla.; pool level.
207.170a Eugene J. Burrell Navigation Lock in Haines Creek near Lisbon, Florida; use, administration, and navigation.
207.170b Apopka-Beauclair Navigation Lock in Apopka-Beauclair Canal in Lake County, Fla.; use, administration, and navigation.
207.170c Kissimmee River, navigation locks between Lake Tohopekaliga and Lake Okeechobee, Fla.; use, administration, and navigation.
207.170d Taylor Creek, navigation lock (S–193) across the entrance to Taylor Creek at Lake Okeechobee, Okeechobee, Fla.; use, administration, and navigation.
207.175a Carlson's Landing Dam navigation lock, Withlacoochee River, Fla.; use, administration, and navigation.
207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration, and navigation.
207.185 Taylors Bayou, Tex., Beaumont Navigation District Lock; use, administration and navigation.
207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.
207.200 Mississippi River below mouth of Ohio River, including South and Southwest Passes; use, administration, and navigation.
207.249 Ouachita and Black Rivers, Ark. and La., Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 276.0 (Shreveport, La.); use, administration, and navigation.
207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth at Kleinston Landing to Fisher Street; navigation.
207.270 Tallahatchie River, Miss., between Batesville and the mouth; logging.
207.275 McClellan-Kerr Arkansas River navigation system: use, administration, and navigation.
207.300 Ohio River, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation.
207.306 Missouri River; administration and navigation.
207.310 Mississippi River at Keokuk, Iowa; operation of power dam by Mississippi River Power Co.
207.320 Mississippi River, Twin City Locks and Dam, St. Paul and Minneapolis, Minn.; pool level.
207.330 Mississippi River between Winnibigoshish and Pokegama dams, Leech River between outlet of Leech Lake and Mississippi River, and Pokegama reservoir; logging.
207.340 Reservoirs at headwaters of the Mississippi River; use and administration.
207.350 St. Croix River, Wis. and Minn.
207.360 Rainy River, Minn.; logging regulations for portions of river within jurisdiction of the United States.
207.370 Big Fork River, Minn.; logging.
207.380 Red Lake River, Minn.; logging regulations for portion of river above Thief River Falls.
207.390 [Reserved]
207.420 Chicago River, Ill.; Sanitary District controlling works, and the use, administration, and navigation of the lock at the mouth of river, Chicago Harbor.
207.425 Calumet River, Ill.; Thomas J. O'Brien Lock and Controlling Works and the use, administration and navigation of the lock.
207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.
207.441 St. Marys Falls Canal and Locks, Mich.; security.
207.460 Fox River, Wis.
207.470 Sturgeon Bay and Lake Michigan Ship Canal, Wis.; use and navigation.
207.476 The Inland Route—lock in Crooked River, Alanson, Mich.; use, administration, and navigation.
207.480 Lake Huron, Mich.; Harbor of refuge, Harbor Beach; use and navigation.
207.560 Sandusky Harbor, Ohio; use, administration, and navigation.

207.565 Vermilion Harbor, Ohio; use, administration, and navigation.
207.570 Harbors of Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut, Ohio; use, administration, and navigation.
207.580 Buffalo Harbor, N.Y.; use, administration, and navigation.
207.590 Black Rock Canal and Lock at Buffalo, N.Y.; use, administration and navigation.
207.600 Rochester (Charlotte) Harbor, N.Y.; use, administration, and navigation.
207.610 St. Lawrence River, Cape Vincent Harbor, N.Y.; use, administration, and navigation of the harbor and U.S. breakwater.
207.640 Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration, and navigation.
207.680 Willamette River, Oreg.; use, administration, and navigation of canal and locks at Willamette Falls, Oreg.
207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.
207.750 Puget Sound Area, Wash.
207.800 Collection of navigation statistics.

AUTHORITY: 40 Stat. 266 (33 U.S.C. 1).

§ 207.9 Mystic River, Mass.; dam of Commonwealth of Massachusetts, Metropolitan District Commission.

(a) *Definition and authority of superintendent.* The term superintendent as used in the regulations in this section shall mean himself and/or his personnel then on duty at the dam. The positioning and movements of all watercraft of every description while in the locks or within 100 yards of the locks or dam shall be subject to the direction of the superintendent whose orders must be obeyed. This order does not relieve the master of the responsibility for the safety of his vessel.

(b) *Description of locks.* There are three (3) locks to be used for the passage of vessels; one large lock 325 feet long, 45 feet wide, shall be used for vessels with draft up to seventeen (17) feet; two small locks each 120 feet long and 22 feet wide shall be used for boats up to six (6) feet draft.

(c) *Maximum draft.* Vessels drawing within six (6) inches of depth over the sills shall not be permitted lockage except under special permission of the superintendent. Every vessel using the locks and drawing more than ten (10) feet shall be accurately and distinctly marked at bow and stern showing the exact draft of water at such portions of the vessel. Gages set into the walls or the locks, both upstream and downstream of each gate, indicate the depth in feet of water over the sill of the gate.

(d) *Vessels denied lockage.* The superintendent may deny passage through the locks to any craft with sharp, rough projecting corners, overhanging equipment or cargo, or any craft or two that is in sinking condition or in any way unseaworthy or insufficiently manned and equipped, or any craft failing to comply with the regulations in this section or with any orders given in pursuance thereof.

(e) *Protection of lock gates.* (1) In no case shall boats be permitted to enter or leave any of the locks until directed to do so by the superintendent. Boats shall not be permitted to enter or start to leave until the lock gates are at rest within the gate recesses. All persons, whether in charge of vessels or not, are prohibited from willfully or carelessly damaging the locks or any of the appurtenances or the grounds adjacent thereto, and from throwing or allowing any material of any kind to fall from the barge, scow or other vessel into the locks.

(2) No person shall permit or suffer any vessel, scow, raft, or float to come in contract with any gate or any of the locks of the Amelia Earhart Dam.

(f) *Damage to walls.* The sides of all craft passing through the locks must be free from projection of any kind which might injure the lock walls. All craft must be provided with suitable fenders. One or more men as the superintendent may direct shall be kept at the head of every tow until it has cleared the lock and guide walls, and shall protect the walls by use of the fenders.

(g) *Unnecessary delay at locks.* No person shall cause or permit any craft of which he is in charge to remain in the locks or their approaches for a longer period of time than is necessary for the passage of the locks unless he is especially permitted to do so by the superintendent, and if such craft is, in the opinion of such superintendent, in a position to obstruct navigation, it shall be removed at once as requested or directed by the superintendent.

(h) *Procedure at locks.* The locks shall be operated promptly for the passage of all craft upon signal, excepting only in such cases as are specifically provided for in the regulations in this section. All registered merchant vessels shall pass through the locks in the order directed by the superintendent. Other craft shall be allowed to pass through the locks at the discretion of the superintendent.

(i) *Navigation of the locks.* (1) All barges navigating the locks whether approaching or leaving the locks are required to be assisted by one or more tugs of sufficient power to insure full control at all times. All craft approaching the locks while any other vessel going in the opposite direction is in or about to enter shall be stopped where they will not obstruct the free passage of such other vessel.

(2) All vessels over 100 gross tons including those which are accompanied by towboats must attach not less than two good and sufficient lines, cables, or hawsers to the bollards or other fixtures provided for the purpose to check the speed of the vessel and to stop it as soon as it has gone far enough to permit the lock gate behind it to be closed. Each line, cable, or hawser shall be attended on board while passing into the lock by one or more of the vessel's crew. Where vessels are so long that in order to get them wholly within the locks it is necessary to go within 100 feet of the lock gate ahead, the speed of the vessel must be slow and the vessel must be fully under control at all times by the lines, cables or hawsers. All towboats and vessels less than 100 gross tons may enter the locks without having lines out subject to the discretion of the superintendent. The master or person in charge of a vessel shall arrange to have any line, cable, or hawser handed or thrown from the lock walls by the superintendent, or his assistants, made fast on the vessel as requested or directed, so that in cases of emergency such line, cable, or hawser may also be used to check the speed of and stop the vessel.

(3) Operators of vessels less than 200 gross tons may use the floating moorings in the large lock to fasten lines or hawsers, but they shall not be used to check the way on any vessel greater than 30 gross tons.

(4) Vessels less than 30 gross tons may fasten lines to the floating moorings in the large or small locks. All persons shall keep off the floating moorings at all times.

(5) No line shall be attached to anything on or a part of the dam except the fixtures provided for this purpose.

(6) Equipment of each craft shall include a sufficient bow line and stern line.

(j) *Mooring.* When a craft is in position in the lock, it shall be securely fastened in a manner satisfactory to the superintendent to prevent the craft moving about while the lock is being filled or emptied, and the lines, cables, or hawsers used for this purpose shall be attended as far as is necessary or required while the filling or empting is in progress.

(k) [Reserved]

(l) *Signals.* (1) All craft desiring lockage shall, on approaching the locks, signal by two long and two short blasts of a whistle or other sound device. Two long blasts from the lock in reply will indicate a delayed opening and direct the craft not to enter the lock.

(2) Lights are located at each end of each lock and will normally show red. No vessel shall come within 100 feet of the outside of any gate when the signal is red except when so directed by the superintendent.

(3) Fireboats and craft owned by the U.S. Government shall be given prompt and preferential lockage when they sound four long blasts.

(4) No vessel shall move into or out of any lock until the controlling signal is green. A green light in addition to audio loud speakers, operated by the superintendent or his assistants, will direct craft through the locks.

(5) It shall be the duty of every master or person in charge of any vessel to ascertain by personal observation that the lock gate is fully open before proceeding.

(m) *Operating machinery.* Lock employees only shall be permitted to operate the lock gates, signals or other appliances. No person shall deface or injure any part of the Amelia Earhart Dam, or any pier, wall or other structure or any mechanism connected

therewith; nor shall any person, without the consent of the superintendent, make fast to the dam, guard, guide wall, pier, or any appurtenance thereof any vessel, scow, raft, or float.

(n) *Vessel to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly engaged in navigating the locks. Copies may be obtained without charge from the superintendent; the Commonwealth of Massachusetts, M.D.C. Parks Division, Boston, Mass.; New England Division, Corps of Engineers, Division Engineer, Waltham, Mass.

[32 FR 8716, June 17, 1967, as amended at 56 FR 13764, Apr. 4, 1991]

§ 207.10 Charles River, Mass.; dam of Charles River Basin Commission.

(a) The movements of all vessels or boats in and near the lock shall be under the direction of the superintendent in charge of these structures and his assistants, whose orders and signals shall be obeyed.

(b) Every vessel using the lock and drawing more than 10 feet shall be accurately and distinctly marked at the bow and stern, showing the exact draft of water at such portions of the vessel.

(c) All steam vessels desiring to pass through the lock shall signal for the same by two long and two short blasts of the whistle.

(d)(1) All vessels passing through the lock shall have their outboard spars, if any, rigged in, and booms amidships, and secured. All standing and running rigging must be triced in to keep it from blowing out and fouling the drawbridge. Every vessel of 200 tons and under shall be provided with at least two, and every vessel of more than 200 tons shall be provided with at least four good and sufficient lines, cables, or hawsers. Anchors shall either be stowed or shall hang from hawse pipes, hauled up close, clear of the water if possible. Vessels with anchors under foot or hanging from catheads will not be permitted to enter the lock.

(2) All vessels must be sufficiently manned and must have a sufficient number of round and fore-and-aft fenders to protect the lock from injury. All heavy rope fenders must be securely lashed to prevent their falling into the lock and interfering with the gates.

(e) All vessels approaching the lock while any other vessel going in the opposite direction is in or about to enter it shall be stopped where they will not obstruct the free passage of such other vessel.

(f) It shall be the duty of every master or person in charge of any vessel upon approaching the lock from the upstream end to ascertain by personal observation whether or not the upper lock gate is open, and a vessel shall not be permitted to come within 100 feet of the upper lock gate until the gate has been wholly withdrawn into its recess.

(g) All towboats, whether towing or not, and other steam vessels of less than 100 tons gross may enter the lock under their own power and without having lines out, but all other vessels, including those which are accompanied by towboats, must attach not less than two good and sufficient lines, cables, or hawsers to the bollards or other fixtures provided for the purpose to check the speed of the vessel and to stop it as soon as it has gone far enough to permit the lock gate behind it to be closed, and each line, cable, or hawser shall be attended on board while passing into the lock by one or more of the vessel's crew. Where vessels are so long that in order to get them wholly within the lock it is necessary to approach within 150 feet of the lock gate ahead, the speed of the vessel must be slow and fully under control by the lines, cables, or hawsers. Steam vessels of more than 100 tons gross, not including towboats, will not be permitted to turn their propellers on entering the lock after the bow of the vessel has entered, but will be drawn in by means of capstans on the lock walls or otherwise, and their speed must be checked and the vessel stopped by lines, cables, or hawsers as in other cases. All steam vessels may leave the lock under their own power. The master or person in charge of a vessel shall arrange to have any line, cable, or hawser handed or thrown from the lock walls by the superintendent or his assistants, made fast on the vessel as requested or directed, so that in cases of emergency such line, cable, or hawser may also be

used to check the speed of and stop the vessel.

(h) When a vessel is in position in the lock it shall be securely fastened in a manner satisfactory to the superintendent, or his assistant in charge of the lock at the time, to prevent the vessel from moving about while the lock is being filled or emptied, and the lines, cables, and hawsers used for this purpose shall be attended as far as is necessary or required while the filling or emptying is in progress.

(i) No vessel which has iron or irons projecting from it or lumber or other cargo projecting over its sides shall enter the lock, except at such time and with such precautions to prevent damage to the lock or its appurtenances as the superintendent, or the assistant in charge of the lock at the time, may require.

(j) All persons, whether in charge of vessels or not, are prohibited from willfully or carelessly damaging the lock, any of its appurtenances or the grounds adjacent thereto, and from throwing any material of any kind into the lock. No line shall be attached to anything except the bollards and other fixtures provided for the purpose.

(k) Upon each passage through the lock, the master or clerk of a vessel shall make a statement of the kind and tonnage of the freight carried.

(l) No person shall cause or permit any vessel or boat of which he is in charge to remain in the lock or its approaches for a longer time than is necessary for the passage of the lock, unless he is especially permitted to do so by the superintendent or the assistant in charge of the lock at the time, and if such vessel or boat is, in the opinion of such superintendent or assistant, in a position to obstruct navigation it shall be removed at once as requested or directed by such superintendent or assistant.

(m) All registered merchant vessels shall pass through the lock in the order directed by the superintendent or the assistant in charge of the lock at the time. Unregistered craft will not be allowed to pass through the lock separately unless especially permitted by such superintendent or assistant.

(n) The lock shall be operated promptly for the passage of all vessels upon signal excepting only in such cases as are specifically provided for in this section.

[Regs., May 6, 1909]

§ 207.20 Cape Cod Canal, Mass.; use, administration, and navigation.

(a) *Limit of Canal.* The canal, including approaches, extends from the Canal Station Minus 100 in Cape Cod Bay, approximately one and six-tenths (1.6) statute miles seaward of the Canal Breakwater Light, through dredged channels and land cuts to Cleveland Ledge Light in Buzzards Bay approximately four (4) statute miles southwest of Wings Neck.

(b) *Supervision.* (1) The movement of ships, boats and craft of every description through the canal and the operation and maintenance of the waterway and all property of the United States pertaining thereto shall be under the supervision of the Division Engineer, U.S. Army Engineer Division, New England, Corps of Engineers, Waltham, Massachusetts, or the authorized representative of the division engineer, the Engineer-In-Charge of the Cape Cod Canal. The division engineer or the Engineer-In-Charge from time to time will prescribe rules governing the dimensions of vessels which may transit the waterway, and other special conditions and requirements which will govern the movement of vessels using the waterway.

(2) The Engineer-In-Charge, through the marine traffic controller on duty, will enforce these regulations and monitor traffic through the canal. The marine traffic controller on duty is the individual responsible for interpretation of these regulations with respect to vessels transiting the canal. Vessels transiting the canal must obey the orders of the marine traffic controller.

(3) The government has tugs stationed at the West Boat Basin for emergency use on an on-call basis. A patrol vessel is manned and operational 24-hours a day.

(c) *Communications.* There is a marine traffic controller on duty 24 hours a day, seven days a week, in the traffic control center located at the Canal Administrative Office. The primary method of communications between the canal and vessels transiting will be by

VHF-FM Marine radio. The traffic controller can also be contacted by telephone.

(1) For radio communications, call the traffic controller on channel 16 to establish contact. The transmissions will then be switched to channel 12 or 14 as the working channel to pass information. Channel 13 is also available at the canal office; however, the use of channel 13 should be limited to emergency situations or whenever vessels do not have one of the other channels. All four channels are monitored continuously by the traffic controller. Radio discipline will be adhered to in accordance with FCC rules and regulations.

(2) For telephone communications with the traffic controller, call (617) 759–4431.

(3) Vessels shall maintain a radio guard on Marine VHF-FM channel 13 during the entire passage through the canal.

(4) All radio communications in the vicinity of the canal are tape recorded for future reference.

(d) *Vessels allowed passage*. The canal is open for passage to all adequately powered vessels properly equipped and seaworthy, of sizes consistent with safe navigation as governed by the controlling depths and widths of the channel and the vertical and horizontal clearances of the bridges over the waterway. The granting of permission for any vessel to proceed through the waterway shall not relieve the owners, agents and operators of full responsibility for its safe passage. No vessel having a greater draft forward than aft will be allowed to transit the canal. Craft of low power and wind driven are required to have and use auxiliary power during passage throughout the canal as defined in paragraph (a) of this section. Low powered vessels will be required to await slack water or favorable current for canal transit.

(e) *Tows*. (1) Tows shall be made-up outside the canal entrances. All vessels engaged in towing other vessels not equipped with a rudder shall use two lines or a bridle and one tow line. If the vessel in tow is equipped with a rudder or a ship shaped bow, one tow line may be used. All tow lines of hawsers must be hauled as short as practicable for safe handling of the tows. No towboat will be allowed to enter the waterway with more than two barges in tow unless prior approval is granted by the Engineer-In-Charge; requests must be submitted 12 hours in advance of the passage.

(2) The maximum length of pontoon rafts using the canal will be limited to 600 feet, and the maximum width to 100 feet. Pontoon rafts exceeding 200 feet in length will be required to have an additional tug on the stern to insure that the tow is kept in line. The tugs used must have sufficient power to handle the raft safely.

(3) Dead ships are required to transit the canal during daylight hours and must be provided with the number of tugs sufficient to afford safe passage through the canal. (A dead ship will not be allowed to enter the canal unless prior approval is granted by the Engineer-In-Charge; requests must be submitted 12 hours in advance of the passage).

(f) *Dangerous cargoes*. The master or pilot of any vessel or tow carrying dangerous cargoes must notify the Marine Traffic Controller prior to entering the canal. Dangerous cargoes are defined as those items listed in 33 CFR 126.10 when carried in bulk (*i.e.*, quantities exceeding 110 U.S. gallons in one tank) plus Class A explosives (commercial or military) as listed in 49 CFR 173.53 (commercial) and 46 CFR 146.29–100 (military), liquified natural gas and liquified petroleum gas. Transportation of dangerous cargoes through the canal shall be in strict accordance with existing regulations prescribed by law. In addition, vessels carrying dangerous cargoes shall comply with the following requirements.

(1) They must have sufficient horsepower to overcome tidal currents or they will be required to wait for favorable current conditions.

(2) Transits will be during daylight hours.

(3) No transit will be permitted when visibility conditions are unstable or less than 2 miles at the approaches and throughout the entire length of the canal.

(4) Transits must await a clear canal for passage.

(g) *Obtaining clearance.* (1) Vessels under 65 feet in length may enter the canal without obtaining clearance. All craft are required to make a complete passage through the canal except excursion craft which may operate and change direction within the canal in accordance with procedures coordinated with the marine traffic controller on duty. When the railroad bridge span is in the closed (down) position, all vessels are directed not to proceed beyond the points designated by stop signs posted east and west of the railroad bridge. Vessels proceeding with a fair tide (with the current) should turn and stem the current at the designated stop points until the railroad bridge is in the raised (open) position.

(2) Vessels 65 feet in length and over shall not enter the canal until clearance has been obtained from the marine traffic controller by radio. See paragraph (c) ''Communications'' for procedures. If a vessel, granted prior clearance, is delayed or stops at the mooring basins, state pier, or the Sandwich bulkhead, a second clearance must be obtained prior to continuing passage through the canal.

(3) Vessels will be given clearance in the order of arrival, except when conditions warrant one-way traffic, or for any reason an order of priority is necessary, clearance will be granted in the following order.

(i) First—To vessels owned or operated by the United States, including contractors' equipment employed on canal maintenance or improvement work.

(ii) Second—To passenger vessels.

(iii) Third—To tankers and barges docking and undocking at the Canal Electric Terminal.

(iv) Fourth—To merchant vessels, towboats, commercial fishing vessels, pleasure boats and miscellaneous craft.

(4) Procedures in adverse weather: Vessels carrying flammable or combustible cargoes as defined in 46 CFR 30.25 will be restricted from passage through the canal when visibility is less than ½ mile. Other vessels may transit the canal in thick weather by use of radar with the understanding that the U.S. Government will assume no responsibility: *And provided,* That clearance has been obtained from the marine traffic controller.

(h) *Traffic lights.* There are three sets of traffic lights showing red, green, and yellow that are operated on a continuous basis at the canal. The traffic lights apply to all vessels 65 feet in length and over. The traffic lights are a secondary system that is operated in support of the radio communications system. The traffic lights are located at the easterly canal entrance, Sandwich, and at the westerly entrance to Hog Island Channel at Wings Neck. A third traffic light is located at the Canal Electric Terminal basin on the south side of the canal in Sandwich, and applies only to vessels arriving and departing that terminal.

(1) *Westbound traffic.* When the green light is on at the eastern (Cape Cod Bay) entrance, vessels may proceed westward through the canal. When the red light is on, any type of vessel 65 feet in length and over must stop clear of the Cape Cod Bay entrance channel. When the yellow light is on, vessels 65 feet in length and over and drawing less than 25 feet may proceed as far as the East Mooring Basin where they must stop. Prior to continuing passage through the canal, clearance must be obtained from the marine traffic controller.

(2) *Eastbound traffic.* When the green light is on at Wings Neck, vessels may proceed eastward through the canal. When the red light is on, vessels 65 feet and over in length and drawing less than 25 feet must keep southerly of Hog Island Channel Entrance Buoys Nos. 1 and 2 and utilize the general anchorage areas adjacent to the improved channel. Vessel traffic drawing 25 feet and over are directed not to enter the canal channel at the Cleveland Ledge Light entrance and shall lay to or anchor in the vicinity of Buzzards Bay Buoy No. 11 (FLW & Bell) until clearance is granted by the canal marine traffic controller or a green traffic light at Wings Neck is displayed. When the yellow light is on, vessels may proceed through Hog Island Channel as far as the West Mooring Basin where they must stop. Prior to continuing passage through the canal, clearance must be obtained from the marine traffic controller.

(i) *Railroad Bridge Signals.* The following signals at the Buzzards Bay Railroad Bridge will be given strict attention.

(1) The vertical lift span on the railroad bridge is normally kept in the raised (open) position except when it is lowered for the passage of trains, or for maintenance purposes. Immediately preceding the lowering of the span, the operator will sound two long blasts of an air horn. Immediately preceding the raising of the span, the operator will sound one long blast of an air horn. When a vessel or craft of any type is approaching the bridge with the span in the down (closed) position and the span cannot be raised immediately, the operator of the bridge will so indicate by sounding danger signals of four short blasts in quick succession.

(2) When the lift span is in the down (closed) position in foggy weather or when visibility is obscured by vapor, there will be four short blasts sounded from the bridge every two minutes.

(j) *Speed.* All vessels are directed to pass mooring and boat basin facilities, the state pier, and all floating plant engaged in maintenance operations of the waterway at a minimum speed consistent with safe navigation. In order to coordinate scheduled rail traffic with the passage of vessels, to minimize erosion of the canal banks and dikes from excessive wave wash and suction, and for the safety of vessels using the canal, the following speed regulations must be observed by vessels of all types, including pleasure craft. The minimum running time for the land cut between the East Mooring Basin (Station 35) and the Administration Office in Buzzards Bay (Station 388) is prescribed as follows:

Head Tide—60 Minutes
Fair Tide—30 Minutes
Slack Tide—45 Minutes

The minimun running time between the Administration Office (Station 388) and Hog Island Channel westerly entrance Buoy No. 1 (Station 661) is prescribed as follows:

Head Tide—46 Minutes
Fair Tide—23 Minutes
Slack Tide—35 Minutes

The running time at slack water will apply to any vessel which enters that portion of the canal between stations 35 and 661, within the period of one-half hour before or after the predicted time of slack water as given in the National Ocean Survey publication ''Current Tables, Atlantic Coast, North America.'' The minimum running time during a head tide or a fair tide shall apply to any vessel which enters that portion of the canal between Station 35 and 661 at any time other than designated above for time requirements at slack tide. Vessels of any kind unable to make a through transit of the land cut portion of the canal against a head current of 6.0 knots within a maximum time limit of 2 hours 30 minutes shall be required to obtain the assistance of a helper tug at the vessel owner's expense or await favorable tide conditions prior to receiving clearance from the marine traffic controller. In the event vessels within the confines of the canal fail to perform and are unable to make sufficient headway against the currents, the marine traffic controller may activate a helper tug in accordance with paragraph (k) of this section.

(k) *Management of vessels.* (1) Vessels within the limits of the canal shall comply with applicable navigation rules.

(2) Vessels within the limits of the canal shall comply with the applicable requirements for the use of pilots established by the Coast Guard, including but not limited to those contained in 46 CFR 157.20–40. Vessels will not be granted clearance to enter the canal until the marine traffic controller has been notified of the name of the pilot who will be handling the vessel.

(3) The master of a vessel will be responsible for notifying the marine traffic controller as soon as an emergency situation appears to be developing. When in the opinion of the marine traffic controller an emergency exists, he/she can require the master to accept the assistance of a helper vessel. Whether or not assistance is provided by a government vessel or by a private firm under contract to the government, the government reserves the right to seek compensation from the vessel owners for all costs incurred.

(4) Right of Way: All vessels proceeding with the current shall have the right of way over those proceeding

against the current. All craft up to 65 feet in length shall be operated so as not to interfere with the navigation of vessels of greater length.

(5) Passing of vessels: The passing of one vessel by another when proceeding in the same direction is prohibited except when a leading low powered ship is unable to make sufficient headway. However, extreme caution must be observed to avoid collision, and consideration must be given to the size of the ship to be overtaken, velocity of current and wind, and atmospheric conditions. Masters of vessels involved shall inform the marine traffic controller on duty of developing situations to facilitate coordination of vessel movement. Meeting or passing of vessels at the easterly end of the canal between Station Minus 40 and Station 60 will not be permitted, except in cases of extreme emergency, in order to allow vessels to utilize the center line range to minimize the effects of hazardous eddies and currents. Due to bank suction and tidal set, meeting and passing of vessels at the following locations will be avoided:

(i) Sagamore Bridge.

(ii) Bourne Bridge.

(iii) Railroad Bridge.

(iv) Mass Maritime Academy.

(6) Unnecessary delay in canal: Vessels and other type crafts must not obstruct navigation by unnecessarily idling at low speed when entering or passing through the canal.

(7) Stopping in the waterway: Anchoring in the Cape Cod Canal Channel is prohibited except in emergencies. For the safety of canal operations it is mandatory that the masters of all vessels anchoring in or adjacent to the canal channel (Cape Cod Bay to Cleveland Ledge Light) for any reason, immediately notify the marine traffic controller.

(8) Utilization of mooring and boat basins and the Sandwich Bulkhead: Vessels mooring or anchoring in the mooring or boat basins at the Sandwich bulkhead must do so in a manner not to obstruct or impede vessel movements to and from facilities. These facilities are of limited capacity and permission to occupy them for periods exceeding 24 hours must be obtained in advance from the marine traffic controller. Mooring in the West Boat Basin at Buzzards Bay, near the railroad bridge, is not permitted except in an emergency. Fishing boats, yachts, cabin cruisers and other craft utilizing the East Boat Basin on the south side of the canal at Sandwich, Massachusetts are not permitted to tie up at the Corps of Engineers landing float or anchor in a manner to prevent canal floating plant from having ready access to the float. All vessels or barges left unattended must be securely tied with adequate lines or cables. The United States assumes no liability for damages which may be sustained by any craft using the bulkhead at Sandwich or the canal mooring or boat basin facilities. Vessels shall not be left unattended along the face of the government bulkhead. A responsible person with authority to authorize and/or accomplish vessel movement must remain onboard at all times.

(l) *Grounded, wrecked or damaged vessels.* In the event a vessel is grounded, or so damaged by accident as to render it likely to become an obstruction and/or hazard to navigation in the waterway, the division engineer or the division engineer's authorized representative shall supervise and direct all operations that may be necessary to remove the vessel to a safe locality.

(m) [Reserved]

(n) *Deposit of refuse.* No oil or other allied liquids, ashes, or materials of any kind shall be thrown, pumped or swept into the canal or its approaches from any vessel or craft using the waterway, nor shall any refuse be deposited on canal grounds, marine structures, or facilities.

(o) *Trespass to property.* Subject to the provisions of paragraph (q) of this section trespass upon the canal property is prohibited.

(p) *Bridges over the canal.* The government owns, operates and maintains all bridges across the canal which include one railroad bridge and two highway bridges. The division engineer or his/her authorized representative may establish rules and regulations governing the use of these bridges.

(q) *Recreational use of canal*—(1) *Policy.* (i) It is the policy of the Secretary of the Army acting through the Chief of Engineers to provide the public with

safe and healthful recreational opportunities within all water resource development projects administered by the Chief of Engineers, including the canal and government lands part thereof. Any recreational use of the canal and those lands shall be at the users own risk.

(ii) All water resource development projects open for recreational use shall be available to the public without regard to sex, race, creed, color or national origin. No lessee, licensee, or concessionaire providing a service to the public shall discriminate against any person or persons because of sex, race, creed, color or national origin in the conduct of operations under the lease, license or concession contract.

(2) *Motor vehicles*. Operation of motor vehicles, motorcycles, minibikes, mopeds, motorbikes, snowmobiles, and all types of off-road vehicles is prohibited on government lands and service roads except in areas specifically designated for such operation.

(3) *Swimming*. Swimming, skin diving, snorkling, and scuba diving in the canal between the east entrance in Cape Cod Bay and the west entrance at Cleveland Ledge Light are prohibited. Diving operations may be authorized by the Engineer-In-Charge in conjunction with operation and maintenance of the canal.

(4) *Camping*. Overnight tenting or camping on governmment land is prohibited except in areas designated by the division engineer. Bourne Scenic Park and Scusset Beach State Reservation are designated camping areas. Persons asleep during hours of darkness in or out of vehicles shall be considered as campers.

(5) *Fishing*. Persons may fish with rod and line from the banks of the canal on Federally owned property except areas designated by the division engineer. Fishing and lobstering by boat in the Cape Cod Canal between the east entrance in Cape Cod Bay and the west entrance at Cleveland Ledge Light are prohibited. Fishing by boat is permitted in the area west of the State Pier in Buzzards Bay, provided that all craft stay out of the channel defined by U.S. Coast Guard buoys and beacons. Fish and game laws of the United States and the Commonwealth of Massachusetts will be enforced.

(6) *Hunting*. Hunting is permitted in accordance with game laws of the United States and the Commonwealth of Massachusetts.

(7) *Fires*. No open fires will be allowed at any time except by special permission and then shall be continuously overseen and in compliance with state or town laws.

(8) *Control of animals and pets*. (i) No person shall bring or have horses in camping, picnic, swimming beaches or developed recreation areas.

(ii) No person shall bring dogs (except seeing eye dogs), cats, or other pets into developed recreation areas unless penned, caged, or on a leash no longer than six feet or otherwise under physical restrictive controls at all time.

(9) *Restrictions*. (i) The division engineer may establish a reasonable schedule of visiting hours for all or portions of the project area and close or restrict the public use of all or any portion of the project by the posting of appropriate signs indicating the extent and scope of closure. All persons shall observe such posted restrictions.

(ii) The operation or use of any audio or other noise producing device including, but not limited to, communications media and vehicles in such a manner as to unreasonably annoy, endanger persons or affect vessel traffic through the canal is prohibited.

(10) *Explosives, firearms, other weapons and fireworks*. (i) The possession of loaded firearms, ammunition, projectile firing devices, bows and arrows, crossbows, and explosives of any kind is prohibited unless in the possession of a law enforcement officer or Government employee on official duty or used for hunting during the hunting season as permitted under paragraph (q)(6) of this section, or unless written permission has been received from the division engineer.

(ii) The possession or use of fireworks is prohibited unless written permission has been received from the division engineer.

(11) *Public property*. Destruction, injury, defacement or removal of public property including natural formations, historical and archeological features and vegetative growth is prohibited

without written permission of the division engineer.

(12) *Abandonment of personal property.* (i) Abandonment of personal property is prohibited. Personal property shall not be left unattended upon the lands or waters of the project except in accordance with this regulation. After a period of 24 hours, abandoned or unattended personal property shall be impounded and stored at a storage point designated by the division engineer. The division engineer shall assess a reasonable impoundment fee, which shall be paid before the impounded property is returned to its owners.

(ii) The division engineer shall, by public or private sales or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into his/her custody or control. However, efforts should be made to find the owner, the owner's heirs or next of kin, or legal representatives. If the owner, heirs or next of kin, or legal representative is determined but not found, the property may not be disposed of until the expiration of 120 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at last known address. When diligent effort to determine the owner, owner's heirs or next of kin, or legal representative is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of $25 or more the property generally may not be disposed of until three months after the date it is received at the Cape Cod Canal Administrative Office. The net proceeds from the sale of property shall be placed into the Treasury of the United States as miscellaneous receipts.

(13) *Lost and found articles.* All abandoned/lost articles shall be deposited by the finder at the Canal Administration office or with Canal ranger. The finder shall leave his/her name, address, and phone number. All lost articles shall be disposed of in accordance with procedures set forth in paragraph (q)(12) of this section.

(14) *Advertisement.* Advertising by the use of billboards, signs, markers, audio devices or any other means whatever is prohibited unless written permission has been received from the division engineer.

(15) *Commercial activities.* The engaging in or solicitation of business without the written permission of the division engineer is prohibited.

(16) *Unauthorized structures.* The construction or placing of any structure of any kind under, upon or over the project lands or water is prohibited unless a permit has been issued by the division engineer. Structures not under permit are subject to summary removal by the division engineer.

(17) *Special events.* Prior approval must be obtained from the Engineer-In-Charge for special events, recreational programs and group activities. The public shall not be charged any fee by the sponsor of such event unless the division engineer has approved in writing the proposed schedule of fees.

(18) *Interference with government employees.* Interference with any government employee in the conduct of official duties pertaining to the administration of these regulations is prohibited.

[45 FR 51552, Aug. 4, 1980; 45 FR 60430, Sept. 12, 1980, as amended at 56 FR 13765, Apr. 4, 1991]

§ 207.50 Hudson River Lock at Troy, N.Y.; navigation.

(a) *Authority of lockmaster.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(b) *Signals.* Steamboats or tows desiring lockage in either direction shall give notice to the lock tenders, when not more than three-fourths mile from

the lock, by one long blast of (10 seconds' duration), followed by one short blast (of three seconds' duration), or a whistle or horn. When the lock is ready for entrance a green light will be shown from the river wall. An amber light will indicate that the lock is being made ready for entrance. A red light will indicate that the approaching vessel must wait. Whenever local conditions make it advisable the visual signals will be supplemented by sound signals as follows:

(1) One long blast of a horn to indicate that the vessel must wait.

(2) One short blast of a horn to indicate that the lock is being made ready for entrance.

(3) Two short blasts of a horn to indicate permission to enter the lock.

(4) Four short and rapid blasts to attract attention, indicate caution, and signal danger.

(c) *Draft of boats*. Deep-draft boats must clear the miter sills by at least 3 inches. Boats drawing too much water will not be allowed to lighter cargo in the entrances.

(d) *Precedence at the lock*. The vessel arriving first at the lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the lock. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the lock within the meaning of this paragraph. If the traffic is crowded in both directions; up and down lockages will usually be made alternately, but the lock tender may permit two or more lockages to be made at one time in the same direction when this will not cause unreasonable delay. In case two or more boats or tows are to enter for the same lockage, they shall enter as directed by the lock tender. No boat shall run ahead of another while in the lock. The boat that enters first shall leave first.

(e) *Lockage of pleasure boats*. The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying gasoline or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. Lockage of pleasure craft may be made with commercial craft carrying petroleum products other than gasoline, provided a clear distance of at least 100 feet between such vessels can be maintained in the lock. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made.

(f) *Stations while waiting*. Boats waiting their turn to enter the lock must lie at a sufficient distance from the lock and in such a position as to leave sufficient room for the passage of boats leaving the lock.

(g) *Unnecessary delay*. (1) Boats must not cause delay in entering or leaving the lock. Masters and pilots will be held to a strict accountability in this matter, and those with tows must provide enough men to move barges promptly. Boats failing to enter the lock with reasonable promptness after being signaled will lose their turn.

(2) Tugboats arriving with their tows in a condition which will delay locking shall lose their turn if so ordered by the lock tender. Leaking boats may be excluded until put in shape to be passed through safely.

(h) *Mooring*. Boats in the lock or waiting in the entrance shall be moored where directed by the lock tender, by bow, stern, and spring lines, to the snubbing posts or line hooks. Tying boats to the lock ladders is strictly prohibited.

(i) *Protection of lock gates*. Boats will not be permitted to enter or leave the lock until the lock gates are at rest in the gate recesses and the lock tender has directed the boat to start.

(j) *Damage to walls, etc*. All craft passing through the lock must be free from projections or sharp corners which might scar the walls or injure other parts. Steamboats must be provided with suitable fenders, etc. One man shall be kept at the head of every tow till it has cleared the lock and guide walls, and shall use the fender to prevent scarring the walls.

(k) *Handling machinery*. None but employees of the United States will be allowed to move any valve, gate, or other machinery belonging to the lock.

(l) *Refuse in lock.* Throwing ashes, refuse, or other obstruction in the entrances or in the lock, or on the walls thereof, and passing coal from flats or barges to a steamboat while in the lock is prohibited.

(m) [Reserved]

(n) *Trespass on U.S. property.* Trespass on U.S. property, or willful injury to the banks, masonry, fences, trees, houses, machinery, or other property of the United States at or near the lock is strictly prohibited.

(o) *Penalties.* In addition to the penalties prescribed by law, boats which fail to comply with the regulations in this section will thereafter be refused lockage until assurances have been received, satisfactory to the District Engineer, Corps of Engineers, New York, New York, that the regulations will be complied with.

[Regs., Mar. 24, 1916, as amended at 16 FR 7210, July 24, 1951; 26 FR 352, Jan. 18, 1961; 56 FR 13765, Apr. 4, 1991]

§ 207.60 Federal Dam, Hudson River, Troy, N.Y.; pool level.

(a) Whenever the elevation of the pool created by the Federal dam at Troy, N.Y., shall fall to a point level with the crest of the main spillway, the elevation of which is +14.33 feet mean sea level, the operation of the power plant shall cease and further operation thereof shall be suspended until such time as the water level rises to or above +14.43 feet mean sea level.

(b) Flashboards may be maintained on the section of the spillway of the dam having an elevation of +14.33 feet mean sea level in order to increase the elevation of this section to an elevation equal to that of the auxiliary spillway, or +16.33 feet mean sea level: *Provided*, That the flashboards are so erected as to drop automatically when the pool level rises to an elevation of +18.5 feet mean sea level, and conform in other respects to the plans attached thereto.

(c) The tide staff to be used in determining the elevation of the pool shall be the ceramic tide staff now located on the westerly face of the east lock wall north of the northerly gates, the zero of which is set 2 feet below mean sea level.

(d) The regulations of the pool level and the maintenance of flashboards shall be subject to the supervision and approval of the District Engineer, New York City.

[Regs., Dec. 2, 1924, as amended at 25 FR 8907, Sept. 16, 1960]

§ 207.100 Inland waterway from Delaware River to Chesapeake Bay, Del. and Md. (Chesapeake and Delaware Canal); use, administration, and navigation.

(a) *Applicability.* The regulations in this section are applicable to that part of the inland waterway from Delaware River to Chesapeake Bay, Del. and Md., between Reedy Point, Delaware River, and Old Town Point Wharf, Elk River.

(b) *Supervision.* The District Engineer, Corps of Engineers, Philadelphia, Pa., has administrative supervision over the waterway and is charged with the enforcement of these regulations. The District Engineer from time to time will prescribe rules governing the dimensions of vessels which may transit the waterway, and other special conditions and requirements which will govern the movement of vessels using the waterway. The District Engineer's representative is the Chesapeake City Resident Engineer. The Chesapeake City Resident Engineer through the dispatcher on duty will enforce these regulations and monitor traffic through the canal.

(c) *Safe navigation required.* Clearance for any vessel to enter or pass through any part of the waterway will be contingent on the vessel's having adequate personnel, machinery, and operative devices for safe navigation. In the event of question as to the ability of any vessel to navigate the waterway safely, a ruling will be made by the dispatcher. The owner, agent, master, pilot, or other person in charge of the vessel concerned may appeal the dispatcher's ruling to the District Engineer whose decision shall be final. A clearance by the dispatcher for a vessel's passage through the waterway shall not relieve the owners, agents, and operators of the vessel of full responsibility for its safe passage.

(d) *Radio equipment.* Requirements for radio equipment on vessels transiting the waterway are as described in rules

governing traffic through the waterway issued by the District Engineer. Vessels not having the mandatory radio equipment will not be permitted to transit the canal.

(e) *Anchorage and wharfage facilities.* The anchorage basin at Chesapeake City and free wharfage facilities on the west side of the anchorage basin are available for small vessels only. These facilities are of limited capacity, and permission to occupy them for periods exceeding 24 hours must be obtained in advance from the dispatcher at Chesapeake City.

(f) *Projections from vessels.* No vessel carrying a deck load which overhangs or projects beyond the sides of the vessel will be permitted to enter or pass through the waterway. Vessels carrying rods, poles, or other gear extending above the top of the vessel's mast will be required to lower such equipment to a level with the top of the mast before entering the waterway.

(g) [Reserved]

(h) *Tows*—(1) *Integrated pusher-type tows.* The maximum overall length and extreme breadth of this type of tow which may transit the canal are as described in rules governing traffic through the waterway issued by the District Engineer.

(2) *All other types of tows.* All ships or tugs engaged in towing vessels not equipped with a rudder, whether light or loaded, shall use two towlines or a bridle on one towline. If the vessel in tow is equipped with a rudder, one towline without a bridle may be used. All towlines must be hauled as short as practicable for safe handling of the tows. No towboat will be permitted to enter the waterway with more than two loaded, or three light barges. Two or more barges or other vessels, not self-propelled, shall be towed abreast and not in tandem, using two towlines unless the towboat is made fast alongside the tow.

(i) [Reserved]

(j) *Traffic lights.* Traffic lights are located at Reedy Point and Old Town Point Wharf. These traffic lights are described in the rules governing traffic through the waterway issued by the District Engineer.

(k) *Drawbridges.* Operation of the Penn Central vertical lift bridge across the canal will be in accordance with regulations promulgated by the U.S. Coast Guard, § 117.235a *Chesapeake and Delaware Canal, Del.*, of this chapter.

(l) [Reserved]

(m) *Refuse and oil.* The depositing of trash, refuse, debris, oil, or other material in the waterway or upon the banks or right-of-way is prohibited. Violators are subject to penalties as prescribed by Federal law.

(n) *Damage to waterway property.* Damage to the waterway, lands, banks, bridges, jetties, piers, fences, buildings, trees, telephone lines, lighting structures, or any other property of the United States pertaining to the waterway is prohibited.

(o) *Fish and game.* The fish and game laws of the United States and of the States of Delaware and Maryland, within their respective bounds, will be enforced upon the waters and lands pertaining to the waterway owned by the United States.

(p) *Grounded, wrecked, or damaged vessels.* In the event a vessel is grounded or wrecked in the waterway or is damaged by accident or successive mechanical breakdown, the owner, agent, or operator shall take prompt action to prevent the vessel from becoming or remaining an obstruction to navigation, and such persons shall also respond to such instructions as may be issued by the District Engineer to prevent the vessel from becoming or remaining a menace to navigation. The lack of reasonable response from owner, agent, or operator may be deemed sufficient cause for the District Engineer to undertake repair or removal of the vessel as he may determine to be in the best interest to the Government.

(q)–(s) [Reserved]

(t) *Pilotage.* Any pilot who pilots in the canal shall comply with State laws or Coast Guard regulations and must be licensed for this waterway by the U.S. Coast Guard.

(u) *Vessels difficult to handle.* Vessels which are observed by the pilot or master in charge, to be difficult to handle, or which are known to have handled badly on previous trips, must transit the canal during daylight hours and must have tug assistance. Such vessels

must obtain permission from the dispatcher to enter the canal and must be provided with the number of tugs sufficient to afford safe passage. Agents must make their own arrangements for tug assistance. Such eastbound vessels must clear Reedy Point Bridge, and such westbound vessels the Chesapeake City Bridge, before dark.

[37 FR 9670, May 16, 1972, as amended at 42 FR 57961, Nov. 7, 1977; 56 FR 13765, Apr. 4, 1991]

§ 207.160 All waterways tributary to the Atlantic Ocean south of Chesapeake Bay and all waterways tributary to the Gulf of Mexico east and south of St. Marks, Fla.; use, administration, and navigation.

(a) *Description*. This section applies to the following:

(1) *Waterways*. All navigable waters of the United States, natural or artificial, including bays, lakes, sounds, rivers, creeks, intracoastal waterways, as well as canals and channels of all types, which are tributary to or connected by other waterways with the Atlantic Ocean south of Chesapeake Bay or with the Gulf of Mexico east and south of St. Marks, Florida.

(2) *Locks*. All Government owned or operated locks and hurricane gate chambers and appurtenant structures in any of the waterways described in paragraph (a)(1) of this section.

(3) *U.S. property*. All river and harbor lands owned by the United States in or along the waterways described in paragraph (a)(1) of this section, including lock sites and all structures thereon, other sites for Government structures and for the accommodation and use of employees of the United States, and rights of way and spoil disposal areas to the extent of Federal interest therein.

(4) *Vessels and rafts*. The term ''vessel'' as used in this section includes all floating things moved over these waterways other than rafts.

(b) *Authority of District Engineers*. The use, administration, and navigation of these waterways, Federal locks and hurricane gate chambers shall be under the direction of the officers of the Corps of Engineers, U.S. Army, detailed in charge of the respective sections, and their authorized assistants. The cities in which the U.S. District Engineers are located are as follows:

U.S. District Engineer, Norfolk, Virginia.
U.S. District Engineer, Wilmington, North Carolina.
U.S. District Engineer, Charleston, South Carolina.
U.S. District Engineer, Savannah, Georgia.
U.S. District Engineer, Jacksonville, Florida.

(c) [Reserved]

(d) *Bridges*. (For regulations governing the operation of bridges, see §§ 117.1, 117.240 and 117.245 of this title.)

(e) *Locks*—(1) *Authority of lockmasters*. (i) *Locks staffed with Government personnel*. The provisions of this subparagraph apply to all waterways in this Section except for the segment of the Atlantic Intracoastal Waterway identified in (e)(1)(ii). The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He/she shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his/her assistants.

(ii) *Locks staffed with contract personnel*. The provisions of this subparagraph apply to the segment of the Atlantic Intracoastal Waterway comprising the Albermarle and Chesapeake Canal and the Dismal Swamp Canal including Great Bridge Lock, Chesapeake, Virginia; Deep Creek Lock, Chesapeake, Virginia; and South Mills Lock, North Carolina. Contract personnel shall give all necessary orders and directions for operation of the locks. No one shall cause any movement of any vessel, boat or other floating thing in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmaster set forth in this section shall be performed

by the contract lock operator except that the responsibility for enforcing all laws, rules and regulations shall be vested in a government employee designated by the Norfolk District Engineer. The District Engineer will notify waterway users and the general public through appropriate notices and media concerning the location and identity of the designated government employee.

(2) *Signals.* Vessels desiring lockage in either direction shall give notice to the lockmaster at not more than three-quarters of a mile nor less than one-quarter of a mile from the lock, by two long and two short blasts of a whistle. When the lock is available, a green light, semaphore or flag will be displayed; when not available, a red light, semaphore or flag will be displayed. No vessels or rafts shall approach within 300 feet of any lock entrance unless signalled to do so by the lockmaster.

(3) *Precedence at locks.* (i) The vessel arriving first at a lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

(ii) The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying petroleum products or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. If, after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time not to exceed the time required for three other lockages, then separate lockage shall be made.

(4) *Entrance to and exit from locks.* No vessel or raft shall enter or leave the locks before being signalled to do so. While waiting their turns, vessels or rafts must not obstruct traffic and must remain at a safe distance from the lock. They shall take position in rear of any vessels or rafts that may precede them, and there arrange the tow for locking in sections if necessary. Masters and pilots of vessels or in charge of rafts shall cause no undue delay in entering or leaving the lock, and will be held to a strict accountability that the approaches are not at any time unnecessarily obstructed by parts of a tow awaiting lockage or already passed through. They shall provide sufficient men to move through the lock promptly without damage to the structures. Vessels or tows that fail to enter the locks with reasonable promptness after being signalled to do so will lose their turn.

(5) *Lockage of vessels.* (i) Vessels must enter and leave the locks carefully at slow speed, must be provided with suitable lines and fenders, must always use fenders to protect the walls and gates, and when locking at night must be provided with suitable lights and use them as directed.

(ii) Vessels which do not draw at least six inches less than the depth on miter sills or breast walls, or which have projections or sharp corners liable to damage gates or walls, shall not enter a lock or approaches.

(iii) No vessel having chains or lines either hanging over the sides or ends, or dragging on the bottom, for steering or other purposes, will be permitted to pass a lock or dam.

(iv) Power vessels must accompany tows through the locks when so directed by the lockmaster.

(v) No vessel whose cargo projects beyond its sides will be admitted to lockage.

(vi) Vessels in a sinking condition shall not enter a lock or approaches.

(vii) The passing of coal from flats or barges to steamers while in locks is prohibited.

(viii) Where special regulations for safeguarding human life and property are desirable for special situations, the same may be indicated by printed signs, and in such cases such signs will have the same force as other regulations in this section.

(ix) The lockmaster may refuse to lock vessels which, in his judgment, fail to comply with this paragraph.

(6) *Lockage of rafts.* Rafts shall be locked through in sections as directed by the lockmaster. No raft will be locked that is not constructed in accordance with the requirements stated in paragraph (g) of this section. The

party in charge of a raft desiring lockage shall register with the lockmaster immediately upon arriving at the lock and receive instructions for locking.

(7) *Number of lockages.* Tows or rafts locking in sections will generally be allowed only two consecutive lockages if one or more single vessels are waiting for lockage, but may be allowed more in special cases. If tows or rafts are waiting above and below a lock for lockage, sections will be locked both ways alternately whenever practicable. When there are two or more tows or rafts awaiting lockage in the same direction, no part of one shall pass the lock until the whole of the one preceding it shall have passed.

(8) *Mooring.* (i) Vessels and rafts when in the lock shall be moored where directed by the lockmaster by bow, stern and spring lines to the snubbing posts or hooks provided for that purpose, and lines shall not be let go until signal is given for vessel or raft to leave. Tying boats to the lock ladders is prohibited.

(ii) The mooring of vessels or rafts near the approaches to locks except while waiting for lockage, or at other places in the pools where such mooring interferes with general navigation of the waterway is prohibited.

(9) *Maneuvering locks.* The lock gates, valves, and accessories will be moved only under the direction of the lockmaster; but if required, all vessels and rafts using the locks must furnish ample help on the lock walls for handling lines and maneuvering the various parts of the lock under the direction of the lockmaster.

(f) [Reserved]

(g) *Rafts, logging.* (1) Rafts will be permitted to navigate a waterway only if properly and securely assembled. The passage of ''bag'' or ''sack'' rafts, ''dog'' rafts, or of loose logs over any portion of a waterway, is prohibited. Each section of a raft will be secured within itself in such a manner as to prevent the sinking of any log, and so fastened or tied with chains or wire rope that it cannot be separated or bag out so as to materially change its shape. All dogs, chains and other means used in assembling rafts shall be in good condition and of ample size and strength to accomplish their purposes.

(2) No section of a raft will be permitted to be towed over any portion of a waterway unless the logs float sufficiently high in the water to make it evident that the section will not sink en route.

(3) Frequent inspections will be made by the person in charge of each raft to insure that all fastenings remain secure, and when any one is found to have loosened, it shall be repaired at once. Should any log or section be lost from a raft, the fact must be promptly reported to the District Engineer, giving as definitely as possible the exact point at which the loss occurred. In all cases the owner of the lost log or section will take steps immediately to remove the same from the waterway.

(4) The length and width of rafts shall not exceed such maximum dimensions as may be prescribed by the District Engineer.

(5) All rafts shall carry sufficient men to enable them to be managed properly, and to keep them from being an obstruction to other craft using the waterway. To permit safe passage in a narrow channel rafts will, if necessary, stop and tie up alongside the bank. Care must be exercised both in towing and mooring rafts to avoid the possibility of damage to aids to navigation maintained by the United States or under its authorization.

(6) When rafts are left for any reason with no one in attendance, they must be securely tied at each end and at as many intermediate points as may be necessary to keep the timbers from bagging into the stream, and must be moored so as to conform to the shape of the bank. Rafts moored to the bank shall have lights at 500-foot intervals along their entire length. Rafts must not be moored at prominent projections of the bank, or at critical sections.

(7) Logs may be stored in certain tributary streams provided a clear channel at least one-half the width of the channel be left clear for navigation along the tributary. Such storage spaces must be protected by booms and, if necessary to maintain an open channel, piling should also be used. Authority for placing these booms and piling must be obtained by written permit from the District Engineer.

(8) The building, assembling, or breaking up of a raft in a waterway will be permitted only upon special authority obtained from the District Engineer, and under such conditions as he may prescribe.

(h) *Dumping of refuse or oil in waterway, obstructions.* Attention is invited to the provisions of sections 13 and 20 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152, 1154; 33 U. S. C. 407, 415), and of sections 2, 3, and 4 of the Oil Pollution Act of June 7, 1924 (43 Stat. 604, 605; 33 U.S.C. 432–434), which prohibit the depositing of any refuse matter in these waterways or along their banks where liable to be washed into the waters; authorize the immediate removal or destruction of any sunken vessel, craft, raft, or other similar obstruction, which stops or endangers navigation; and prohibit the discharge of oil from vessels into the coastal navigable waters of the United States.

(i) *Damage.* Masters and owners of vessels using the waterways are responsible for any damage caused by their operations to canal revetments, lock piers and walls, bridges, hurricane gate chambers, spillways, or approaches thereto, or other Government structures, and for displacing or damaging of buoys, stakes, spars, range lights or other aids to navigation. Should any part of a revetment, lock, bridge, hurricane gate chamber, spillway or approach thereto, be damaged, they shall report the fact, and furnish a clear statement of how the damage occurred, to the nearest Government lockmaster or bridge tender, and by mail to the District Engineer, U.S. Engineer Office, in local charge of the waterway in which the damage occurred. Should any aid to navigation be damaged, they shall report that fact immediately to the Superintendent of Lighthouses at Norfolk, Virginia, if north of New River Inlet, North Carolina; to the Superintendent of Lighthouses at Charleston, South Carolina, if between New River Inlet, North Carolina, and St. Lucie Inlet, Florida; to the Superintendent of Lighthouses at Key West, Florida, if between St. Lucie Inlet and Suwanee River, Florida; and to the Superintendent of Lighthouses, New Orleans, Louisiana, if between Suwanee River and St. Marks, Florida.

(j) *Trespass on property of the United States.* Trespass on waterway property or injury to the banks, locks, bridges, piers, fences, trees, houses, shops or any other property of the United States pertaining to the waterway is strictly prohibited. No business, trading or landing of freight or baggage will be allowed on or over Government piers, bridges, or lock walls.

(k) *Copies of regulations.* Copies of the regulations in this section will be furnished free of charge upon application to the nearest District Engineer.

[Regs., Apr. 30, 1938, as amended at 8 FR 15381, Nov. 9, 1943; 25 FR 8908, Sept. 16, 1960; 26 FR 353, Jan. 18, 1961; 34 FR 4967, Mar. 7, 1969; 42 FR 57961, Nov. 7, 1977; 48 FR 6335, Feb. 11, 1983; 56 FR 13765, Apr. 4, 1991]

§ 207.169 Oklawaha River, navigation lock and dam at Moss Bluff, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 7 p.m. during the period of February 15 through October 15 each year, and from 8 a.m. to 6 p.m. during the remaining months of the year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels. The hours of operation are based on local time.

(b) The owner of or agency controlling the lock shall place signs of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Fla., at each side of the lock indicating the nature of the regulations of this section.

[35 FR 10520, June 27, 1970, as amended at 38 FR 5468, Mar. 1, 1973]

§ 207.170 Federal Dam, Oklawaha River, Moss Bluff, Fla.; pool level.

(a) The level of the pool shall normally be maintained at elevation 56.5 feet above sea level: *Provided*, That the level of the pool may be raised to not exceeding 58.5 feet above sea level at such times as may be authorized in writing by the District Engineer, Jacksonville, Fla., and subject to such conditions as he may specify.

(b) When, in the opinion of the District Engineer, an emergency exists requiring the lowering of the pool level to an elevation less than 56.5 above sea level either to safeguard the dikes or to increase the discharge from Lake Griffin in times of high water, the discharge past the dam shall be regulated in such manner as he may direct until he shall declare the emergency passed.

[Regs., Dec. 3, 1928]

§ 207.170a Eugene J. Burrell Navigation Lock in Haines Creek near Lisbon, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 12 noon, and from 1 p.m. to 7 p.m., during the period of February 15 through October 15 each year; and from 8 a.m. to 12 noon, and from 1 p.m. to 6 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section.

[24 FR 1461, Feb. 27, 1959]

§ 207.170b Apopka-Beauclair Navigation Lock in Apopka-Beauclair Canal in Lake County, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7:00 a.m. to 12:00 noon, and from 1:00 p.m. to 7:00 p.m., during the period of February 15 through October 15 each year; and from 8:00 a.m. to 12 noon, and from 1:00 p.m. to 6:00 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and descriptions as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations.

[24 FR 5151, June 24, 1959]

§ 207.170c Kissimmee River, navigation locks between Lake Tohopekaliga and Lake Okeechobee, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

Locks S–61, S–65, and S–65E		
Monday through Friday	All year	7:00 a.m. to 6:00 p.m.
Saturday and Sunday	Mar. 1 through Oct. 31.	5:30 a.m. to 7:30 p.m.
Do	Nov. 1 through Feb. 28.	5:30 a.m. to 6:30 p.m.
Lock S–65A		
Seven days a week	All year	8:00 a.m. to 5:00 p.m.
Locks S–65B, S–65C, and S–65D		
Monday through Friday	All year	8:00 a.m. to 5:00 p.m.
Saturday and Sunday	Mar. 1 through Oct. 31.	5:30 a.m. to 7:30 p.m.
Do	Nov. 1 through Feb. 28.	5:30 a.m. to 6:30 p.m.

(b) The owner of or agency controlling the locks shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida, at each side of the locks indicating the nature of the regulations of this section.

[29 FR 2384; Feb. 12, 1964, as amended at 31 FR 7566, May 26, 1966; 33 FR 7626, May 23, 1968]

§ 207.170d Taylor Creek, navigation lock (S–193) across the entrance to Taylor Creek at Lake Okeechobee, Okeechobee, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 5:30 a.m. to 8:00 p.m. daily. During the above hours the lock shall be opened upon demand for the passage of vessels.

(b) The owner of the lock shall place signs, of such size and description as

may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Florida at each side of this lock indicating the nature of the regulations of this section.

[Regs., July 17, 1973, 1522–01 (Taylor Creek, Fla.) DAEN-CWO-N]

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[38 FR 21404, Aug. 8, 1973]

§ 207.175a Carlson's Landing Dam navigation lock, Withlacoochee River, Fla.; use, administration, and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 12 noon, and from 1 p.m. to 7 p.m., during the period of February 15 through October 15 each year; and from 8 a.m. to 12 noon, and from 1 p.m. to 6 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels.

(b) The owner of or agency controlling the lock shall place signs, of such size and description as may be designated by the District Engineer, U.S. Army Engineer District, Jacksonville, Fla., at each side of the lock indicating the nature of the regulations in this section.

[30 FR 6161, May 1, 1965]

§ 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration, and navigation.

(a) The regulations in this section shall apply to:

(1) *Waterways*. All navigable waters of the U.S. tributary to or connected by other waterways with the Gulf of Mexico between St. Marks, Fla., and the Rio Grande, Tex. (both inclusive), and the Gulf Intracoastal Waterway; except the Mississippi River, its tributaries, South and Southwest Passes, and the Atchafalaya River above its junction with the Morgan City-Port Allen Route.

(2) *Locks and floodgates*. All locks, floodgates, and appurtenant structures in the waterways described in paragraph (a)(1) of this section.

(3) *Bridges, wharves, and other structures*. All bridges, wharves, and other structures in or over these waterways.

(4) *Vessels*. The term ''vessels'' as used in this section includes all floating craft other than rafts.

(5) *Rafts*. The term ''raft'' as used in this section includes any and all types of assemblages of floating logs or timber fastened together for support or conveyance.

(b) *Authority of District Engineers*. The use, administration, and navigation of the waterways and structures to which this section applies shall be under the direction of the officers of the Corps of Engineers, U.S. Army, in charge of the respective districts, and their authorized assistants. The location of these Engineer Districts, and the limits of their jurisdiction, are as follows:

(1) *U.S. District Engineer, Mobile, Ala*. The St. Marks River, Fla., to the Pearl River, Mississippi and Louisiana; and the Gulf Intracoastal Waterway from Apalachee Bay, Fla., to mile 36.4 east of Harvey Lock.

(2) *U.S. District Engineer, Vicksburg, Miss*. The Pearl River and its tributaries, Mississippi and Louisiana.

(3) *U.S. District Engineer, New Orleans, La*. From Pearl River, Mississippi and Louisiana, to Sabine River, Louisiana and Texas; and the Gulf Intracoastal Waterway from mile 36.4 east of Harvey Lock, to mile 266 west of Harvey Lock.

(4) *U.S. District Engineer, Galveston, Tex*. The Sabine River, Louisiana and Texas, to the Rio Grande, Tex.; and the Gulf Intracoastal Waterway from mile 266 west of Harvey Lock, to Brownsville, Tex.

(c) [Reserved]

(d) *Locks and floodgates*. (1) The term ''lock'' as used in this section shall include locks, floodgates, and appurtenant structures, and the area designated as the lock area including the lock approach channels.

(2) *Authority of lockmasters*. The term ''lockmaster'' as used in this section means the official in charge of operating a lock or floodgate. The lockmaster is responsible for the immediate management and control of

the lock and lock area and for the enforcement of all laws, rules, and regulations for the use of the lock. He is authorized to give all necessary and appropriate orders and instructions to every person in the lock area, whether navigating the lock or not; and no one shall cause any movement of any vessel within the lock area unless instructed to do so by the lockmaster or his duly authorized assistants. The lockmaster may refuse passage through the lock to any vessel which, in his judgment, fails to comply with the regulations of this section.

(3) *Sound signals.* Vessels desiring passage through a lock shall notify the lockmaster by three long and distinct blasts of a horn, whistle, or calls through a megaphone, when within a reasonable distance from the lock. When the lock is ready for entrance, the lockmaster shall reply with three long blasts of a horn, whistle, or calls through a megaphone. When the lock is not ready for entrance, the lockmaster shall reply by four or more short, distinct blasts of a horn, whistle, or calls through a megaphone (danger signal). Permission to leave the lock shall be indicated by the lockmaster by one long blast.

(4) *Visual signals.* Signal lights and discs shall be displayed at all locks as follows:

(i) *From sunset to sunrise.* One green light shall indicate the lock is open to approaching navigation; one red light shall indicate the lock is closed to approaching navigation.

(ii) *From sunrise to sunset.* Large discs, identical in color and number to the light signals prescribed in paragraph (d)(4)(i) of this section will be displayed from a mast on or near the lock wall.

(5) *Radiophone.* Locks will moior continously VHF—Channel 14 (''Safety and Calling'' Channel) and/or AM–2738 kHz for initial communication with vessels. Upon arrival at a lock, a vessel equipped with radio-phone will immediately advise the lock by radio of its arrival so that the vessel may be placed on proper turn. Information transmitted or received in these communications shall in no way affect the requirements for use of sound signals or display of visual signals, as provided in paragraphs (d) (3) and (4) of this section.

(6) *Precedence at locks.* The order of precedence for locking is:

(i) U.S. Government vessels, passenger vessels, commercial vessels, rafts, and pleasure craft.

(ii) The vessel arriving first at a lock will be locked through first. When vessels approach simultaneously from opposite directions, the vessel approaching at the same elevation as the water in the lock chamber will be locked through first. In order to achieve the most efficient utilization of the lock, the lockmaster is authorized to depart from the normal order of locking precedence, stated in paragraph (d)(6)(i) of this section, as in his judgment is warranted.

(iii) The lockage of pleasure boats, houseboats, or like craft may be expedited by locking them through with commercial craft (other than vessels carrying dangerous cargoes, as described in 46 CFR part 146). If, after the arrival of such craft, no combined lockage can be made within reasonable time, not to exceed three other lockages, then separate lockage shall be made.

(7) *Entrance to and exits from locks.* No vessel or tow shall enter or exit from a lock before being signaled to do so. While awaiting turn, vessels or tows must not obstruct navigation and must remain at a safe distance from the lock, taking position to the rear of any vessel or tows that precede them; and rearranging the tow for locking in sections, if necessary. Masters and pilots of vessels or tows shall enter or exit from a lock with reasonable promptness after receiving the proper signal. Appropriate action will be taken to insure that the lock approaches are not obstructed by sections of a tow either awaiting lockage or already locked through. Masters of vessels shall provide sufficient men to assist in the locking operation when deemed necessary by the lockmaster. Care shall be taken to insure prompt and safe passage of the vessel without damage to the structure.

(8) *Lockage and passage of vessels.* Vessels or tows shall enter and exit from locks under sufficient control to prevent damage to the lock, gates, guide

walls, fenders, or other parts of the structure. Vessels shall be equipped with and use suitable fenders and adequate lines to protect the lock and to insure safe mooring during the locking operation. Vessels shall not meet or pass anywhere between the gate walls or fender system or in the approaches to locks.

(9) *Vessels prohibited from locks.* The following vessels shall not be permitted to enter locks or approach channels:

(i) Vessels in a sinking condition.

(ii) Vessels leaking or spilling cargo.

(iii) Vessels not having a draft of at least three (3) inches less than the depth over the sills or breast walls.

(iv) Vessels having projection or cargo loaded in such a manner that is liable to damage the structure.

(v) Vessels having chains, links, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes.

(vi) Vessels containing flammable or dangerous cargo must have the hatch covers in place and securely fastened.

(10) *Number of lockages.* Tows locking in sections will generally be allowed only two consecutive lockages if other vessels are waiting for lockage unless otherwise decided by the lockmaster. If other tows are waiting above and below a lock, lockages will be made both ways alternately whenever practicable.

(11) *Mooring in locks.* (i) When in a lock, vessels and tows shall be moored where directed by the lockmaster by bow, stern, and spring lines to the snubbing posts or hooks provided for that purpose, and lines shall not be let go until the signal is given for the vessel to exit. Tying to the lock ladders is prohibited.

(ii) Mooring near the approaches to locks is prohibited except when the vessels or tows are awaiting lockage.

(12) *Lock operating personnel.* Vessels and tows using the locks may be required to furnish personnel to assist in locking through; however, the operation of the structure is the responsibility of the lockmaster, and personnel assisting in the lockage of the vessels and tows will follow the direction of the appropriate official on duty at the lock. No gates, valves or other accessories or controls will be operated unless under his direction.

(13) [Reserved]

(14) *Lockage of rafts.* Rafts shall be locked through as directed by the lockmaster. No raft will be locked that is not constructed in accordance with the requirements stated in paragraph (f) of this section. The person in charge of a raft desiring lockage shall register with the lockmaster immediately upon arriving at the lock and receive instructions for locking.

(e) *Waterways.* (1)–(5)(i) [Reserved]

(ii) Algiers Canal between the Mississippi River and Bayou Barataria, La., and on Harvey Canal, Gulf Intracoastal Waterway, mile 0 to mile 6 WHL, tows 74 feet in width will be allowed. Tows in excess of 55 feet wide desiring to move over Algiers Canal or Harvey Canal will obtain clearance from the lockmaster at Algiers Lock or Harvey Lock, respectively, before entering the canal. Overwidth tows will report clearing Algiers or Harvey Canal to the respective lockmaster and will rearrange tows to conform to prescribed dimensions immediately upon leaving the canal. The lockmaster will withhold permission for additional tows over 55 feet wide until all previously authorized tows moving in the opposite direction have cleared the waterway.

(iii)–(vi) [Reserved]

(vii) Vessels or tows shall not navigate through a drawbridge until the movable span is fully opened.

(6) *Projections from vessels.* Vessels or tows carrying a deck load which overhangs or projects over the side, or whose rigging projects over the side, so as to endanger passing vessels, wharves, or other property, shall not enter or pass through any of the narrow parts of the waterway without prior approval of the District Engineer.

(7) *Meeting and passing.* Passing vessels shall give the proper signals and pass in accordance with the Federal Rules of the Road. At certain intersections where strong currents may be encountered, sailing directions may be issued through navigation bulletins or signs posted on each side of the intersection.

(f) *Rafts*. The navigation regulations in this paragraph shall apply fully to the movement of rafts.

(1) Rafts will be permitted to navigate a waterway only if properly and securely assembled. Each raft shall be so secured as to prevent the loss or sinking of logs.

(2) All rafts shall carry sufficient men to enable them to be managed properly. It will be the responsibility of the owner to remove logs from the waterway that have broken loose from the raft.

(3) Building, assembling, or breaking up of a raft within a waterway may be permitted; however, the work must be done in an area that will not restrict the use of the waterway by other users. The work area must be cleared of loose logs so that they will not enter the waterway and become a hazard to navigation.

(g) *Damage*. Should any damage be done to a revetment, lock, floodgates, bridge, or other federally owned or operated structure, the master of the vessel shall report the accident to the nearest lockmaster or bridgetender as soon as possible after the accident. Damage to aids to navigation and to nonfederally owned bridges must be reported to the Commander, Eighth Coast Guard District, New Orleans, La.

(h) *Marine accidents*. Masters, mates, pilots, owners, or other persons using the waterways covered by this section shall report to the District Engineer at the earliest possible date any accident on the waterway which causes any vessel to become an obstruction to navigation. The information to be furnished the District Engineer shall include the name of the vessel, its location, and the name and address of the owner. The owner of a sunken vessel shall properly mark the vessel as soon as practicable after sinking.

(i) *Trespass on U.S. property*. (1) Trespass on or injury to waterway property of the United States is prohibited. No business, trading, or landing of freight, will be allowed on Government property without permission of the District Engineer.

(2) The District Engineer may establish policy pertaining to mooring, exchanging crews, loading and unloading supplies, and making emergency repairs in the vicinity of locks so long as navigation is not impeded thereby.

(j) *Liability*. The regulations of this section will not affect the liability of the owners and operators of vessels for any damage caused by their operations to the waterway or to the structures therein.

[36 FR 8866, May 14, 1971, as amended at 37 FR 26419, Dec. 12, 1972; 42 FR 57961, Nov. 7, 1977; 48 FR 6707, Feb. 15, 1983; 54 FR 6519, Feb. 13, 1989; 56 FR 13765, Apr. 4, 1991]

§ 207.185 Taylors Bayou, Tex., Beaumont Navigation District Lock; use, administration, and navigation.

(a) Between March 15 and September 15 each year, pleasure boats, houseboats, and other craft not employed for commercial purposes, will be locked through only at 6:00 and 11:45 a.m., and 6:30 p.m., except in cases of emergency; but whenever a lockage is made for a commercial boat, other craft may likewise pass through if there is room in the lock. At all other times lockages shall be made in accordance with § 207.180.

(b) The lock tender or one in charge of the lock shall be the judge as to whether the boat presenting itself for lockage is a commercial or pleasure boat.

[4 FR 1719, Apr. 29, 1939]

§ 207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.

(a) *Application*. The regulations in this section shall apply to the operation of the Brazos River Floodgates and the Colorado River Locks at Mile 400.8 and Mile 441.5, respectively, west of Harvey Lock, La., on the Gulf Intracoastal Waterway, and navigation of the tributary Colorado River Channel in the vicinity of said locks.

(b) *Definitions*. The term *current* means the velocity of flow of water in the river. It is expressed in statute miles per hour. The term ''head differential'' means the difference measured in feet between the water level in the river and that in the waterway when the floodgates or lock gates are closed. The term ''Lockmaster'' means the official in charge of the floodgates or locks.

(c) *Operation of floodgates and locks*—(1) *Unlimited passage*. The floodgates and locks shall be opened for the passage of single vessels and towboats with single or multiple barges when the current in the river is less than 2 miles per hour and the head differential is less than 0.7 foot. When the head differential is less than 0.7, the Colorado River locks shall normally be operated as floodgates, using only the riverside gates of each lock.

(2) *Limited passage*. When the current in either river exceeds 2 miles per hour or the head differential at the Brazos River floodgates is between the limits of 0.7 foot and 1.8 feet, both inclusive, or the head differential at the Colorado River locks is 0.7 foot or greater, passage shall be afforded only for single vessels or towboats with single loaded barges or two empty barges. When two barges are rigidly assembled abreast of each other and the combined width of both together is 55 feet or less, they shall be considered as one barge. Each section of an integrated barge shall be considered as one barge, except when it is necessary to attach a rake section to a single box section to facilitate passage, the two sections shall be considered as one barge. It shall be the responsibility of the master, pilot or other person in charge of a vessel to determine whether a safe passage can be effected, give due consideration to the vessel's power and maneuverability, and prevailing current velocity, head differential, weather and visibility. If conditions are not favorable, passage shall be delayed until conditions improve and a safe crossing is assured.

(3) *Gate closures*. The Brazos River Floodgates shall be closed to navigation when the head differential exceeds 1.8 feet. The Colorado River Locks shall be closed to navigation when the current in the river exceeds a critical velocity as determined by the District Engineer, U.S. Army Engineer District, Galveston, Tex. The Brazos River Floodgates or the Colorado River Locks shall be closed to navigation when in the opinion of said District Engineer it is required for the protection of life and property, or it is to the advantage of the Government to permit uninterrupted emergency or maintenance operations, including dredging.

(4) *Mooring facilities*. Mooring facilities located on both banks of the Gulf Intracoastal Waterway on the approaches to the floodgates and locks are for the mooring of vessels when the floodgates or locks are closed to navigation or tows are limited to single barges. Vessels awaiting passage shall be moored parallel to the bank and as close to the bank as possible. Barges shall be moored fore and aft with two lines, each to a separate mooring facility. Beaching of vessels in lieu of mooring them is prohibited. The mooring facilities are numbered and vessels making fast to them shall notify the Lockmaster giving the number of each facility being used.

(5) [Reserved]

(6) *Communication*—(i) *Radio*. The floodgates and locks are equipped with short wave radio equipment transmitting and receiving on VHF—FM Channels 12, 13, 14 and 16. Call letters for the floodgates are WUI 411 and for the locks are WUI 412.

(ii) *Telephone*. The floodgates and locks are equipped with telephone facilities. The floodgates may be reached by phoning Freeport, Tx, 713–233–1251; the locks may be reached by phoning Matagorda, Tx, 713–863–7842.

(7) *Arrival posts*. Arrival posts 10 feet high and 10 inches in diameter have been established on the approaches to the locks and floodgates. They are painted with alternate horizontal bands of red and white 3 inches wide. Arrival at the floodgates or locks shall be determined as provided in paragraph (d)(4) of § 207.180.

(d) *Navigation of the Colorado River Channel*—(1) *Traffic signals*. (i) Light and sound signals directed both upstream and downstream on the Colorado River are mounted on top of a galvanized skeleton steel tower 85 feet high located on the northeast point of land at the Gulf Intracoastal Waterway crossing of the river. They will be operated from the control house of the East Lock of the Colorado River Locks to direct the interchange of traffic in the Colorado River and the Gulf Intracoastal Waterway.

(ii) Vessels navigating the Colorado River and desiring passage either upstream or downstream through the crossing, or into the crossing and

through a lock into the Gulf Intracoastal Waterway, shall give notice to the Lockmaster by two long and distinct blasts of a whistle or horn when within a distance of not more than one-half mile nor less than one-fourth mile from the Gulf Intracoastal Waterway crossing. When the locks and the crossing are clear of vessels, the Lockmaster shall reply by two long and distinct blasts of a whistle or horn and display a green light from the signal tower indicating that the vessel in the river may proceed across the crossing or into the main stem of the Gulf Intracoastal Waterway either eastbound or westbound. When there are vessels in the river crossing or in the locks, the Lockmaster shall reply by four or more short blasts of a whistle or horn (danger signal) and display a red light from the signal tower indicating the vessel in the river shall wait at least a quarter of a mile from the crossing for clearance. When the locks and crossing are clear of vessels, the lockmaster shall indicate to the waiting vessel by two long and distinct blasts of a whistle or horn and display of a green light from the signal tower indicating that the vessel may proceed across the crossing or into the main stem of the Gulf Intracoastal Waterway either eastbound or westbound. During periods when the red light may be obscured by fog, mist, or rain, an audible signal consisting of a long blast followed by a short blast of a whistle or horn, repeated every 30 seconds, shall be sounded from the signal tower as an adjunct to the red light.

(2) *Signs*. Large signs with silver reflective background and stop sign red letters are erected one-fourth mile upstream and downstream from the Gulf Intracoastal Waterway on the Colorado River. The legend states ''DO NOT PROCEED BEYOND THIS POINT WHEN SIGNAL TOWER LIGHT IS RED.'' These signs must be obeyed.

NOTE: The foregoing regulations are supplementary to the regulations in § 207.180.

[31 FR 15310, Dec. 7, 1966, as amended at 34 FR 15797, Oct. 14, 1969; 48 FR 6707, Feb. 15, 1983]

§ 207.200 Mississippi River below mouth of Ohio River, including South and Southwest Passes; use, administration, and navigation.

(a) *Mississippi River bank protection works provided by United States*. Except in case of great emergency, no vessel or craft shall anchor over revetted banks of the river, and no floating plant other than launches and similar small craft shall land against banks protected by revetment except at regular commercial landings. In all cases, every precaution to avoid damage to the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks shall be performed in such a manner as to cause no damage to the mattress work or bank paving. Generally, mattress work extends out into the river 600 feet from the low water line. Information as to the location of revetted areas may be obtained from, and will be published from time to time by, the District Engineers, Corps of Engineers, New Orleans, Louisiana, Vicksburg, Mississippi, and Memphis, Tennessee, and the President, Mississippi River Commission, Vicksburg, Mississippi.

(b) *Mississippi River below Baton Rouge, La., including South and Southwest Passes*—(1) *Supervision*. The use, administration, and navigation of the waterways to which this paragraph applies shall be under the supervision of the District Engineer, Corps of Engineers, New Orleans, Louisiana.

(2)–(3) [Reserved]

(4) *Cable and pipeline crossings*. Any cable or pipeline crossing or extending into the waterways shall be marked by large signs with 12-inch black letters on a white background readable from the waterway side, placed on each side of the river near the point where the cable or pipeline enters the water, and at a sufficient height to be readable above any obstructions normally to be expected at the locality such as weeds or moored vessels.

(5) *Marine accidents*. Masters, mates, pilots, owners, or other persons using the waterway to which this paragraph applies shall notify the District Engineer by the most expeditious means available of all marine accidents, such

as fire, collision, sinking, or stranding, where there is possible obstruction of the channel or interference with navigation or where damage to Government property is involved, furnishing a clear statement as to the name, address, and ownership of the vessel or vessels involved, the time and place, and the action taken. In all cases, the owner of the sunken vessel shall take immediate steps properly to mark the wreck.

[15 FR 3325, May 30, 1950, as amended at 17 FR 6594, July 18, 1952; 27 FR 3166, Apr. 3, 1962; 33 FR 10456, July 23, 1968; 42 FR 51773, Sept. 29, 1977; 42 FR 57961, 57962, Nov. 7, 1977]

§ 207.249 Ouachita and Black Rivers, Ark. and La., Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 276.0 (Shreveport, La.); use, administration, and navigation.

(a) [Reserved]

(b) *Locks*—(1) *Authority of lockmasters.* (i) *Locks staffed with Government personnel.* The lockmaster shall be charged with the immediate control and management of the lock and of the area set aside as the lock area, including the lock approach channels. He shall insure that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants. For the purpose of the regulations in this section, the ''lock area'' is considered to extend from the downstream to the upstream arrival posts.

(ii) *Locks staffed with contract personnel.* Contract lock operators shall give all necessary orders and direction for operation of the locks. No one shall cause any movement of any vessel or other floating object in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmasters set forth in this section shall be performed by the contract lock operator except that the responsibility for enforcing all laws, rules and regulations shall be vested in an offsite government employee designated by the Vicksburg District Engineer.

(2) *Sound signals.* (i) Vessels desiring passage through a lock in either direction shall give notice to the lockmaster by one long and one short distinct blast of a horn or whistle when not less than three-fourths mile from the lock. When carrying dangerous cargo, the signal will be one long and two short blasts of the horn or whistle. When the lock is ready for entrance, the lockmaster shall reply with one long blast of a horn or whistle. When the lock is not ready for entrance, the lockmaster shall reply by four or more short, distinct blasts of a horn or whistle (danger signal). Permission to leave the lock shall be indicated by the lockmaster by one short blast. A distinct blast is defined as a clearly audible blast of any length. A long blast means a blast of from 4 to 6 seconds' duration. A short blast is of about 1 second's duration.

(ii) Vessels that are not equipped with a sound signal desiring passage through a lock shall give notice to the lockmaster by one long blast of the horn located at either end of the lock wall. The horn may be activated by pulling the properly marked chain or rope hanging from the horn down to the water surface. One long blast means a blast of from 4 to 6 seconds' duration.

(3) *Visual signals.* Signal lights will be displayed outside each lock gate to supplement the sound signals, as follows:

(i) One green light to indicate that the lock is open to approaching navigation.

(ii) One red light to indicate that the lock is not open to approaching navigation. Vessels shall stand clear.

(iii) Navigation over the dam is possible during high water. When this condition exists, a continuous flashing red light, visible upstream and downstream, will be displayed to indicate that traffic will bypass the lock and pass over the dam on the Ouachita and Black Rivers.

(iv) *A navigation pass is not provided as part of the Red River Locks and Dams.* When water levels rise to within 2 feet of the top of the lock walls, operation of the locks will cease until the water level falls below this level. These stages can reasonably be expected to occur once in 10 years. No vessel, tow, or raft shall attempt to navigate over the lock or other structures at high river stages. United States Coast Guard radiotelephone broadcasts and U.S. Army Corps of Engineers navigation bulletins should be monitored for information on lock operations.

(4) *Radiotelephone.* Two-way radio equipment is provided at all locks. The ''Safety and Calling'' channel (Channel 16, frequency of 156.8 mhz), will be monitored at all times for initial communication with vessels. Information transmitted or received in these communications shall in no way affect the requirements for the use of sound signals or display of visual signals as provided in paragraphs (b)(2) and (3) of this section.

(5) *Precedence at locks.* (i) The vessel arriving first at a lock will be first to lock through. In the case of vessels approaching the lock simultaneously from opposite directions, the vessel approaching at the same elevation as the water in the lock chamber will be locked through first. Precedence shall be given to vessels belonging to the United States, passenger vessels, commercial vessels, rafts, and pleasure craft, in the order named. Arrival posts or markers will be established ashore above and below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the lock within the meaning of this paragraph (b)(5). The lockmaster may prescribe such departure from the normal order of precedence stated above, as in his judgment, is warranted under prevailing circumstances to achieve best lock utilization.

(ii) The lockage of pleasure boats, houseboats, or like craft may be expedited by locking them through with commercial craft (other than barges carrying dangerous cargoes). If, after the arrival of such craft, no combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockages shall be made. Dangerous cargoes are described in 46 CFR part 146.

(iii) Vessels, tows, or rafts navigating on the Ouachita and Black Rivers with overall dimensions greater than 80 feet wide, 600 feet long, and 9 feet draft, or tows or rafts requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster finds necessary at the time of transit.

(iv) The maximum dimensions on the Red River Waterway of a vessel tow attempting to pass through the lock during normal pool stages in a single passage are 80 feet wide, 705 feet long, and 9 feet draft. Tows requiring breaking into two or more sections to pass through the lock may transit the lock at such times as the lockmaster/lock operator determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster/lock operator finds necessary at the time of transit.

(6) *Entrance to an exit from locks.* No vessel or raft shall enter or leave locks before being signaled to do so. While waiting their turn, vessels or rafts must not obstruct navigation and must remain at a safe distance from locks. Before entering a lock they shall take position in the rear of any vessels or rafts that precede them, and there arrange the tow for locking in sections if necessary. Masters and pilots of vessels or persons in charge of rafts shall cause no undue delay in entering or leaving locks upon receiving the proper signal. They shall take such action as will insure that the approaches are not at any time unnecessarily obstructed by parts of a tow awaiting lockage or already passed through. They shall provide sufficient men to move through locks

promptly without damage to the structures. Vessels or tows shall enter locks with reasonable promptness after being signaled to do so.

(7) *Lockage and passage of vessels.* (i) Vessels shall enter and leave locks under such control as to prevent any damage to the locks, gates, guide walls, guard walls, and fenders. Vessels shall be provided with suitable lines and fenders, shall always use fenders to protect the walls and gates, and when locking at night shall be provided with suitable lights and use them as directed. Fenders on vessels shall be water-soaked or otherwise fire proofed before being utilized in the lock or approaches. Vessels shall not meet or pass each other anywhere between the guide walls or fender system at the approaches to locks.

(ii) Vessels which do not have a draft of at least 2 feet less than the depth over sills, or which have projections liable to damage gates, walls, or fenders, shall not enter the approaches to or pass through locks. Information concerning depth over sills may be obtained from the lockman on duty.

(iii) Vessels having chains, lines, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes will not be permitted to pass locks or dams.

(iv) Towing vessels shall accompany all tows or partial tows through locks.

(v) No vessel whose cargo projects beyond its sides will be admitted to lockage.

(vi) Vessels in a sinking condition shall not enter locks or approaches.

(vii) The lockmaster may refuse to lock vessels which in his judgment fail to comply with the regulations in this paragraph.

(viii) This section shall not affect the liability of the owners and operators of boats for any damage caused by their operations to locks or other structures.

(8) *Number of lockages.* Tows or rafts locking in sections will generally be allowed only two consecutive lockages if individual vessels are waiting for lockage, but may be allowed more in special cases. If tows or rafts are waiting above and below a lock for lockage, sections will be locked both ways alternately whenever practicable. When two or more tows or rafts are waiting lockage in the same direction, no part of one shall pass the lock until the whole of the one preceding it shall have passed.

(9) *Mooring.* (i) Vessels and rafts when in a lock shall be moored where directed by the lockmaster by bow, stern, and spring lines to the bitts provided for that purpose and lines shall not be let go until the signal is given for the vessel or raft to leave. Tying to the lock ladders is prohibited.

(ii) The mooring of vessels or rafts near the approaches to locks except while waiting for lockage, or at other places in the pools where such mooring interfers with general navigation, is prohibited.

(10) *Operating locks.* The lock gates, valves, and accessories will be moved only under the direction of the lockmaster; but, if required, all vessels and rafts using the locks shall furnish ample help on the lock walls for handling lines under the direction of the lockmaster.

(c) *Trespass on U.S. property.* Trespass on lock grounds or other waterway property or injury to the banks, lock entrances, locks, cribs, dams, piers, fences, trees, buildings, or any other property of the United States pertaining to the waterway is strictly prohibited. No landing of freight, passengers, or baggage will be allowed on or over Government piers, lock walls, guide or guard walls, except by permission of the lockmaster. No person except employees of the United States or persons assisting with the locking operations under the direction of the lockmaster will be allowed on the dam, lock walls, guide walls, guard walls, abutments, or appurtenant structures.

(d) *Vessels to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly navigating the waterways to which the regulations in this section apply. Copies may be obtained free of charge at any of the locks or from the Vicksburg District Engineer, Vicksburg, Mississippi, upon request.

[37 FR 14778, July 25, 1972, as amended at 52 FR 18235, May 14, 1987; 52 FR 34775, Sept. 15, 1987; 56 FR 13765, Apr. 4, 1991; 63 FR 24428, May 4, 1998]

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth at Kleinston Landing to Fisher Street; navigation.

(a) *Signals.* Vessels navigating the canal will be governed by the Pilot Rules for Western Rivers (rivers emptying into the Gulf of Mexico and their tributaries) prescribed by the U.S. Coast Guard. (See part 95 of this title.)[1]

(b) *Rafts.* Rafts will be permitted to navigate the canal only if properly and securely assembled. Each section of a raft shall be so secured within itself as to prevent the sinking of any log, and so fastened with chains or wire rope that it cannot be separated or bag out or materially change its shape. All logs, chains, and other means used in assembling rafts shall be in good condition and of ample size and strength to accomplish their purpose. No section of a raft will be permitted to be towed unless the logs float sufficiently high in the water to make it evident that the section will not sink en route. Rafts shall not be of greater dimensions than 50 feet wide by 600 feet long, and if longer than 300 feet they shall be handled by two tugs; and in all cases they must be handled by sufficient tug power to make headway and guide the raft so as to give half the channel to passing vessels.

(c) *Mooring.* At stages below 20 feet on the Vicksburg Gage, no vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21′16″, Longitude 90°53′05″ and Latitude 32°20′55″, Longitude 90°53′18″, which is approximately 1200 feet above and 1200 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′21″, Longitude 90°53′44″, which is approximately 1200 feet from the mouth of the canal. No vessel or raft shall be moored along the east bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′12″, Longitude 90°53′41″, which is approximately 750 feet from the mouth of the canal. When tied up, boats, barges, or rafts shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Lines shall be secured at sufficiently close intervals to insure the vessel or raft will not be drawn away from the bank by winds, current, or other passing vessels. No vessel or raft shall be moored along the banks of the canal for a period longer than five (5) calendar days without written permission from the District Engineer, Corps of Engineers, Vicksburg District Office, 4155 E. Clay St., Vicksburg, Mississippi 39180–3435.

(d) [Reserved]

(e) *Refuse in canal.* No person shall roll or throw any stones, ashes, cinders, barrels, logs, log butts, sawdust, shavings, refuse, or any other material into the canal or the approach thereto, or place any such material on the bank or berm so that it is liable to be rolled, thrown, or washed into the canal.

(f) *Preservation of works of improvement.* Masters and pilots of all craft using the canal shall avoid damaging any revetment, dike, floodwall, or other work of improvement placed in or adjacent to the canal. They shall not disturb any gages or marks set as aids to navigation in the canal or approaches thereto.

(g) *Fairway.* A clear channel not less than 175 feet wide as established by the District Engineer shall be left open at all times to permit free and unobstructed navigation by all types of vessels.

[13 FR 9562, Dec. 31, 1948; 42 FR 57962, Nov. 7, 1977, as amended at 63 FR 24428, May 4, 1998]

§ 207.270 Tallahatchie River, Miss., between Batesville and the mouth; logging.

(a) The floating of ''sack'', rafts, or of loose timbers, logs, or cribs is prohibited.

(b) Rafts shall be made up of logs parallel with each other, secured, and held closely together by cross sticks, chains, or cables placed across each crib and at the joints between cribs. No raft shall be over 60 feet wide or 800 feet long.

[1] Part 95 was removed by CGD 82–029, 47 FR 19519, May 6, 1982.

(c) In rafting nonbuoyant timber each crib must contain self-buoyant logs in such proportion of ''floaters'' to ''sinkers'' as will safely float the whole; and in assembling such cribs, extra strong connections must be used to prevent the breaking up of a crib or the detachment of individual logs.

(d) No raft shall be moved at river stages less than that corresponding to a reading of 3⁴⁄₁₀ feet on the U.S. Weather Bureau gage at Greenwood, Miss.

(e) A raft in transit must be accompanied by sufficient men, or by power boats of sufficient capacity to properly manage the movement of the raft and to keep it from being an obstruction to other craft navigating the river, or from forming jams at bridges.

(f) Rafts in transit must be so floated, and when not in transit be so tied to the bank, as not to interfere with the passage of boats.

(g) When rafts are left with no one in attendance they must be securely tied at each end and at as many intermediate points as will prevent them from bagging into the stream. When left at night a white light shall be exposed at each end of the raft.

(h) This section shall apply to the portion of the Tallahatchie River, Miss., between Batesville, Panola County, Miss., and the mouth.

[Regs. Feb. 18, 1918, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.275 McClellan-Kerr Arkansas River navigation system: use, administration, and navigation.

(a) *Applicability of regulations.* These regulations apply to all locks and appurtenant structures, wharves, and other Corps of Engineers structures in the following waterways: The White River between Mississippi River and Arkansas Post Canal, Arkansas; Arkansas Post Canal, Arkansas; Arkansas River between Dam No. 2, Arkansas, and Verdigris River, Oklahoma; Verdigris River between Arkansas River and Catoosa, Oklahoma; and reservoirs on these waterways between Mississippi River, Arkansas, and Catoosa, Oklahoma.

(b) *Authority of district engineers.* The use, administration, and navigation of the structures to which this section applies shall be under the direction of the officers of the Army Corps of Engineers, detailed in charge of the respective districts, and their authorized assistants. The cities in which these district engineers are located, and the limits of their jurisdictions, are as follows:

(1) *District Engineer, U.S. Army Engineer District, Little Rock, Arkansas.* From Mississippi River, Arkansas, to Arkansas-Oklahoma State line at Fort Smith, Arkansas.

(2) *District Engineer, U.S. Army Engineer District, Tulsa, Oklahoma.* From Arkansas-Oklahoma State line at Fort Smith, Arkansas, to Catoosa, Oklahoma.

(c) *Authority of lockmasters.* The lockmaster shall be charge with the immediate control and management of the lock and of the area set aside as the lock area. The lockmaster shall ensure that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions both to employees of the Government and to any person within the limits of the lock area, whether navigating the lock or not. No one shall cause any movement of any vessel or other floating thing in the lock area except by or under the direction of the lockmaster. Failure to comply with directions given by the lockmaster pursuant to the regulations in this section may result in refusal of lockage. For the purpose of the regulations in this section, the ''lock area'' is considered to be between the upstream and downstream arrival points. The district engineer may extend the limits of the lock area consistent with the safe and efficient use of the waterway.

(d) *Precedence at locks.* (1) Precedence shall be given to vessels owned by the United States, licensed commercial passenger vessels operating on a published schedule or regularly operating in the ''for hire'' trade, commercial tows, rafts, and pleasure craft, in the order named. Precedence being equal, the first vessel to arrive at a lock will normally be the first to lock through; however, the lockmaster may depart

from this procedure to achieve optimum utilization of the lock or in accordance with the order of precedence stated above and in paragraphs (d)(2) and (h) of this section. Arrival points have been established ashore upstream and downstream of the locks. Vessels arriving at these markers or the mooring cells immediately upstream and downstream of the lock will be considered as having arrived at the lock within the meaning of this subparagraph.

(2) Vessels or tows, with overall dimensions greater than 105 feet wide or 595 feet long may transit the lock at such time as the lockmaster determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster deems necessary at the time of transit.

(e) *Safety rules for vessels using navigation locks.* (1) Leaking vessels may be excluded from the locks.

(2) Smoking, open flames, and activities capable of producing a flammable atmosphere such as painting will not be permitted in the lock chamber.

(3) All deckhands handling lines during locking procedures shall wear a personal flotation device.

(f) *Dangerous cargo barges.* The following rules are prescribed for all tows containing dangerous cargoes as defined in Title 46, Code of Federal Regulations. These rules are applicable to both loaded barges and empty barges.

(1) All hatches on barges used to transport dangerous cargoes shall be closed before the tow enters the lock area.

(2) Prior to entering the lock area, towboat pilots shall furnish the name of product, the source of shipment, the company which made the shipment, and the consignee. If a towboat is not equipped with a radio or its radio is out of service, pilots shall furnish this information to the lockmaster while the tow is in the lock chamber. The shipping papers required by Title 46, Code of Federal Regulations, shall be available for review by the lockmaster. Lockage shall be refused when this information is not furnished to the lockmaster.

(3) Fenders shall be water-soaked or otherwise spark proofed.

(4) Smoking, open flames, chipping, or other spark producing activity are prohibited in the ''lock area.''

(5) Simultaneous lockage of other vessels with vessels carrying dangerous cargoes or containing flammable vapors shall normally not be permitted. if significant delays are occurring at a lock, such simultaneous lockages, except with pleasure craft, may be permitted by the lockmaster, when he/she determines such action safe and appropriate, provided:

(i) The first vessel entering or the last vessel exiting shall be secured before the other enters or leaves.

(ii) All masters involved have agreed to the joint use of the lock.

(g) *General locking procedures.* (1) In case two or more boats or tows are to enter for the same lockage, their order of entry and exit shall be determined by the lockmaster.

(2) Tows entering a lock shall come to a complete stop at a point designated by the district engineer before proceeding to the mooring position.

(3) When entering or exiting locks, tow speeds shall not exceed 200 feet per minute (rate of slow walk) or the rate of travel whereby the tow can be stopped by checking should mechanical difficulties develop. When navigating over Norrell Dam during high water, vessels shall reduce speed to the minimum necessary to maintain steerageway. Pilots should check with the individual lockmasters concerning prevailing conditions. It is also recommended that pilots check their ability to reverse their engines prior to beginning an approach. Towboat engines shall not be turned off in the lock unless authorized by lockmaster.

(4) The sides and ends of all vessels passing through any lock shall be free from protrusions of any kind which might damage the lock structure.

(5) All vessels shall be provided with suitable fenders. When entering and exiting locks, one deckhand, or more if the lockmaster so directs, shall be stationed at the bow and stern of tows. These deckhands shall maintain their

stations while tows are moving adjacent to any part of a lock. They shall protect the lock walls by the use of hand-held fenders. In all cases, two deckhands shall be stationed at the bows of tows 100 feet wide or wider when entering locks. They shall remain at their stations until the bows of such tows pass the recessed miter gates.

(6) Masters and pilots must use every precaution to prevent unnecessary delay in entering or leaving locks. Vessels failing to enter locks with reasonable promptness when signaled to do so shall lose their turn. Rearranging or switching of barges in the locks or in approaches is prohibited unless approved or directed by the lockmaster.

(7) No vessel shall enter a lock unless its draft is at least two feet less than the least depth of water over the sills. Information concerning controlling depth over sills can be obtained from the lockmaster at each lock or by inquiry at the office of the district engineer of the district in which the lock is located.

(8) Vessels awaiting their turn to lock shall be positioned so that they will not interfere with vessels leaving the lock. However, to the extent practicable under the prevailing conditions, vessels and tows shall be positioned so as to minimize approach time.

(9) *Number of lockages.* (i) Tows or rafts locking in sections will generally be allowed only two consecutive lockages if other vessels are waiting lockage, but may be allowed more in special cases. No part of a tow shall pass a lock until the whole of the one preceding it shall have passed. The lockmaster may prescribe a departure from the normal order of precedence to achieve the best lock utilization.

(ii) One deckhand, or more if the lockmaster so directs, shall tend the lines at the bow and stern of each section of a tow that transits a lock or moors to the river walls.

(10) Vessels shall enter and leave locks under such control as to prevent any damage to the walls and gates.

(11) Placing or discharging refuse of any description into the lock, on the lock walls, on the esplanade, or on any other government property is prohibited.

(h) *Lockage of pleasure craft.* In order to fully utilize the capacity of the lock, lockmasters may expedite the lockage of pleasure craft by locking them through with commercial vessels, except vessels carrying volatile cargoes or other substances likely to emit toxic, flammable, or explosive vapors. If the lockage of pleasure craft cannot be accomplished within the time required for three single lockages, a separate lockage of pleasure craft shall be made. Pleasure craft operators are advised that the locks have a pull chain located at the end of each river wall which signals the lockmaster that lockage is desired.

(i) *Locking rafts and floating dredge discharge line.* While awaiting lockage, rafts and tows containing floating dredge discharge line shall not obstruct the lock approaches. They shall be properly and securely assembled to assure adequate control while entering and exiting locks. The passage of loose logs through a lock is prohibited. Lockage will be refused to rafts unless the logs float sufficiently high to make it evident that the raft will not sink.

(j) *Mooring*—(1) *At locks.* (i) When in the locks, all vessels shall be moored as directed by the lockmaster. Vessels shall be moored with bow and stern lines leading in opposite directions to prevent the vessel from ''running'' in the lock. All vessels will have one additional line available on the head of the tow for emergency use. The pilot of a vessel shall remain at his station in the pilot house and the deckhands shall stand by the mooring lines during the entire locking procedure. When the vessel is securely moored, the pilot shall not cause movement of the propeller except in an emergency or unless directed by the lockmaster. Tying to lock ladders is strictly prohibited.

(ii) Mooring of any vessel will not be permitted at or between the arrival points without permission of the lockmaster.

(2) *Outside of locks.* (i) Vessels over 40 feet in length shall not land or anchor against revetted banks without written permission of the district engineer, except in case of emergency. When an emergency landing is necessary, adjacent locks shall be notified. In all

cases, every precaution to avoid damage to the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks require the permission of the district engineer.

(ii) Government mooring facilities at the junction of main stem and secondary channels are to provide temporary mooring for tows awaiting transfer of barges to or from ports, docks, or fleeting areas located on the secondary channels. These facilities shall not be used for storage of barges or fleeting activities. The maximum permissible time of mooring at the facilities shall be determined by the district engineer.

(k) *Locking signals*. Vessels must approach the locks with caution and not enter or leave the locks until signaled to do so by the lockmaster.

(1) *Signal by radio*. Requests for lockage by radio will be the primary signal for vessels equipped with VHF-FM radios operating in the FCC authorized Maritime Band. District engineers will advise all known interested parties of the channels available for use in communicating with the locks. Pilots of commercial tows should contact the locks at least one-half hour before arrival in order that they may be informed of current river and traffic conditions that may affect the safe passage of their tows.

(2) *Sound signals*. In addition to radio communication, the following sound signals are prescribed for use during lockage. Sound signals given by vessels and locks shall be given by means of a horn. The term prolonged blast means a blast of from four to six second's duration. The term short blast means a blast of about one second's duration.

(i) Vessels desiring a single lockage shall give notice to the lockmaster by one prolonged blast of the horn followed by one short blast. If a double lockage is required, vessels shall give one prolonged blast of the horn followed by two short blasts. These signals are not required from pleasure craft not equipped with horns. Locking procedures for pleasure craft are prescribed in paragraph (h).

(ii) When the lock is ready for entrance, the lockmaster shall give one prolonged blast of the horn to signal permission to enter the lock chamber.

(iii) The lockmaster shall give permission to leave the lock chamber by one short blast of the horn.

(iv) Five or more short and rapid blasts of the lock horn will be used as a means of attracting attention, to indicate caution, or to signal danger. This signal will be used to attract the attention of the masters and crews of vessels using the lock or navigating in the lock area and to indicate that something unusual involving danger or requiring special caution is happening or is about to happen. When this signal is given by the lockmaster, the masters and crews of vessels in the vicinity shall immediately become alert to determine the reason for the signal and shall take the necessary steps to cope with the situation.

(3) *Visual signals*. Signal lights are displayed outside each lock gate to supplement the radio and sound signals. Vessels will be governed as follows:

(i) One flashing green light to indicate that the lock is open to approaching navigation.

(ii) One flashing red light to indicate that the lock is not open to approaching navigation. Vessels shall stand clear.

(iii) Flashing amber and green lights to indicate that one or both lock gates can not be fully recessed or other unusual conditions exist. Vessels can enter the lock with caution.

(iv) In the absence of any of the above visual signals, pilots shall signal for lockage by radio or horn and wait for the lockmaster to acknowledge their signal.

(l) *Navigation lights on locks and dams*. (1) The following navigation lights will be displayed at all locks except Norrell Lock and Lock No. 2 during hours of darkness and heavy fog.

(i) Three green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream river wall.

(ii) Two green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream river wall.

(iii) A single red light visible through an arc of 360 degrees on the ends of the upstream and downstream land walls.

(2) The following navigation lights will be displayed at Lock No. 2 during hours of darkness and heavy fog. They shall also be displayed at Norrell Lock during hours of darkness and heavy fog except when navigation is passing over the dam.

(i) Three green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream river wall.

(ii) Two green lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream river wall.

(iii) A single red light visible through an arc of 360 degrees on the dolphin located furthest upstream in line with the land wall and on the dolphin located furthest downstream in line with the land wall.

(3) The following navigation lights will be displayed at Norrell Lock and Dam during hours of darkness and heavy fog when navigation is passing over the dam. During daylight hours a yellow and black disc will be displayed on each end (upstream and downstream) of the river wall to signal navigation over the dam.

(i) Three red lights visible through an arc of 360 degrees arranged in a vertical line on the end of the upstream river wall.

(ii) Two red lights visible through an arc of 360 degrees arranged in a vertical line on the end of the downstream river wall.

(iii) A single red light visible through an arc of 360 degrees on the dolphin located furthest upstream in line with the land wall and on the dolphin located furthest downstream in line with the land wall.

(iv) A single, flashing blue light visible through an arc of 360 degrees located on the end of the dam opposite the lock.

(m) *Restricted areas at locks and dams.* All waters immediately above and below each dam, as posted by the respective district engineers, are hereby designated as restricted areas. No vessel or other floating craft shall enter any such restricted area without permission of the lockmaster. The limits of the restricted areas at each dam will be determined by the responsible district engineer and marked by signs installed in conspicuous and appropriate locations.

(n) *Trespass on lock and dam property.* (1) Trespass on locks or dams or other United States property pertaining to the locks or dams is strictly prohibited except in those areas specifically permitted by the lockmaster. Any person committing a willful injury to any United States property or personnel will be prosecuted.

(2) No fishing will be permitted from the lock or dam structures.

(3) No one but employees of the United States shall move any lock machinery unless directed by the lockmaster. Tampering or meddling with the machinery or other parts of the lock is strictly forbidden.

(o) *Repair and construction of navigation structures.* To avoid damage to plant and structures connected with the construction or repair of locks and dams, vessels passing structures in the process of construction or repair shall reduce their speed and navigate with special caution while in the vicinity of such work.

(p) *Reporting the navigation incidents.* In furtherance of maintaining navigation safety the following rules are prescribed for all navigation interests:

(1) Any incident resulting in uncontrolled barges shall immediately be reported to the nearest lock and the appropriate U.S. Coast Guard Office. The report shall include information as to the number of loose barges, their cargo, and the time and location where they broke loose. The lockmaster shall be kept informed of the progress being made in bringing the barges under control so that he/she can initiate whatever actions may be warranted.

(2) Masters, owners, or other persons using the waterways to which the regulations in this section apply shall report to the nearest lockmaster or the district engineer by the most expeditious means available all marine accidents; such as fire, collision, sinking, or grounding, where there is possible obstruction of the channel or interference with navigation; furnishing a clear statement as to the name, address, and ownership of the vessel or

vessels involved; the time and place; and the action taken. In all cases, the owner of a sunken vessel shall take immediate steps to mark the wreck properly.

(i) Sunken or sinking barges shall be reported to the nearest lock both downstream and upstream of the location in order that traffic passing those points may be advised of the hazards. The appropriate U.S. Coast Guard Office shall also be notified.

(ii) Whenever it is necessary to report an incident involving uncontrolled, sunken or sinking barges, the cargo in the barges shall be precisely identified.

(iii) The owners or masters of vessels sunk in the navigable waters of the United States shall provide the appropriate district engineer with a copy of the sunken vessel report furnished to the appropriate U.S. Coast Guard Marine Inspection Office.

(q) [Reserved]

(r) *Liability for damage.* This section shall not affect the liability of the owners and operators of vessels for any damage caused by their operations. Should any Government property be damaged as the result of the operation of a vessel, the master of the vessel shall report the accident to the nearest lockmaster or the appropriate district engineer.

(s) *Persistent violation of regulations.* If the owner or operator of any vessel persistently violates the regulations of this section or any orders given in pursuance thereof, after due notice of same, lockage may be refused by the district engineer. The lockmaster may refuse lockage if deemed necessary to protect government property in the vicinity of the lock.

(t) *Vessels to carry regulations.* A copy of these regulations shall be kept at all times on board each commercial vessel engaged in navigating the waterway. Copies may be obtained from any lock or district engineer's office on request. Masters of such vessels are also required to have on board current copies of the navigation charts and applicable Notices to Navigation Interest.

[51 FR 30639, Aug. 28, 1986, as amended at 56 FR 13765, Apr. 4, 1991]

§ 207.300 Ohio River, Mississippi River above Cairo, Ill., and their tributaries; use, administration, and navigation.

(a) *Authority of lockmasters*—(1) *Locks staffed with Government personnel.* The provisions of this paragraph apply to all waterways in this section except for Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He/she shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions in accordance therewith, both to employees of the government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his/her assistants. In the event of an emergency, the lockmaster may depart from these regulations as he deems necessary. The lockmasters shall also be charged with the control and management of federally constructed mooring facilities.

(2) *Locks staffed with contract personnel.* The provisions of this paragraph apply to Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. Contract personnel shall give all necessary orders and directions for operation of the lock. No one shall cause any movement of any vessel, boat or other floating thing in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmaster set forth in this section shall be performed by the contract lock operator except that responsibility for enforcing all laws, rules, and regulations shall be vested in a government employee designated by the Nashville District Engineer. The district engineer will notify waterway users and the general public through appropriate notices and media concerning the location and identity of the designated government employee.

(b) *Safety rules for vessels using navigation locks.* The following safety rules are hereby prescribed for vessels in the locking process, including the act of approaching or departing a lock:

(1) *Tows with flammable or hazardous cargo barges, loaded or empty.* (i) Stripping barges or transferring cargo is prohibited.

(ii) All hatches on barges used to transport flammable or hazardous materials shall be closed and latched, except those barges carrying a gas-free certificate.

(iii) Spark-proof protective rubbing fenders (''possums'') shall be used.

(2) *All vessels.* (i) Leaking vessels may be excluded from locks until they have been repaired to the satisfaction of the lockmaster.

(ii) Smoking, open flames, and chipping or other spark-producing activities are prohibited on deck during the locking cycle.

(iii) Painting will not be permitted in the lock chamber during the locking cycle.

(iv) Tow speeds shall be reduced to a rate of travel such that the tow can be stopped by checking should mechanical difficulties develop. Pilots should check with the individual lockmasters concerning prevailing conditions. It is also recommended that pilots check their ability to reverse their engines prior to beginning an approach. Engines shall not be turned off in the lock until the tow has stopped and been made fast.

(v) U.S. Coast Guard regulations require all vessels to have on board life saving devices for prevention of drowning. All crew members of vessels required to carry work vests (life jackets) shall wear them during a lockage, except those persons in an area enclosed with a handrail or other device which would reasonably preclude the possibility of falling overboard. All deckhands handling lines during locking procedure shall wear a life jacket. Vessels not required by Coast Guard regulations to have work vests aboard shall have at least the prescribed life saving devices, located for ready access and use if needed. The lockmaster may refuse lockage to any vessel which fails to conform to the above.

(c) *Reporting of navigation incidents.* In furtherance of increased safety on waterways the following safety rules are hereby prescribed for all navigation interests:

(1) Any incident resulting in uncontrolled barges shall immediately be reported to the nearest lock. The report shall include information as to the number of loose barges, their cargo, and the time and location where they broke loose. The lockmaster or locks shall be kept informed of the progress being made in bringing the barges under control so that he can initiate whatever actions may be warranted.

(2) Whenever barges are temporarily moored at other than commercial terminals or established fleeting areas, and their breaking away could endanger a lock, the nearest lock shall be so notified, preferably the downstream lock.

(3) Sunken or sinking barges shall be reported to the nearest lock both downstream and upstream of the location in order that other traffic passing those points may be advised of the hazards.

(4) In the event of an oil spill, notify the nearest lock downstream, specifying the time and location of the incident, type of oil, amount of spill, and what recovery or controlling measures are being employed.

(5) Any other activity on the waterways that could conceivably endanger navigation or a navigation structure shall be reported to the nearest lock.

(6) Whenever it is necessary to report an incident involving uncontrolled, sunken or sinking barges, the cargo in the barges shall be accurately identified.

(d) *Precedence at locks.* (1) The vessel arriving first at a lock shall normally be first to lock through, but precedence shall be given to vessels belonging to the United States. Licensed commercial passenger vessels operating on a published schedule or regularly operating in the ''for hire'' trade shall have precedence over cargo tows and like craft. Commercial cargo tows shall have precedence over recreational craft, except as described in paragraph (f) of this section.

(2) Arrival posts or markers may be established ashore above and/or below

the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph. Precedence may be established visually or by radio communication. The lockmaster may prescribe such departure from the normal order of precedence as in his judgment is warranted to achieve best lock utilization.

(e) *Unnecessary delay at locks.* Masters and pilots must use every precaution to prevent unnecessary delay in entering or leaving locks. Vessels failing to enter locks with reasonable promptness when signalled to do so shall lose their turn. Rearranging or switching of barges in the locks or in approaches is prohibited unless approved or directed by the lockmaster. This is not meant to curtail ''jackknifing'' or set-overs where normally practiced.

(f) *Lockage of recreational craft.* In order to fully utilize the capacity of the lock, the lockage of recreational craft shall be expedited by locking them through with commercial craft: *Provided,* That both parties agree to joint use of the chamber. When recreational craft are locked simultaneously with commercial tows, the lockmaster will direct, whenever practicable, that the recreational craft enter the lock and depart while the tow is secured in the lock. Recreational craft will not be locked through with vessels carrying volatile cargoes or other substances likely to emit toxic or explosive vapors. If the lockage of recreational craft cannot be accomplished within the time required for three other lockages, a separate lockage of recreational craft shall be made. Recreational craft operators are advised that many locks have a pull chain located at each end of the lock which signals the lockmaster that lockage is desired. Furthermore, many Mississippi River locks utilize a strobe light at the lock to signal recreational type vessels that the lock is ready for entry. Such lights are used exclusively to signal recreational craft.

(g) *Simultaneous lockage of tows with dangerous cargoes.* Simultaneous lockage of other tows with tows carrying dangerous cargoes or containing flammable vapors normally will only be permitted when there is agreement between the lockmaster and both vessel masters that the simultaneous lockage can be executed safely. He shall make a separate decision each time such action seems safe and appropriate, provided:

(1) The first vessel or tow in and the last vessel or tow out are secured before the other enters or leaves.

(2) Any vessel or tow carrying dangerous cargoes is not leaking.

(3) All masters involved have agreed to the joint use of the lock chamber.

(h) *Stations while awaiting a lockage.* Vessels awaiting their turn to lock shall remain sufficiently clear of the structure to allow unobstructed departure for the vessel leaving the lock. However, to the extent practicable under the prevailing conditions, vessels and tows shall position themselves so as to minimize approach time when signaled to do so.

(i) *Stations while awaiting access through navigable pass.* When navigable dams are up or are in the process of being raised or lowered, vessels desiring to use the pass shall wait outside the limits of the approach points unless authorized otherwise by the lockmaster.

(j) *Signals.* Signals from vessels shall ordinarily be by whistle; signals from locks to vessels shall be by whistle, another sound device, or visual means. when a whistle is used, long blasts of the whistle shall not exceed 10 seconds and short blasts of the whistle shall not exceed 3 seconds. Where a lock is not provided with a sound or visual signal installation, the lockmaster will indicate by voice or by the wave of a hand when the vessel may enter or leave the lock. Vessels must approach the locks with caution and shall not enter nor leave the lock until signaled to do so by the lockmaster. The following lockage signals are prescribed:

(1) *Sound signals by means of a whistle.* These signals apply at either a single lock or twin locks.

(i) Vessels desiring lockage shall on approaching a lock give the following signals at a distance of not more than one mile from the lock;

(*a*) If a single lockage only is required: One long blast of the whistle followed by one short blast.

(*b*) If a double lockage is required: One long blast of the whistle followed by two short blasts.

(ii) When the lock is ready for entrance, the lock will give the following signals:

(*a*) One long blast of the whistle indicates permission to enter the lock chamber in the case of a single lock or to enter the landward chamber in the case of twin locks.

(*b*) Two long blasts of the whistle indicates permission to enter the riverward chamber in the case of twin locks.

(iii) Permission to leave the locks will be indicated by the following signals given by the lock:

(*a*) One short blast of the whistle indicates permission to leave the lock chamber in the case of a single lock or to leave the landward chamber in the case of twin locks.

(*b*) Two short blasts of the whistle indicates permission to leave the riverward chamber in the case of twin locks.

(iv) Four or more short blasts of the lock whistle delivered in rapid succession will be used as a means of attracting attention, to indicate caution, and to signal danger. This signal will be used to attract the attention of the captain and crews of vessels using or approaching the lock or navigating in its vicinity and to indicate that something unusual involving danger or requiring special caution is happening or is about to take place. When this signal is given by the lock, the captains and crews of vessels in the vicinity shall immediately become on the alert to determine the reason for the signal and shall take the necessary steps to cope with the situation.

(2) *Lock signal lights.* At locks where density of traffic or other local conditions make it advisable, the sound signals from the lock will be supplemented by signal lights. Flashing lights (showing a one-second flash followed by a two-second eclipse) will be located on or near each end of the land wall to control use of a single lock or of the landward lock of double locks. In addition, at double locks, interrupted flashing lights (showing a one-second flash, a one-second eclipse and a one-second flash, followed by a three-second eclipse) will be located on or near each end of the intermediate wall to control use of the riverward lock. Navigation will be governed as follows:

(i) *Red light.* Lock cannot be made ready immediately. Vessel shall stand clear.

(ii) *Amber light.* Lock is being made ready. Vessel may approach but under full control.

(iii) *Green light.* Lock is ready for entrance.

(iv) *Green and amber.* Lock is ready for entrance but gates cannot be recessed completely. Vessel may enter under full control and with extreme caution.

(3) *Radio communications.* VHF-FM radios, operating in the FCC authorized Maritime Band, have been installed at all operational locks (except those on the Kentucky River and Lock 3, Green River). Radio contact may be made by any vessel desiring passage. Commercial tows are especially requested to make contact at least one half hour before arrival in order that the pilot may be informed of current river and traffic conditions that may affect the safe passage of his tow.

(4) All locks monitor 156.8 MHz (Ch. 16) and 156.65 MHz (Ch. 13) and can work 156.65 MHz (Ch. 13) and 156.7 MHz (Ch. 14) Ch. 16 is the authorized call, reply and distress frequency, and locks are not permitted to work on this frequency except in an emergency involving the risk of immediate loss of life or property. Vessels may call and work Ch. 13, without switching, but are cautioned that vessel to lock traffic must not interrupt or delay Bridge to Bridge traffic which has priority at all times.

(k) *Rafts.* Rafts to be locked through shall be moored in such manner as not to obstruct the entrance of the lock, and if to be locked in sections, shall be brought to the lock as directed by the lockmaster. After passing the lock the sections shall be reassembled at such distance beyond the lock as not to interfere with other vessels.

(l) *Entrance to and exit from locks.* In case two or more boats or tows are to enter for the same lockage, their order of entry shall be determined by the lockmaster. Except as directed by the lockmaster, no boat shall pass another in the lock. In no case will boats be

permitted to enter or leave the locks until directed to do so by the lockmaster. The sides of all craft passing through any lock shall be free from projections of any kind which might injure the lock walls. All vessels shall be provided with suitable fenders, and shall be used to protect the lock and guide walls until it has cleared the lock and guide walls.

(m) *Mooring*—(1) *At locks*. (i) All vessels when in the locks shall be moored as directed by the lockmaster. Vessels shall be moored with bow and stern lines leading in opposite directions to prevent the vessel from ''running'' in the lock. All vessels will have one additional line available on the head of the tow for emergency use. The pilothouse shall be attended by qualified personnel during the entire locking procedure. When the vessel is securely moored, the pilot shall not cause movement of the propellers except in emergency or unless directed by the lockmaster. Tying to lock ladders is strictly prohibited.

(ii) Mooring of unattended or nonpropelled vessels or small craft at the upper or lower channel approaches will not be permitted within 1200 feet of the lock.

(2) *Outside of locks*. (i) No vessel or other craft shall regularly or permanently moor in any reach of a navigation channel. The approximate centerline of such channels are marked as the sailing line on Corps of Engineers' navigation charts. Nor shall any floating craft, except in an emergency, moor in any narrow or hazardous section of the waterway. Furthermore, all vessels or other craft are prohibited from regularly or permanently mooring in any section of navigable waterways which are congested with commercial facilities or traffic unless it is moored at facilities approved by the Secretary of the Army or his authorized representative. The limits of the congested areas shall be marked on Corps of Engineers' navigation charts. However, the District Engineer may authorize in writing exceptions to any of the above if, in his judgment, such mooring would not adversely affect navigation and anchorage.

(ii) No vessel or other craft shall be moored to railroad tracks, to riverbanks in the vicinity of railroad tracks when such mooring threatens the safety of equipment using such tracks, to telephone poles or power poles, or to bridges or similar structures used by the public.

(iii) Except in case of great emergency, no vessel or craft shall anchor over revetted banks of the river, and no floating plant other than launches and similar small craft shall land against banks protected by revetment except at regular commercial landings. In all cases, every precaution to avoid damage to the revetment works shall be exercised. The construction of log rafts along mattressed or paved banks or the tying up and landing of log rafts against such banks shall be performed in such a manner as to cause no damage to the mattress work or bank paving. Generally, mattress work extends out into the river 600 feet from the low water line.

(iv) Any vessel utilizing a federally constructed mooring facility (e.g., cells, buoys, anchor rings) at the points designated on the current issue of the Corps' navigation charts shall advise the lockmaster at the nearest lock from that point by the most expeditious means.

(n) *Draft of vessels*. No vessel shall attempt to enter a lock unless its draft is at least three inches less than the least depth of water over the guard sills, or over the gate sills if there be no guard sills. Information concerning controlling depth over sills can be obtained from the lockmaster at each lock or by inquiry at the office of the district engineer of the district in which the lock is located.

(o) *Handling machinery*. No one but employees of the United States shall move any lock machinery except as directed by the lockmaster. Tampering or meddling with the machinery or other parts of the lock is strictly forbidden.

(p) *Refuse in locks*. Placing or discharging refuse of any description into the lock, on lock walls or esplanade, canal or canal bank is prohibited.

(q) *Damage to locks or other work*. To avoid damage to plant and structures connected with the construction or repair of locks and dams, vessels passing

structures in the process of construction or repair shall reduce their speed and navigate with special caution while in the vicinity of such work. The restrictions and admonitions contained in these regulations shall not affect the liability of the owners and operators of floating craft for any damage to locks or other structures caused by the operation of such craft.

(r) *Trespass of lock property*. Trespass on locks or dams or other U.S. property pertaining to the locks or dams is strictly prohibited except in those areas specifically permitted. Parties committing any injury to the locks or dams or to any part thereof will be responsible therefor. Any person committing a willful injury to any U.S. property will be prosecuted. No fishing will be permitted from lock walls, guide walls, or guard walls of any lock or from any dam, except in areas designated and posted by the responsible District Engineer as fishing areas. Personnel from commercial and recreational craft will be allowed on the lock structure for legitimate business reasons; e.g., crew changes, emergency phone calls, etc.

(s) *Restricted areas at locks and dams*. All waters immediately above and below each dam, as posted by the respective District Engineers, are hereby designated as restricted areas. No vessel or other floating craft shall enter any such restricted area at any time. The limits of the restricted areas at each dam will be determined by the responsible District Engineer and market by signs and/or flashing red lights installed in conspicuous and appropriate places.

(t) [Reserved]

(u) *Operations during high water and floods in designated vulnerable areas*. Vessels operating on these waters during periods when river stages exceed the level of ''ordinary high water,'' as designated on Corps of Engineers' navigation charts, shall exercise reasonable care to minimize the effects of their bow waves and propeller washes on river banks; submerged or partially submerged structures or habitations; terrestrial growth such as trees and bushes; and man-made amenities that may be present. Vessels shall operate carefully when passing close to levees and other flood protection works, and shall observe minimum distances from banks which may be prescribed from time to time in Notices to Navigation Interests. Pilots should exercise particular care not to direct propeller wash at river banks, levees, revetments, structures or other appurtenances subject to damage from wave action.

(v) *Navigation lights for use at all locks and dams except on the Kentucky River and Lock 3, Green River*. (1) At locks at all fixed dams and at locks at all movable dams when the dams are up so that there is no navigable pass through the dam, the following navigation lights will be displayed during hours of darkness:

(i) Three green lights visible through an arc of 360° arranged in a vertical line on the upstream end of the river (guard) wall unless the intermediate wall extends farther upstream. In the latter case, the lights will be placed on the upstream end of the intermediate wall.

(ii) Two green lights visible through an arc of 360° arranged in a vertical line on the downstream end of the river (guard) wall unless the intermediate wall extends farther downstream. In the latter case, the lights will be placed on the downstream end of the intermediate wall.

(iii) A single red light, visible through an arc of 360° on each end (upstream and downstream) of the land (guide) wall.

(2) At movable dams when the dam has been lowered or partly lowered so that there is an unobstructed navigable pass through the dam, the navigation lights indicated in the following paragraphs will be displayed during hours of darkness until lock walls and weir piers are awash.

(i) Three red lights visible through an arc of 360° arranged in a vertical line on the upstream end of the river (guard) wall.

(ii) Two red lights visible through an arc of 360° arranged in a vertical line on the downstream end of the river (guard) wall.

(iii) A single red light visible through an arc of 360° on each end (upstream and downstream) of the land (guide) wall.

(3) After lock walls and weir piers are awash they will be marked as prescribed in paragraph (x) of this section.

(4) If one or more bear traps or weirs are open or partially open, and may cause a set in current conditions at the upper approach to the locks, this fact will be indicated by displaying a white circular disk 5 feet in diameter, on or near the light support on the upstream end of the land (guide) wall during the hours of daylight, and will be indicated during hours of darkness by displaying a white (amber) light vertically under and 5 feet below the red light on the upstream end of the land (guide) wall.

(5) At Locks No. 1 and 2, Green River, when the locks are not in operation because of high river stages, a single red light visible through an arc of 360° will be displayed on each end (upstream and downstream) of the lock river (guard) will at which time the lights referred to above will not be visible.

(w) *Navigation lights for use at locks and dams on the Kentucky River and Lock 3, Green River*. A single red light visible through an arc of 360° shall be displayed during hours of darkness at each end of the river wall or extending guard structures until these structures are awash.

(x) *Buoys at movable dams*. (1) Whenever the river (guard) wall of the lock and any portion of the dam are awash, and until covered by a depth of water equal to the project depth, the limits of the navigable pass through the dam will be marked by buoys located at the upstream and downstream ends of the river (guard) wall, and by a single buoy over the end or ends of the portion or portions of the dam adjacent to the navigable pass over which project depth is not available. A red nun-type buoy will be used for such structures located on the left-hand side (facing downstream) of the river and a black can-type buoy for such structures located on the right-hand side. Buoys will be lighted, if practicable.

(2) Where powerhouses or other substantial structures projecting considerably above the level of the lock wall are located on the river (guard) wall, a single red light located on top of one of these structures may be used instead of river wall buoys prescribed above until these structures are awash, after which they will be marked by a buoy of appropriate type and color (red nun or black can buoy) until covered by a depth of water equal to the project depth. Buoys will be lighted, if practicable.

(y) *Vessels to carry regulations*. A copy of these regulations shall be kept at all times on board each vessel regularly engaged in navigating the rivers to which these regulations apply. Copies may be obtained from any lock office or District Engineer's office on request. Masters of such vessels are encouraged to have on board copies of the current edition of appropriate navigation charts.

NOTES

1. Muskingum River Lock & Dam 1 has been removed. Ohio River slackwater provides navigable channel for recreational craft to Lock 2 near Devola, Ohio. Muskingum River Locks 2 thru 11 inclusive have been transferred to the State of Ohio and are operated during the recreational boating season by the Ohio Department of Natural Resources. Inquiries regarding Muskingum River channel conditions and lock availability should be directed to the aforementioned Department.

2. Little Kanawha River Lock and Dam 1 has been removed, thus permitting recreational craft to navigate up to Lock 2 near Slate, W. Va. Operation of Locks 2 thru 5 on the Little Kanawha River has been discontinued.

3. Big Sandy River: Lock 1 has been removed, thus permitting recreational craft to navigate to Lock 2, near Buchanan, Ky. Operation of Lock 2 and Lock 3 near Fort Gay, W. Va. has been discontinued. Operation of Lock and Dam 1 on Levisa Fork near Gallup, Ky., and Lock and Dam 1 on Tug Fork near Chapman, Ky. has been discontinued.

4. Operation of the following Green River Locks has been discontinued: Lock 4 near Woodbury, Ky., Lock 5 near Glenmore, Ky., and Lock 6 near Brownsville, Ky.

5. Operation of Barren River Lock and Dam No. 1 near Richardsville, Ky. has been discontinued.

6. Operation of Rough River Lock and Dam No. 1 near Hartford, Ky. has been discontinued.

7. Operation of Osage River Lock and Dam 1 near Osage City, Mo., has been discontinued.

8. Operation of the 34 locks in the Illinois and Mississippi (Hennepin) Canal, including the feeder section, has been discontinued.

9. Operation of the Illinois and Michigan Canal has been discontinued.

[40 FR 32121, July 31, 1975, as amended at 50 FR 37580, Sept. 18, 1985; 56 FR 13765, Apr. 4, 1991]

§ 207.306 Missouri River; administration and navigation.

(a) [Reserved]

(b) *General.* The regulations in this section shall implement those contained in paragraph(s) of § 207.300.

[33 FR 17242, Nov. 21, 1968; 42 FR 57962, Nov. 7, 1977]

§ 207.310 Mississippi River at Keokuk, Iowa; operation of power dam by Mississippi River Power Co.

(a) All previous regulations of the Secretary of War relating to the use of the Mississippi River for the generation of power by the Mississippi River Power Co., including the memorandum of March 24, 1908, approved by the Secretary of War, March 26, 1908, are rescinded, and the following regulations will govern the operation of the dam until further orders:

(b) Excepting as specially provided in this section the normal flow of the river shall be discharged below the dam at all times of day and night.

(c) The Mississippi River Power Co. shall not during the period of navigation raise the level of its pond behind the Keokuk Dam when the natural flow of the Mississippi River is falling or when such natural flow is less than approximately 64,000 cubic feet per second, which corresponds to a normal stage of 6 feet above low water at Keokuk, Iowa, except upon the written permission of the U.S. District Engineer in charge of this locality, such permit to state the period which such ponding may cover and the maximum variation in stage below the dam which may be caused by each ponding.

(d) The granting of permits by the District Engineer shall be governed by the provision of the law authorizing the construction of the dam and its accessories, as follows:

SEC. 2. That the withdrawal of water from the Mississippi River and the discharge of water into the said river, for the purpose of operating the said power stations and appurtenant works, shall be under the direction and control of the Secretary of War, and shall at no time be such as to impede or interfere with the safe and convenient navigation of the said river by means of steamboats or other vessels or by rafts or barges. * * * (33 Stat. 713)

(e) The power company when proposing to raise or lower the pond, either under general authority or special permission, shall give due notice to the District Engineer or his authorized agent of its intention.

(f) The power company shall hold all records relating to operations affecting the river discharge open to the inspection of the District Engineer or his authorized agent.

(g) It shall be the duty of the district engineer or his authorized agent to observe closely and carefully the operations of the power company and to maintain in addition to such as may be maintained by the power company, such river and pool gages as may be advisable, and make from time to time such examinations as may be necessary for determining the effect of the operation of the power dam and accessories on the river channels.

(h) The Department of the Army approves the method of regulating the flow below the Keokuk Dam by estimating the flow 24 hours in advance and maintenance of the stage corresponding to such flow as indicated by the river gage at U.S. Lock (the method employed during 1917). The general rules stated in paragraph (g) of this section are not intended to apply to unavoidable small compensating variations in pond level behind the dam inherent in such method of regulation.

[Regs., Jan. 12, 1918]

§ 207.320 Mississippi River, Twin City Locks and Dam, St. Paul and Minneapolis, Minn.; pool level.

In accordance with the provisions of Article 8 of Federal Power Commission License of June 7, 1923 (Project No. 362-Minn., Ford Motor Co.), this section is prescribed for the control of the pool level created by the Twin City Locks and Dam, Minneapolis, in the interest of navigation, and supersedes rules and regulations made effective January 1, 1928, by the Secretary of War:

(a) The pool above the dam shall not be allowed to drop below elevation 744.5

(Cairo datum), except after loss or lowering of flashboards and before replacement or raising of same, during the navigation season; nor below elevation 743.3 during the period when the river is closed to navigation. The variation of pool level shall not exceed 0.5 foot per day whenever the pool is below elevation 745.5, and in addition, during the period when the river is closed to navigation, the maximum rate of such variation shall not exceed 0.1 foot per hour; except that during the navigation season, increases in pool level at rates greater than that specified may be made to eliminate wasting of water during an increase in river flow.

(b) Whenever, due to high flows, the pool above the dam is above elevation 746.5, all flashboards on the crest of the dam shall be removed or in the lowered position.

(c) To protect navigation in cases of emergency, such as the stranding of a boat or the loss of a pool below the Twin City Dam, etc., the licensee shall temporarily discharge water at such rates, subject to the limitations of paragraph (a) of this section, as may be directed by the U.S. District Engineer in charge of the locality.

(d) It shall be the duty of the U.S. District Engineer in charge of the locality to notify the licensee of the periods during which the river shall be considered open to navigation.

(e) It shall be the further duty of the said District Engineer or his authorized agent, by frequent inspections, to determine whether paragraphs (a) to (d) of this section are being observed. In case of noncompliance he shall so notify the licensee and report the facts to the Chief of Engineers.

[Regs., Feb. 24, 1938]

§ 207.330 Mississippi River between Winnibigoshish and Pokegama dams, Leech River between outlet of Leech Lake and Mississippi River, and Pokegama reservoir; logging.

(a) Parties engaged in the transportation of loose logs, timbers, and rafts of logs, poles, posts, ties, or pulpwood, on the waters described in this section, shall conduct their operations so as to interfere as little as possible with navigation by steamboats, launches, or other craft, or with the operations of other parties using the waters for purposes similar to their own, and, so far as may be possible, shall prevent the formation of log jams.

(b) In case of the formation of a jam, the owner of the logs, poles, posts, ties, or pulpwood, causing the jam, or the representatives in charge of the drive or tow, shall cause the same to be broken with the least practicable delay.

(c) Steamboats, launches, or other craft desiring to pass through a body of floating logs, poles, or ties shall be given all reasonable and necessary assistance in doing so by the representatives in charge of the logs, poles, posts, ties, or pulpwood causing the obstruction.

(d) Any individual, firm, or corporation banking logs, poles, posts, ties, or pulpwood on the shores or within the banks of any of the waters covered by this section, which are to be transported during the navigation season, shall so place them as to maintain a clear navigable channel width of not less than 20 feet.

(e) Parties using the river for rafted poles, posts, ties, or pulpwood shall not tie rafts up to the bank two or more abreast; shall not tie up where there will be less than 50 feet of clear waterway between their raft and the other bank or between their raft and another tied to the opposite bank; and shall not tie more than three rafts along any bank without leaving an opening for a landing.

[Regs., Mar. 5, 1915]

§ 207.340 Reservoirs at headwaters of the Mississippi River; use and administration.

(a) *Description*. These reservoirs include Winnibigoshish, Leech Lake, Pokegama, Sandy Lake, Pine River and Gull Lake.

(b) *Penalties*. The River and Harbor Act approved August 11, 1888 (25 Stat. 419, 33 U.S.C. 601) includes the following provisions as to the administration of the headwater reservoirs:

And it shall be the duty of the Secretary of War to prescribe such rules and regulations in respect to the use and administration of said reservoirs as, in his judgment, the public interest and necessity may require; which rules and regulations shall be posted in some

conspicuous place or places for the information of the public. And any person knowingly and willfully violating such rules and regulations shall be liable to a fine not exceeding five hundred dollars, or imprisonment not exceeding six months, the same to be enforced by prosecution in any district court of the United States within whose territorial jurisdiction such offense may have been committed.

(c) *Previous regulations now revoked.* In accordance with the above act, the Secretary of War prescribed regulations for the use and administration of the reservoirs at the headwaters of the Mississippi River under date of February 11, 1931, which together with all subsequent amendments are hereby revoked and the following substituted therefor.

(d) *Authority of officer in charge of the reservoirs.* The accumulation of water in, and discharge of water from the reservoirs, including that from one reservoir to another, shall be under the direction of the U.S. District Engineer, St. Paul, Minnesota, and of his authorized agents subject to the following restrictions and considerations:

(1) Notwithstanding any other provision of this section, the discharge from any reservoir may be varied at any time as required to permit inspection of, or repairs to, the dams, dikes or their appurtenances, or to prevent damage to lands or structures above or below the dams.

(2) Except as provided in paragraph (d)(1) of this section the average annual discharge from the respective reservoirs shall not be reduced below the following values, as nearly as they can practically be maintained:

Winnibigoshish, 150 cubic feet per second.
Leech Lake, 70 cubic feet per second.
Pokegama, 200 cubic feet per second.
Sandy Lake, 80 cubic feet per second.
Pine River, 90 cubic feet per second.
Gull Lake, 30 cubic feet per second.

(3) During the season of navigation on the upper Mississippi River, the volume of water discharged from the reservoirs shall be so regulated by the officer in charge as to maintain as nearly as practicable, until navigation closes, a sufficient stage of water in the navigable reaches of the upper Mississippi and in those of any tributary thereto that may be navigated and on which a reservoir is located.

(4) Surplus waters in storage above the stages listed in paragraph (d)(7) of this section not required for use in the aid of navigation, as provided for in paragraph (d)(3) of this section, may be discharged at such time and at such rates as will result, in the judgment of the District Engineer, in the greatest general benefit or the minimum of injuries to all affected interests.

(5) No discharge other than the minimum specified in paragraph (d)(2) of this section shall be permitted when a reservoir is at or below its minimum stage as set forth in paragraph (d)(7) of this section except such increases of discharge as may specifically be directed by the Chief of Engineers.

(6) The surplus inflow over the minimum discharge set forth in paragraph (d)(2) of this section shall be stored until the limit of capacity or safety of the reservoir is reached, or until such time as water may be discharged in accordance with this section.

(7) So far as practicable, under the requirements of this section, the officer in charge will cause the reservoirs to be maintained above the following minimum stages, referred to zeros of respective Government gauges:

Winnebigoshish	6.0
Leech Lake	0.0
Pokegama	6.0
Sandy Lake	7.0
Pine River	9.0
Gull Lake	5.0

The range of fluctuations in levels in any reservoir in a single calendar year shall be held at a minimum consistent with the requirements of this section and with the inflow of that year. If, through necessity reservoirs are drawn below these stages, minimum stages will be restored at the first practicable opportunity.

(e) *Passage of logs and other floating bodies.* Logs and other floating bodies may be sluiced or locked through the dams, but prior authority for the sluicing of logs must be obtained from the District Engineer when this operation necessitates a material change in discharge.

(f) *Obstructions to flow of water.* No person shall place floating bodies in a stream or pond above or below a reservoir dam when, in the opinion of the

officer in charge, such act would prevent the necessary flow of water to or from such dam, or in any way injure the dam and its appurtenances, its dikes and embankments; and should floating bodies lying above or below a dam constitute at any time an obstruction or menace as beforesaid, the owners of said floating bodies will be required to remove them immediately.

(g) *Trespass.* No one shall trespass on any reservoir dam, dike, embankment or upon any property pertaining thereto.

[Regs., Feb. 4, 1936, as amended at 10 FR 414, Jan. 10, 1945]

§ 207.350 St. Croix River, Wis. and Minn.

(a) *Logging regulations for river above Lake St. Croix.* (1) During the season of navigation from May 1 to September 30, the full natural run of water in the river shall be permitted to flow between 1 a.m. on Thursday and 4 p.m. on Sunday of each week, and during the time between 1 p.m. on Wednesday and 4 p.m. on Sunday of each week no logs shall be sluiced into the river between St. Croix Falls, Wis., and Stillwater, Minn.

(2) Except during the period above mentioned, the parties engaged in handling logs upon the river shall have the right to sluice, drive, and float loose logs and to regulate the flow of water in the river as may best suit their convenience, all reasonable caution being taken to avoid log jams.

(3) This paragraph shall remain in force until modified or rescinded. (Act of May 9, 1900, 31 Stat. 172; 33 U.S.C. 410)

(b) *Power dam at Taylors Falls.* (1) That between April 1 and October 31, whenever the natural river flow exceeds 1,600 feet per second, the reduced flow shall be not less than 1,600 feet per second, and that whenever the natural flow be less than 1,600 feet per second, then the reduced flow shall not be less than such natural flow: *Provided,* That the District Engineer in charge of the locality may vary these requirements temporarily, as the interests of navigation, in his judgment, require, prompt report of his action in such instances to be made to the Chief of Engineers.

(2) The Northern States Power Co. shall establish automatic water-stage recorders of a type approved by the district engineer at the following localities:

(i) On the Nevers Pond near the dam.

(ii) On the St. Croix hydroplant pond near the dam.

(iii) On the St. Croix hydroplant tailrace.

(iv) On the St. Croix River near Osceola.

(v) On the St. Croix River near Marine.

(3) The gages are to be installed and maintained by the Northern States Power Co. in a manner satisfactory to the District Engineer, but their operation and inspection is to be under the sole direction of the District Engineer, who will retain the original records, furnishing the Northern States Power Co. with duplicates of the gage records.

[Regs., Apr. 20, 1907, Apr. 10, 1931, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.360 Rainy River, Minn.; logging regulations for portions of river within jurisdiction of the United States.

(a) During the season of navigation, parties engaged in handling logs upon such portion of the river shall have the right to sluice, drive, and float logs in such manner as may best suit their convenience: *Provided,* A sufficient channel for safe navigation by boats is maintained between 7:00 a.m. and 11:00 p.m. from the opening of navigation to September 15th; between 8:00 a.m. and 11:00 p.m. from September 16th to October 31st; and between 9:00 a.m. and 11:00 p.m. from November 1st to the close of navigation.

(b) Owners of loose logs running in the river must maintain a sufficient force of men on the river to keep the logs in motion and to prevent the formation of log jams or accumulation of logs on the several rapids; and said log owners must also construct and maintain for the control and direction of floating logs, such guide booms on said rapids and at other points on said river, as may be considered necessary by the District Engineer in charge of the District.

(c) Owners of sack and brail rafts must so handle the same as not to

interfere with the general navigation of the river or with the approaches to regular boat landings.

[Regs., Nov. 6, 1935, as amended at 25 FR 8908, Sept. 16, 1960]

§ 207.370 Big Fork River, Minn.; logging.

(a) During the season of navigation, parties engaged in handling logs upon the river shall have the right to sluice, drive, and float logs in such manner as may best suit their convenience: *Provided*, A sufficient channel is maintained at all times for the navigation of steamboats, flatboats, and other small craft.

(b) A sufficient force of men must accompany each log drive to prevent the formation of log jams and to maintain an open channel for navigation.

(c) This section shall remain in force until modified or rescinded.

[Regs., Feb. 24, 1905]

§ 207.380 Red Lake River, Minn.; logging regulations for portion of river above Thief River Falls.

(a) Parties wishing to run logs on Red Lake River must provide storage booms near the head of the river to take care of said logs.

(b) No one will be permitted to turn into the river at any time more logs than he can receive at his storage boom.

(c) Tows arriving at the head of the river shall turn their logs into the river successively in the order of their arrival, and such logs shall be at once driven to the owner's storage boom.

(d) Parties authorized to run logs on the river shall have the use of the river on successive days in rotation to run their logs from their storage boom down, but not more than 1,000,000 feet, board measure, shall be released from the storage booms on any one day. Said parties must provide a sufficient force of log drivers to keep their logs in motion throughout the section of river above mentioned, so as to avoid obstructing the general navigation of the river.

(e) When a drive is made it shall be so conducted that not more than 1,500,000 feet, board measure, of logs shall pass any point on the river in 24 hours. The decision of the agent appointed by the United States shall be final as to the quantity of logs running at any time.

(f) This section shall remain in force until modified or rescinded.

[Regs., Feb. 24, 1905]

§ 207.390 [Reserved]

§ 207.420 Chicago River, Ill.; Sanitary District controlling works, and the use, administration, and navigation of the lock at the mouth of river, Chicago Harbor.

(a) *Controlling works*. The controlling works shall be so operated that the water level in the Chicago River will be maintained at a level lower than that of the lake, except in times of excessive storm run-off into the river or when the level of the lake is below minus 2 feet, Chicago City Datum.

(1) The elevation to be maintained in the Chicago River at the west end of the lock will be determined from time to time by the U.S. District Engineer, Chicago, Illinois. It shall at no time be higher than minus 0.5 foot, Chicago City Datum, and at no time lower than minus 2.0 feet, Chicago City Datum, except as noted in the preceding paragraph.

(b) *Lock*—(1) *Operation*. The lock shall be operated by the Metropolitan Sanitary District of Chicago under the general supervision of the U.S. District Engineer, Chicago, Illinois. The lock gates shall be kept in the closed position at all times except for the passage of navigation.

(2) *Description of lock*.

	Feet
Clear length	600
Clear width	80
Depth over sills	[1] 24.4

[1] This depth is below Chicago City Datum which is the zero of the gages mounted on the lock. The clear depth below Low Water Datum for Lake Michigan, which is the plane of reference for U. S. Lake Survey Charts, is 23.0 feet.

The east end of the northeast guide wall shall be marked by an intermittent red light, and by a traffic light showing a fixed red or fixed green light. The west end of the northwest gate block shall be marked by a traffic light showing a fixed red or fixed green light. The east end of the southeast guide wall and the west end of the southwest guide wall shall be marked by an intermittent white light.

(3) *Authority of lockmasters.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the lock or lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(4) *Signals.* (i) Signals from vessels for lockage shall be by whistle, horn or by idling or standing near the ends of the lock guide walls. Signals from the lockmaster shall be by the traffic light and horn and/or by voice with or without electrical amplification. In case of emergency, the lockmaster may signal the vessel by wave of hand or lantern, and the signals thus given shall have the same weight as though given by visual or sound devices at the lock. Vessels must approach the lock with caution and shall not enter or leave the lock until signaled to do so by the lockmaster. The following lockage signals and duration of sound signals are prescribed. A long blast shall be of 4 second duration; a short blast shall be of 1 second duration.

(*a*) *Vessel signals.* Inbound vessels at a distance of not more than 4,000 feet from the lock and outbound vessels immediately after crossing under the Lake Shore Drive bridge shall signal for lockage by 2 long and 2 short blasts of a whistle or horn.

(*b*) *Lock signals.* (*1*) When the lock is ready for entrance, the traffic light will show green, and vessels under 500 gross tons shall come ahead under caution and enter the lock; vessels of 500 gross tons or more shall come to a stop along the guide wall, as prescribed in paragraph (b)(5) of this section. Should the traffic light be out of order or be invisible due to thick weather, vessels shall upon 1 long blast of the lock horn approach and moor to the south guide wall or continue into the lock if so directed by the lockmaster.

(*2*) When the lock is not ready for entrance, the traffic light will show red, and vessels shall not pass beyond the end of the south guide wall: *Provided, however,* That vessels may approach and moor to said wall if authorized by 1 long blast of the lock horn.

(*3*) Permission to leave the lock shall be indicated by 1 short blast of the lock horn.

(*4*) Caution or danger will be indicated by 4 or more flashes of the red traffic light or 4 or more short blasts of the lock horn delivered in rapid succession.

(ii) When in the lock, vessels shall not blow whistle signals for tugs, bridges, landings, etc., without the lockmaster's permission.

(iii) The master and chief engineer of each vessel of 500 gross tons or more shall be on duty at their respective stations when passing through the lock.

(5) *Stop before entering.* All vessels or tows of 500 gross tons or more shall come to a full stop at the point indicated by the sign reading ''Stop'' on the south guide wall and shall not proceed into the lock until so directed by the lockmaster.

(6) *Maximum draft.* Vessels drawing within 6 inches of the depth over the sills shall not be permitted lockage except under special permission from the lockmaster.

(7) *Precedence at locks.* The vessel arriving first at a lock shall be first to lock through; but precedence shall be given to vessels belonging to the United States and to commercial vessels in the order named. Arrival posts or markers may be established ashore above or below the locks. Vessels arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

(8) *Lockage of pleasure boats.* The lockage of pleasure boats, house boats or like craft shall be expedited by locking them through with commercial craft (other than barges carrying petroleum products or highly hazardous materials) in order to utilize the capacity of the lock to its maximum. If,

after the arrival of such craft, no separate or combined lockage can be accomplished within a reasonable time, not to exceed the time required for three other lockages, then separate lockage shall be made.

(9) *Speed of approach and departure.* Vessels of 500 gross tons or more when approaching the lock shall navigate at a speed not exceeding 2 miles per hour, and when leaving the lock shall navigate at a speed not exceeding 6 miles per hour. While entering or leaving the lock, the propellers of vessels of 500 gross tons or more shall be operated at slow speed so as not to undermine or injure the concrete paving on the bottom of the lock chamber. Tugs assisting vessels in lockage, and Coast Guard and fire vessels, may navigate at a higher speed when authorized by the lockmaster. Vessels of less than 500 gross tons shall operate at reasonable speed.

(10) *Mooring.* (i) Vessels shall be moored in the lock or along its approach walls in such manner as may be directed by the lockmaster. Tying to lock ladders, lamp standards, or railings is strictly prohibited. Commercial vessels and tows of 500 gross tons or more shall, in general, have at least one line out when entering the lock and shall be moored in the lock with two bow and two stern lines, which shall lead forward and aft at each end of the vessel or tow. When the gates are closed, commercial vessels shall not be permitted to work their wheels. Said vessels shall have at least two seamen ashore to handle the mooring lines while they are in the lock.

(ii) Mooring lines shall not be cast off until after the lock gates have been opened fully into their recesses, and the signal given to leave the lock. The lines leading aft shall be released first. The lines leading forward shall not be released until the vessel has started to move forward, so as to prevent the vessel from drifting back into the lock gates.

(11) [Reserved]

(12) *Unnecessary delay at lock.* Masters and pilots must use every precaution to prevent unnecessary delay in entering of leaving the lock. Vessels failing to enter lock with reasonable promptness, when signaled to do so, shall lose their turn. Vessels arriving at the lock with their tows in such shape so as to impede lockage, shall lose their turn.

(13) *Depositing refuse prohibited.* The depositing of ashes or refuse matter of any kind in the lock; the passing of coal from barges or flats while in the lock; and the emission of dense smoke from any vessel while passing through the lock, is forbidden.

(14) *Vessels denied lockage.* The lockmaster may deny the privilege of passage through the lock to any vessel with sharp or rough projecting surfaces of any kind, or overhanging rigging, or any vessel which is badly leaking or in a sinking condition.

(15) *Fenders.* All barges and oil tankers must be provided with suitable nonmetallic fenders so as to eliminate damage to the lock or approach walls and reduce fire hazard. Said fenders shall be used as may be directed by the lockmaster.

(16) *Operating machinery.* Lock employees only shall be permitted to operate the lock gates, valves, signals or other appliances. Tampering or meddling with machinery or other parts of the lock is strictly forbidden.

(17) [Reserved]

(18) *Vessels to carry regulations.* A copy of the regulations in this section shall be kept at all times on board each vessel regularly engaged in navigating this lock. Copies may be obtained without charge from the lockmaster.

(19) *Failure to comply with regulations.* Any vessel failing to comply with this section or any orders given in pursuance thereof, may in the discretion of the lockmaster be denied the privilege of passage through or other use of the lock or appurtenant structures.

[3 FR 2139, Sept. 1, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 26 FR 354, Jan. 18, 1961; 44 FR 67657, Nov. 27, 1979; 56 FR 13765, Apr. 4, 1991]

§ 207.425 Calumet River, Ill.; Thomas J. O'Brien Lock and Controlling Works and the use, administration and navigation of the lock.

(a) *Controlling Works.* (1) The controlling works shall be so operated that the water level at the downstream end of the lock will be maintained at a level lower than that of Lake Michigan, except in times of excessive storm

run-off into the Illinois Waterway, or when the lake level is below minus 2 feet, Chicago City Datum.

(2) The elevation to be maintained at the downstream end of the lock shall at no time be higher than minus 0.5 feet, Chicago City Datum, and at no time lower than minus 2.0 feet, Chicago City Datum, except as noted in paragraph (a)(1) of this section.

(b) *Lock*—(1) *Operation*. The Thomas J. O'Brien Lock and Dam is part of the Illinois Waterway which is a tributary of the Mississippi River. All rules and regulations defined in § 207.300, Ohio River, Mississippi River above Cairo, Illinois, and their tributaries; use, administration and navigation shall apply.

[40 FR 57358, Dec. 9, 1975]

§ 207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.

(a) The use, administration, and navigation of the canal and canal grounds shall be under the direction of the District Engineer, Engineer Department at Large, in charge of the locality, and his authorized agents. The term ''canal'' shall include all of the natural waters of the St. Marys River on the U.S. side of the International Boundary and all of the canalized waterway and the locks therein between the western or upstream limit, which is a north and south line tangent to the west end of the Northwest Pier, and the eastern or downstream limit, which is a north and south line tangent to the northeast corner of the old Fort Brady Reservation, the distance between limits being 1.9 miles. The term ''canal grounds'' shall include all of the United States part and other lands, piers, buildings, water level regulation works, hydroelectric power plant, and other appurtenances acquired or constructed for the channel improvement and use of the waterway.

NOTE: Rules and regulations governing the movements of vessels and rafts in St. Marys River from Point Iroquois, on Lake Superior, to Point Detour, on Lake Huron, prescribed by the U.S. Coast Guard pursuant to 33 U.S.C. 475, are contained in part 92 of this title.

(b) Masters of all registered vessels approaching and desiring to use the locks shall, upon arriving at Sailors Encampment, Little Rapids Cut, and Brush Point, report the name of the vessel and its draft to the Coast Guard Lookout Stations at those points.

(c) *Approach requirements*. Upon approaching the canal, vessel masters shall request lock dispatch by radiotelephone to the Corps of Engineers Chief Lockmaster at St. Marys Falls Canal dispatch tower (Radio Call WUE–21). Every up bound vessel requiring lock transit shall request lock dispatch immediately before initiating the turn at Mission Point at the intersection of Course 1, Bayfield Channel, and Course 2, Little Rapids Cut. Every down bound vessel shall call when approximately one-half mile downstream from Big Point.

(d) When in the locks, vessels shall not blow whistle signals for tugs, supply vessels, or persons unless authorized to do so by the District Engineer or his authorized agents.

(e)(1) *Manning requirements*. On all vessels of 400 gross tons or over navigating the canal under their own power, the following ship's personnel shall be on duty. In the pilot house, on the bridge, the master. One mate and one able seaman shall be on watch and available to assist; in the engine room, the engineering watch officer. The chief engineer shall be available to assist. During transit of the locks, all vessels of 400 gross tons or over equipped with power operated mooring deck winches shall have, in addition to the winch operators, mates or signalman at the forward and after ends of the vessel to direct operations from points providing maximum vision of both the winch operators and canal linesmen.

(2) *Linehandlers*—(i) *Cargo vessels equipped with bow thrusters and friction winches*. Two line handlers from the vessel are required on the piers under normal weather conditions. Lockmasters can ask for three persons under severe weather conditions. If a vessel is experiencing mechanical problems or in extreme severe weather situations, the lockmaster may require four vessel-supplied line handlers on the pier.

(ii) *Vessels with non-friction winches or lack of both bow and stern thrusters*.

Four vessel-supplied line handlers are required on the pier at all times.

(f) *Vessel restrictions*—(1) *Speed limits.* Within the limits of the canal, vessels approaching the locks shall not navigate at a speed greater than 2½ miles per hour, and vessels leaving the locks shall not navigate at a speed greater than 6 miles per hour. Tugs assisting vessels in passing through the locks may be authorized by the District Engineer or his authorized agents to navigate at a higher speed when considered necessary to expedite canal operations.

(2) *Use of bow/stern thrusters.* Bow and/or stern thruster use shall be kept to a minimum while transiting the Soo Locks. Thrusters shall not be used while the thrusters are opposite lock gates. They may be used sparingly for short durations within the lock to maintain the ship position near the mooring wall or in an emergency. Thrusters shall be at zero thrust during the period the ship is stopped and moored to the wall with all lines out, and during raising and lowering of pool levels within the chamber.

(g) For passage through the canal, vessels or boats owned or operated by the U.S. Government may be given precedence over all others.

(h) *Vessel lockage order*—(1) *Arrival.* All registered vessels will be passed through the locks in the order of their arrival at the dispatch point unless otherwise directed by the District Engineer or his authorized agents. When a vessel that has stopped on its own business is ready to proceed, it is not entitled to precedence over other vessels already dispatched.

(2) *Departure.* The following order of departure procedure will apply to vessels leaving the MacArthur Lock and Poe Lock simultaneously or at approximately the same time:

(i) The first vessel to leave will be the vessel in the lock which is ready for vessel release first. The vessel in the other lock will be restrained by the gates remaining closed and the wire rope fender remaining in the down position.

(A) On down bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the end of the East Center pier.

(B) On up bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the railroad bridge.

(ii) When a 1,000 foot vessel is ready to depart the Poe Lock and a vessel has left the MacArthur Lock already, the 1,000 foot vessel may start to leave once the bow of the other vessel reaches the end of the respective nose pier.

(iii) Vessels will remain in radio contact with each other and with the Chief Lockmaster at all times until clear of the lock area.

(iv) The need for a deviation from the procedures set forth in paragraph (h)(2)(i) of this section will be determined on a case by case basis by the Chief Lockmaster. If two vessels masters agree to a different departure scheme, they both shall notify the Chief Lockmaster and request a change.

(i) Unless otherwise directed, all vessels or boats approaching the locks shall stop at the points indicated by signs placed on the canal piers until ordered by the District Engineer or his authorized agents to proceed into the lock.

(j) Vessels and boats shall not proceed to enter or leave a lock until the lock gates are fully in their recesses and the lockmaster has given directions for starting.

(k) Upon each passage through the canal, the master or clerk of the vessel or craft shall report to the canal office, upon the prescribed form, a statement of passengers, freight, and registered tonnage, and such other statistical information as may be required by the blank forms provided for the purpose.

(l) No business, trading, or loading or landing of freight, baggage, or passengers will be allowed on or over the canal piers or lock walls, or over the other piers within the limits of the canal grounds, except by prior authority of the District Engineer or his authorized agents.

(m) No person shall throw material of any kind into the canal, or litter the grounds with any refuse.

(n) The releasing of vessel steam, water, or waste from side discharge openings upon the piers or lock walls, the cleaning of boiler flues in the locks

or canal, or the emission of dense smoke from the stack of any vessel while passing through the locks, is forbidden.

(o) No person shall enter or navigate the canal with a boat or other craft which, when entering or while navigating the canal, shall have an iron or irons projecting from it or a rough surface or surfaces on it which would be liable to damage the lock walls or canal piers.

(p) No person shall cause or permit any vessel or boat of which he is in charge or on which he is employed to in any way obstruct the canal or delay in passing through it, except upon prior authority of the District Engineer or his authorized agents.

(q) No person shall enter upon any part of the canal grounds except as permitted, either generally or in specific instances, by the District Engineer or his authorized agents. No person shall willfully or carelessly injure, tamper with, or damage the canal or any of the Government buildings, works or structures, trees or shrubbery, or other public property pertaining to the canal or canal grounds.

(r) *Tug assist procedure*—(1) *Self-powered vessels*. Mariners are advised that often times adverse local weather conditions, *i.e.*, high winds, current conditions and/or inclement weather, exists as vessels approach, enter and/or depart the Soo Locks. These conditions combined with close quarters slow speed maneuvering, particularly with large vessels not equipped with bow or stern thrusters, may cause control difficulties for certain classes of vessels. Therefore, any vessel requesting lockage which in the opinion of the vessel master in consultation with the pilot on board, where applicable may experience severe control problems due to the above conditions, must request assistance by one or more tugs to ensure full control over the vessel at all times. Vessel masters and pilots must consult with the lockmaster concerning local conditions well in advance of arrival at the lock to allow tug assistance to be arranged if necessary. These guidelines apply to all vessels.

(2) *Non self-powered vessels*. All barges or other vessels navigating within the canal and not operating under their own power, whether approaching or leaving the locks, are required to be assisted by one or more tugs of sufficient power to ensure full control at all times.

(s) Smoking and open flames are prohibited on the canal grounds within 50 feet of any tanker transiting the canal and locks, and on board the tanker transiting the locks except in such places as may be designated in the ship's regulations.

(t) All oil tankers, barges, and other vessels which are used for transporting inflammable liquids, either with or without cargo, shall, if not equipped with fixed timber fenders, be prevented from contacting any unfendered pier, lock wall, or other structure by an adequate number of suitable fenders of timber, rubber, or rope placed between the vessel and such unfendered structure.

(u) The locks will be opened and closed to navigation each year as provided in paragraphs (u) (1) and (2) of this section except as may be authorized by the Division Engineer. Consideration will be given to change in these dates in an emergency involving disaster to a vessel or other extraordinary circumstances.

(1) *Opening date*. At least one lock will be placed in operation for the passage of vessels on March 25. Thereafter, additional locks will be placed in operation as traffic density demands.

(2) *Closing date*. The locks will be maintained in operation only for the passage of down bound vessels departing from a Lake Superior port before midnight (2400 hours) of January 14, and of upbound vessels passing Detour before midnight (2400 hours) of January 15. Vessel owners are requested to report in advance to the Engineer in charge at Sault Ste. Marie, the name of vessel and time of departure from a Lake Superior port on January 14 before midnight, and of vessels passing Detour on January 15 before midnight, which may necessitate the continued operation of a lock to permit passage of vessel.

(v) The maximum overall dimensions of vessels that will be permitted to transit MacArthur Lock are 730 feet in length and 75 feet in width, except as

provided in paragraph (v)(1) of this section. Further, any vessel of greater length than 600 feet must be equipped with deck winches adequate to safely control the vessel in the lock under all conditions including that of power failure.

(1) Whenever the Poe Lock is out of service for a period exceeding 24 hours the District Engineer may allow vessels greater than 730 feet in length, but not exceeding 767 feet in length to navigate the MacArthur Lock. Masters of vessels exceeding 730 feet in length shall be required to adhere to special handling procedures as prescribed by the District Engineer.

(w) The maximum overall dimensions of vessels that will be permitted to transit the New Poe Lock without special restrictions are 100 feet in width, including fendering, and 1,000 feet in length, including steering poles or other projections. Vessels having overall widths of over 100 feet and not over 105 feet including fendering, and overall lengths of not more than 1,100 feet, including projections, will be permitted to transit the New Poe Lock at such times as determined by the District Engineer or his authorized representative that they will not unduly delay the transit of vessels of lesser dimensions, or endanger the lock structure because of wind, ice, or other adverse conditions. These vessels also will be subject to such special handling requirements as may be found necessary by the Area Engineer at time of transit. Vessels over 1,000 feet in length will be required to be equipped with six mooring cables and winches ready for use to assist in safe transit of the lock.

(x) Masters or other persons refusing to comply with the regulations in this section or any orders given in pursuance thereof, or using profane, indecent, or abusive language, may, in the discretion of the District Engineer or his authorized agents, be denied the privileges of the locks and canal grounds.

[10 FR 14451, Nov. 27, 1945, as amended at 21 FR 8285, Oct. 30, 1956; 22 FR 401, Jan. 19, 1957; 22 FR 864, Feb. 12, 1957; 31 FR 4346, Mar. 12, 1966; 34 FR 18458, Nov. 20, 1969; 40 FR 8347, Feb. 27, 1975; 40 FR 20818, May 13, 1975; 42 FR 6582, Feb. 3, 1977; 42 FR 12172, Mar. 3, 1977; 57 FR 10245, Mar. 24, 1992; 61 FR 55572, Oct. 28, 1996; 64 FR 69403, Dec. 13, 1999]

§ 207.441 St. Marys Falls Canal and Locks, Mich.; security.

(a) *Purpose and scope of the regulations.* The regulations in this section are prescribed as protective measures. They supplement the general regulations contained in § 207.440 the provisions of which shall remain in full force and effect except as modified by this section.

(b) *Restrictions on transit of vessels.* The following classes of vessels will not be permitted to transit the U.S. locks or enter any of the United States approach canals:

(1)–(3) [Reserved]

(4) *Tanker vessels*—(i) *Hazardous material.* Cleaning and gas freeing of tanks on all hazardous material cargo vessels (as defined in 49 CFR part 171) shall not take place in a lock or any part of the Soo Locks approach canals from the outer end of the east center pier to the outer end of the southwest pier.

(ii) *Approaching.* Whenever a tank vessel is approaching the Soo Locks and within the limits of the lock piers (outer ends of the southwest and east center piers) either above or below the locks, no other vessel will be released from the locks in the direction of the approaching tank vessel, unless the tank vessel is certified gas free or is carrying non-combustible products, until the tank vessel is within the lock chamber or securely moored to the approach pier. Whenever a tank vessel is within a Soo Lock Chamber, the tank vessel, unless certified gas free or is carrying non-combustible products, will not be released from the lock until the channel within the limits of the lock piers either above or below the lock, in the direction of the tank vessel, is clear of vessels or vessels therein are securely moored to the approach pier. This limits movement to a single vessel whenever a tank vessel is within the limits of the lock piers either above or below the locks, unless the tank vessel is certified gas free or is carrying non-combustible products. Tank vessels to which this paragraph (b)(4)(ii) applies include those vessels carrying fuel oil, gasoline, crude oil or other flammable liquids in bulk, including vessels that are not certified gas free where the previous cargo was one of these liquids.

(iii) *Locks park*. Except as provided in paragraph (b)(5) of this section, tankers with any type cargo will be permitted to transit the MacArthur Lock when the locks park is closed. The exact dates and times that the park is closed varies, but generally these periods are from midnight to 6 a.m. June through September with one or two hour closure extensions in the early and late seasons. Tankers carrying non-combustible products that will not react hazardously with water or tankers that have been purged of gas or hazardous fumes and certified gas free will be allowed to transit the MacArthur Lock when the park is open.

(5) *Carrying explosives*. All vessels, except U.S. vessels of war and public vessels as defined in 46 U.S.C. 2101, carrying explosives are prohibited from transiting the U.S. Locks.

(c) *Personnel restrictions*. Masters of vessels are responsible for the conduct of crew and passengers while transiting St. Marys Falls Canal and Locks and for strict compliance with the regulations. The following procedures are established for the control of persons embarking or debarking from vessels while transiting the locks:

(1) The master or mate and not more than three deckhands will be permitted to go ashore from transiting vessels and then only for normal operations and business incident to the transit. A maximum of four men will be permitted ashore at any one time from any one ship.

(2) *Personnel*—(i) *Embarking*. Personnel, including technicians, repairmen, and company officials will be permitted to embark at the locks if they are in possession of a letter addressed to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, from the vessel's master, the operators of the vessel, or the Lake Carriers' Association, requesting that the individual named therein be permitted to embark on a particular vessel. United States vessel personnel must also be in possession of a specially validated seaman's document issued by the U.S. Coast Guard. Their papers will be presented to the civilian guard on duty at the main gate on Portage Avenue who will arrange escort from the gate to the vessel. Luggage will be subject to inspection.

(ii) *Debarking*. The vessel master will furnish prior notification to the Chief Lockmaster at St. Marys Falls Canal Tower (Radio Call WUD–31) that he has vessel personnel, technicians, repairmen or company officials aboard for whom he requests authority to debark. If authority to debark is granted such personnel will be furnished a letter by the vessel master, addressed to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, giving the name and position of the individual concerned. Personnel will not debark until they have been properly identified by a licensed officer of the vessel and the letter furnished to the escort provided from the civilian guard detail who will escort personnel to the gate. In the event a person debarking for medical attention is a litter case, notification will be given sufficiently in advance to permit the Chief Lockmaster to route the vessel to the MacArthur Lock in order that the long carry over the lock gates may be avoided. The Area Engineer will make the necessary arrangements for clearance of ambulances and medical personnel into the lock area.

(3) No passengers or guest passengers will be permitted to embark or debark at St. Marys Falls Canal except in emergency when medical attention is required.

(4) Letters cited in paragraph (c)(2) of this section are valid only for a single passage through the lock area. In the event frequent access to the area is required a request for extended access with reasons therefor will be submitted to the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, who may arrange for the necessary clearance.

(5) Emergency needs to embark or debark which develop with insufficient time to follow the procedure outlined in this paragraph will be approved or disapproved by the Area Engineer, St. Marys Falls Canal, Sault Ste. Marie, Michigan, according to the circumstances of the individual case, and

requests therefor should be promptly directed to him.

[19 FR 1275, Mar. 6, 1954, as amended at 21 FR 10253, Dec. 20, 1956; 23 FR 2300, Apr. 9, 1958; 24 FR 4562, June 4, 1959; 32 FR 10652, July 20, 1967; 35 FR 7512, May 14, 1970; 37 FR 4194, Feb. 2, 1972; 41 FR 3291, Jan. 22, 1976; 66 FR 30063, June 5, 2001; 66 FR 31277, June 11, 2001]

§ 207.460 Fox River, Wis.

(a) *Use, administration and navigation of the locks and canals*—(1) *Navigation*. The Fox River and Wolf River navigation seasons will commence and close as determined by the district engineer, Corps of Engineers, in charge of the locality, depending on conditions and need for lock service. Days and hours of lock operation will also be determined by the district engineer. Public notices will be issued announcing or revising the opening and closing dates and operating schedules at least 10 days in advance of such dates.

(2) *Authority of lockmaster*. The movement of all boats, vessels, tows, rafts and floating things, both powered and nonpowered, in the canals and locks, approaches to the canals, and at or near the dams, shall be subject to the direction of the lockmaster or his duly authorized representatives in charge at the locks.

(3) *Signals*. All boats approaching the locks shall signal for lockage by four distinct whistles of short duration. Locks will not be opened on such audible signal during the period when advance notice is required if the services of the lock tender are required elsewhere to meet prior requests for lockages.

(4) *Mooring in locks*. All craft being locked shall be secured to the mooring posts on the lock walls. Large craft shall use one head line and at least one spring line. Lines shall remain fastened until the signal is given by the lock tender for the craft to leave the lock.

(5) *Delays in canals*. No boat, barge, raft or other floating craft shall tie up or in any way obstruct the canals or approaches, or delay entering or leaving the locks, except by permission from proper authority. Boats wishing to tie up for some hours or days in the canals must notify the Project Engineer directly or through a lock tender, and proper orders on the case will be given. Boats so using the canals must be securely moored in the places assigned, and if not removed promptly on due notice, will be removed, as directed by the Project Engineer at the owner's expense. Boats desiring to tie up in the canals for the purpose of unloading cargoes over the canal banks must, in each case, obtain permission in advance from the District Engineer. Request for such permission shall be submitted through the Project Engineer.

(6) *Provisions for lockage service*. (i) Commercial vessels, barges, rafts and tows engaged in commerce will be provided lockages during the same period as provided for pleasure boats (see paragraph (a)(6)(iv) of this section).

(ii) Pleasure boats, powered and nonpowered, houseboats and similar craft will be provided with not more than one lockage each way through the same lock in a 24-hour period.

(iii) All small vessels or craft, such as skiffs, sculls, sailing boats, etc., shall be passed through locks in groups of not less than six at one lockage, or may be granted separate lockage if the traffic load at the time permits.

(iv) Lockage may be provided during certain hours other than announced at the intermediate locks provided prior requests are made to the Corps of Engineers, Fox River Project Office. Requests may be made either in writing, by telephone or in person to U.S. Army Corps of Engineers, Fox River Project Office, 1008 Augustine Street, Kaukauna, Wisconsin 54130, telephone: 414–766–3531.

(7) *Injury to locks or fixtures*. Vessel operators shall use great care not to strike any part of the locks or sluice walls, or any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the canals. All boats using the canals shall be free from projecting irons or rough surfaces that would be liable to damage the locks or any part of the canals, and they must be provided with fenders to be used in guarding the lock walls, etc., from injury. Boats will not be permitted to enter or leave the locks until the lock gates are fully in the gate recesses, and the lock tender has directed the boat to proceed. No vessel shall be raced or crowded alongside another vessel, or be

moved at such speed as will cause excessive swells or wash. Speed shall be kept at a minimum consistent with safe navigation.

(8) *Handling gates*. No one, unless authorized by the lock tender, shall open or close any gate, or valve, or in any way interfere with the employees in the discharge of their duties. The lock tender may call for assistance from the master of any boat using the lock should such aid be needed.

(9) *Draft of boats*. No boat shall enter a canal or lock whose actual draft exceeds the least depth of water in the channel of the canal as given by the Project Engineer.

(10) *Right-of-way*. Boats going downstream shall have the right-of-way over boats going upstream. Ordinarily, the boats or tows arriving first at any of the locks shall have precedence in passage except that those vessels which have given advance notice, when such notice is required, shall have precedence over other vessels when such notifying vessel is ready for passage. In all cases boats and barges belonging to the United States, or employed upon public works, shall have precedence over all others, and commercial passenger boats shall have precedence over tows. All boats not taking advantage of the first lawful opportunity to pass shall lose their turn. When lockage has started on tows requiring multiple lockages, all units of the tow will be locked ahead of other vessels traveling in the same direction. In the case of tows requiring two lockages, any craft awaiting lockage in the opposite direction will have priority over the second lockage of the tow.

(11) *Boats and rafts without power*. No boat or raft without power except small boats controlled by sails or oars shall be brought through the canal unless accompanied by a power operated boat.

(12) *Dumping of refuse in waterway*. No refuse or other material shall be thrown or dumped from vessels into the natural river, improved channels, canals and locks or placed on any bank of the river or berm of the canals so that it is liable to be thrown or washed into the waterway. (Sec. 13 of the River and Harbor Act of Mar. 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), prohibits the depositing of any refuse matter in any navigable water or along the banks thereof where the same shall be liable to be washed into such navigable water.)

(13) *Drawing off water*. No water shall be drawn by any party or parties from any portion of the Fox River canals, or of the Fox River, including its lakes, improved channels and unimproved channels, to such extent as to lower the water surface below the crest of that dam next below the place where such draft of water is affected.

(14) *Obstructing navigation*. Anyone who shall willfully or through carelessness in any way obstruct the free navigation of the waterway, or by violation of any of the laws or regulations governing the waterway and those using it, delay or inconvenience any boat having the right to use the waterway, shall be responsible for all damages and delays, and for all expenses for removing the obstructions. (Sec. 20 of the River and Harbor Act of Mar. 3, 1899 (30 Stat. 1154; 33 U.S.C. 415), authorizes the immediate removal or destruction of any sunken vessel, craft or similar obstruction, which impedes or endangers navigation.)

(15) [Reserved]

(16) *Trespass on U.S. property*. Trespass on waterway property or injury to the banks, locks, dams, canals, piers, fences, trees, buildings or any other property of the United States pertaining to the waterway is strictly prohibited. No business, trading or landing of freight or baggage will be allowed on or over Government property, unless a permit or lease approved by the Secretary of the Army has been secured.

(17) *Neenah dam outlet works*. (i) During periods of high water, when determined to be necessary by the District Engineer, U.S. Army Engineer District, Chicago, to reduce the threat of flooding, it shall be the duty of the person owning, operating, or controlling the dam across the Neenah Channel of the Fox River at Neenah, Wis., acting as agent of the United States, to open or close, or cause to be opened or closed, pursuant to paragraph (a)(17)(ii) of this section, the outlet works of said dam to regulate the passage of water through said outlet works.

(ii) The outlet works of said dam shall be opened when and to the extent

directed by the District Engineer or his authorized field representatives, and said outlet works shall thereafter be closed when and to the extent directed by the said District Engineer or his authorized field representative.

(b) *Use of the United States drydock on Fox River at Kaukauna, Wis.* (1) The drydock being a part of the Fox River improvement, its use will be governed by the general regulations for the use, administration, and navigation of that river, so far as they may be applicable.

(2) The drydock at Kaukauna, when not required for repairs or construction by the United States, may be used by private parties or corporations under certain restrictions and under the supervision and direction of the U.S. District Engineer in charge of the locality or his authorized agent.

(3) The drydock will be loaned to private parties only when no private drydock is available at the time and for the purpose desired. Applicants will be required to establish over their signature the fact that due effort has been made to secure the use of a private drydock and none can be had.

(4) Private parties desiring to use the Kaukauna drydock will give notice to the U.S. Assistant Engineer in local charge at Appleton, Wis., as long in advance as practicable, stating when use of the dock is wanted, nature of repairs required, and the dimensions and character of boat. No boat will enter the dock until the permission of the U.S. District Engineer or the Assistant Engineer above referred to has been obtained.

(5) All private parties or corporations using the Kaukauna drydock will furnish all material and labor, including blocking, when necessary, required for prompt execution of their work, and will also furnish all labor for properly operating, under the immediate personal supervision of an authorized canal employee, gates, and sluices of the drydock. No gate or sluice of the drydock will be operated, or in any way meddled with, except by permission of and under the personal supervision of such authorized canal employee.

(6) No boat will be allowed to occupy the Kaukauna drydock for a longer period than 2 days when other boats are waiting to use the dock, except in cases when, in the opinion of the U.S. District Engineer or his authorized agent, circumstances necessitate and justify a longer use than 2 days. The U.S. District Engineer or his authorized agent is authorized to remove from the drydock any boat using or occupying such dock without his authority, and the expense of such removal will be paid by the party or parties owning such boat.

(7) The wages of all mechanics and laborers, due from private parties for repairs carried on in the Kaukauna drydock, must be paid before the boat leaves the dock.

(8) Repair shop, timber shed, tools, etc., owned by the Government at and near the drydock shall not be used by parties allowed to occupy the drydock.

(9) Lumber and all material needed by parties allowed to use the drydock may be deposited in the drydock yards at such places as may be directed, but only for such time as repairs are being made, and residue must be entirely removed when the boat leaves the dock; general storage will not be permitted.

(10) All refuse and old material taken from boats under repairs must be removed or disposed of, as may be directed, by the owner of the boat or his employees without expense to the Government, and before the boat leaves the dock, and to the satisfaction of the agent in charge of the dock.

(11) The Government charges for the authorized and necessary use and occupancy of the Kaukauna drydock by private boats shall be, until further orders, as follows:

(i) Docking charges (including lay time for the calendar day on which vessel is docked): Tugs, motor boats, and dredges, 75 cents per linear foot; $25 minimum charge. Barges, dump scows, and derrick boats, 65 cents per linear foot; $20 minimum charge.

(ii) Lay-day charges (excluding Sundays and national holidays, unless repairs are made on such Sundays and holidays): For all vessels, 20 cents per linear foot per calendar day or part thereof; $7 per calendar day or part thereof, minimum charge.

(12) The charges for all use or occupancy of the Kaukauna drydock by a boat or private parties, after repairs on such boat have, in the opinion of the U.S. District Engineer or authorized

agent, been so far completed as to permit safe removal from the dock, or after such removal has been ordered by the U.S. District Engineer or his authorized agent, shall be $50 per day or part of a day, in addition to any penalties incurred for violation of any of the regulations prescribed by law for the government of the dock and those using it.

(13) The dock will be considered in use by a boat from the time the dock is placed at its disposal until the boat is out of the dock.

(14) The length of all vessels shall be the over-all length measured on the main deck from stem to stern.

(15) The charges for the use of the drydock shall be paid within 10 days from date of bill, which will be submitted to the owner by the District Engineer as promptly as possible after the vessel leaves the dock. If charges are not so paid, the vessel shall be liable to the amount of the charges and the cost of collection in the manner prescribed by law, and the owner of the vessel shall be denied the use of the drydock until all charges and the cost of collection have been paid to the United States.

(16) This section supersedes the regulations for the use of this drydock approved April 10, 1906, which regulations are hereby revoked.

[Regs., Oct. 2, 1926, as amended at 33 FR 11544, Aug. 14, 1968; 36 FR 1253, Jan. 27, 1971; 43 FR 26570, June 21, 1978; 48 FR 13985, Apr. 1, 1983; 56 FR 13765, Apr. 4, 1991]

§ 207.470 Sturgeon Bay and Lake Michigan Ship Canal, Wis.; use and navigation.

(a) *Authority of canal officers.* The movement of all boats and floating things in the canal and in the approaches thereto shall be under the direction of the superintendent or his authorized assistants, and their orders and instructions must be obeyed.

(b) *Signals.* On entering the canal at either entrance, steamers or tugs must blow their whistles for 1 minute in order to warn craft approaching from opposite direction and give them time to guard against collisions, by tying up if necessary. All steamers approaching others going in the opposite direction shall slacken speed so as to pass in safety. Compliance is required with rule V of the rules and regulations for the government of pilots, adopted by the U.S. Coast Guard.

Rule V. Whenever a steamer is nearing a short bend or curve in the channel where, from the height of the banks or other cause, a steamer approaching from the opposite direction cannot be seen for a distance of half a mile, the pilot of such steamer, when he shall have arrived within half a mile of such curve or bend, shall give a signal by one long blast of the steam whistle, which signal shall be answered by a similar blast by the pilot of any approaching steamer that may be within hearing. Should such signal be so answered by a steamer upon the farther side of such bend, then the usual signals for the meeting and passing shall immediately be given and answered; but if the first alarm signal of such pilot be not answered, he is to consider the channel clear and govern himself accordingly.

(c) *Speed.* The rate of speed while passing through the canal shall not exceed 5 miles per hour.

(d) *Keeping in the center.* The center must be kept all the way through, except in passing other craft. In case of grounding, the rapid or strong working of boat's engines is strictly forbidden.

(e)–(g) [Reserved]

(h) *Rafts.* (1) The passage of bag or sack rafts, or of loose logs, into or through the canal is prohibited.

(2) Rafts shall be made up with logs parallel to each other, in the direction of raft lengths, secured and held closely together by frequent cross-sticks, chains, or cables.

(3) Rafts shall not be of greater dimensions, either way, than 50 feet wide by 600 feet long, and if longer than 300 feet shall be handled by two tugs.

(4) No raft shall pass through the canal, unless by special permission of the superintendent or his authorized assistants, who will direct a time for passing that will least interfere with other navigation.

(5) Masters of tugs and other persons in charge of rafts are required to avoid damaging the canal revetments, and displacing buoys, spars, or the pedestal of any range light aiding navigation through the canal. They shall keep careful watch when passing aids to navigation, and should any be accidentally displaced, shall report the fact at

the earliest possible moment to the superintendent or his authorized assistants.

(i)–(l) [Reserved]

(m) *Refuse in canal.* No person shall roll or throw any stones, ashes, cinders, or other material into the canal or the approaches thereto, or place any such material on any bank or berm of the canal so that it is liable to be thrown or roll in.

(n)–(o) [Reserved]

[Regs., Feb. 15, 1895, as amended Apr. 14, 1908; 42 FR 57962, Nov. 7, 1977; 56 FR 13765, Apr. 4, 1991]

§ 207.476 The Inland Route—lock in Crooked River, Alanson, Mich.; use, administration, and navigation.

(a) *General.* The use, administration, and navigation of the lock shall be under the direction and supervision of the District Engineer, U.S. Army Engineer District, Detroit, Mich., and his authorized agents.

(b) *Authority of lockmaster.* The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to the employees of the Government and to any and every person within the limits of the lock area, whether navigating the lock or not. No one shall cause any movement of any boat, craft or other floating object in the lock or approaches except by or under the direction of the lockmaster or his assistants.

(c) *Operation.* The lock operating season will commence and close as determined by the district engineers, Corps of Engineers in charge of the locality, depending on conditions and the need for lockage services. Public notices will be issued announcing the opening and closing dates at least 15 days in advance of such dates.

(d) *Maximum allowable dimensions of craft.* (1) Overall length—60 feet.

(2) Overall width—16 feet.

(3) Height above water—15 feet when upper pool is at low water datum.

(4) Draft—6 feet when lower pool is at low water datum.

(e) *Signals.* (1) Craft desiring lockage in either direction shall give notice to the lock tenders, when not farther than 200 yards from the lock, by one long blast (of 10 seconds duration) followed by one short blast (of 3 seconds duration) of whistle, horn, or siren.

(2) Craft not equipped with whistle, horn, or siren may signal for lockage by use of the signal provided for this purpose located near the extreme end of the guide wall to the starboard side of the craft, both upbound and downbound.

(f) *The procedures for transit of lock.* (1) Stand clear of the lock while the red signal light shows.

(2) When the green signal light shows and the lock horn sounds three blasts, approach and enter the lock.

(3) Full control of the craft must be maintained while entering the lock.

(4) After entrance to the lock is complete, the craft shall be securely moored to the cleats and bitts situated on the lock wall.

(5) While moored in the lock, the operator of the craft shall maintain constant attention to the mooring lines, to provide slack or retain tautness as needed.

(6) The craft shall remain securely moored until the exit lock gate is fully open and the lock horn sounds one blast.

(7) When the exit lock gate is fully open and the lock horn has sounded one blast, the craft shall immediately leave the lock under full control of its operator.

(g) *Precedence at lock.* The craft arriving first at the lock shall be first to lock through; but precedence will be given to craft belonging to the United States or other local government entities, such as state, county, or municipality. Arrival posts may be established above and below the lock. Craft arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

[32 FR 9068, June 27, 1967, as amended at 48 FR 6707, Feb. 15, 1983]

§ 207.480 Lake Huron, Mich.; Harbor of refuge, Harbor Beach; use and navigation.

(a) All boats, barges, and vessels entering the harbor will be required to take such positions as may be assigned them by the officer in charge, who will direct their movements, either from the breakwater or from the Government tug on the harbor.

(b) In the absence of any directions as to position, boats, barges, and vessels entering the harbor will observe the following rule: The first steam vessel, or the first steam vessel with consort in tow, on entering the harbor for shelter, will proceed to the upper end of the breakwater. All steam vessels, and all steam vessels with consorts in tow, entering later, will place themselves in a compact position close to those preceding them. Sailing craft will so locate themselves that they will not lie in the way of other vessels entering the harbor. All vessels of every description will in no way place themselves so as to interfere with the work of reconstruction of piers, or repairs, that may be in progress at the time.

(c) The use of chains in making fast to the breakwater will not be permitted. Lines must be attached to the snubbing posts only, and outboard anchors taken in.

(d) Steam craft with barges or vessels in tow will, if practicable, at once place them compactly alongside the breakwater, either taking in the towlines entirely or passing them on the breakwater so as not to interfere in any way with the landing or departure of boats or vessels between them. If impracticable to place them alongside the breakwater, they will each drop anchor and at once take in all towlines extending from one to the other.

(e) Passenger boats will, in general, have the preference as to location and attention by the officer in charge. Rafts will give way to all documented craft.

(f) All classes of boats, barges, vessels, or other floating property making fast to the breakwater must at once place such fenders between themselves and the breakwater as may be thought necessary by the officer in charge to prevent chafing or other damage.

(g) The unloading of wood, coal, ballast, stone, or freight of any class upon the breakwater is expressly prohibited, except in certain cases allowed by special permission from the officer in charge.

(h) Each and every piece of floating property made fast to the breakwater, or anchored in the harbor, must keep outboard from sunset to sunrise a conspicuous white light, and must have upon it and in immediate charge of it a watchman during the entire time such floating property is in the harbor. All colored lights must be at once taken in, or covered, on dropping anchor or making fast to the breakwater.

[Regs., Apr. 3, 1906]

§ 207.560 Sandusky Harbor, Ohio; use, administration, and navigation.

(a)–(c) [Reserved]

(d) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(e) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 6, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.565 Vermilion Harbor, Ohio; use, administration, and navigation.

(a)–(b) [Reserved]

(c) No vessel or other craft shall moor or anchor to any structure of the United States without the consent of the District Engineer, Corps of Engineers.

(d) No vessel or other craft shall moor or anchor in or along any improved channel or basin in such a manner as to interfere with the improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel or craft is so moored or anchored, the owner thereof shall cause such vessel or craft to be

moved upon notification from, and within the time specified by, the District Engineer.

[13 FR 9564, Dec. 31, 1948, as amended at 42 FR 51773, Sept. 29, 1977; 42 FR 57962, Nov. 7, 1977]

§ 207.570 Harbors of Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut, Ohio; use, administration, and navigation.

(a)–(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.580 Buffalo Harbor, N.Y.; use, administration, and navigation.

(a)–(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.590 Black Rock Canal and Lock at Buffalo, N.Y.; use, administration, and navigation.

(a) The term ''canal'' when used in this section will mean all of the Black Rock Waterway, including Black Rock Lock, and all of the lands, piers, buildings, and other appurtenances acquired by letters patent from the State of New York, or constructed for the use of the waterway; the southerly limit thereof being at the southerly end of Bird Island Pier, and the northerly limit being at the downstream end of the guide pier, Black Rock Lock, a length of 3.7 miles.

(b) The canal and all of its appurtenances and the use, administration and navigation thereof shall be in charge of the District Engineer, U.S. Army Engineer District, in charge of the locality, or his authorized agents.

(c) The movement of all vessels, boats, or other floating things in the canal shall be under the direction of the authorized agents of the District Engineer in charge, and their orders and instructions must be obeyed.

(d) For passage through the canal, vessels or boats belonging to the U.S. Government shall have precedence over all others.

(e) All registered vessels or boats must pass through the canal in order of their arrival at the canal limits, unless otherwise directed in accordance with this section.

(f) [Reserved]

(g) No vessel shall pass or approach within ¼-mile of a vessel bound in the same direction in the Black Rock Canal south of the Ferry Street Bridge. Tugs without tows, tugs towing a single barge under 150 feet in length, and single vessels under 150 feet in length are exempt from this paragraph.

(h) No vessel or boat shall anchor in or moor along the canal except at localities specially designated by the District Engineer or his agent; and no business, trading, or landing of freight or baggage, except such articles as may be readily carried in the hand, will be allowed on or over the canal lands or structures, without the permission of the District Engineer or his agent.

(i) No person or operator of a vessel in the Black Rock Canal, lock or approaching channels shall throw or discharge or permit to be thrown or discharged any solid material of any kind or any petroleum product of any kind into the canal, lock or appurtenant waters.

(j) All vessels and tows shall be navigated with care so as not to strike or disturb the channel buoys or channel markers. If a buoy or other channel marker is accidentally struck, damaged or displaced, the fact shall be reported immediately to the Black Rock Lock, foot of Bridge Street, Buffalo, N.Y., telephone 876–5454.

(k) Ferry Street Bridge: The clearheadroom under the bridge at low water datum is 17.3 feet for a width of 86 feet from the pivot pier, thence decreasing to 12.3 feet at the left (westerly) abutment.

(1) All vessels and boats which cannot pass under the bridge shall, on approaching the bridge, reduce speed sufficiently to enable them to come to a dead stop, without touching the bridge, in case the movable span cannot be lifted. If the wind is dangerously strong, passage of the bridge shall not be attempted by large vessels without the aid of a tug or tugs.

(2) Vessels and boats bound north shall have the right-of-way and priority for passage through the bridge over those bound south.

(3) All vessels and boats desiring passage through the bridge shall signal therefor by one long and two short whistle blasts.

(4) Upon receiving the opening signal, the bridge operator shall answer by giving the same signal on the bridge whistle and he shall then proceed at once to lift the bridge.

(5) In case the bridge cannot be lifted, for any cause, the bridge operator shall answer a vessel signal by giving five short whistle blasts; and the vessel shall then be stopped until the bridge is ready to be lifted, when the bridge operator shall give the whistle signal for passage and the vessel may proceed.

(6) In case the bridge is disabled so that it cannot be lifted for one-half hour or more pending repairs, red flags will be displayed on the bridge in daytime and two red lantern lights, one above the other, at night; and when such signals are displayed no vessel or boat shall signal for or attempt passage through the bridge.

(l) Radio control of vessel movement in Black Rock Canal. (1) The movement of vessels in the Black Rock Canal will be controlled by radio communication between the Black Rock Lock and the vessels desiring to use the canal. Vessels will not be permitted to meet or pass in the channel of restricted width between the southerly end of Bird Island (approximately 3,500 feet northerly along the canal from the North Breakwater South End Light) and the International Railway Bridge near the southerly entrance to the Black Rock Lock. Vessels less than 150 feet in length and tugs towing a single barge under 150 feet in length are not to be included in this special condition. In addition to the control of vessel movements in the restricted section of the canal, radio communications will also be utilized to facilitiate the passage of vessels through the entire canal and the Black Rock Lock.

(2) Radio communication will be the only means of control of vessel traffic in the canal in order to prevent a meeting or passing of vessels in the restricted area, and therefore it is mandatory that all vessels over 150 feet in length and tugs towing a barge or barges over 150 feet in combined length of tow be equipped with radio communication equipment operating on designated frequencies. Any vessel lacking such equipment will not be permitted to enter the canal unless arrangements are made with the Black Rock Lock by land telephone to 876–5454 or marine ship-to-shore facilities immediately before entering the canal.

(3) The Black Rock Lock radio communication equipment operates on VHF(FM) frequencies as follows: VHF—156.8 Mcs—Channel 16—Safety and Calling, VHF—156.7 Mcs—Channel 14—Working; VHF—156.6 Mcs—Channel 12 Working. A listening watch is maintained on VHF Channel 16.

(4) In order that positive control may be maintained it is mandatory that the following procedures be followed in communicating by radio with the Black Rock Lock:

(i) Vessels desiring to enter the Black Rock Canal from either the Buffalo Outer Harbor or the Buffalo River shall call the Black Rock Lock on VHF Channel 16 or by land telephone approximately 15 minutes before the estimated time of arrival at Buffalo Harbor Traffic Lighted Bell Buoy 1 located at latitude N. 42°50.1′ and longitude W.

78°55.4′. Information to be furnished the Black Rock Lock Operator should include the name of the vessel, position, destination, length, draft (forward and aft) and the type of cargo. A second call shall be made to the lock when the vessel is abreast of the Buffalo Harbor Light on the southerly end of the detached West Breakwater. Information furnished the vessel by the Lock Operator will assure the vessel operator of the proper time to enter the Black Rock Canal with a view to safety and minimum delay.

(ii) Vessels desiring to enter the Black Rock Canal from either the Buffalo Outer Harbor or the Buffalo River shall call the Black Rock Lock on VHF Channel 16 or by land telephone to 876–5454 immediately before departing a dock and again when abreast of the North Breakwater South End Light on the southerly end of the North Breakwater.

(iii) In any radio communication from a vessel to the Black Rock Lock, and VHF(FM) frequencies will be utilized.

(iv) In any radio communication from a vessel to the Black Rock Lock, the VHF (FM) frequencies will be utilized if available in preference to the MF (AM) frequencies.

(v) When an initial radio contact has been made with the Black Rock Lock the vessel entering the canal shall maintain a standby watch at the radio until the passage through the canal and lock is completed.

(vi) Failure to comply with the foregoing procedures could result in considerable delay to a vessel and possibly in a collision between vessels in the restricted section of the canal.

(m) Black Rock Lock. All vessels and boats desiring to use the lock shall signal by two long and two short whistle blasts.

(1) Northbound vessels and boats shall not be brought to within less than 300 feet of the upper lock gates, nor shall southbound vessels be brought to within less than 200 feet of the lower lock gates, until the lock is made ready and the lockmaster in charge signals the vessel to enter the lock.

(2) Vessels and boats shall not moor to the approach walls of the lock at either end, for any other purpose than waiting for lockage, except by direction or permission of the lockmaster.

(3) Commercial vessels will receive perference in passage through the locks. Small vessels such as row, sail, and motor boats, bent on pleasure only, will be passed through the lock in company with commercial vessels when small vessels can be safely accomodated or in the absence of commercial vessels may be passed through the lock individually or together in one lockage on the hour if northbound and on the half hour if southbound. However, commercial vessels will receive preference which could delay the passage of pleasure craft. Pleasure craft will not be permitted to pass through the lock with vessels carrying inflammable cargo. Vessels and other large boats when in the lock shall fasten one head line and one spring line to the snubbing posts on the lock walls, and the lines shall not be cast off until the signal is given by the lockmaster for the boats to leave the lock.

(4) Vessels and boats will be passed through the lock in order of their arrival except that the lockmaster may order a small vessel to lock through in company with another vessel, irrespective of the former's order of arrival.

(5) All vessels and boats shall be maneuvered with great care so as not to strike any part of the lock walls, or any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the lock approaches.

(6) Vessels and boats shall not enter or leave until the lock gates are fully in their recesses, and the lockmaster has given direction for starting.

(7) [Reserved]

(8) Trespass on lock property is strictly prohibited. However, in that portion of the Black Rock Canal lying between the International Railway Bridge and the northerly end of the westerly lower guide pier, the following conditions shall apply to the embarking or disembarking of crew members or passengers of a vessel transiting the lock:

(i) Only the master or mate and two or three linesmen will be permitted to go ashore from transiting vessels and then only for normal operations and business incident to the transit. A

maximum of only four (4) men will be permitted to go ashore from any one ship.

(ii) No crew members will be permitted to board a ship at the locks unless previously requested in writing by the master or owners, and approved by canal authorities.

(iii) No crew member may leave a ship while it is in transit in the lock or canal unless certified in advance as an emergency by the vessel master and approved by canal authorities.

(iv) No guest passengers will be permitted to either board or disembark at the canal or locks.

(9) Schedule of Seasonal Operation:

(i) March 23 through June 14—6 a.m. to 11 p.m., daily.

(ii) June 15 through September 6–24 hours, daily.

(iii) September 7 through November 30—6 a.m. to 11 p.m., daily.

(iv) December 1 through March 22—8 a.m. to 4:30 p.m., daily. During the navigation season the hours may be extended by the district engineer, depending on conditions and the need for lockage service. Public notices will be issued announcing the opening and closing dates at least 10 days in advance of such dates.

(10) Non-Operational Hours Lockings. In addition to the above schedule of operating hours, commercial vessels may be locked through during non-operational hours with prior arrangements made through the U.S. Army Engineer District, Buffalo. Requests for non-operational hours lockings shall be made at lease 24 hours in advance by calling (716) 876–5454, extension 2284 or by radio as described in paragraph (l) of this section, Monday through Friday, 9 a.m. to 4 p.m., except holidays. Requests shall include the approximate time of arrival and the name and call letters of the vessel or, if the vessel is not equipped to receive radio messages, a telephone number at which messages may be received for the vessel. If a requested lockage must be delayed, prompt notification shall be given by telephone or radio.

[30 FR 3382, Mar. 13, 1965; 30 FR 3881, Mar. 25, 1965, as amended at 41 FR 34035, Aug. 12, 1976; 42 FR 57962, Nov. 7, 1977; 45 FR 51555, Aug. 4, 1980; 56 FR 13765, Apr. 4, 1991]

§ 207.600 Rochester (Charlotte) Harbor, N.Y.; use, administration, and navigation.

(a)–(b) [Reserved]

(c) No vessel shall moor or anchor to any structure of the United States without the consent of the District Engineer, U.S. Army, in charge of the locality, or his authorized agent.

(d) No vessel shall moor or anchor in or along any improved channel or basin in such manner as to interfere with improvement or maintenance operations therein. Whenever in the opinion of the District Engineer any vessel is so moored or anchored, the owner thereof shall cause said vessel to be moved upon notification from and within the time specified by said District Engineer.

[Regs., May 5, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.610 St. Lawrence River, Cape Vincent Harbor, N.Y.; use, administration, and navigation of the harbor and U.S. breakwater.

(a)–(c) [Reserved]

(d) Vessels shall observe the following rule in mooring to the breakwater: The first self-propelled vessel stopping at the harbor for shelter will proceed to the upstream end of the breakwater and moor along either side of it. All similar vessels entering later will place themselves in a compact position close to those preceding them. Passenger vessels will, in general, have preference as to location of moorage. Sailing craft will so locate themselves that they will not lie in the way of other vessels entering the harbor. All vessels of every description will place themselves so as not to interfere with any work of reconstruction or repair that may be in progress at the time.

(e) The use of chains in making fast to the breakwater is prohibited. Lines must be attached to the snubbing posts only, and outboard anchors taken in.

(f) Vessels with other craft in tow will, if practicable, at once, moor them compactly along the breakwater, either taking in the towlines or placing the slack in them upon the breakwater in such a manner as not to interfere with other vessels. If necessary to moor alongside of other vessels moored to the breakwater, the towlines shall

be taken in or disposed of in such a manner as not to interfere with the departure of vessels moored between them and the breakwater.

(g) Vessels of every description mooring to the breakwater, must place suitable fenders between themselves and the breakwater to protect the timber walings on the breakwater from damage.

(h) The unloading of freight of any class upon the breakwater is expressly prohibited, except in accordance with special permission from the said District Engineer or his representative.

(i) Each and every vessel made fast to the breakwater, or anchored in the harbor without a line made fast to the shore or shore dock, must have at least one experienced person upon it during the entire time said vessel is thus moored in the harbor.

[Regs., May 6, 1938, as amended at 25 FR 8908, Sept. 16, 1960; 42 FR 57962, Nov. 7, 1977]

§ 207.640 Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration, and navigation.

(a) *Sacramento Deep Water Ship Channel Barge Lock and Approach Canals; use, administration and navigation*—(1) *General*. The lock, its approach channels and all its appurtenances, including the highway and railroad bridge, shall be under the jurisdiction of the District Engineer, U.S. Army Engineer District, Sacramento, Federal and Courts Building, 650 Capitol Avenue, Sacramento, California. His designated representative at the locality shall be the lockmaster, who will be in immediate charge of movement and position of all water traffic while at or near the locks and in the barge canals.

(2) *Immediate control*. The lockmaster shall be charged with the immediate control and management of the lock, bridge, and of the area set aside as the lock area, including the entrance channels. He shall see that all laws, rules and regulations for the use of the lock, bridge and the lock area are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the Government lock area. Crews shall render such assistance in the lockage of their craft as may be required by the lockmaster.

(3) *Signals*—(i) *Sound*. All craft desiring lockage shall signal by two long blasts followed by two short blasts of the whistle, delivered at a distance of one-half mile from the lock. When the lock is ready for entrance, notice will be given by one long blast from the control house. Permission to leave the lock will be one short blast given by the lockmaster.

(ii) *Visual lock traffic signals*. Visual signals are located outside of each lock gate on the north guide wall, and will be used in conjunction with sound signals. When the red light is flashing, lock cannot be made ready for entrance immediately, vessel must stand clear. When the amber light is flashing, lock is being made ready, prepare for lockage. When the green light is flashing, lock is ready for entrance, the vessel may proceed with caution into the lock.

(iii) *Visual river traffic signals*. Visual signals are located on the south bank of the barge canal at the confluence with the Sacramento River and also 1,950 feet upstream on the west bank of the Sacramento River. When the red light is on, a river-bound vessel of a size making passing in the canal hazardous is in the lock or canal. Approaching vessel shall stand clear of canal to permit out-going vessel to pass. When the amber light is on, a river-bound vessel of a size to permit passing is in the lock or canal. Vessel may enter canal with caution. When the green light is on, vessel may enter canal and proceed under full control.

(iv) *Radio*. The lock is equipped with two-way radio operating on a frequency of 156.60 mc. The frequency is monitored by the lock personnel. Vessels equipped with two-way radio may communicate with the crew operating the lock but communications or signals so received will only augment and not replace the sound and visual signals.

(4) *Permissible dimensions of vessels and tows*. The lock chamber has a maximum usable width of 86 feet and length of 600 feet. The sill at the harbor end and the bottom of the lock chamber are −13.0 feet elevation, CofE

datum, and usually provides a depth of water ranging from 14.0 feet at LLW to 19.4 feet at HHW, with greater depths during large floods in the delta. The sill at the river end is at −10.0 feet elevation, CofE datum, and usually provides a depth of water ranging from 14.6 feet at LLW to 16.8 feet at HHW, with greater depths when the river is high. The depth of water at any time is indicated by staff gages located on the south wall of the lock, riverward and harborward of each lock gate and at the center of the lock. A vessel must not attempt to enter the lock if its beam or length is greater than indicated above, or if its draft exceeds the depth of water indicated by the gages, with due allowance for clearance.

(5) *Precedence at lock*. Ordinarily, craft will be locked through in order of arrival; however, depending upon whether the lock is full or empty, this precedence may be modified at the discretion of the lockmaster if boats are approaching from the opposite direction and are within reasonable distance of the lock at the time of the approach by the first boat. When several craft are to pass, precedence shall be given as follows:

First: Government owned or controlled craft.
Second: Commercial craft.
Third: Passenger boats.
Fourth: Small vessels and pleasure boats.

(6) *Loss of turn*. Boats that fail to enter the lock with reasonable promptness, after being authorized to do so, shall lose their turn.

(7) *Multiple lockage*. The lockmaster shall decide whether one or more vessels may be locked through at the same time.

(8) *Speed*. Vessels shall not be raced or crowded alongside another in the barge canals. When entering the barge canals and lock, speed shall be reduced to a minimum consistent with safe navigation. As a general rule, when a number of vessels are entering the lock, the following vessel shall remain at least 200 feet astern of the vessel ahead. No overtaking, except when directed by lockmaster, will be permitted.

(9) *Lockage of small boats*—(i) *General*. The lockage of pleasure boats, skiffs, fishing boats and other small craft will be coordinated with the lockage of commercial craft. If no commercial craft are scheduled to be locked through within a reasonable time, not to exceed one hour after the arrival of the small craft at the lock, separate lockage will be made for such small craft.

(ii) *Signals*. Small boats desiring to use the lock will sound two long blasts followed by two short blasts of the horn. When the lock is ready for entrance, the lockmaster will notify the small boat by one long blast of the horn; or through the public address system. Permission to leave the lock will be given by the lockmaster by one short blast of the horn.

(10) *Mooring in lock*. All boats, when in the lock, shall be moored to the fastenings provided for that purpose, by bow and stern lines and other spring lines as may be necessary, and the lines shall not be let go until the signal is given by the lockmaster for the craft to leave the lock.

(11) *Waiting for lockage*. The mooring or anchoring of boats or other craft in the approaches to the lock, where such mooring will interfere with navigation of the lock is prohibited. All boats, barge tows and other craft to be passed through the lock shall lie in designated waiting areas in such manner as not to interfere with the navigation of the lock or its approaches, and, if a barge tow is to be divided into sections for locking, the sections shall be brought into the lock as directed by the lockmaster. After passing through the lock, the sections shall be reassembled at such a distance from the entrance as not to obstruct or interfere with navigation of the lock or its approaches.

(12) *Delay in lock*. Boats or barges must not obstruct navigation by unnecessary delays in entering or leaving the lock.

(13) *Damage to lock or other structures*. The regulations contained in this paragraph shall not relieve the owners and operators of vessels from liability for any damage by their operations to the lock or other structures. They must use great care not to strike any part of the lock, any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the approach canals. All boats with metal nosings or projecting irons,

or rough surfaces that would be liable to damage the gates or lock walls, will not be permitted to enter the lock unless provided with suitable buffers and fenders.

(14) *Tows*. Tows shall be made up outside the canal entrance. All vessels engaged in towing other vessels not equipped with a rudder shall use two tow lines or a bridge and one tow line. If the vessel in tow is equipped with a rudder, one tow line may be used. All tow lines or hawsers must be hauled as short as practicable for safe handling of tows.

(15) *Crew to move craft*. The pilots in charge of tows and persons in charge of other craft must provide a sufficient number of men to handle lines in mooring craft and to move barges and other craft into and out of the lock easily and promptly.

(16) *Handling valves, gates, bridges and machinery*. No person, unless authorized by the lockmaster shall open or close any bridge, gate, valve or operate any machinery in connection with the lock; but the lockmaster may, under emergency conditions, call for assistance from the master of any boat using the lock, should such aid be necessary, and when rendering such assistance, the man so employed shall be strictly under the orders of the lockmaster.

(17) *Landing of freight*. No one shall land freight or baggage on or over the walls of the lock so as in any way to delay or interfere with navigation or the operation of the lock.

(18) *Refuse in lock*. No material of any kind shall be thrown or discharged into the lock, and no material of any kind shall be deposited into the lock area.

(19) [Reserved]

(20) *Persistent violation of regulations*. If the owner or pilot of any boat persistently violates the regulations of this paragraph after due notice of the same, lockage may be refused by the lockmaster at the time of the violation or subsequent thereto, as required in the interest of public safety or protection of Government property.

(21) *Other laws and regulations*. In all other respects, the existing Federal laws, rules and regulations affecting navigable waters of the United States will govern in the use, administration and navigation of the ship channel, lock and its approaches.

[26 FR 11201, Nov. 28, 1961, as amended at 27 FR 4737, May 18, 1962; 27 FR 10484, Oct. 27, 1962; 28 FR 8461, Aug. 17, 1963; 31 FR 6590, May 3, 1966; 33 FR 14166, Sept. 19, 1968; 42 FR 17120, Mar. 31, 1977; 42 FR 57962, Nov. 7, 1977; 48 FR 6708, Feb. 15, 1983; 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986; 56 FR 13765, Apr. 4, 1991]

§ 207.680 Willamette River, Oreg.; use, administration, and navigation of canal and locks at Willamette Falls, Oreg.

(a) *Administration*—(1) *Administrative jurisdiction*. The canal and locks and all appurtenances shall be in the charge of the District Engineer, Portland District, Corps of Engineers, Department of the Army, 319 S.W. Pine Street, Portland, Oregon 97208. The representative of the District Engineer at the locality shall be the lockmaster, who shall receive his orders and instructions from the district engineer. In case of emergency, however, the lockmaster shall have authority to take such steps as may be immediately necessary without waiting for instruction from the district engineer.

(2) *Operational jurisdiction*. The lock master shall be charged with the immediate control and management of the canal and locks and the grounds and public property pertaining thereto. He shall see that all laws, rules and regulations, for the use of the canal and grounds are duly complied with, to which end he is authorized to give all necessary orders and directions in accordance therewith, both to employees of the Government and to any and every person within the limits of the canal and locks or grounds pertaining thereto, whether navigating the canal or not. In case of the absence or disability of the lock master, his duty shall be performed by an assistant or other employee to be designated by the District Engineer.

(b) *Use and navigation*—(1) *Authority of lock master*. The lock master or his assistants shall direct the movement, operation, and moorage of all vessels, boats, rafts, barges, or other floating things using the locks, while they are in the locks, the canal basin, or in either the upstream or downstream lock approaches. Crews of vessels, boats,

rafts, barges, or other floating things seeking lockage shall render such assistance as the lock master or his assistants may require.

(2) *Signals.* All vessels desiring lockage shall signal the same by one long and one short blast of the whistle, delivered at a distance of approximately 1,000 feet from the locks. Requests for lockage may also be made by contacting the lockmaster on VHF-FM radio on channel 14, at WUJ 363, Willamette Falls Locks or by telephone or otherwise notifying the lockmaster's office. Notice to vessels desiring lockage will be given by red and green traffic lights. Vessels may enter locks on green lights, but must await green signal when lights are red. Permission to leave the lock will be given in the same manner. In the event a failure occurs and the referenced lights cannot be operated, the lockmaster will indicate by voice or by hand or lantern signals when vessels may enter or leave the locks.

(3) *Controlling dimensions.* For lockage purposes the maximum length of space available is 175 feet and the maximum clear width available is 37 feet. All vessels, boats, rafts, barges, or other floating things of less size than the foregoing dimensions can pass through the locks. The controlling water depth over the intermediate miter sills throughout the locks is 6.5 feet. However, the depth on the sill of the upstream gate at low water is 7.5 feet and over the downstream sill is 8.4 feet. The elevation of the upstream sill is 43.7 feet and of the downstream sill is −6.4 feet, corresponding to the elevations shown on the gages provided at both the downstream and upstream approaches to the locks. All vessels, boats, rafts, barges, and other floating things of which the dimensions or draft are greater than will permit clearing any of the above indicated elevations shall be prohibited from entering the locks. All vessels, boats, rafts, barges or other floating things entering the locks in violation of the above shall be responsible for all resulting damages.

(4) *Precedence at locks.* Ordinarily the vessel, boat, raft, barge, or other floating thing arriving first at the lock will be locked through first. In the event of a simultaneous approach from opposite directions ascending craft will ordinarily be locked through first. When several boats are to be passed through the locks, the order of precedence shall be as follows:

(i) To boats owned by the United States or employed upon river and harbor improvement work.

(ii) To passenger boats.

(iii) To freight and tow boats.

(iv) To rafts.

(v) To small vessels and pleasure craft.

The lock master shall have authority to digress from the above precedence in order to eliminate reversing the flow of traffic through the locks when both upbound and downbound lockages are in waiting.

(5) *Entrance to locks.* The lock master shall decide whether one or more vessels may be locked through at the same time. No one shall attempt to enter the locks with a vessel or attempt to cause a vessel to enter the locks until he is authorized by the lock master to do so. No one shall take a vessel, or cause a vessel to be taken, within the limits of 500 feet above the upper gate and 300 feet below the lower gate, except for the purpose of entering the locks; and not for this purpose until it has been indicated to him by a proper person by signal that the lock is ready to receive the vessel. All vessels within the foregoing limits must be operated under ''slow bell'' and be kept constantly under control.

(6) *Lockage of small boats.* Pleasure boats, skiffs, fishing boats, and other small craft may be passed through the locks singularly, in groups, or as part of a lockage of other than pleasure craft. A continual flow of traffic in one direction will not be interrupted or reversed to accommodate these small pleasure boats. However, any such small boat will be accommodated at such time as the lock master upon receipt of a request for lockage deems such action will not interfere with other traffic. The decision of the lock master shall be final as to whether craft requesting lockage is defined as a pleasure boat.

(7) *Use of canal locks.* No person, unless authorized by the lockmaster or his assistants, shall open or close any

bridge, lock gate, wicket gate, or operate any lock machinery, or in any way interfere with any mechanism or appliance connected with the operation of the locks, nor shall anyone interfere with the employees in the discharge of their duties. The lockmaster or his assistants may call for aid from the persons in charge of any craft, vessel, or raft using the lock should such aid be necessary. Persons rendering such assistance shall be strictly under the orders of the lockmaster. The Government reserves the right to refuse lockage to any vessel, craft or raft when the persons in charge thereof refuse to give such assistance when it is requested. The persons in charge of vessels with tows or rafts, barges and other craft must provide sufficient personnel, lines and towing equipment of sufficient power to insure at all times full control of such tows, rafts, barges and other craft while moving into and through the locks, unless otherwise prearranged with the lockmaster. A copy of these regulations shall be kept on board each vessel regularly engaged in navigating the locks. Copies may be obtained without charge from the lockmaster or from the District Engineer, Corps of Engineers, Department of the Army, 319 S.W. Pine Street, Post Office Box 2946, Portland, Oregon 97208.

(8) *Petroleum vessels*. All tankers, barges, and other floating equipment, used for transporting inflammable liquids, either with or without cargo, shall be equipped with fixed timber fenders and, if not so equipped, shall have aboard an adequate number of suitable fenders of timber, rubber, or rope which are to be placed between the vessel and unfendered lock structures. All such barges or other vessels navigating without power within the canal or locks must be assisted by one or more tugs of sufficient power to insure full control at all times whether passing upstream or downstream through the locks with or without cargo.

(9) *Mooring in locks*. All boats, barges, rafts, and other craft when in the locks shall be moored by head and spring lines and such other lines as may be necessary to the fastenings provided for that purpose; and the lines shall not be unloosed until the signal is given for the vessel to leave the lock.

(10) *Mooring while waiting for lockage*. The mooring of boats, tows or other craft in the approaches to the locks where such mooring will interfere with navigation or other vessels to or from the locks is prohibited.

(11) *Delays*. Boats, barges, rafts, or other craft must not obstruct navigation by unnecessary delay in entering or leaving the locks. Vessels failing to enter the locks with reasonable promptness, when signaled to do so, and vessels arriving at the locks with their tows in such shape so as to impede lockage shall forfeit their turn.

(12) *Landing of freight*. No freight or baggage shall be unloaded on or over the walls of the canal or locks. Freight and baggage consigned to the Willamette Falls locks shall be unloaded only at such places as may be provided for this purpose or as directed by the lock master.

(13) *Refuse in canal or locks*. No refuse or other material shall be thrown or dumped from vessels into the canal and locks, or deposited in the lock area, or placed on the berm of the canal so that it is liable to be thrown or washed into the waterway. Violations of this paragraph (b)(13) shall be subject to sections 13 and 16 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 407, 411).

(14) *Damage to locks or other structures*. The regulations contained in this section shall not affect the liability of the owners and operators of vessels for any damage caused by their operations to the locks or other structures. Persons in charge of vessels and log rafts passing through the locks must use great care to prevent the vessels or log rafts from striking any gate or appurtenance thereto. All boats or barges with metal nosings, or projecting irons, or rough surfaces, and log rafts with dragging cables that may damage any part of the lock structures will not be permitted to enter the locks unless said craft are provided with suitable protective buffers and fenders and log rafts are free of loose, dragging cables.

(c) [Reserved]

(d) *Trespass*. No one shall trespass on the grounds or buildings, and everyone shall be deemed guilty of trespass within the meaning of this paragraph who

shall willfully or carelessly damage or disfigure the canal and locks or any part thereof, or any building or appliance on the grounds, or who shall carry on business or trading of any sort, or shall build any fishing stand or lead, or set any fish net within the limits of the reservation, or do any act to or on the grounds or buildings which would be recognized by law as a trespass.

(e) *Definitions*. Except as otherwise provided in paragraph (b)(6) of this section, whenever such a word as ''vessel'', ''boat'', ''barge'', ''raft'', or the like is used in this section, it shall include all types of floating things which may be subject to lockage. Failure to refer specifically to a type of floating thing by its name shall not mean exclusion thereof from applicability of this section.

[19 FR 5816, Sept. 9, 1954, as amended at 35 FR 14988, Sept. 26, 1970; 48 FR 10062, Mar. 10, 1983; 56 FR 13765, Apr. 4, 1991]

§ 207.718 Navigation locks and approach channels, Columbia and Snake Rivers, Oreg. and Wash.

(a) *General*. All locks, approach channels, and all lock appurtenances, shall be under the jurisdiction of the District Engineer, Corps of Engineers, U.S. Army, in charge of the locality. The district engineer may, after issuing a public notice and providing a 30-day opportunity for public comment, set (issue) a schedule for the daily lockage of recreational vessels. Recreational vessels are pleasure boats such a row, sail, or motor boats used for recreational purposes. Commercial vessels include licensed commercial passenger vessels operating on a published schedule or regularly operating in the ''for hire'' trade. Any recreational schedule shall provide for a minimum of one scheduled recreation lockage upstream and downstream (two lockages) each day. At the discretion of the district engineer, additional lockages may be scheduled. Each schedule and any changes to the schedule will be issued at least 30 days prior to implementation. Prior to issuing any schedule or any change to the schedule, the district engineer will consider all public comments and will evaluate the expected energy situation, water supply, and recreation use of the lock to determine the seasonal need for the schedule or change in schedule. The district engineer's representative at the locks shall be the project engineer, who shall issue orders and instructions to the lockmaster in charge of the lock. Hereinafter, the term ''lockmaster'' shall be used to designate the person in immediate charge of the lock at any given time. In case of emergency and on all routine work in connection with the operation of the lock, the lockmaster shall have authority to take action without waiting for instructions from the project engineer.

(b) *Lockage control*. The Lock Master shall be charged with immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. Upstream and downstream approach channels extend to the end of the wing or the guide wall, whichever is longer. At Bonneville lock the upstream approach channel extends to the mooring tie offs at Fort Rains and the downstream approach channel extends to the downstream tip of Robins Island. The Lock Master shall demand compliance with all laws, rules and regulations for the use of the lock and lock area and is authorized to issue necessary orders and directions, both to employees of the Government or to other persons within the limits of the lock or lock area, whether navigating the lock or not. Use of lock facilities is contingent upon compliance with regulations, Lock Master instructions and the safety of people and property.

(c) *Authority of Lock Master*. No one shall initiate any movement of any vessel in the lock or approaches except by or under the direction of the Lock Master. (''Vessel'' as used herein includes all connected units, tugs, barges, tows, boats or other floating objects.)

(d) *Signals*—(1) *Radio*. All locks are equipped with two-way FM radio operating on channel 14, frequency of 156.700 MHz, for both the calling channel and the working channel. Vessels equipped with two-way radio desiring a lockage shall call WUJ 33 Bonneville, WUJ 34 The Dalles, WUJ 35 John Day, WUJ 41 McNary, WUJ 42 Ice Harbor, WUJ 43 Lower Monumental, WUJ 44 Little Goose, or WUJ 45 Lower Granite,

at least one-half hour in advance of arrival since the Lock Master is not in constant attendance of the locks. Channel 14 shall be monitored constantly in the vessel pilot house from the time the vessel enters the approach channel until its completion of exit. Prior to entering the lock chamber, the commercial freight or log-tow vessel operator shall report the nature of any cargo, the maximum length, width and draft of the vessel and whether the vessel is in any way hazardous because of its condition or the cargo it carries or has carried.

(2) *Pull-cord signal stations.* Pull-cord signal stations marked by large instructional signs and located near the end of the upstream and downstream lock entrance walls may be used in place of radios to signal the Lock Master for a lockage.

(3) *Entering and exit signals.* Signal lights are located outside each lock gate. When the green (go) light is on, all vessels will enter in the sequence prescribed by the Lock Master. When the red (stop) light is on, the lock is not ready for entrance and vessels shall stand clear. In addition to the above visual signals, the Lock Master will signal that the lock is ready for entrance by sounding one long blast on the lock air horn. The Lock Master will signal that the lock is ready for exit by lighting the green exit light and sounding one short blast on the air horn.

(4) *Craft lockage-readiness signal.* Upon query from Lock Master, a vessel operator will signal when he is properly moored and ready for the lockage to begin.

(e) *Permissible dimensions of vessels.* Nominal overall dimensions of vessels allowed in the lock chamber are 84 feet wide and 650 feet long. Depth of water in the lock depends upon river levels which may vary from day to day. Staff gauges showing the minimum water level depth over gate sills are located inside the lock chamber near each lock gate and outside the lock chamber near the end of both upstream and downstream guide walls, except at Bonneville where the staff gauges show water levels in feet above MSL and are located on the southern guide walls at the upstream and downstream miter gates. Bonneville's upstream sill elevation is 51 feet MSL and the downstream sill elevation is −12 feet MSL. Depth over sill at Bonneville is determined by subtracting the sill elevation from the gauge reading. Vessels shall not enter the navigation lock unless the vessel draft is at least one foot less than the water depth over the sill. Information concerning allowable draft for vessel passage through the locks may be obtained from the Lock Master. Minimum lock chamber water level depth is 15 feet except at Ice Harbor where it is 14 feet and at Bonneville where it is 19 feet. When the river flow at Lower Granite exceeds 330,000 cubic feet per second the normal minimum 15-foot depth may be decreased to as little as eight feet.

(f) *Precedence at lock.* Subject to the order of precedence, the vessel or tow arriving first; at the lock will be locked through first, however, this precedence may be modified at the discretion of the lockmaster. If immediate passage is required, lockage of vessels owned or operated by the United States shall take precedence. The precedence of all other vessels shall be as follows:

(1) When a recreational vessel lockage schedule is in effect, at the appointed time for lockage of recreation craft, recreation craft shall take precedence; however, commercial vessels may be locked through with recreation craft if safety and space permit. At other than the appointed time, the lockage of commercial and tow vessels shall take precedence and recreational craft may (only) lock through with commercial vessels only as provided in paragraph (h) of this section.

(2) If a recreational vessel lockage schedule is not in effect, commercial and tow vessels shall take precedence. Recreational craft may be locked through with commercial craft. If no commercial vessels are scheduled to be locked through within a reasonable time, not to exceed one hour after the arrival of the recreational vessels at the lock, the recreational vessel may be locked through separately. If a combined lockage cannot be arranged, the recreational craft shall be locked through after waiting three commercial lockages.

(g) *Loss of turn.* Vessels that fail to enter the lock with reasonable promptness, after being authorized to do so, shall lose their turn.

(h) *Lockage*—(1) *Multiple lockage.* The Lock Master shall decide whether one or more vessels or tows may be locked through at the same time. Vessels with flammable or highly hazardous cargo will be passed separately from all other vessels. Hazardous materials are described in part 171, title 49, Code of Federal Regulations. Flammable materials are defined in the National Fire Code of the National Fire Protection Association.

(2) *Recreational craft.* By mutual agreement of (all parties,) the lockmaster and the captains of the vessels involved, recreational vessels may be locked through with commercial vessels. Under the recreational vessel schedule, separate lockage will not be made by recreational vessels except in accordance with the recreational lockage schedule or when circumstances warrant, such as in an emergency. When recreational craft are locked simultaneously with commercial vessels, the recreational vessel will enter the lock chamber after the commercial vessel is secured in the chamber and when practicable will depart while the commercial vessel remains secured.

(3) *Special schedules.* Recreational boating groups may request special schedules by contacting the district engineer. The schedule for the daily lockage of recreational vessels will indicate the number of boats required for a special schedule and how many days' notice is required in order to arrange a special schedule.

(i) *Mooring in approaches prohibited.* Mooring or anchoring in the approaches to the lock is prohibited where such mooring will interfere with navigation.

(j) *Waiting for lockage.* Vessels waiting for lockage shall wait in the clear outside of the lock approach channel, or contingent upon permission by the Lock Master, may at their own risk, lie inside the approach channel at a place specified by the Lock Master. At Bonneville, vessels may at their own risk, lay-to at the downstream moorage facility on the north shore downstream from the north guide wall provided a 100-foot-wide open channel is maintained.

(k) *Mooring in lock.* All vessels must be moored within the lock chamber so that no portion of any vessel extends beyond the lines painted on the lock walls. Moorage within the lock chamber will be to floating mooring bits only and will be accomplished in a proper no-slip manner. Small vessels will not be locked with a large vessel unless the large vessel is so moored (two mooring bits) that no lateral movement is possible. The vessel operator will constantly monitor the position of his vessel and his mooring bit ties to assure that there is no fore or aft movement of his vessel and lateral movement is minimized. Propulsion by vessels within the lock chamber will not be permitted during closure operation of a lock chamber gate or as otherwise directed by the Lock Master.

(l) *Crew to move craft.* During the entire lockage, the vessel operator shall constantly attend the wheelhouse, be aware of the vessel's position, and monitor radio channel 14 on frequency 156.700 MHz, or otherwise be constantly able to communicate with the Lock Master. At a minimum, vessels shall be as vigilantly manned as if underway.

(m) *Speed.* Vessels shall be adequately powered to maintain a safe speed and be under control at all times. Vessels shall not be raced or crowded alongside another in the approach channels. When entering the lock, speed shall be reduced to a minimum consistent with safe navigation. As a general rule, when a number of vessels are entering the lock, the following vessel shall remain at least 200 feet astern of the vessel ahead.

(n) *Delay in lock.* Vessels shall not unnecessarily delay any operation of the locks.

(o) *Landing of freight.* No freight, baggage, personnel, or passengers shall be landed on or over the walls of the lock, except by permission and direction of the Lock Master.

(p) *Damage to lock or other structures.* The regulations in this section shall not relieve owners and/or operators of vessels from liability for any damage to the lock or other structures or for

the immediate removal of any obstruction. No vessel in less than stable floating condition or having unusual sinking potential shall enter the locks or its approaches. Vessels must use great care not to strike any part of the lock, any gate or appurtenance thereto, or machinery for operating the gates, or the walls protecting the banks of the approach channels. All vessels with projecting irons, or rough surfaces which may damage the gates or lock walls, shall not enter the lock unless provided with suitable buffers and fenders. Vessels having chains, lines, or drags either hanging over the sides or ends or dragging on the bottom for steering or other purposes will not be permitted to pass.

(q) *Tows*. Prior to a lockage, the person in charge of a vessel towing a second vessel by lines shall, at a safe distance outside of the incoming approach channel, secure the second vessel to the towing vessel and keep it secured during the entire course of a lockage and until safely clear of the outgoing approach channel.

(r) *Violation of regulations*. Any violation of these regulations may subject the owner or master of any vessel to any or all of the following: (1) Penalties prescribed by law of the U.S. Government (33 U.S.C. part 1); (2) Report of violation to the titled owner of the vessel; (3) Report of violation to the U.S. Coast Guard; (4) Refusal of lockage at the time of violation.

(s) *Refuse in locks*. No material of any kind shall be thrown or discharged into the lock, or be deposited in the lock area. Vessels leaking or spilling cargo will be refused lockage and suitable reports will be made to the U.S. Coast Guard. Deck cargo will be so positioned so as not to be subject to falling overboard.

(t) *Handling valves, gates, bridges, and machinery*. No person, unless authorized by the Lock Master, shall open or close any bridge, gate, valve, or operate any machinery in connection with the lock. However, the Lock Master may call for assistance from the master of any vessel using the lock, should such aid be necessary; and when rendering such assistance, the person so employed shall be directly under the orders of the Lock Master. Masters of vessels refusing to provide such assistance when it is requested of them may be denied the use of the lock by the Lock Master.

(u)–(v) [Reserved]

(w) *Restricted areas*. No vessel shall enter or remain in any restricted area at any time without first obtaining permission from the District Engineer, Corps of Engineers, U.S. Army, or his duly authorized representative.

(1) *At Bonneville Lock and Dam*. The water restricted to all vessels, except Government vessels, are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above the first powerhouse, spillway, and second powerhouse (excluding the new navigation lock channel) and all waters below the first powerhouse, spillway, second powerhouse, and old navigation lock. This is bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the river and running in a South 65 degrees West direction a distance of approximately 2,100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington shore. Signs designate the restricted areas. The approach channel to the new navigation lock is outside the restricted area.

(2) *At the Dalles Dam*. The waters restricted to only Government vessels are described as all downstream waters other than those of the navigation lock downstream approach channel which lie between the Wasco County Bridge and the project axis including those waters between the powerhouse and the Oregon shore and all upstream waters other than those of the navigation lock upstream approach channel which lie between the project axis and a line projected from the upstream end of the navigation lock guide wall to the junction of the concrete structure with the earth fill section of the dam near the upstream end of the powerhouse.

(3) *At the John Day Dam*. The waters restricted to only Government vessels are described as all of the waters within a distance of about 1,000 yards above the dam lying south of the navigation channel leading to the lock and bounded by a line commencing at the upstream end of the guide wall, and running in a direction 54°01′37″ true for a distance of 771 yards, thence 144°01′37″ true across the river to the south

shoreline. The downstream limit is marked by orange and white striped monuments on the north and south shores.

(4) *At McNary Lock and Dam.* The waters restricted to all vessels, except to Government vessels, are described as all waters commencing at the upstream end of the Oregon fish ladder thence running in the direction of 39°28′ true for a distance of 540 yards; thence 7°49′ true for a distance of 1,078 yards; thence 277°10′ for a distance of 468 yards to the upstream end of the navigation lock guidewall. The downstream limits commence at the downstream end of the navigation lock guidewall thence to the south (Oregon) shore at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(5) *At Ice Harbor Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters within a distance of about 800 yards upstream of the dam lying south of the navigation lock and bound by the line commencing at the upstream end of the guidewall, and running a direction of 91°10′ true for a distance of 575 yards; thence 162°45′ to the south shore, a distance of about 385 yards. The downstream limits commencing at the downstream end of the guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(6) *At Lower Monumental Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 46°25′ true for a distance of 344 yards; thence 326°19′ true for a distance of 362 yards; thence 243°19′ true for a distance of 218 yards; thence 275°59′ true to the north shore a distance of about 290 yards. The downstream limits commence at the downstream end of the navigation lock guidewall; thence to the north shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

(7) *At Little Goose Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall and running in a direction of 60°37′ true for a distance of 676 yards; thence 345°26′ true for a distance of 494 yards; thence 262°37′47″ true to the dam embankment shoreline. The downstream limits commence 512 yards downstream and at right angles to the axis of the dam on the south shore; thence parallel to the axis of the dam to the north shore. Signs designate the restricted areas.

(8) *At Lower Granite Lock and Dam.* The waters restricted to all vessels, except Government vessels, are described as all waters commencing at the upstream of the navigation lock guidewall thence running in the direction of 131°31′ true for a distance of 608 yards; thence 210°46′ true to the south shore, a distance of about 259 yards. The downstream limits commence at the downstream end of navigation lock guidewall; thence to the south shore, at right angles and parallel to the axis of the dam. Signs designate the restricted areas.

[43 FR 3115, Jan. 23, 1978, as amended at 52 FR 22310, June 11, 1987; 56 FR 13765, Apr. 4, 1991; 65 FR 4125, Jan. 26, 2000; 71 FR 25503, May 1, 2006]

§ 207.750 Puget Sound Area, Wash.

(a) *Waterway connecting Port Townsend and Oak Bay; use, administration and navigation*—(1) *Works to which the regulations apply.* The ''canal grounds'' when used in this paragraph shall mean that area between the south end of the jetties in Oak Bay and the northern end of the dredge channel approximately 400 yards northwest of Port Townsend Canal Light. The ''canal'' is the water lying between these limits and the banks containing the same.

(2) [Reserved]

(3) *Trading, landing, etc.* No business, loading, or landing of freight or baggage will be allowed on or over the canal piers or bulkheads.

(4) *Refuse.* No person shall throw material of any kind into the canal.

(5) [Reserved]

(6) *Obstructions.* On the canal's being obstructed by a vessel, raft, or other craft, by sinking, grounding, or otherwise, the District Engineer, Seattle, shall be notified by telephone or telegraph as soon as possible by the person

in charge of the obstructing vessel, raft, or craft.

(b) *Lake Washington Ship Canal; use, administration and navigation*—(1) *Definitions*. The term ''canal'' as used in the regulations in this paragraph shall include the water area in the locks and the channel and adjacent waters from a point 5,500 feet northwest of the Burlington Northern, Inc. railway bridge to the east end of the channel opposite Webster Point, Lake Washington. The term ''canal grounds'' shall include all grounds set aside for the use of the canal or occupied in its construction.

(2) *Supervision*. The canal and all its appurtenances shall be under the supervision of the District Engineer, Corps of Engineers, Seattle. The District Engineer will detail as many assistants as may be necessary for the efficient operation of the canal and the enforcement of the regulations in this paragraph. The movement of all vessels and other floating things in the canal and approaches thereto shall be under the direction of the District Engineer and his authorized assistants. All orders given under the regulations to any master or person in charge of any vessel, raft, or other watercraft by the District Engineer or his authorized assistants, either in person or through any canal operative, shall be acknowledged and obeyed. Failure to see, understand, or comply with signals or instructions shall constitute a violation of the regulations. Any person refusing to comply with the regulations or any orders given in pursuance thereof may be denied the privileges of the canal or canal grounds.

(3) *Speed*. To avoid damage to other vessels and to property along the shores, all vessels shall proceed at reduced speed in the canal as follows:

(i) From the west entrance of the Lake Washington Ship Canal to the western end of the west guide pier of the Hiram M. Chittenden Locks, and from the east end of the easternmost guide pier of said Locks to the white flashing dolphin located south of Webster Point on Lake Washington, including all of Salmon Bay, Lake Union, Portage Bay, and Union Bay, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 7 nautical miles per hour within 200 feet of any shoreline, pier, restricted area or shore installation.

(ii) From the western end of the aforesaid west guide pier to the eastern end of the aforesaid east guide pier at said Locks, it shall be unlawful for any person to operate any watercraft or vessel at a speed in excess of 4 nautical miles per hour.

NOTE: Signs are located along the canal to indicate permissible speeds.

(4) *Traffic signal lights*. In addition to the lock signal lights described in paragraph (g)(5)(ii) of this section, a red light, and a green light are installed on the west side of the Ballard Bridge, on the east side of the Fremont Bridge, 1,000 feet west of the Montlake Bridge, and 1,000 feet east of the Montlake Bridge, for the guidance of vessels approaching the sections of the canal between Salmon Bay and Lake Union and between Lake Union and Lake Washington, respectively. Vessels of 300 gross tons and over and all vessels with tows, except as hereinafter provided, shall not pass the red lights. The green lights will indicate that vessels may proceed. Vessels of less than 300 gross tons without tows may disregard these signals, but they shall travel at very slow speed when passing other vessels. Vessels of 300 gross tons and over and vessels with tows, except logs, whose destination is easterly between the Ballard Bridge and a point 2,500 feet east of the Ballard Bridge, may pass the red signals on the Ballard Bridge, provided, such passage will not interfere with approaching traffic.

(5) *Approaching and passing through locks*—(i) *Signals for locks*. Vessels with tows desiring to use the locks shall so indicate by two long and three short blasts of a whistle, horn, or megaphone. All other vessels desiring to use the locks shall so indicate by two long and two short blasts.

NOTE: The term ''long blasts'' means blasts of four seconds duration, and the term ''short blasts'' means blasts of one second duration. Signals for the opening of drawbridges are prescribed in § 117.795 of chapter I.

(ii) *Lock signal lights*. Red and green signal lights are installed on the guide pier west of the Burlington Northern, Inc. railway bridge below the locks. The green light will indicate to vessels bound for the large lock that the lock

has been made ready. If the red light is burning, vessels bound for the large lock shall moor at the pier. Vessels bound for the small lock shall be guided into the small lock by traffic signals thereon. The masters of all vessels approaching the locks from Puget Sound shall be alert to receive and shall immediately comply with instructions by voice or signal from the employee on the west pier.

(iii) *Precedence at locks.* All vessels approaching the locks shall stop at the points indicated by signs placed on the canal piers or as directed by a lockman until ordered to proceed into the lock. Unless otherwise directed by the District Engineer or his authorized assistants, vessels owned or operated by the United States or the City of Seattle and passenger vessels operating on a regular schedule shall have precedence over all others in passing through the locks. Registered merchant vessels shall have precedence over pleasure craft, which shall pass through in the order of their arrival at the locks, and both shall have precedence over vessels towing floated timber or logs. Tows of floated timber and logs may be denied the use of the locks during certain hours when both locks are busy passing other traffic. However, advance notice will be given towboat companies as to the periods when log tows will be denied lockage.

(iv) *Entering locks.* Masters of vessels shall exercise the greatest care when entering either lock. The forward movement of vessels while taking position in the locks shall be very slow, and boats entering the small lock shall reduce their speed to not more than two and one-half miles per hour when within 200 feet of the outer gate and come to practically a full stop before entering the lock so that in case the engine mechanism fails to operate properly the momentum of the boat may be stopped easily by its lines. The masters of vessels entering either lock from either direction shall be alert to receive and shall immediately comply with instructions by voice or signal from the lock attendants.

(v) *Mooring in locks.* Vessels entering the locks shall be equipped with adequate lines, at least 50 feet in length being required fore and aft. While in the large lock vessels and rafts will be moored at the top of the lock wall. While in the small lock vessels shall be moored to the floating mooring wall. Lines shall not be released until the signal has been given by the lock force to leave the lock, after which there shall be no delay in leaving. All vessels not equipped to handle tie-up lines with power winches shall be equipped with suitable mooring lines of manila, or other suitable fiber, of sufficient size and strength to hold the vessel against the currents to be met within the lock chamber. The use of wire rope for tie-up by vessels not equipped to handle such lines with power winches is prohibited. Vessels may be denied the use of the locks if their lines are not in good condition, or if the mooring bits on barges are not accessible or are not equipped to prevent lines from slipping off when the water is lowered in the lock. All vessels entering the locks should have, in addition to the master, at least one person on deck to handle lines. Mates and deckhands, when preparing to moor within the lock chambers, should not throw heavy mooring lines at the lockmen on the walls, but should wait for a heaving lie to be passed to them unless otherwise directed. All towboat crews, while locking or moving a tow out of the lock chamber, should station themselves so as to preclude the possibility of being injured by the parting of cable or lines under strain. Persons attempting to take vessels through the locks without assistance on deck may be required to wait until the lock is clear of other traffic before passing through. All operators of vessels are especially cautioned to use extreme care while crowded in the locks to avoid accident or fire on their boats. Under no circumstances will small craft, such as rowboats, launches and houseboats, or any other type of pleasure boats, be locked through with barges used for carrying any type of petroleum product or other hazardous material. At the discretion of the lockmaster, small craft as described above may be locked through with barge tows containing other than dangerous material. Operators of small vessels and larger vessels operating in the proximity of each

other shall be alert to the danger arising from the limited maneuverability of the larger vessels, and shall exercise all precautions to prevent accident.

(6) *Damage to locks or other structures.* (i) The regulations in this paragraph shall not affect the liability of the owners and operators of vessels for any damage caused by their operations to the locks or other structures. The sides and corners of all vessels and rafts passing through the locks should be free from spikes or projections of any kind which might damage the locks or other structures. Vessels with appurtenances or projections which might damage the locks or other structures shall be fitted with adequate fenders. Lockage of leaking vessels or vessels with overhanging loads may be refused. Such barge or craft shall be moored in a location outside of the channel approach to the lock so as to not interfere with passing navigation. Vessels of unusual dimensions, or other characteristics which, in the opinion of the lockmaster, pose a threat to the integrity or safety of the locks or canal will be refused passage until written permission to pass is provided by the District Engineer. Sufficient written data and drawings shall be provided the District Engineer that an engineering determination can be made as to the safety of the vessel. The District Engineer shall have the right to inspect any such vessels prior to passage. The operators of all vessels shall use care to avoid striking the guide walls or other structures pertaining to the canal.

(ii) In the interest of safety and fire prevention, all woven rope fenders used with barges carrying flammable cargo should be water-soaked or otherwise fireproofed prior to entering the lock approaches.

(iii) Burning fenders should be dropped overboard immediately rather than being placed on the deck of a barge or towboat.

(iv) A minimum of one man with a portable fender shall be stationed at the head end of every tow of hazardous cargo and at the aft if the lockmaster so directs so as to protect the lock and guide walls from damage while entering or departing the lock structures.

(v) All cylinder or containers holding gases under pressure, or any other chemical or substance, shall be securely fastened to the hull of the vessel to prevent their rolling overboard into the lock chamber and becoming a hazard.

(vi) All containers holding paint, gasoline or other volatile materials shall be securely fastened with tight-fitting covers. To preclude a concentration of potentially explosive vapors, no paint will be allowed to be applied to the exterior of vessel hulls, houses, machinery, or other equipment while the vessels are in the lock chamber.

(vii) All hatches of tank barges must be closed prior to entering lock. Tank barges with open hatch or hatches will be denied lockage.

(viii) No smoking will be permitted aboard vessels with cargoes of fuel or explosives.

(ix) All vessels carrying hazardous cargoes shall so be identified with the lockmaster. They shall be in compliance with Department of Transportation (U.S. Coast Guard) regulations (CFR title 46, parts 30 thru 40, parts 146 thru 154, and 49 CFR parts 171 thru 179 and shall accordingly carry required markings. All DOT safety regulations for transit of hazardous cargoes shall be adhered to, whether or not specifically cited or duplicated herein.

(7) [Reserved]

(8) *Rafts.* (i) No log raft exceeding 700 feet in length or 76 feet in width shall pass through the canal. Boom sticks shall be smooth, with rounded ends, and securely tied together with cables, chains, or log swifters to prevent the raft from spreading while in the lock. Rafts containing logs that do not float above water for their entire length, or are in danger of being submerged when they enter fresh water, shall not be towed in the canal until such logs are securely fastened so as to prevent their escape from the raft.

(ii) Whenever required, log rafts passing in through the lock will be given a number that shall be fastened on one of the logs in the raft. This number will identify the raft and shall not be removed until the logs are used.

(iii) Two floats are maintained in Shilshole Bay near the entrance of the canal channel to facilitate the handling of logs in the canal. Rafts bound for the canal may be moored at one of

these floats, only the portion of the raft that is to be taken through at a single lockage being brought into the canal. The remainder of the raft may be left at the float until the first portion has been towed to its destination above the lock.

(9) *Tows.* All vessels engaged in towing shall use tow lines of the least practicable length and shall have full control of their tows at all times. Towing more than one craft abreast is forbidden if the total width of the tow, including the towboat, exceeds 70 feet.

(10) *Obstructing navigation.* (i) All vessels and tows passing through the canal shall be kept as close as practicable to the center or, when safer, to the right side of the waterway, except when passing other craft or preparing to moor at a pier or wharf. Slowly moving log rafts, tows, or vessels shall, whenever practicable, pull out of the way when meeting other vessels or when other traffic proceeding in the same direction desires to pass. Vessels are forbidden to obstruct the canal in any way or to delay by slow passage through the canal the progress of other vessels. Small and readily maneuverable vessels operating in the vicinity of larger, less maneuverable vessels shall, in all cases, keep clear and operate with caution in order that the larger vessels may maintain safe steerage way and that hazards to all vessels may be reduced. All vessels shall operate with extreme caution and movements shall be made only when adequate precautions for the safety of other vessels and property are being effectively employed.

(ii) The placing of logs, vessels, or other floating objects within the limits of the dredged channels or anywhere in the canal where they may interfere with navigation to or from piers or industrial plants is prohibited.

(11) *Turning.* Vessels exceeding 100 feet in length shall not turn around, or attempt to turn around, in the concrete revetted portions of the canal at the Fremont Cut or Portage Cut sections of the canal.

(12) *Excessive working of propellers or engines.* Excessive working of the propellers of a vessel for purposes of testing or for other purposes when this creates objectionable or dangerous currents in the canal is forbidden. In case of grounding, the rapid or strong working of the vessel's engines is forbidden.

(13) *Landing or mooring.* No business, trading, or landing of passengers, freight, or baggage will be allowed on or over the canal piers or lock walls, or over the piers or grounds forming a part of the canal or its appurtenances. All persons in charge of or employed on any boat are prohibited from landing or mooring such boat at any of the canal piers, unless in transit through the canal or specially permitted to do so by the District Engineer or his authorized assistants.

(14) *Deposit of refuse.* The deposit, either from watercraft or from the shore, of any oil or refuse matter in the canal or upon the canal grounds is prohibited, nor shall water discharged from the side of a vessel be allowed to spill on the lock wall.

(15) *Aids to navigation.* Persons in charge of log rafts or other tows, and the masters of vessels and boats using the canal, shall keep a careful watch when passing buoys or other aids to navigation and promptly report to the District Engineering or his authorized assistants any displacement or damage to such aids.

NOTE: Aids to navigation and other related data are shown on Nautical Chart No. 18447 published by the National Ocean Survey.

(16) *Operation of salt water barrier in the large lock of the Hiram M. Chittenden Locks.* (i) A salt water barrier is installed across the east end of the large lock. This barrier, while in the depressed position, reduces the depth of the water available at the east end of this chamber from 36 feet to 33.75 feet at low lake elevation (20 feet above MLLW). In the raised position, the depth of water will be reduced to 16 feet. In comparison, the depth of water available for navigation at the west end of the large lock chamber is 29 feet at mean lower low water. The purpose of this barrier is to reduce salt water intrusion into Lake Washington through normal operations of the locks.

(ii) The least depth of water available over the barrier when raised will be shown on signs placed near the ends of the guide piers to the large lock. A yellow light mounted on these signs will

be lighted only while the barrier is in a raised position.

(iii) Vessels transiting the lock from east to west having draft requirements that exceed the water depth available over the barrier will advise the lockmaster by sounding one long and two short blasts of a horn or whistle. When the yellow light is extinguished on the signboard, the operator of the vessel may assume the barrier has been lowered.

(iv) Vessels transiting the lock from west to east having draft requirements that exceed the depth available over the intrusion barrier will advise the lockmaster by sounding one long and two short blasts of a horn or whistle. A yellow light mounted on a standard on the south lock wall and opposite the intrusion barrier will be lighted only when the barrier is in the raised position.

(v) It shall be the responsibility of the vessel operator to satisfy himself of the position of this barrier prior to passing over it.

(c) *West Waterway, Seattle Harbor; navigation.* (1) The movement of vessels of 250 gross tons or over and all vessels with tows of any kind through the narrow section of West Waterway between the bend at Fisher's Flour Mill dock and the bend at the junction of East Waterway with Duwamish Waterway, and through the draws of the City of Seattle and Northern Pacific Railway Company bridges crossing this narrow section, shall be governed by red and green traffic signal lights mounted on the north and south sides of the west tower of the City Light power crossing at West Spokane Street.

(2) Two green lights, one vertically above the other, displayed ahead of a vessel, shall indicate that the waterway is clear. Two red lights, one vertically above the other, displayed ahead of a vessel, shall indicate that the waterway is not clear.

(3) A vessel approaching the narrow section and drawbridges from either end of the waterway shall give one long blast of a whistle and shall not enter the narrow section until green lights are displayed.

(4) One vessel may follow another vessel in either direction, but the channel shall not be kept open in the same direction for an unreasonable time if a vessel is waiting at the other end.

(5) Tugs, launches, and small craft shall keep close to one side of the channel when vessels or boats with tows are passing.

(6) All craft shall proceed with caution. The display of a green light is not a guarantee that the channel is clear of traffic, and neither the United States nor the City of Seattle will be responsible for any damage to vessels or other property which may be chargeable to mistakes in the operation of the signal lights or to their failure to operate.

[26 FR 11203, Nov. 28, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 207.750, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 207.800 Collection of navigation statistics.

(a) *Definitions.* For the purpose of this regulation the following terms are defined:

(1) *Navigable waters of the United States* means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR part 329 for a more complete definition of this term.)

(2) *Offenses and Violations* mean:

(i) Failure to submit a required report.

(ii) Failure to provide a timely, accurate, and complete report.

(iii) Failure to submit monthly listings of idle vessels or vessels in transit.

(iv) Failure to submit a report required by the lockmaster or canal operator.

(3) *Leased* or *chartered vessel* means a vessel that is leased or chartered when the owner relinquishes control of the vessel through a contractual agreement with a second party for a specified period of time and/or for a specified remuneration from the lessee. Commercial movements on an affreightment basis are not considered a lease or charter of a particular vessel.

(4) *Person* or *entity* means an individual, corporation, partnership, or company.

(5) *Timely* means vessel and commodity movement data must be received by the Waterborne Commerce Statistics Center within 30 days after the close of the month in which the vessel movement or nonmovement takes place.

(6) *Commercial vessel* means a vessel used in transporting by water, either merchandise or passengers for compensation or hire, or in the course of business of the owner, lessee, or operator of the vessel.

(7) *Reporting situation* means a vessel movement by an operator that is required to be reported. Typical examples are listed in the instructions on the various ENG Forms. Five typical movements that are required to be reported by vessel operating companies include the following examples:

Company A is the barge owner, and the barge transports corn from Minneapolis, MN to New Orleans, LA, with fleeting at Cairo, IL.

(i) *Lease/Charter:* If Company A leases or charters the barge to Company B, then Company B is responsible for reporting the movements of the barge until the lease/charter expires.

(ii) *Interline movement:* A barge is towed from Minneapolis to Cairo by Company A, and from Cairo to New Orleans by Company B. Since Company A is the barge owner, and the barge is not leased. Company A reports the entire movement of the barge with an origin of Minneapolis and a destination of New Orleans.

(iii) *Vessel swap/trade:* Company A swaps barge with Company B to allow Company B to meet a delivery commitment to New Orleans. Since Company A has not leased/chartered the barge, Company A is responsible for filing the report. Company B is responsible for filing the report on the barge which is traded to Company A. The swap or trade will not affect the primary responsibility for reporting the individual vessel movements.

(iv) *Re-Consignment:* Barge is reconsigned to Mobile, AL. Company A reports the movements as originating in Minneapolis and terminating in Mobile. The point from which barge is reconsigned is not reported, only points of loading and unloading.

(v) *Fleeting:* Barge is deposited at a New Orleans fleeting area by Company A and towed by Company B from fleeting area to New Orleans area dock for unloading. Company A, as barge owner, reports entire movements from Minneapolis to the unloading dock in New Orleans. Company B does not report any barge movement.

(b) Implementation of the waterborne commerce statistics provisions of the River and Harbor Act of 1922, as amended by the Water Resources Development Act of 1986 (Pub. L. 99–662), mandates the following.

(1) *Filing requirements.* Except as provided in paragraph (b)(2) of this section, the person or entity receiving remuneration for the movement of vessels or for the transportation of goods or passengers on the navigable waters is responsible for assuring that the activity report of commercial vessels is timely filed.

(i) For vessels under lease/charter agreements, the lessee or charterer of any commercial vessel engaged in commercial transportation will be responsible for the filing of said reports until the lease/charter expires.

(ii) The vessel owner, or his designated agent, is always the responsible party for ensuring that all commercial activity of the vessel is timely reported.

(2) The following Vessel Information Reports are to be filed with the Army Corps of Engineers, at the address specified on the ENG Form, and are to include:

(i) *Monthly reports.* These reports shall be made on ENG Forms furnished upon written request of the vessel operating companies to the Army Corps of Engineers. The forms are available at the following address: U.S. Army Corps of Engineers, Waterborne Commerce Statistics Center, Post Office Box 61280, New Orleans, Louisiana 70161–1280.

(A) All movements of domestic waterborne commercial vessels shall be reported, including but not limited to: Dry cargo ship and tanker moves, loaded and empty barge moves, towboat moves, with or without barges in tow, fishing vessels, movements of crew

boats and supply boats to offshore locations, tugboat moves and movements of newly constructed vessels from the shipyard to the point of delivery.

(B) Vessels idle during the month must also be reported.

(C) Notwithstanding the above requirements, the following waterborne vessel movements need not be reported:

(*1*) Movements of recreational vessels.

(*2*) Movements of fire, police, and patrol vessels.

(*3*) Movements of vessels exclusively engaged in construction (e.g., pile-drivers and crane barges). NOTE: however, that movements of supplies, materials, and crews to or from the construction site must be timely reported.

(*4*) Movements of dredges to or from the dredging site. However, vessel movements of dredged material from the dredging site to the disposal site must be reported.

(*5*) Specific movements granted exemption in writing by the Waterborne Commerce Statistics Center.

(D) ENG Forms 3925 and 3925b shall be completed and filed by vessel operating companies each month for all voyages or vessel movements completed during the month. Vessels that did not complete a move during the month shall be reported as idle or in transit.

(E) The vessel operating company may request a waiver from the Army Corps of Engineers, and upon written approval by the Waterborne Commerce Center, the company may be allowed to provide the requisite information of the above paragraph (D), on computer printouts, magnetic tape, diskettes, or alternate medium approved by the Center.

(F) Harbor Maintenance Tax information is required on ENG Form 3925 for cargo movements into or out of ports that are subject to the provisions of section 1402 of the Water Resources Development Act of 1986 (Pub. L. 99–662).

(*1*) The name of the shipper of the commodity, and the shipper's Internal Revenue Service number or Social Security number, must be reported on the form.

(*2*) If a specific exemption applies to the shipper, the shipper should list the appropriate exemption code. The specific exemption codes are listed in the directions for ENG Form 3925.

(*3*) Refer to 19 CFR part 24 for detailed information on exemptions and ports subject to the Harbor Maintenance Tax.

(ii) *Annual reports*. Annually an inventory of vessels available for commercial carriage of domestic commerce and vessel characteristics must be filed on ENG Forms 3931 and 3932.

(iii) *Transaction reports*. The sale, charter, or lease of vessels to other companies must also be reported to assure that proper decisions are made regarding each company's duty for reporting vessel movements during the year. In the absence of notification of the transaction, the former company of record remains responsible until proper notice is received by the Corps.

(iv) *Reports to lockmasters and canal operators*. Masters of self-propelled nonrecreational vessels which pass through locks and canals operated by the Army Corps of Engineers will provide the data specified on ENG Forms 3102b, 3102c, and/or 3102d to the lockmaster, canal operator, or his designated representative in the manner and detail dictated.

(c) *Penalties for noncompliance*. The following penalties for noncompliance can be assessed for offenses and violations.

(1) *Criminal penalties*. Every person or persons violating the provisions of this regulation shall, for each and every offenses, be liable to a fine of not more than $5,000, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed.

(2) *Civil penalties*. In addition, any person or entity that fails to provide timely, accurate, and complete statements or reports required to be submitted by this regulation may also be assessed a civil penalty of up to $2,500 per violation under 33 U.S.C. 555, as amended.

(3) *Denial of passage*. In addition to these fines, penalties, and imprisonments, the lockmaster or canal operator can refuse to allow vessel passage.

(d) *Enforcement policy*. Every means at the disposal of the Army Corps of Engineers will be utilized to monitor and enforce these regulations.

(1) To identify vessel operating companies that should be reporting waterborne commerce data, The Corps will make use of, but is not limited to, the following sources.

(i) Data on purchase and sale of vessels.

(ii) U.S. Coast Guard vessel documentation and reports.

(iii) Data collected at Locks, Canals, and other facilities operated by the Corps.

(iv) Data provided by terminals on ENG Form 3926.

(v) Data provided by the other Federal agencies including the Internal Revenue Service, Customs Service, Maritime Administration, Department of Transportation, and Department of Commerce.

(vi) Data provided by ports, local facilities, and State or local governments.

(vii) Data from trade journals and publications.

(viii) Site visits and inspections.

(2) *Notice of violation*. Once a reporting violation is determined to have occurred, the Chief of the Waterborne Commerce Statistics Center will notify the responsible party and allow 30 days for the reports to be filed after the fact. If the reports are not filed within this 30-day notice period, then appropriate civil or criminal actions will be undertaken by the Army Corps of Engineers, including the proposal of civil or criminal penalties for noncompliance. Typical cases for criminal or civil action include, but are not limited to, those violations which are willful, repeated, or have a substantial impact in the opinion of the Chief of the Waterborne Commerce Statistics Center.

(3) *Administrative assessment of civil penalties*. Civil penalties may be assessed in the following manner.

(i) *Authorization*. If the Chief of the Waterborne Commerce Statistics Center finds that a person or entity has failed to comply with any of the provisions specified herein, he is authorized to assess a civil penalty in accordance with the Class I penalty provisions of 33 CFR part 326. Provided, however, that the procedures in 33 CFR part 326 specifically implementing the Clean Water Act (33 U.S.C. 1319(g)(4)), public notice, comment period, and state coordination, shall not apply.

(ii) *Initiation*. The Chief of the Waterborne Commerce Statistics Center will prepare and process a proposed civil penalty order which shall state the amount of the penalty to be assessed, describe by reasonable specificity the nature of the violation, and indicate the applicable provisions of 33 CFR part 326.

(iii) *Hearing requests*. Recipients of a proposed civil penalty order may file a written request for a hearing or other proceeding. This request shall be as specified in 33 CFR part 326 and shall be addressed to the Director of the Water Resources Support Center, Casey Building, Fort Belvoir, Virginia 22060–5586, who will provide the requesting person or entity with a reasonable opportunity to present evidence regarding the issuance, modification, or revocation of the proposed order. Thereafter, the Director of the Water Resources Center shall issue a final order.

(4) *Additional remedies*. Appropriate cases may also be referred to the local U.S. Attorney for prosecution, penalty collection, injunctive, and other relief by the Chief of the Waterborne Commerce Statistics Center.

[56 FR 13765, Apr. 4, 1991]

PART 208—FLOOD CONTROL REGULATIONS

Sec.

208.10 Local flood protection works; maintenance and operation of structures and facilities.
208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.
208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Tex.
208.22 Twin Buttes Dam and Reservoir, Middle and South Concho Rivers, Tex.
208.25 Pensacola Dam and Reservoir, Grand (Neosho) River, Okla.
208.26 Altus Dam and Reservoir, North Fork Red River, Okla.
208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.

208.28 Foss Dam and Reservoir, Washita River, Oklahoma.
208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.
208.32 Sanford Dam and Lake Meredith, Canadian River, Tex.
208.33 Cheney Dam and Reservoir, North Fork of Ninnescah River, Kans.
208.34 Norman Dam and Lake Thunderbird, Little River, Okla.
208.82 Hetch Hetchy, Cherry Valley, and Don Pedro Dams and Reservoirs.

AUTHORITY: Sec. 7, 58 Stat. 890; 33 U.S.C. 709.

§ 208.10 Local flood protection works; maintenance and operation of structures and facilities.

(a) *General*. (1) The structures and facilities constructed by the United States for local flood protection shall be continuously maintained in such a manner and operated at such times and for such periods as may be necessary to obtain the maximum benefits.

(2) The State, political subdivision thereof, or other responsible local agency, which furnished assurance that it will maintain and operate flood control works in accordance with regulations prescribed by the Secretary of the Army, as required by law, shall appoint a permanent committee consisting of or headed by an official hereinafter called the ''Superintendent,'' who shall be responsible for the development and maintenance of, and directly in charge of, an organization responsible for the efficient operation and maintenance of all of the structures and facilities during flood periods and for continuous inspection and maintenance of the project works during periods of low water, all without cost to the United States.

(3) A reserve supply of materials needed during a flood emergency shall be kept on hand at all times.

(4) No encroachment or trespass which will adversely affect the efficient operation or maintenance of the project works shall be permitted upon the rights-of-way for the protective facilities.

(5) No improvement shall be passed over, under, or through the walls, levees, improved channels or floodways, nor shall any excavation or construction be permitted within the limits of the project right-of-way, nor shall any change be made in any feature of the works without prior determination by the District Engineer of the Department of the Army or his authorized representative that such improvement, excavation, construction, or alteration will not adversely affect the functioning of the protective facilities. Such improvements or alterations as may be found to be desirable and permissible under the above determination shall be constructed in accordance with standard engineering practice. Advice regarding the effect of proposed improvements or alterations on the functioning of the project and information concerning methods of construction acceptable under standard engineering practice shall be obtained from the District Engineer or, if otherwise obtained, shall be submitted for his approval. Drawings or prints showing such improvements or alterations as finally constructed shall be furnished the District Engineer after completion of the work.

(6) It shall be the duty of the superintendent to submit a semiannual report to the District Engineer covering inspection, maintenance, and operation of the protective works.

(7) The District Engineer or his authorized representatives shall have access at all times to all portions of the protective works.

(8) Maintenance measures or repairs which the District Engineer deems necessary shall be promptly taken or made.

(9) Appropriate measures shall be taken by local authorities to insure that the activities of all local organizations operating public or private facilities connected with the protective works are coordinated with those of the Superintendent's organization during flood periods.

(10) The Department of the Army will furnish local interests with an Operation and Maintenance Manual for each completed project, or separate useful part thereof, to assist them in carrying out their obligations under this part.

(b) *Levees*—(1) *Maintenance*. The Superintendent shall provide at all times such maintenance as may be required to insure serviceability of the structures in time of flood. Measures shall be taken to promote the growth of sod,

exterminate burrowing animals, and to provide for routine mowing of the grass and weeds, removal of wild growth and drift deposits, and repair of damage caused by erosion or other forces. Where practicable, measures shall be taken to retard bank erosion by planting of willows or other suitable growth on areas riverward of the levees. Periodic inspections shall be made by the Superintendent to insure that the above maintenance measures are being effectively carried out and, further, to be certain that:

(i) No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place;

(ii) No caving has occurred on either the land side or the river side of the levee which might affect the stability of the levee section;

(iii) No seepage, saturated areas, or sand boils are occurring;

(iv) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged;

(v) Drains through the levees and gates on said drains are in good working condition;

(vi) No revetment work or riprap has been displaced, washed out, or removed;

(vii) No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod;

(viii) Access roads to and on the levee are being properly maintained;

(ix) Cattle guards and gates are in good condition;

(x) Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained;

(xi) There is no unauthorized grazing or vehicular traffic on the levees;

(xii) Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.

Such inspections shall be made immediately prior to the beginning of the flood season; immediately following each major high water period, and otherwise at intervals not exceeding 90 days, and such intermediate times as may be necessary to insure the best possible care of the levee. Immediate steps will be taken to correct dangerous conditions disclosed by such inspections. Regular maintenance repair measures shall be accomplished during the appropriate season as scheduled by the Superintendent.

(2) *Operation*. During flood periods the levee shall be patrolled continuously to locate possible sand boils or unusual wetness of the landward slope and to be certain that:

(i) There are no indications of slides or sloughs developing;

(ii) Wave wash or scouring action is not occurring;

(iii) No low reaches of leave exist which may be overtopped;

(iv) No other conditions exist which might endanger the structure.

Appropriate advance measures will be taken to insure the availability of adequate labor and materials to meet all contingencies. Immediate steps will be taken to control any condition which endangers the levee and to repair the damaged section.

(c) *Flood walls*—(1) *Maintenance*. Periodic inspections shall be made by the Superintendent to be certain that:

(i) No seepage, saturated areas, or sand boils are occurring;

(ii) No undue settlement has occurred which affects the stability of the wall or its water tightness;

(iii) No trees exist, the roots of which might extend under the wall and offer accelerated seepage paths;

(iv) The concrete has not undergone cracking, chipping, or breaking to an extent which might affect the stability of the wall or its water tightness;

(v) There are no encroachments upon the right-of-way which might endanger the structure or hinder its functioning in time of flood;

(vi) Care is being exercised to prevent accumulation of trash and debris adjacent to walls, and to insure that no fires are being built near them;

(vii) No bank caving conditions exist riverward of the wall which might endanger its stability;

(viii) Toe drainage systems and pressure relief wells are in good working condition, and that such facilities are not becoming clogged.

Such inspections shall be made immediately prior to the beginning of the flood season, immediately following

each major high water period, and otherwise at intervals not exceeding 90 days. Measures to eliminate encroachments and effect repairs found necessary by such inspections shall be undertaken immediately. All repairs shall be accomplished by methods acceptable in standard engineering practice.

(2) *Operation.* Continuous patrol of the wall shall be maintained during flood periods to locate possible leakage at monolith joints or seepage underneath the wall. Floating plant or boats will not be allowed to lie against or tie up to the wall. Should it become necessary during a flood emergency to pass anchor cables over the wall, adequate measures shall be taken to protect the concrete and construction joints. Immediate steps shall be taken to correct any condition which endangers the stability of the wall.

(d) *Drainage structures*—(1) *Maintenance.* Adequate measures shall be taken to insure that inlet and outlet channels are kept open and that trash, drift, or debris is not allowed to accumulate near drainage structures. Flap gates and manually operated gates and valves on drainage structures shall be examined, oiled, and trial operated at least once every 90 days. Where drainage structures are provided with stop log or other emergency closures, the condition of the equipment and its housing shall be inspected regularly and a trial installation of the emergency closure shall be made at least once each year. Periodic inspections shall be made by the Superintendent to be certain that:

(i) Pipes, gates, operating mechanism, riprap, and headwalls are in good condition;

(ii) Inlet and outlet channels are open;

(iii) Care is being exercised to prevent the accumulation of trash and debris near the structures and that no fires are being built near bituminous coated pipes;

(iv) Erosion is not occurring adjacent to the structure which might endanger its water tightness or stability.

Immediate steps will be taken to repair damage, replace missing or broken parts, or remedy adverse conditions disclosed by such inspections.

(2) *Operation.* Whenever high water conditions impend, all gates will be inspected a short time before water reaches the invert of the pipe and any object which might prevent closure of the gate shall be removed. Automatic gates shall be closely observed until it has been ascertained that they are securely closed. Manually operated gates and valves shall be closed as necessary to prevent inflow of flood water. All drainage structures in levees shall be inspected frequently during floods to ascertain whether seepage is taking place along the lines of their contact with the embankment. Immediate steps shall be taken to correct any adverse condition.

(e) *Closure structures*—(1) *Maintenance.* Closure structures for traffic openings shall be inspected by the Superintendent every 90 days to be certain that:

(i) No parts are missing;

(ii) Metal parts are adequately covered with paint;

(iii) All movable parts are in satisfactory working order;

(iv) Proper closure can be made promptly when necessary;

(v) Sufficient materials are on hand for the erection of sand bag closures and that the location of such materials will be readily accessible in times of emergency.

Tools and parts shall not be removed for other use. Trial erections of one or more closure structures shall be made once each year, alternating the structures chosen so that each gate will be erected at least once in each 3-year period. Trial erection of all closure structures shall be made whenever a change is made in key operating personnel. Where railroad operation makes trial erection of a closure structure infeasible, rigorous inspection and drill of operating personnel may be substituted therefor. Trial erection of sand bag closures is not required. Closure materials will be carefully checked prior to and following flood periods, and damaged or missing parts shall be repaired or replaced immediately.

(2) *Operation.* Erection of each movable closure shall be started in sufficient time to permit completion before flood waters reach the top of the structure sill. Information regarding the

proper method of erecting each individual closure structure, together with an estimate of the time required by an experienced crew to complete its erection will be given in the Operation and Maintenance Manual which will be furnished local interests upon completion of the project. Closure structures will be inspected frequently during flood periods to ascertain that no undue leakage is occurring and that drains provided to care for ordinary leakage are functioning properly. Boats or floating plant shall not be allowed to tie up to closure structures or to discharge passengers or cargo over them.

(f) *Pumping plants*—(1) *Maintenance.* Pumping plants shall be inspected by the Superintendent at intervals not to exceed 30 days during flood seasons and 90 days during off-flood seasons to insure that all equipment is in order for instant use. At regular intervals, proper measures shall be taken to provide for cleaning plant, buildings, and equipment, repainting as necessary, and lubricating all machinery. Adequate supplies of lubricants for all types of machines, fuel for gasoline or diesel powered equipment, and flash lights or lanterns for emergency lighting shall be kept on hand at all times. Telephone service shall be maintained at pumping plants. All equipment, including switch gear, transformers, motors, pumps, valves, and gates shall be trial operated and checked at least once every 90 days. Megger tests of all insulation shall be made whenever wiring has been subjected to undue dampness and otherwise at intervals not to exceed one year. A record shall be kept showing the results of such tests. Wiring disclosed to be in an unsatisfactory condition by such tests shall be brought to a satisfactory condition or shall be promptly replaced. Diesel and gasoline engines shall be started at such intervals and allowed to run for such length of time as may be necessary to insure their serviceability in times of emergency. Only skilled electricians and mechanics shall be employed on tests and repairs. Operating personnel for the plant shall be present during tests. Any equipment removed from the station for repair or replacement shall be returned or replaced as soon as practicable and shall be trial operated after reinstallation. Repairs requiring removal of equipment from the plant shall be made during off-flood seasons insofar as practicable.

(2) *Operation.* Competent operators shall be on duty at pumping plants whenever it appears that necessity for pump operation is imminent. The operator shall thoroughly inspect, trial operate, and place in readiness all plant equipment. The operator shall be familiar with the equipment manufacturers' instructions and drawings and with the ''Operating Instructions'' for each station. The equipment shall be operated in accordance with the abovementioned ''Operating Instructions'' and care shall be exercised that proper lubrication is being supplied all equipment, and that no overheating, undue vibration or noise is occurring. Immediately upon final recession of flood waters, the pumping station shall be thoroughly cleaned, pump house sumps flushed, and equipment thoroughly inspected, oiled and greased. A record or log of pumping plant operation shall be kept for each station, a copy of which shall be furnished the District Engineer following each flood.

(g) *Channels and floodways*—(1) *Maintenance.* Periodic inspections of improved channels and floodways shall be made by the Superintendent to be certain that:

(i) The channel or floodway is clear of debris, weeds, and wild growth;

(ii) The channel or floodway is not being restricted by the depositing of waste materials, building of unauthorized structures or other encroachments;

(iii) The capacity of the channel or floodway is not being reduced by the formation of shoals;

(iv) Banks are not being damaged by rain or wave wash, and that no sloughing of banks has occurred;

(v) Riprap sections and deflection dikes and walls are in good condition;

(vi) Approach and egress channels adjacent to the improved channel or floodway are sufficiently clear of obstructions and debris to permit proper functioning of the project works.

Such inspections shall be made prior to the beginning of the flood season and otherwise at intervals not to exceed 90 days. Immediate steps will be taken to

remedy any adverse conditions disclosed by such inspections. Measures will be taken by the Superintendent to promote the growth of grass on bank slopes and earth deflection dikes. The Superintendent shall provide for periodic repair and cleaning of debris basins, check dams, and related structures as may be necessary.

(2) *Operation.* Both banks of the channel shall be patrolled during periods of high water, and measures shall be taken to protect those reaches being attacked by the current or by wave wash. Appropriate measures shall be taken to prevent the formation of jams of ice or debris. Large objects which become lodged against the bank shall be removed. The improved channel or floodway shall be thoroughly inspected immediately following each major high water period. As soon as practicable thereafter, all snags and other debris shall be removed and all damage to banks, riprap, deflection dikes and walls, drainage outlets, or other flood control structures repaired.

(h) *Miscellaneous facilities*—(1) *Maintenance.* Miscellaneous structures and facilities constructed as a part of the protective works and other structures and facilities which function as a part of, or affect the efficient functioning of the protective works, shall be periodically inspected by the Superintendent and appropriate maintenance measures taken. Damaged or unserviceable parts shall be repaired or replaced without delay. Areas used for ponding in connection with pumping plants or for temporary storage of interior run-off during flood periods shall not be allowed to become filled with silt, debris, or dumped material. The Superintendent shall take proper steps to prevent restriction of bridge openings and, where practicable, shall provide for temporary raising during floods of bridges which restrict channel capacities during high flows.

(2) *Operation.* Miscellaneous facilities shall be operated to prevent or reduce flooding during periods of high water. Those facilities constructed as a part of the protective works shall not be used for purposes other than flood protection without approval of the District Engineer unless designed therefor.

(Sec. 3, 49 Stat. 1571, as amended; 33 U.S.C. 701c)

[9 FR 9999, Aug. 17, 1944; 9 FR 10203, Aug. 22, 1944]

§ 208.11 Regulations for use of storage allocated for flood control or navigation and/or project operation at reservoirs subject to prescription of rules and regulations by the Secretary of the Army in the interest of flood control and navigation.

(a) *Purpose.* This regulation prescribes the responsibilities and general procedures for regulating reservoir projects capable of regulation for flood control or navigation and the use of storage allocated for such purposes and provided on the basis of flood control and navigation, except projects owned and operated by the Corps of Engineers; the International Boundary and Water Commission, United States and Mexico; and those under the jurisdiction of the International Joint Commission, United States, and Canada, and the Columbia River Treaty. The intent of this regulation is to establish an understanding between project owners, operating agencies, and the Corps of Engineers.

(b) *Responsibilities.* The basic responsibilities of the Corps of Engineers regarding project operation are set out in the cited authority and described in the following paragraphs:

(1) Section 7 of the Flood Control Act of 1944 (58 Stat. 890, 33 U.S.C. 709) directs the Secretary of the Army to prescribe regulations for flood control and navigation in the following manner:

> Hereafter, it shall be the duty of the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, and the operation of any such project shall be in accordance with such regulations: *Provided,* That this section shall not apply to the Tennessee Valley Authority, except that in case of danger from floods on the lower Ohio and Mississippi Rivers the Tennessee Valley Authority is directed to regulate the release of water from the Tennessee River into the Ohio River in accordance with such instructions as may be issued by the War Department.

(2) Section 9 of Public Law 436–83d Congress (68 Stat. 303) provides for the development of the Coosa River, Alabama and Georgia, and directs the Secretary of the Army to prescribe rules and regulations for project operation in the interest of flood control and navigation as follows:

The operation and maintenance of the dams shall be subject to reasonable rules and regulations of the Secretary of the Army in the interest of flood control and navigation.

NOTE: This Regulation will also be applicable to dam and reservoir projects operated under provisions of future legislative acts wherein the Secretary of the Army is directed to prescribe rules and regulations in the interest of flood control and navigation. The Chief of Engineers, U.S. Army Corps of Engineers, is designated the duly authorized representative of the Secretary of the Army to exercise the authority set out in the Congressional Acts. This Regulation will normally be implemented by letters of understanding between the Corps of Engineers and project owner and will incorporate the provisions of such letters of understanding prior to the time construction renders the project capable of significant impoundment of water. A water control agreement signed by both parties will follow when deliberate impoundment first begins or at such time as the responsibilities of any Corps-owned projects may be transferred to another entity. Promulgation of this Regulation for a given project will occur at such time as the name of the project appears in the FEDERAL REGISTER in accordance with the requirements of paragraph 6k. When agreement on a water control plan cannot be reached between the Corps and the project owner after coordination with all interested parties, the project name will be entered in the FEDERAL REGISTER and the Corps of Engineers plan will be the official water control plan until such time as differences can be resolved.

(3) Federal Energy Regulatory Commission (FERC), formerly Federal Power Commission (FPC), Licenses.

(i) Responsibilities of the Secretary of the Army and/or the Chief of Engineers in FERC licensing actions are set forth in reference 3c above and pertinent sections are cited herein. The Commission may further stipulate as a licensing condition, that a licensee enter into an agreement with the Department of the Army providing for operation of the project during flood times, in accordance with rules and regulations prescribed by the Secretary of the Army.

(A) Section 4(e) of the Federal Power Act requires approval by the Chief of Engineers and the Secretary of the Army of plans of dams or other structures affecting the navigable capacity of any navigable waters of the United States, prior to issuance of a license by the Commission as follows:

The Commission is hereby authorized and empowered to issue licenses to citizens * * * for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction * * * *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army.

(B) Sections 10(a) and 10(c) of the Federal Power Act specify conditions of project licenses including the following:

(1) *Section 10(a)*. ''That the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses * * *.''

(2) *Section 10(c)*. ''That the licensee shall * * * so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property * * *.''

(C) Section 18 of the Federal Power Act directs the operation of any navigation facilities built under the provision of that Act, be controlled by rules and regulations prescribed by the Secretary of the Army as follows:

The operation of any navigation facilities which may be constructed as part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all

times be controlled by such reasonable rules and regulations in the interest of navigation; including the control of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of the Army, * * *.

(ii) Federal Power Commission Order No. 540 issued October 31, 1975, and published November 7, 1975 (40 FR 51998), amending § 2.9 of the Commission's General Policy and Interpretations prescribed Standardized Conditions (Forms) for Inclusion in Preliminary Permits and Licenses Issued Under part I of the Federal Power Act. As an example, Article 12 of Standard Form L–3, titled: ''Terms and Conditions of License for Constructed Major Projects Affecting Navigable Waters of the United States,'' sets forth the Commission's interpretation of appropriate sections of the Act, which deal with navigation aspects, and attendant responsibilities of the Secretary of the Army in licensing actions as follows:

The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, * * * and the Licensee shall release water from the project reservoir at such rate * * * as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

(c) *Scope and terminology*. This regulation applies to Federal authorized flood control and/or navigation storage projects, and to non-Federal projects which require the Secretary of the Army to prescribe regulations as a condition of the license, permit or legislation, during the planning, design and construction phases, and throughout the life of the project. In compliance with the authority cited above, this regulation defines certain activities and responsibilities concerning water control management throughout the Nation in the interest of flood control and navigation. In carrying out the conditions of this regulation, the owner and/or operating agency will comply with applicable provisions of Pub. L. 85–624, the Fish and Wildlife Coordination Act of 1958, and Pub. L. 92–500, the Federal Water Pollution Control Act Amendments of 1972. This regulation does not apply to local flood protection works governed by § 208.10, or to navigation facilities and associated structures which are otherwise covered by part 207 (Navigation Regulations) of title 33 of the code. Small reservoirs, containing less than 12,500 acre-feet of flood control or navigation storage, may be excluded from this regulation and covered under § 208.10, unless specifically required by law or conditions of the license or permit.

(1) The terms *reservoir* and *project* as used herein include all water resource impoundment projects constructed or modified, including natural lakes, that are subject to this regulation.

(2) The term *project owner* refers to the entity responsible for maintenance, physical operation, and safety of the project, and for carrying out the water control plan in the interest of flood control and/or navigation as prescribed by the Corps of Engineers. Special arrangements may be made by the project owner for ''operating agencies'' to perform these tasks.

(3) The term *letter of understanding* as used herein includes statements which consummate this regulation for any given project and define the general provisions or conditions of the local sponsor, or owner, cooperation agreed to in the authorizing legislative document, and the requirements for compliance with section 7 of the 1944 Flood Control Act, the Federal Power Act or other special congressional act. This information will be specified in the water control plan and manual. The letter of understanding will be signed by a duly authorized representative of the Chief of Engineers and the project owner. A ''field working agreement'' may be substituted for a letter of understanding, provided that the specified minimum requirements of the latter, as stated above, are met.

(4) The term *water control agreement* refers to a compliation of water control criteria, guidelines, diagrams, release

schedules, rule curves and specifications that basically govern the use of reservoir storage space allocated for flood control or navigation and/or release functions of a water control project for these purposes. In general, they indicate controlling or limiting rates of discharge and storage space required for flood control and/or navigation, based on the runoff potential during various seasons of the year.

(5) For the purpose of this regulation, the term *water control plan* is limited to the plan of regulation for a water resources project in the interest of flood control and/or navigation. The water control plan must conform with proposed allocations of storage capacity and downstream conditions or other requirements to meet all functional objectives of the particular project, acting separately or in combination with other projects in a system.

(6) The term *real-time* denotes the processing of current information or data in a sufficiently timely manner to influence a physicial response in the system being monitored and controlled. As used herein the term connotes * * * the analyses for and execution of water control decisions for both minor and major flood events and for navigation, based on prevailing hydrometeorological and other conditions and constraints, to achieve efficient management of water resource systems.

(d) *Procedures*—(1) *Conditions during project formulation*. During the planning and design phases, the project owner should consult with the Corps of Engineers regarding the quantity and value of space to reserve in the reservoir for flood control and/or navigation purposes, and for utilization of the space, and other requirements of the license, permit or conditions of the law. Relevant matters that bear upon flood control and navigation accomplishment include: Runoff potential, reservoir discharge capability, downstream channel characteristics, hydrometeorological data collection, flood hazard, flood damage characteristics, real estate acquisition for flowage requirements (fee and easement), and resources required to carry out the water control plan. Advice may also be sought on determination of and regulation for the probable maximum or other design flood under consideration by the project owner to establish the quantity of surcharge storage space, and freeboard elevation of top of dam or embankment for safety of the project.

(2) *Corps of Engineers involvement*. If the project owner is responsible for real-time implemenetation of the water control plan, consultation and assistance will be provided by the Corps of Engineers when appropriate and to the extent possible. During any emergency that affects flood control and/or navigation, the Corps of Engineers may temporarily prescribe regulation of flood control or navigation storage space on a day-to-day (real-time) basis without request of the project owner. Appropriate consideration will be given for other authorized project functions. Upon refusal of the project owner to comply with regulations prescribed by the Corps of Engineers, a letter will be sent to the project owner by the Chief of Engineers or his duly authorized representative describing the reason for the regulations prescribed, events that have transpired, and notification that the project owner is in violation of the Code of Federal Regulations. Should an impasse arise, in that the project owner or the designated operating entity persists in noncompliance with regulations prescribed by the Corps of Engineers, measures may be taken to assure compliance.

(3) *Corps of Engineers implementation of real-time water control decisions*. The Corps of Engineers may prescribe the continuing regulation of flood control storage space for any project subject to this regulation on a day-to-day (real-time) basis. When this is the case, consultation and assistance from the project owner to the extent possible will be expected. Special requests by the project owner, or appropriate operating entity, are preferred before the Corps of Engineers offers advice on real-time regulation during surcharge storage utilization.

(4) *Water control plan and manual*. Prior to project completion, water control managers from the Corps of Engineers will visit the project and the area

served by the project to become familiar with the water control facilities, and to insure sound formulation of the water control plan. The formal plan of regulation for flood control and/or navigation, referred to herein as the water control plan, will be developed and documented in a water control manual prepared by the Corps of Engineers. Development of the manual will be coordinated with the project owner to obtain the necessary pertinent information, and to insure compatibility with other project purposes and with surcharge regulation. Major topics in the manual will include: Authorization and description of the project, hydrometeorology, data collection and communication networks, hydrologic forecasting, the water control plan, and water resource management functions, including responsibilities and coordination for water control decision-making. Special instructions to the dam tender or reservoir manager on data collection, reporting to higher Federal authority, and on procedures to be followed in the event of a communication outage under emergency conditions, will be prepared as an exhibit in the manual. Other exhibits will include copies of this regulation, letters of understanding consummating this regulation, and the water control agreements. After approval by the Chief of Engineers or his duly authorized representative, the manual will be furnished the project owner.

(5) *Water control agreement.* (i) A water control diagram (graphical) will be prepared by the Corps of Engineers for each project having variable space reservation for flood control and/or navigation during the year; e.g., variable seasonal storage, joint-use space, or other rule curve designation. Reservoir inflow parameters will be included on the diagrams when appropriate. Concise notes will be included on the diagrams prescribing the use of storage space in terms of release schedules, runoff, nondamaging or other controlling flow rates downstream of the damsite, and other major factors as appropriate. A water control release schedule will be prepared in tabular form for projects that do not have variable space reservation for flood control and/or navigation. The water control diagram or release schedule will be signed by a duly authorized representative of the Chief of Engineers, the project owner, and the designated operating agency, and will be used as the basis for carrying out this regulation. Each diagram or schedule will contain a reference to this regulation.

(ii) When deemed necessary by the Corps of Engineers, information given on the water control diagram or release schedule will be supplemented by appropriate text to assure mutual understanding on certain details or other important aspects of the water control plan not covered in this regulation, on the water control diagram or in the release schedule. This material will include clarification of any aspects that might otherwise result in unsatisfactory project performance in the interest of flood contol and/or navigation. Supplementation of the agreement will be necessary for each project where the Corps of Engineers exercises the discretionary authority to prescribe the flood control regulation on a day-to-day (real-time) basis. The agreement will include delegation of the responsibility. The document should also cite, as appropriate, section 7 of the 1944 Flood Control Act, the Federal Power Act and/or other congressional legislation authorizing construction an/or directing operation of the project.

(iii) All flood control regulations published in the FEDERAL REGISTER under this section (part 208) of the code prior to the date of this publication which are listed in § 208.11(e) are hereby superseded.

(iv) Nothing in this regulation prohibits the promulgation of specific regulations for a project in compliance with the authorizing acts, when agreement on acceptable regulations cannot be reached between the Corps of Engineers and the owner.

(6) *Hydrometeorological instrumentation.* The project owner will provide instrumentation in the vicinity of the damsite and will provide communication equipment necessary to record and transmit hydrometeorological and reservoir data to all appropriate Federal authorities on a real-time basis unless there are extenuating circumstances or are otherwise provided for as a condition of the license or permit. For those

projects where the owner retains responsibility for real-time implementation of the water control plan, the owner will also provide or arrange for the measurement and reporting of hydrometeorological parameters required within and adjacent to the watershed and downstream of the damsite, sufficient to regulate the project for flood control and/or navigation in an efficient manner. When data collection stations outside the immediate vicinity of the damsite are required, and funds for installation, observation, and maintenance are not available from other sources, the Corps of Engineers may agree to share the costs for such stations with the project owner. Availability of funds and urgency of data needs are factors which will be considered in reaching decisions on cost sharing.

(7) *Project safety*. The project owner is responsible for the safety of the dam and appurtenant facilities and for regulation of the project during surcharge storage utilization. Emphasis upon the safety of the dam is especially important in the event surcharge storage is utilized, which results when the total storage space reserved for flood control is exceeded. Any assistance provided by the Corps of Engineers concerning surcharge regulation is to be utilized at the discretion of the project owner, and does not relieve the owner of the responsibility for safety of the project.

(8) *Notification of the general public*. The Corps of Engineers and other interested Federal and State agencies, and the project owner will jointly sponsor public involvement activities, as appropriate, to fully apprise the general public of the water control plan. Public meetings or other effective means of notification and involvement will be held, with the initial meeting being conducted as early as practicable but not later than the time the project first becomes operational. Notice of the initial public meeting shall be published once a week for 3 consecutive weeks in one or more newspapers of general circulation published in each county covered by the water control plan. Such notice shall also be used when appropriate to inform the public of modifications in the water control plan. If no newspaper is published in a county, the notice shall be published in one or more newspapers of general circulation within that county. For the purposes of this section a newspaper is one qualified to publish public notices under applicable State law. Notice shall be given in the event significant problems are anticipated or experienced that will prevent carrying out the approved water control plan or in the event that an extreme water condition is expected that could produce severe damage to property or loss of life. The means for conveying this information shall be commensurate with the urgency of the situation. The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers, project owner or designated operating agency.

(9) *Other generalized requirements for flood control and navigation*. (i) Storage space in the reservoirs allocated for flood control and navigation purposes shall be kept available for those purposes in accordance with the water control agreement, and the plan of regulation in the water control manual.

(ii) Any water impounded in the flood control space defined by the water control agreement shall be evacuated as rapidly as can be safely accomplished without causing downstream flows to exceed the controlling rates; *i.e.*, releases from reservoirs shall be restricted insofar as practicable to quantities which, in conjunction with uncontrolled runoff downstream of the dam, will not cause water levels to exceed the controlling stages currently in force. Although conflicts may arise with other purposes, such as hydropower, the plan or regulation may require releases to be completely curtailed in the interest of flood control or safety of the project.

(iii) Nothing in the plan of regulation for flood control shall be construed to require or allow dangerously rapid changes in magnitudes of releases. Releases will be made in a manner consistent with requirements for protecting the dam and reservoir from major damage during passage of the maximum design flood for the project.

(iv) The project owner shall monitor current reservoir and hydro- meteorological conditions in and adjacent to

the watershed and downstream of the damsite, as necessary. This and any other pertinent information shall be reported to the Corps of Engineers on a timely basis, in accordance with standing instructions to the damtender or other means requested by the Corps of Engineers.

(v) In all cases where the project owner retains responsibility for real-time implementation of the water control plan, he shall make current determinations of: Reservoir inflow, flood control storage utilized, and scheduled releases. He shall also determine storage space and releases required to comply with the water control plan prescribed by the Corps of Engineers. The owner shall report this information on a timely basis as requested by the Corps of Engineers.

(vi) The water control plan is subject to temporary modification by the Corps of Engineers if found necessary in time of emergency. Requests for and action on such modifications may be made by the fastest means of communication available. The action taken shall be confirmed in writing the same day to the project owner and shall include justification for the action.

(vii) The project owner may temporarily deviate from the water control plan in the event an immediate short-term departure is deemed necessary for emergency reasons to protect the safety of the dam, or to avoid other serious hazards. Such actions shall be immediately reported by the fastest means of communication available. Actions shall be confirmed in writing the same day to the Corps of Engineers and shall include justification for the action. Continuation of the deviation will require the express approval of the Chief of Engineers, or his duly authorized representative.

(viii) Advance approval of the Chief of Engineers, or his duly authorized representative, is required prior to any deviation from the plan of regulation prescribed or approved by the Corps of Engineers in the interest of flood control and/or navigation, except in emergency situations provided for in paragraph (d)(9)(vii) of this section. When conditions appear to warrant a prolonged deviation from the approved plan, the project owner and the Corps of Engineers will jointly investigate and evaluate the proposed deviation to insure that the overall integrity of the plan would not be unduly compromised. Approval of prolonged deviations will not be granted unless such investigations and evaluations have been conducted to the extent deemed necessary by the Chief of Engineers, or his designated representatives, to fully substantiate the deviation.

(10) *Revisions*. The water control plan and all associated documents will be revised by the Corps of Engineers as necessary, to reflect changed conditions that come to bear upon flood control and navigation, e.g., reallocation of reservoir storage space due to sedimentation or transfer of storage space to a neighboring project. Revision of the water control plan, water control agreement, water control diagram, or release schedule requires approval of the Chief of Engineers or his duly authorized representative. Each such revision shall be effective upon the date specified in the approval. The original (signed document) water control agreement shall be kept on file in the respective Office the Division Engineer, Corps of Engineers, Department of the Army, located at division offices throughout the continental USA. Copies of these agreements may be obtained from the office of the project owner, or from the office of the appropriate Division Engineer, Corps of Engineers.

(11) *Federal Register*. The following information for each project subject to section 7 of the 1944 Flood Control Act and other applicable congressional acts shall be published in the FEDERAL REGISTER prior to the time the projects becomes operational and prior to any significant impoundment before project completion or * * * at such time as the responsibility for physical operation and maintenance of the Corps of Engineers owned projects is transferred to another entity:

(i) Reservoir, dam, and lake names,

(ii) Stream, county, and State corresponding to the damsite location,

(iii) The maximum current storage space in acre-feet to be reserved exclusively for flood control and/or navigation purposes, or any multiple-use

space (intermingled) when flood control or navigation is one of the purposes, with corresponding elevations in feet above mean sea level, and area in acres, at the upper and lower limits of said space,

(iv) The name of the project owner, and

(v) Congressional legislation authorizing the project for Federal participation.

(e) *List of projects.* The following tables, ''Pertinent Project Data—Section 208.11 Regulation,'' show the pertinent data for projects which are subject to this regulation.

LIST OF PROJECTS

[Non-Corps projects with Corps Regulation Requirements]

Project name [1] (1)	State (2)	County (3)	Stream [1] (4)	Project purpose [2] (5)	Storage 1000 AF (6)	Elev limits feet M.S.L. Upper (7)	Elev limits feet M.S.L. Lower (8)	Area in acres Upper (9)	Area in acres Lower (10)	Authorizing legis. [3] (11)	Proj. owner [4] (12)
Agency Valley Dam & Res	OR	Malheur	N Fork Malheur R	FICR	60.0	3340.0	3263.0	1900	0	PL 68–292	USBR.
Alpine Dam	IL	Winnebago	Keith Cr	F	0.6	796.0	760.0	52	0	PWA Proj	Rkfd, IL.
Altus Dam & Res	OK	Jackson	N Fork Red R	F	19.6	1562.0	1559.0	6800	6260	PL 761	USBR.
				IMR	132.6	1559.0	1517.5P	6260	735		
Anderson Ranch Dam & Res	ID	Elmore	S Fk Boise R	FEI	423.2	4196.0	4039.6	4740	1150	Act of 1939 53 Stat 1187.	USBR.
Arbuckle Dam & Res	OK	Murray	Rock Cr	F	36.4	885.3	872.0	3130	2350	PL 594	USBR.
				MRC	62.5	872.0	827.0	2350	606		
Arrowrock Dam & Res	ID	Elmore	Boise R	FI	286.6	3216.0	2974.0	3100	200	Act of 1902 32 Stat 388.	USBR.
Bear Cr Dam	MO	Marion Ralls	Bear Cr	F	8.7	546.5	520.0	540	0	PL 83–780	Hnbl, MO.
Bear Swamp Fife Brook (Lo)	MA	Franklin	Deerfield R	E	6.9	870.0	830.0	152	115	FERC 2669	NEPC.
Bear Swamp PS (Upper)	MA	Franklin	Deerfield R Trib	E	8.9	1600.0	1550.0	118	102	Fed Pwr Act	NEPC.
Bellows Falls Dam & Lk	VT	Cheshire	Connecticut R	E	7.5	291.6	273.6	2804	836	FERC 1885	NEPC.
Big Dry Creek and Div	CA	Fresno	Big Dry Cr & Dog Cr.	F	16.2	425.0	393.0	1530	0	PL 77–228	Rclm, B CA.
Blue Mesa Dam & Res	CO	Gunnison	Gunnison R	FER	748.5	7519.4	7393.0	9180	2790	PL 84–485	USBR
Boca Dam & Res	CA	Nevada	Little Truckee R	I	32.8	5596.5	5521.0	873	52	PL 61–289	USBR.
				FI	8.0	5605.0	5596.0	980	873	PL 68–292	
Bonny Dam & Res	CO	Yuma	S Fork Republic R	F	128.2	3710.0	3672.0	5036	2042	PL 78–534	USBR.
				ICR	39.2	3672.0	3638.0	2042	331	PL 79–732	
Boysen Dam & Res	WY	Fremont	Wild R	F	150.4	4732.2	4725.0	22170	19560	PL 78–534	USBR.
				FEIQ	146.1	4725.0	4717.0	19560	16960		
				EIQ	403.8	4717.0	4685.0	16960	9280		
Brantley Dam & Res	NM	Eddy	Pecos R	FIRQ	348.5	3283.0	3210.7	21294	38	PL 92–515	USBR.
Brownlee Dam & Res	OR ID	Baker Washington	Snake R	FE	975.3	2077.0	1976.0	13840	6650	FERC No 1971–C	ID Pwr.
Bully Cr Dam & Res	OR	Malheur	Bully Cr	FI	31.6	2516.0	2456.8	1082	140	PL 86–248	USBR.
Camanche Dam & Res	CA	San Joaquin	Mokelumne R	FRIE	200.0	235.5	205.1	7600	5507	PL 86–645	EB-MUD.
				RIE	230.9	205.1	92.0	5507	0		
Canyon Ferry Dam & Lk	MT	Lewis Clark	Missouri R	F	99.5	3800.0	3797.0	33535	32800	PL 78–534	USBR.
				FEI	795.1	3797.0	3770.0	32800	24125		
				EI	711.5	3770.0	3728.0	24125	11480		
Cedar Bluff Dam & Res	KS	Trego	Smoky Hill R	F	191.9	2166.0	2144.0	10790	6869	PL 78–534	USBR.
				IMCR	149.8	2144.0	2107.8	6869	2086		
Cheney Dam & Res	KS	Sedgwick	N Fork Ninnescah R.	F	80.9	1429.9	1421.6	12420	9540	PL 86–787	USBR.
				MC	151.8	1421.6	1392.9	9540	1970		
					0.0	0.0	0.0	0	0		
Clark Canyon Dam & Res	MT	Beaverhead	Beaverhead R	F	79.1	5560.4	5546.1	5900	5160	PL 78–534	USBR.
				FI	50.4	5546.1	5535.7	5160	4495		
				I	126.1	5535.7	5470.6	4495	220		

LIST OF PROJECTS—Continued

[Non-Corps projects with Corps Regulation Requirements]

Project name [1] (1)	State (2)	County (3)	Stream [1] (4)	Project purpose [2] (5)	Storage 1000 AF (6)	Elev limits feet M.S.L.		Area in acres		Authorizing legis. [3] (11)	Proj. owner [4] (12)
						Upper (7)	Lower (8)	Upper (9)	Lower (10)		
Del Valle Dam & Res	CA	Alameda	Alameda Cr	F	37.0	745.0	703.1	1060	710	PL 87–874	DWR.
				FIM	1.0	703.1	702.2	710	700		CA.
				IMR	29.0	702.2	635.0	700	275		
Don Pedro Dam & Lk	CA	Tuolumne	Tuolumne R	FIER	340.0	830.0	802.0	12900	11260	PL 78–534	M&T.
				EIR	1381.0	802.0	600.0	11260	3520		Irr.
					308.0	600.0	342.0	3520	29		
East Canyon Dam & Res	UT	Morgan	East Canyon Cr	FEIM	48.0	5705.5	5578.0	684	130	PL 81–273	USBR.
Echo Dam & Res	UT	Summit	Weber R	FEIM	74.0	5560.0	5450.0	1455	0	PL 81–83	USBR.
Emigrant Dam & Res	OR	Jackson	Emigrant Cr	FIR	39.0	2241.0	2131.5	801	80	PL 83–606	USBR.
Enders Dam & Res	NE	Chase	Frenchman Cr	F	30.0	3127.0	3112.3	2405	1707	PL 78–534	USBR.
				ICR	34.5	3112.3	3082.4	1707	658	PL 84–505	
Folsom Dam & Lk	CA	Sacramento	American R	FEIM	400.0	466.0	427.0	11450	9040		USBR.
				EIM	610.0	427.0	210.0	9040	0		
Fort Cobb Dam & Res	OK	Caddo	Pond (Cobb) Cr	F	63.7	1354.8	1342.0	5980	4100	PL 419	USBR.
				IMCR	78.3	1342.0	1300.0	4100	337		
Foss Dam & Res	OK	Custer	Washita R	F	180.6	1668.6	1652.0	13140	8800	PL 419	USBR.
				IMRC	243.8	1652.0	1597.2	8800	1360		
Friant Dam & Millerton Lk	CA	Fresno	San Joaquin R	FEIM	390.5	578.0	466.3	4850	2101	PL 75–392	USBR.
										PL 76–868	
Galesville Dam	OR	Douglas	Cow Cr	FEMCR	42.2	1881.5	1780.0	760	150	FERC No. 71	Dgls, CO.
										61001	
Gaston Dam & Res	NC	Halifax	Roanoke R	FE	63.0	203.0	200.0	22500	20300	Fed Pwr Act	VA Pwr.
		Northampton									
Glen Elder Dam & Waconda Lk	KS	Mitchel	Solomon R	F	722.3	1488.3	1455.6	33682	12602	PL 78–534	USBR.
				IM	204.8	1455.6	1428.0	12602	3341	PL 79–526	
Glendo Dam & Res	WY	Platte	N Platte R	F	271.9	4653.0	4635.0	17990	12370	PL 78–534	USBR.
				EIM	454.3	4635.0	4570.0	12370	3130		
Grand Coulee Dam & FDR Lk	WA	Okanogan Grant	Columbia R	FEI	5185.5	1290.0	1208.0	82280	45592	PL 89–561	USBR.
H Neely Henry Dam & Res	AL	Calhoun St. Clair	Coosa R	FE	49.7	508.0	502.5	11235	7632	PL 83–436	AL Pwr.
Harris Dam & Res	AL	Randolph	Tallapoosa R	FE	215.0	793.0	785.0	10661	9012	PL 89–789	AL Pwr.
Heart Butte Dm & Lk Tschida	ND	Grant	Heart R	F	147.9	2094.5	2064.5	6580	3400	PL 78–534	USBR.
				IQ	69.0	2064.5	2030.0	3400	810		
Hells Canyon Dam & Res	OR	Wallowa	Snake R	EN	11.7	1688.0	1683.0	2380	2280	FERC No 1971–A	ID Pwr.
	ID	Adams									
Hoover Dam & Lk Mead	NV	Clark Mohave	Colorado R	F	1500.0	1229.0	1219.6	162700	156500	PL 70–642	USBR.
	AZ			FEIMCAR	15.8	1219.6	1083.0	156500	83500		
Hungry Horse Dam & Res	MT	Flathead	S Fork Flathead R	FEI	2982.0	3560.0	3336.0	23800	5400	PL 78–329	USBR.
Indian Valley Dam & Res	CA	Lake	N Fork Cache Cr	FIMR	40.0	1485.0	1474.0	3975	3734	PL 84–984	Yolo FC&W.
				IMR	260.0	1474.0	1334.0	3734	308		
Jamestown Dam & Res	ND	Stutsman	James R	F	185.4	1454.0	1429.8	13210	2090	PL 78–534	USBR.
				IQ	28.1	1429.8	1400.0	2090	160		

Jocassee Dam & Res	SC	Pickens	Keowee R	PRFC	1160.0	1110.0	1080.0	7565	6815	FERC 2503	USBR Pwr.
Keowee Dam & Lk	SC	Pickens	Keowee R	FPMCAR	392.0	800.0	775.0	18372	13072	FERC 2503	Duke Pwr.
Kerr Dam Flathead Lk	MT	Lake	Flathead R	FER	1219.0	2893.0	2883.0	125560	120000	FERC No 5	MT Pwr.
Kerr Dam & Lk Hudson (Markham Ferry Project).	OK	Mayes	Grand Neosho R	F	244.2	636.0	619.0	18800	10900	PL 76–476	GRD Auth.
				E	48.6	619.0	599.0	10900	4500		
Keyhole Dam & Res	WY	Crook	Belle Fourche R	F	140.5	4111.5	4099.3	13730	9410	PL 78–534	USBR.
				IQ	185.8	4099.3	4051.0	9410	820		
Kirwin Dam & Res	KS	Phillips	N Fork Solomon R	F	215.1	1757.3	1729.3	10640	5080	PL 78–534	USBR.
				ICR	89.6	1729.2	1697.0	5080	1010	PL 79–732; PL 79–526.	
Lake Kemp Dam & Res	TX	Wichita	Wichita R	F	234.9	1156.0	1144.0	23830	15590	SD 144	WF&C.
				MI	268.0	1144.0	1114.0	15590	3350		WID2.
Leesville Dam & Res	VA	Campbell Pttsylvnia.	Roanoke R	EQ	37.8	613.0	600.0	3235	2400	Fed Pwr Act	Appl Pwr.
Lemon Dam & Res	CO	La Plata	Florida R	FIM	39.0	8148.0	8023.0	622	62	PL 84–485	USBR.
Lewis M Smith Dam & Res	AL	Walker Culman	Sipsey Fork; Black Warrior R.	F	280.6	522.0	510.0	25700	21200	Fed Pwr Act	AL Pwr.
				E	394.3	510.0	488.0	21200	15097		
Little Wood	ID	Blain	Little Wood R	FI	30.0	5237.3	5127.4	572	0	PL 84–993	USBR.
Logan Martin Dam & Res	AL	Talladega	Cossa R	F	245.3	477.0	465.0	26310	15260	PL 83–436	AL Pwr.
				E	67.0	465.0	460.0	15263	11887		
Los Banos Dam & Detention	CA	Merced	Los Banos Cr	R	20.6	327.8	231.2	467	0		USBR.
Los Banos Dam & Detention Res.	CA	Merced	Los Banos Cr	F	14.0	353.5	327.8	619	467	PL 86–488	USBR.
Lost Creek Dam & Res	UT	Morgan	Lost Cr	FEIM	20.0	6005.0	5912.0	365	93	PL 81–273	USBR.
Lovewell Dam & Res	KS	Jewell	White Rock Cr	F	50.5	1595.3	1582.6	5025	2986	PL 78–534	USBR.
				ICR	24.9	1582.6	1571.7	2986	1704	PL 79–732	
Marshall Ford Dam & Res	TX	Travis	Colorado R	F	779.8	714.0	681.0	29060	18955	PL 73–392	USBR.
				NEIM	810.5	681.0	618.0	18955	8050	PL 78–534	
Mayfield Dam & Res	WA	Lewis	Cowlitz R	FER	21.4	425.0	415.0	2250	2030	FPC No 2016–A	Tac WN.
McGee Creek Dam & Res	OK	Atoka	McGee Cr	F	85.3	595.5	577.1	5540	3810	PL 94–423	USBR.
				MCR	108.0	577.7	515.1	3810	370		
Medicine Cr Dam Harry Strunk Lk.	NE	Frontier	Medicine Cr	F	52.7	2386.2	2366.1	3483	1840	PL 78–534	USBR.
				ICR	26.8	2366.1	2343.0	1840	701	PL 84–505	
Mossyrock Dam Davisson Lk	WA	Lewis	Cowlitz R	FER	1397.0	778.5	600.0	11830	4250	FERC No 2016–B	Tac, WN
Mt Park Dam Tom Steed Res	OK	Kiowa	W Otter Cr	F	20.3	1414.0	1411.0	7130	6400	PL 90–503	USBR.
				MRC	89.0	1411.0	1386.3	6400	1270		
Navajo Dam & Res	NM	San Juan Rio Arriba	San Juan R	FEIRQ	1036.1	6085.0	5990.0	15610	7400	PL 84–485	USBR.
New Bullards Bar Dam & Res	CA	Yuba	Yuba R	FEIMR	170.0	1956.0	1918.3	4809	4225	PL 89–298	YCWA.
				EIMR	790.9	1918.3	1447.5	4225	129		
New Exchequer Dam & Lk	CA	Tuolumne	Merced R	FEIR	400.0	867.0	799.7	7110	4849	PL 86–645	Mrcd, Irr.
				EIR	451.6	799.7	660.0	4849	1900		
				IR	171.0	660.0	467.0	1900	150		
New Melones Dam & Lk	CA	Tuolumne Calaveras	Stanislaus R	FEIMR	450.0	1088.0	1049.5	12500	10900	PL 87–874	USBR.
				EIMR	1670.0	1049.5	808.0	10900	3500		
				IMR	300.0	808.0	540.0	3500	0		
Northfield Mt (Up) PS	MA	Franklin	Connecticut	E	14.0	965.0	938.0	196	134	FERC 1889	WMEC.
Norton Dam & Kieth Sebelius Lk.	KS	Norton	Prairie Dog Cr	F	98.8	2331.4	2304.3	5316	2181	PL 78–534	USBR.
				IMRC	30.7	2304.3	2280.4	2181	587	PL 79–526 PL 79–732	

LIST OF PROJECTS—Continued

[Non-Corps projects with Corps Regulation Requirements]

Project name [1] (1)	State (2)	County (3)	Stream [1] (4)	Project purpose [2] (5)	Storage 1000 AF (6)	Elev limits feet M.S.L.		Area in acres		Authorizing legis. [3] (11)	Proj. owner [4] (12)
						Upper (7)	Lower (8)	Upper (9)	Lower (10)		
Ochoco Dam & Res	OR	Crook	Ochoco Cr	FICR	52.5	3136.2	0.0	1130	130	PL 84–992	USBR.
Oroville Dam & Lk	CA	Butte	Feather R	FEIMAR	750.0	900.0	848.5	15800	13346	PL 85–500	CA.
				EIMAR	2788.0	848.5	210.0	13346	0		
Pactola Dam & Res	SD	Pennington	Rapid Cr	F	43.1	4621.5	4580.2	1230	860	PL 78–534	USBR.
				IM	55.0	4580.2	4456.1	860	100		
Palisades Dam & Res	ID	Bonneville	Snake R	FIE	1202.0	5620.0	5452.0	16100	2170	PL 81–864	USBR.
Paonia Dam & Res	CO	Gunnision	Muddy Cr	FIR	17.0	6447.5	6373.0	334	120	PL 80–177	USBR.
										PL 84–485	
Pensacola Dam Grand Lake O' the Cherokees.	OK	Mayes	Grand (Neosho) R	F	525.0	755.0	745.0	59200	46500	PL 77–228	Grd, Auth.
				E	1192.0	745.0	705.0	46500	17000		
Pineview Dam & Res	UT	Weber	Odgen R	FEIM	110.0	4900.0	4818.0	2874	0	PL 81–273	USBR.
Platoro Dam & Res	CO	Conejos	Conejos R	F	6.0	10034.0	10027.5	947	920	PL 76–640	USBR.
				IR	54.0	10027.5	9911.0	920	0		
Priest Rapids Dam & Res	WA	Grant	Columbia R	FER	44.0	488.0	481.5	7600	6500	FERC No 2114–A	Grnt, PUD.
Prineville Dam & Res	OR	Crook	Crooked R	FIRC	233.0	3257.9	3114.0	3997	140	PL–84–992	USBR.
Prosser Cr Dam & Res	CA	Nevada	Prosser Cr	C	8.6	5703.7	5661.0	334	86	PL 84–858	USBR.
				FC	20.0	5761.0	5703.7	745	334	PL 85–706	
Pueblo Dam & Res	CO	Pueblo	Arkansas R	F	93.0	4898.7	4880.5	5671	4640	PL 87–590	USBR.
				IR	261.4	4880.5	4764.0	4640	421		
Red Willow Dam Hugh Butler Lk.	NE	Frontier	Red Willow Cr	F	48.9	2604.9	2581.8	2682	1629	PL 78–534	USBR.
				IRC	27.3	2581.8	2558.0	1629	787	PL 85–783	
										PL 84–505	
Ririe Dam & Res	ID	Bonneville	Willow Cr	FIRC	99.0	5119.0	5023.0	150	360	PL 87–874	USBR.
Roanoke Rapids Dam & Res	NC	Halifax	Roanoke R	EC	16.8	132.0	128.0	4600	4100	FPC 2009	VA, Pwr.
Rocky Reach Dam Lk Entiat	WA	Chelan	Columbia R	FER	36.0	707.0	703.0	9920	9490	FERC No 2145	Chln PUD.
Rocky River PS Lk Candlewood	CT	Litchfield	Housatonic R	E	142.5	430.0	418.0	5608	4692	FERC 2576	CLPC.
Ross Dam & Res	WA	Whatcom	Skagit R	E	1052.0	1602.5	1475.0	11700	4450	FERC 553	Sttl.
Sanford Dam & Lk Meredith	TX	Hutchison	Canadian R	F	462.1	2965.0	2941.3	21640	17320	PL 81–898	USBR.
				IMCRQ	761.3	2941.3	2860.0	17320	4500		
Savage River Dam & Res	MD	Garrett	Savage R	FMA	20.0	1468.5	1317.0	366	0	PL 78–534	Ptmc Comm.
Scoggins Dam Henry Hagg Lk			Scoggins Cr	FIR	56.3	305.8	235.3	116	4	PL 89–596	USBR.
Shadehill Dam & Res	SD	Perkins	Grand R	F	218.3	2302.0	2271.9	9900	4800	PL 78–534	USBR.
				IQ	80.9	2271.9	2250.8	4800	2800		
Shasta Dam Lk	CA	Shasta	Sacramento R	FEIA	1300.0	1067.0	1018.6	29570	23894	PL 75–392	USBR.
				EIA	3241.0	1018.6	735.8	23894	2200		
Shepaug Dam & Lk	CT	Litchfield	Housatonic R	E	5.0	200.0	172.0	1882	1125	FERC 2576	CLPC.
Smith Mtn Dam & Res	VA	Bedford	Roanoke R	E	40.8	795.0	793.0	20600	20200	Fed Pwr Act	Appl Pwr.
		Franklin									
		Roanoke									
		Pttsylvnia									

Stampede Dam & Res	CA	Sierra	Little Truckee R	FEM	22.0	5949.0	5942.1	3430	3230	PL 84–858	USBR.
				EM	199.4	5942.0	5798.0	3230	210		
Starvation Dam and Res	UT	Duchesne	Strawberry R	FIM	165.3	5712.0	5595.0	3310	689	PL 84–485	USBR.
Stevens Creek Dam & Res	GA	Columbia	Savannah River	P	10.5	187.5	183.0	4300	0	FERC 2535	SC E&G.
Stevenson Dam Lk Zoar	CT	Litchfield	Housatonic R	E	5.0	108.0	80.0	1148	516	FERC 2576	CLPC.
Summer Dam & Lk	NM	De Baca	Pecos R	FI	51.4	4261.0	4200.0	2835	0	PL 83–780	USBR.
Tat Momolikot Dam & Lake	AZ	Pinal	Santa Rosa Wash	FIC	198.5	1539.0	1480.0	11790	0	PL 89–298	BIA.
Tiber Dam & Res	MT	Libert Toole	Marias R	F	400.9	3012.5	2993.0	23150	17890	PL 78–534	USBR.
				FIQ	268.0	2993.0	2976.0	17890	13790		
				IQ	121.7	2976.0	2966.4	13790	11710		
Trenton Dam & Res	NB	Hitchcock	Republican R	F	134.1	2773.0	2752.0	7940	4922	PL 78–534	USBR.
				IRC	99.8	2752.0	2720.0	4922	1572	PL 84–505	
Turners Falls (Low) Dam & Lk	MA	Franklin	Connecticut R	E	8.7	185.0	176.0	2110	1880	FERC 1889	WMEC
Twin Buttes Dam & Lake	TX	Tom Green	Concho R	F	454.4	1969.1	1940.2	23510	23510	PL 85–152	USBR
				IM	150.0	1940.2	1885.0	9080	670	PL 78–534	
Twitchell Dam & Res	CA	Santa Barbara	Cuyama R	F	89.8	651.5	623.0	3671	2556	PL 83–774	USBR
				IM	135.6	623.0	504.0	2556	0		
Upper Baker Dam Baker Lk	WA	Whatcom	Baker R	FE	184.6	724.0	674.0	4985	2375	PL 89–298	Pgt
										FERC 2150B	P&L
Vallecito Dam & Res	CO	La Plata	Los Pinos R	FEI	125.4	7665.0	7582.5	2720	350	PL 61–288	USBR
										PL 68–292	
Vernon Dam & Lk	VT	Windham	Connecticut R	E	18.3	220.1	212.1	2550	1980	FERC 1904	NEPC
Wanapum Dam & Res	WA	Grant	Columbia R	FER	151.6	571.5	560.0	14300	13350	FERC No 2114–B	Grnt PUD
Wanship Dam & Rockport	UT	Summit	Weber R	FEIM	61.0	6037.0	5930.0	1077	121	PL 81–273	USBR
Warm Springs Dam & Res	OR	Malheur	Middle Fork Malheur R.	FICR	191.0	3406.0	3327.0	460	90	PL 78–534	Vale USBR
Waterbury Dam & Res	VT	Washington	Little R	FP	27.7	617.5	592.0	1330	890	PL 78–534	VT
Webster Dam & Res	KS	Rocks	S Fork Solomon R	F	183.4	1923.7	1892.5	8480	3772	PL 78–534	USBR
				IRC	72.1	1892.5	1860.0	3772	906	PL 79–526	
										PL 79–732	
Weiss Dam & Res	AL	Cherokee	Coosa R	F	397.0	574.0	564.0	50000	30200	PL 83–436	AL Pwr
				E	148.4	564.0	558.0	30200	19545		
Wells Dam L Pateros	WA	Douglas	Columbia R	FER	74.0	781.0	771.0	10000	8000	FERC No 2149	Dgls PUD
Wilder Dam & Lk	VT	Windsor	Connecticut R	E	13.3	385.0	380.0	3100	2240	FERC 1893	NEPC
Yellowtail Dam & Bighorn Lk	MT	Big Horn	Bighorn R	F	258.3	3657.0	3640.0	17280	12600	PL 78–534	USBR
				FEIQ	240.3	3640.0	3614.0	12600	6915		PUD
				EIQ	336.1	3614.0	3547.0	6915	4150		

[1] Cr—Creek; CS—Control Structure; Div—Diversion; DS—Drainage Structure; FG—Floodgate; Fk—Fork; GIWW—Gulf Intercoastal Waterway; Lk—Lake; L&D—Lock & Dam; PS—Pump Station; R—River; Res—Reservoir

[2] F—Flood Control; N—Navigation; P—Corps Hydropower; E—Non Corps Hydropower; I—Irrigation; M—Municipal and/or Industrial Water Supply; C—Fish and Wildlife Conservation; A—Low Flow Augmentation or Pollution Abatement; R—Recreation; Q—Water Quality or Silt Control

[3] FCA—Flood Control Act; FERC—Federal Energy Regulatory Comm; HD—House Document; PL—Public Law; PW—Public Works; RHA—River & Harbor Act; SD—Senate Document; WSA—Water Supply Act

[4] Appl Pwr—Appalachian Power; Chln PUD—Chelan Cnty PUD 1; CLPC—CT Light & Power Co; Dgls PUD—Douglas Cnty PUD 1; DWR—Department of Water Resources; EB-MUD—East Bay Municipal Utility Dist; GRD—Grand River Dam Auth; Grnt PUD—Grant Cnty PUD 2; Hnbl—city of Hannibal; M&T Irr—Modesto & Turlock Irr; Mrcd Irr—Merced Irr; NEPC—New England Power Co; Pgnt P&L—Pugent Sound Power & Light; Ptmc Comm—Upper Potomac R Comm; Rclm B—Reclamation Board; Rkfd—city of Rockford; Sttl—city of Seattle; Tac—City of Tacoma; Vale USBR—50% Vale Irr 50% USBR; WF&CWID—City of Wichita Falls and Wichita Cnty Water Improvement District No. 2; WMEC—Western MA Electric Co; YCWA—Yuba City Water Auth; Yolo FC&W—Yolo Flood Control & Water Conserv Dist

(Sec. 7, Pub. L. 78–534, 58 Stat. 890 (33 U.S.C. 709); the Federal Power Act, 41 Stat. 1063 (16 U.S.C. 791(A)); and sec. 9, Pub. L. 83–436, 68 Stat. 303)

[43 FR 47184, Oct. 13, 1978, as amended at 46 FR 58075, Nov. 30, 1981; 55 FR 21508, May 24, 1990]

§ 208.19 Marshall Ford Dam and Reservoir (Mansfield Dam and Lake Travis), Colorado River, Tex.

The Secretary of the Interior, through his agent, the Lower Colorado River Authority (LCRA) shall operate the Marshall Ford Dam and Reservoir in the interest of flood control as follows:

(a) *Water Control Plan*—(1) *General objectives*. The objectives of the Marshall Ford Reservoir (Lake Travis) are the improvement of navigation, flood control, stream regulation, generation of power, irrigation, water supply, and recreation uses.

(2) *Overall plan for water control*. Within the Colorado River Basin, four Federal projects provide flood control protection: Twin Buttes, O. C. Fisher, Hords Creek, Marshall Ford Reservoir. The considerable distance (328 river miles) and large intervening area (19,990 square miles) separating Marshall Ford Reservoir and the three upper basin flood-control projects prevent realizing any significant benefits from coordinating releases to control the inflow into Marshall Ford. Marshall Ford Reservoir is the fifth project in a tandem of six lakes operated and controlled by the Lower Colorado River Authority for the generation of hydroelectric power. These six projects in downstream order are: Lake Buchanan, Lake Inks, Lake Lyndon B. Johnson (Alvin Wirtz Dam), Lake Marble Falls (Max Starcke Dam), Marshall Ford Reservoir (Lake Travis and Mansfield Dam) and Lake Austin (Tom Miller Dam). The releases from each of the six projects are closely coordinated by the LCRA System Operation Control Center. Three of the projects (Lake Inks, Lake Marble Falls, and Lake Austin) are run-of-the-river projects. The capabiity of the four upstream lakes to control the inflow of flood water into Marshall Ford depends on their antecedent lake elevations. The majority of inflows to Marshall Ford are comprised of the mainstream flows of the Colorado River, the tributary flows of the Llano River (entering the Colorado River between Lakes Inks and Lyndon B. Johnson) and the unregulated tributary flows of the Pedernales River (entering between Lake Marble Falls and Marshall Ford Reservoir). During flood conditions, the following upstream U.S. Geological Survey gaging stations are used as indicators of the magnitude of the inflows to Marshall Ford Reservoir:

(i) Colorado River near San Saba (08147000).

(ii) Pedernales River near Johnson City (08153500).

(iii) Llano River at Llano (08151500).

(3) *Standing instructions to dam tender*. During normal conditions, the dam tender will regulate the project in accordance with instructions received from the LCRA System Operator. During flood conditions, when the Marshall Ford Reservoir level is within the flood control zone, the LCRA System Operator will regulate the project in accordance with instructions received from the Corps of Engineers. In the event of a communication outage, the LCRA System Operator will rely on the Emergency Release Schedule, to make changes in the rate of releases from the lake.

(4) *Flood control regulation*—(i) *General*. At all times, releases shall be coordinated such that the Colorado River, Texas, will be controlled when possible, to remain below control stages at downstream official U.S. Geological Survey (USGS) gaging stations; except that no curtailment of normal hydroelectric turbine releases shall result thereby at any time. The USGS river stations and their control stages are as follows:

KEY DOWNSTREAM CONTROL POINTS

Station	Control stage (feet)	Equivalent cubic feet per second (c.f.s.)
Austin (08158000)	20.5	30,000
	[1] 24.8	[1] 50,000
Bastrop (08159200)	25.1	45,000
	[1] 26.7	[1] 50,000
Columbus (08161000)	25.5	50,000

[1] Control stage when elevation 710 is forecast to be exceeded.

Forecasted reservoir inflows and the upstream USGS gaging stations Pedernales River near Johnson City (08153500), Llano River at Llano (08151500), and Colorado River near San Saba (08147000) will be considered when scheduling flood releases.

(ii) *Flood control release schedule*. Marshall Ford will be regulated to reduce

flooding on the Colorado River below the dam. This plan of regulation will govern flood control releases from Marshall Ford Dam as follows:

(A) *Elevation 681–683.* If the reservoir level is forecast to rise above elevation 681 feet, m.s.l. (top of conservation pool) but not to exceed elevation 683 feet, m.s.l., the releases shall be increased to 3,000 c.f.s. and maintained until the reservoir level recedes to elevation 681 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(B) *Elevation 683–685.* If the reservoir elevation is forecast to rise above elevation 683 feet, m.s.l. but not to exceed elevation 685 the releases shall be increased to 5,000 c.f.s. and maintained until the reservoir level recedes below 683 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(C) *Elevation 685–691.* Seasonal. (*1*) During the months of January through April, July through August, and November through December: If the reservoir elevation is forecast to rise above elevation 685 feet, m.s.l. but not to exceed elevation 691, the releases shall be increased to 5,000 c.f.s. and maintained until the reservoir level recedes below 683 feet, m.s.l. These release rates may need to be reduced due to excessive downstream runoff to prevent exceeding the control stages specified in paragraph (a)(4)(i) of this section.

(*2*) During the months of May, June, September, and October: Should the reservoir elevation be forecast to exceed 685 feet, m.s.l. but not to exceed elevation 691 feet, m.s.l: Releases will be made at 30,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be maintained until the reservoir level falls below elevation 685 feet, m.s.l.

(D) *Elevation 691–710.* Should the reservoir elevation be forecast to exceed 691 feet, m.s.l. (the top of the joint use pool) but not to exceed elevation 710 feet, m.s.l: Releases will be made at 30,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be so controlled until the reservoir level falls below elevation 691 feet, m.s.l.

(E) *Elevation 710–714.* If the reservoir level is forecast to exceed 710 feet, m.s.l. but not to exceed elevation 714 feet, m.s.l: Releases will be made at 50,000 c.f.s. from the project or at a rate such that, when combined with local inflows below the dam, will equal but not exceed the downstream control stages on the Colorado River as specified in paragraph (a)(4)(i) of this section. These release rates will be maintained until the reservoir level falls below elevation 710 feet, m.s.l.

(F) *Elevation 714–722.* If the reservoir level is forecast to exceed 714 feet, m.s.l. but not to exceed 722 feet, m.s.l: Releases will be made at 90,000 c.f.s. from the project. Releases shall not exceed the associated peak flood reservoir inflow.

(G) *Elevation 722 and above.* If the reservoir level is forecast to exceed elevation 722 feet, m.s.l., the Bureau of Reclamation will schedule releases as required for the safety of the structure.

(iii) *Normal flood control regulation schedule.* The following table, Flood Control Regulation Schedule, summarizes the flood control releases schedule for given reservoir levels and river conditions:

MARSHALL FORD DAM AND RESERVOIR NORMAL FLOOD CONTROL REGULATION SCHEDULE

Condition	Reservoir level	Flood control release	Control points
Pool Rising	Forecast: 681–683 [1]	3,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 683–685	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.

MARSHALL FORD DAM AND RESERVOIR NORMAL FLOOD CONTROL REGULATION SCHEDULE—Continued

Condition	Reservoir level	Flood control release	Control points
Do	Forecast: 685–691:.		
	(a) During January, February, March, April, July, August, November, December.	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
	(b) During May, June, September, October.	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 691–710	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 710–714	50,000 c.f.s	50,000 c.f.s. (24.8 ft.) at Austin. 50,000 c.f.s. (26.7 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	Forecast: 714–722[2]	90,000 c.f.s	No controls.
Do	Forecast: above 722	The Bureau of Reclamation will specify the releases for safety of the structure.	
Pool Falling	Above 722	.....do.	
Do	722–714[2]	90,000 c.f.s	No controls.
Do	714–710	50,000 c.f.s	50,000 c.f.s. (24.8 ft.) at Austin. 50,000 c.f.s. (26.7 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	710–691	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	691–685:	30,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin.
	(a) During May, June, September, October.		45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
	(b) During January, February, March, April, July, August, November, December.	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	685–683	5,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.
Do	683–681	3,000 c.f.s	30,000 c.f.s. (20.5 ft.) at Austin. 45,000 c.f.s. (25.1 ft.) at Bastrop. 50,000 c.f.s. (25.5 ft.) at Columbus.

[1] During flood conditions, when the reservoir level is below elevation 681 ft., m.s.l., the Corps of Engineers will provide recommendations to the Lower Colorado River Authority on flood control releases.
[2] Releases shall not exceed the associated peak flood reservoir inflow.

NOTE: No curtailment of normal hydroelectric turbine releases shall be required due to flood control operations.

(5) *Deviation from normal regulation.* (i) There are occasions when it is necessary or desirable to deviate from the water control plan for short periods of time as indicated in the following paragraphs:

(A) The water control plan is subject to temporary modification by the Corps of Engineers, if found necessary in time of emergency. Requests for and action on such modifications may be made by the fastest means of communication available. The action taken shall be confirmed in writing the same day to the project owner and shall include justification for the action.

(B) The project owner may temporarily deviate from the water control plan in the event an immediate short-term departure is deemed necessary for emergency reasons to protect the safety of the dam, or to avoid serious hazards. Such actions shall be immediately reported by the fastest means of communication available. Actions shall be confirmed in writing the same

day to the Corps of Engineers and shall include justification for the action. Continuation of the deviation will require the express approval of the Chief of Engineers, or his duly authorized representative.

(C) Advance approval of the Chief of Engineers, or this duly authorized representative, is required prior to any deviation from the plan of regulation prescribed or approved by the Corps of Engineers in the interest of flood control and/or navigation, except in emergency situations provided for in paragraph (a)(5)(i)(B) of this section. When conditions appear to warrant a prolonged deviation from the approved plan, the project owner and the Corps of Engineers will jointly investigate and evaluate the proposed deviation to insure that the overall intergrity of the plan would not be unduly compromised. Approval of prolonged deviations will not be granted unless such investigations and evaluations have been conducted to the extent deemed necessary by the Chief of Engineers, or his designated representative, to fully substantiate the deviations.

(ii) The Fort Worth District Corps of Engineers will serve as the LCRA contact point for any deviation from or modification of the water control plan. The communication network will be described in the Water Control Manual. The Fort Worth District will notify the Division Engineer, Southwestern Division, Corps of Engineers of any deviations or modifications of the water control plan and request his approval. The Division Engineer has been designated as the authorized representative of the Chief of Engineers in matters relating to projects within the Southwestern Division which are subject to provisions of Section 7 of the 1944 Flood Control Act.

(b) *Reports to the Corps of Engineers.* (1) The Authority shall furnish the District Engineer, Fort Worth District, U.S. Army Corps of Engineers, by 0900 hours daily, with the following:

(i) Project information.

(A) Lake elevations at midnight and 0800 hours.

(B) Uncontrolled spillway, flood-control conduits, and turbine releases: Cubic feet per second at 0800 hours, and day-second-feet average for the previous 24 hours, ending at midnight.

(C) Computed average inflow, in day-second-feet for the previous 24 hours, ending at midnight.

(D) Total precipitation in inches for the previous 24 hours at the dam, ending at 0800 hours.

(E) Summary of streamflow and channel conditions at gages named in paragraphs (a)(2) and (a)(4)(i) of this section.

(ii) Lake Buchanan Pool elevation at 0800 hours.

(2) Whenever flood conditions are imminent, or stages of 16 feet (20,000 c.f.s.) or more at the Austin gage have been reached, the Authority shall report at once to the District Engineer by the fastest means of communications available. Data listed in paragraph (b)(1) of this section shall be reported to, and at intervals prescribed by the District Engineer for the duration of flood surveillance and control operations.

(Sec. 7, Pub. L. 78-534, 58 Stat. 890 (33 U.S.C. 709))

[44 FR 24552, Apr. 26, 1979; 44 FR 29050, May 18, 1979]

§ 208.22 Twin Buttes Dam and Reservoir, Middle and South Concho Rivers, Tex.

The Bureau of Reclamation, or its designated agent, shall operate the Twin Buttes Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the Twin Buttes Reservoir level is between elevations 1,940.2 (top of conservation pool) and elevation 1,969.1 (top of flood control pool) the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with releases from San Angelo Reservoir on the North Concho River and local inflow below the dam, will not produce flows in excess of bankful capacities on the South Concho and Concho Rivers downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed a 22.5-foot stage (25,000 c.f.s.) on

the USGS gage on the Concho River near San Angelo, Tex. (river mile 60.9); or a 22.8-foot stage (25,000 c.f.s.) on the USGS gage near Paint Rock, Tex. (river mile 19.6).

(b) When the Twin Buttes Reservoir level exceeds elevation 1,969.1 (top of flood control pool), releases shall be made at the maximum rate possible and continued until the pool elevation recedes to elevation 1,969.1 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Twin Buttes Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing (1) for Twin Buttes Reservoir, the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway releases; storage; reservoir inflow; available evaporation data; and precipitation in inches; and (2) for Nasworthy Reservoir, the elevation of the reservoir level; irrigation outlet works and controlled spillway releases; storage; tailwater elevation; and reservoir inflow. Normally, one reading at 8 a.m. shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the Twin Buttes Reservoir level is above elevation 1,940.2. Whenever the Twin Buttes Reservoir level rises to elevation 1,940.2 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1,940.2. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity in Twin Buttes Reservoir above elevation 1,940.2 are subject to temporary modification in time of flood by the District Engineer, if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Twin Buttes Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Twin Buttes Dam.

(e) Flood control operation shall not restrict releases necessary for municipal, industrial, and irrigation uses.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the Twin Buttes Dam and Reservoir from major damage or inconsistent with safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 32,470 c.f.s. with the reservoir level at elevation 1,969.1) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC–5274 as modified by revised drawings and criteria in Designers' Operating Criteria, Twin Buttes Dam, dated February 1963).

(h) All elevations stated in this section are at Twin Buttes Dam and are referred to the datum in use at that location.

[31 FR 12521, Sept. 22, 1966]

§ 208.25 Pensacola Dam and Reservoir, Grand (Neosho) River, Okla.

The representative of the agency charged with the operation of the Pensacola Dam, referred to in this section as the Representative shall operate the dam and reservoir in the interest of flood control as follows:

(a) Whenever the pool stage exceeds elevation 745 at the dam, the discharge facilities shall be operated under the direction of the District Engineer, Engineer Department at Large, in charge of the locality, so as to reduce as much as practicable the flood damage below

the reservoir and to limit the pool stage to elevation 755 at the dam.

(b) The District Engineer will advise the Representative when inflow rates are anticipated which will raise the pool above elevation 745 at the dam. The District Engineer will also advise the Representative of essential increase in the flood control storage capacity of the reservoir which should be provided by drawing the pool down below elevation 745 at the dam in order to obtain maximum flood control benefits, with the provision that the suggested reduction in power storage shall at no time exceed the replacement volume of flow then in sight in the streams above the reservoir.

(c) The Representative shall furnish the District Engineer, daily, a report showing the elevation of the reservoir pool and the tailwater, number of gates in operation, spillway and turbine releases, evaporation, storage, reservoir inflow, and precipitation in inches as shown by Agency gages. One reading shall be shown for each day with additional readings of releases for all changes in spillway gate operation, and with readings of all items except evaporation three times daily when the District Engineer advises the Representative that flood conditions are imminent. By agreement between the Representative and the District Engineer, any of the foregoing information may be furnished by telephone and may, if agreed upon, be omitted from the report. Whenever the pool is above elevation 745 at the dam the Representative shall submit additional reports by telegraph or telephone as directed by the District Engineer, with a report to be furnished immediately whenever the pool rises above elevation 745 at the dam.

(d) The District Engineer will furnish the Representative with all available information and detailed instructions for operation of the reservoir in the interest of flood control during an emergency condition when communications between the dam and the District Office are broken. In the event that the District Engineer or his authorized representative cannot be reached by telephone, telegraph or by other means during a flood emergency, these instructions will govern. The provisions of paragraphs (a), (b), and (c) of this section will govern at all times except during such an emergency.

(e) Elevations stated in this section are referred to Pensacola datum which is 1.07 feet below mean sea level.

[10 FR 15044, Dec. 14, 1945]

§ 208.26 Altus Dam and Reservoir, North Fork Red River, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Altus Dam and Reservoir in the interest of flood control as follows:

(a) Flood control storage in the reservoir between elevation 1559 (top of conservation pool) and elevation 1562 (top of flood control pool) amounts to 21,448 acre-feet (based on 1953 sedimentation survey). Whenever the reservoir level is within this elevation range, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the dam, and to limit the reservoir level to elevation 1562 when possible.

(b) When the reservoir level is below elevation 1559 and the predicted volume of runoff from the area above the dam exceeds the volume of water necessary to raise the reservoir level above elevation 1559, the reservoir will be operated to obtain maximum overall benefits which may consist of preflood releases: *Provided*, That all preflood releases will have prior concurrence of the Bureau of Reclamation or its designated agent. The preflood releases shall not result in a reservoir level below elevation 1559 at the end of the flood.

(c) When the reservoir level exceeds elevation 1559, releases will be made equal to inflow or 2,000 c.f.s., whichever is smaller, except that when the reservoir elevation forecast indicates that this operation will result in a reservoir level exceeding elevation 1562, releases will be increased in order to provide maximum overall benefits and prevent the reservoir level from exceeding elevation 1562, insofar as possible. The flood control pool will be emptied by continuing the peak discharge rate

until the reservoir level recedes to elevation 1559, at which time releases will be made equal to inflow.

(d) If the reservoir level exceeds elevation 1562 (top of flood control pool) releases shall be made at the maximum rate possible through the spillway gates, conduit, and the uncontrolled spillway and continued until the reservoir level recedes to elevation 1559, at which time releases will be made equal to inflow.

(e) Whenever the reservoir level is above elevation 1559 and communication with the Bureau of Reclamation Regional Office and the Corps of Engineers District Office is unobtainable, releases shall be made equal to inflow until all gates are fully open. The maximum release thus obtained shall be maintained until the pool recedes to elevation 1559 at which time releases shall be made to equal inflow.

(f) The representative of the Bureau of Reclamation, or its designated agent, in immediate charge of the operation of Altus Dam will furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report on forms provided by the District for this purpose, showing the reservoir pool elevation; the number of spillway gates in operation with their respective opening and releases; the uncontrolled spillway release; conduit, canal outlet wasteway, and irrigation releases; storage; reservoir inflow; available evaporation data; and precipitation in inches. A reading at 8 a.m., noon, 4 p.m., and midnight, shall be shown for each day. Whenever the reservoir level rises to elevation 1559 and releases for flood control regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report at 8 a.m., noon, and 3 p.m. thereafter, in that manner, until the reservoir level recedes to elevation 1559. These latter reports shall reach the District Engineer by 9 a.m., 1 p.m., and 4 p.m. each day.

(g) The regulations of this section, insofar as they govern use of the flood control storage capacity above elevation 1559 are subject to temporary modification by the District Engineer in time of flood, if found desirable on the basis of conditions at the time. Such desired modifications shall be coordinated with and approved by the Bureau of Reclamation.

(h) Flood control operation shall not restrict releases necessary for irrigation, municipal, and industrial uses.

(i) Releases made in accordance with the regulations of this section are subject to the conditions that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage.

(j) Any time that the Bureau of Reclamation determines that operation in accordance with the regulations of this section will jeopardize the safety of Altus Dam, they will so advise the District Engineer and will assume operational responsibility and take action necessary to assure the safety of the dam.

(k) The discharge characteristics of the controlled and the uncontrolled spillways (capable of discharging approximately 42,800 c.f.s. and 2,000 c.f.s., respectively, with the reservoir level at elevation 1562) shall be maintained in accordance with the construction plans (Bureau of Reclamation Drawing No. 258–D–69).

(l) All elevations stated in this section are at Altus Dam and are referred to the datum in use at that location.

[33 FR 12733, Sept. 7, 1968]

§ 208.27 Fort Cobb Dam and Reservoir, Pond (Cobb) Creek, Oklahoma.

The Bureau of Reclamation shall operate the Fort Cobb Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the reservoir level is between elevation 1342.0, top of the conservation pool, and elevation 1354.8, top of flood control pool, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam,

will not produce flows in excess of bankfull on Pond (Cobb) Creek downstream of the reservoir and on the Washita River downstream of their confluence. In order to accomplish this purpose, flows shall not exceed a 13.0-foot stage (1,300 cfs) on the USGS gage on Pond (Cobb) Creek near Fort Cobb, Oklahoma, river mile 5.0; a 19.0-foot stage (6,000 cfs) on the USGS gage on the Washita River near Anadarko, Oklahoma, river mile 305.0; or a 19.0-foot stage on the USGS gage near Bradley, Oklahoma, river mile 210.6.

(b) When the reservoir level exceeds elevation 1354.8, top of flood control pool, releases shall be made at the maximum rate possible and continued until the pool elevation recedes to elevation 1354.8 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Fort Cobb Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer showing the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway and municipal outlet works release; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, one reading at 8:00 a.m., shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the reservoir level is above elevation 1342.0. Whenever the reservoir level rises to elevation 1342.0 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1342.0. These latter reports shall reach the District Engineer by 9:00 a.m., each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity above elevation 1342.0 are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Fort Cobb Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Fort Cobb Dam.

(e) Flood control operation shall not restrict releases necessary for municipal-industrial and irrigation uses:

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with safe routing of the inflow design flood.

(g) All elevations stated in this section are at Fort Cobb Dam and are referred to the datum in use at that location.

[26 FR 3190, Apr. 14, 1961]

§ 208.28 Foss Dam and Reservoir, Washita River, Oklahoma.

The Bureau of Reclamation shall operate the Foss Dam and Reservoir in the interest of flood control as follows:

(a) Whenever the reservoir level is between elevation 1652.0, top of conservation pool, and elevation 1668.6, top of flood control pool, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the Washita River downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed an 18.0 foot stage (3,000 c.f.s.) on the USGS gage on the Washita River near Clinton, Oklahoma, river mile 447.4, or an 18.0 foot stage (6,000 c.f.s.) on the USGS

gage on the Washita River near Carnegie, Oklahoma, river mile 353.9.

(b) When the reservoir level exceeds elevation 1668.6, top of flood control pool, releases shall be made at the maximum rate possible through the river outlet works and uncontrolled spillway and continued until the pool elevation recedes to elevation 1668.6 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation in immediate charge of operation of the Foss Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, on forms provided by the District Engineer for this purpose, a report, showing the elevation of the reservoir level; number of river outlet works gates in operation with their respective openings and releases; canal outlet works, municipal outlet works and uncontrolled spillway releases; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, one reading at 8:00 a.m. shall be shown for each day. Readings of all items except evaporation shall be shown for at least three observations a day when the reservoir level is above elevation 1652.0. Whenever the reservoir level rises to elevation 1652.0 and releases for flood regulation are necessary or appear imminent, the Bureau representative shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1652.0. These latter reports shall reach the District Engineer by 9:00 a.m., each day.

(d) The regulations of this section insofar as they govern use of the flood control storage capacity above elevation 1652.0 are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation in immediate charge of operations of the Foss Dam by any available means of communication and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, with a copy to the representative in charge of the Foss Dam.

(e) Flood control operations shall not restrict releases necessary for municipal-industrial and irrigation uses.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with safe routing of the inflow design flood.

(g) All elevations stated in this section are at Foss Dam and are referred to the datum in use at that location.

[26 FR 6982, Aug. 3, 1961]

§ 208.29 Arbuckle Dam and Lake of the Arbuckles, Rock Creek, Okla.

The Bureau of Reclamation, or its designated agent, shall operate the Arbuckle Dam and Lake of the Arbuckles in the interest of flood control as follows:

(a) Flood control storage in Lake of the Arbuckles between elevation 872 (top of conservation pool) and elevation 885.3 (top of flood control pool) initially amounts to 36,400 acre-feet. Whenever the lake level is within this elevation range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable of the flood damage below the lake. In order to accomplish this purpose, flood control releases shall be limited to amounts, which when combined with local inflows below the dam will not produce flows in excess of bankfull on Rock Creek downstream of the lake and on the Washita River, from the confluence of Rock Creek to Durwood, Okla. Operating stages and corresponding flows are as follows: An 11-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on Rock Creek near Dougherty, Okla., river mile 1; and a 20-foot stage (15,000 c.f.s.) on the U.S.G.S. gage on the Washita River near Durwood, Okla., river mile 63.4.

(b) When the level in Lake of the Arbuckles exceeds elevation 885.3 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the lake level recedes to elevation 885.3 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Arbuckle Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the lake elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; tailwater elevation; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight shall be shown for each day. Whenever the lake level rises to elevation 872 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and unless otherwise instructed shall report once daily thereafter in that manner until the lake level recedes to elevation 872. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 872, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operation of the Arbuckle Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Arbuckle Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and lake from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 1,880 c.f.s. when the lake level is at 872) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. 6099 as modified by the ''as built'' drawings).

(h) All elevations stated in this section are at Arbuckle Dam and are referred to the datum in use at that location.

[33 FR 263, Jan. 9, 1968]

§ 208.32 Sanford Dam and Lake Meredith, Canadian River, Tex.

The Bureau of Reclamation, or its designated agent, shall operate the Sanford Dam and Lake Meredith in the interest of flood control as follows:

(a) Flood control storage in the reservoir, Lake Meredith, between elevation 2941.3 (top of conservation pool) and elevation 2965.0 (top of flood control pool) initially amounts to 462,100 acre-feet. Whenever the reservoir level is within this elevation range, the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the Canadian River downstream of the reservoir. In order to accomplish this purpose, flows shall not exceed 25,000 c.f.s. at the Sanford Dam site or an 8.0-foot stage (75,000 c.f.s.) on the U.S.G.S. gage on the Canadian

River near Canadian, Tex., river mile 433.9.

(b) When the reservoir level exceeds elevation 2965.0 (top of flood control pool) releases shall be made at the maximum rate possible through the flood control outlet works, the river outlet works and the uncontrolled spillway and continue until the pool level recedes to elevation 2965.0 when releases will be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation, or its designated agent in immediate charge of operation of the Sanford Dam will furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose showing the pool elevation; the number of flood control outlet works gates in operation with their respective openings and releases; the uncontrolled spillway release; and the municipal outlet works release; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally a reading at 8 a.m., noon, 4 p.m., and midnight, shall be shown for each day. Readings of all items except evaporation shall be shown for at least four observations a day when the reservoir level is at or above elevation 2941.3. Whenever the reservoir level rises to elevation 2941.3 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation, or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, will report once daily thereafter in that manner until the reservoir level recedes to elevation 2941.3. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of the flood control storage capacity above elevation 2941.3, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operation of the Sanford Dam by the best available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Sanford Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Release made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the flood control outlet works (capable of discharging approximately 22,000 c.f.s. with the reservoir level at elevation 2941.3) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC–5725 as modified by revised drawings and criteria in Designers' Operating Criteria, Sanford Dam, dated October 1965).

(h) All elevations stated in this section are at Sanford Dam and are referred to the datum in use at that location.

[31 FR 7751, June 1, 1966]

§ 208.33 Cheney Dam and Reservoir, North Fork of Ninnescah River, Kans.

The Bureau of Reclamation, or its designated agent, shall operate the Cheney Dam and Reservoir in the interest of flood control as follows:

(a) Flood control storage in the reservoir is the capacity between elevation 1421.6 (top of the conservation pool) and elevation 1429.0 (top of the flood control pool), and initially amounts to 80,860 acre-feet. Whenever the reservoir level is within this range the flood control discharge facilities shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in

charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. All flood control releases shall be made in amounts which, when combined with local inflow below the dam, will not produce flows in excess of bankfull on the North Fork of Ninnescah and Ninnescah River downstream of the reservoir and on the Arkansas River to Arkansas City, Kans. In order to accomplish this, flows shall not exceed a 90-foot stage (2,500 c.f.s.) on the U.S.G.S. gage on North Fork of Ninnescah River near Cheney, Kans., river mile 8.8; a 12-foot stage (7,000 c.f.s.) on the U.S.G.S. gage on Ninnescah River near Peck, Kans., river mile 31.6; and a 16-foot stage (18,000 c.f.s.) on the U.S.W.B. gage on Arkansas River at Arkansas City, Kans., river mile 701.4.

(b) When the reservoir level exceeds elevation 1429.0 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the pool recedes to elevation 1429.0 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Cheney Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer for this purpose, showing the pool elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; storage; tailwater elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m., and midnight, shall be shown for each day. Whenever the reservoir pool rises to elevation 1421.6 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph, and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir pool recedes to elevation 1421.6. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 1421.6, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operations of the Cheney Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Cheney Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 3,590 c.f.s. with the reservoir level at elevation 1421.6) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC–5744 as modified by revised drawings and criteria in Designers' Operating Criteria, Cheney Dam, dated November 1964).

(h) All elevations stated in this section are at Cheney Dam and are referred to the datum in use at that location.

[31 FR 7751, June 1, 1966]

§ 208.34 Norman Dam and Lake Thunderbird, Little River, Okla.

The Bureau of Reclamation, or its designated agent, shall operate Norman Dam and Lake Thunderbird in the interest of flood control as follows:

(a) Flood control storage in Lake Thunderbird between elevation 1039 (top of the conservation pool) and elevation 1049.4 (top of flood control pool) initially amounts to 76,600 acre-feet. Whenever the reservoir level is within this elevation range the flood control discharge facilities at Norman Dam shall be operated under the direction of the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, so as to reduce as much as practicable the flood damage below the reservoir. In order to accomplish this purpose, flood control releases shall be limited to amounts which, when combined with local inflows below the dam, will not produce flows in excess of bankfull on the Little River downstream of the reservoir. Controlling bankfull stages and corresponding flows, as presently estimated, are as follows: A 7.5-foot stage (1,800 c.f.s.) on the U.S.G.S. gage on Little River near Tecumseh, Okla., river mile 77.2 and a 17-foot stage (6,500 c.f.s.) on the U.S.G.S. gage on Little River near Sasakwa, Okla., river mile 24.1.

(b) When the reservoir level in Lake Thunderbird exceeds elevation 1049.4 (top of flood control pool), releases shall be made at the maximum rate possible through the river outlet works and the uncontrolled spillway and continued until the pool recedes to elevation 1049.4 when releases shall be made to equal inflow or the maximum release permissible under paragraph (a) of this section, whichever is greater.

(c) The representative of the Bureau of Reclamation or its designated agent in immediate charge of operation of the Norman Dam shall furnish daily to the District Engineer, Corps of Engineers, Department of the Army, in charge of the locality, a report, on forms provided by the District Engineer showing the pool elevation; the number of river outlet works gates in operation with their respective openings and releases; uncontrolled spillway release; municipal pumping rate; storage; tail water elevation; reservoir inflow; available evaporation data; and precipitation in inches. Normally, a reading at 8 a.m., noon, 4 p.m. and midnight, shall be shown for each day. Whenever the reservoir level rises to elevation 1039 and releases for flood regulation are necessary or appear imminent, the representative of the Bureau of Reclamation or its designated agent, shall report at once to the District Engineer by telephone or telegraph and, unless otherwise instructed, shall report once daily thereafter in that manner until the reservoir level recedes to elevation 1039. These latter reports shall reach the District Engineer by 9 a.m. each day.

(d) The regulations of this section, insofar as they govern use of flood control storage capacity above elevation 1039.0, are subject to temporary modification in time of flood by the District Engineer if found desirable on the basis of conditions at the time. Such desired modifications shall be communicated to the representative of the Bureau of Reclamation and its designated agent in immediate charge of operations of the Norman Dam by any available means of communication, and shall be confirmed in writing under date of the same day to the Regional Director in charge of the locality, and his designated agent, with a copy to the representative in charge of the Norman Dam.

(e) Flood control operation shall not restrict pumping necessary for municipal and industrial uses and releases necessary for downstream users.

(f) Releases made in accordance with the regulations of this section are subject to the condition that releases shall not be made at rates or in a manner that would be inconsistent with emergency requirements for protecting the dam and reservoir from major damage or inconsistent with the safe routing of the inflow design flood (spillway design flood).

(g) The discharge characteristics of the river outlet works (capable of discharging approximately 5,400 c.f.s. with the reservoir level at elevation 1039.0) shall be maintained in accordance with the construction plans (Bureau of Reclamation Specifications No. DC–5793 as revised by the ''as built drawings'').

(h) All elevations stated in this section are at Norman Dam and are referred to the datum in use at that location.

[34 FR 4967, Mar. 7, 1969]

§ 208.82 Hetch Hetchy, Cherry Valley, and Don Pedro Dams and Reservoirs.

The Turlock Irrigation District and Modesto Irrigation District, acting jointly, hereinafter called the Districts, shall operate Don Pedro Dam and Reservoir in the interest of flood control, and the City and County of San Francisco, hereinafter called the City, shall operate Hetch Hetchy Dam and Reservoir and Cherry Valley Dam and Reservoir in the interest of flood control all as follows:

(a) Storage space in Don Pedro Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Storage Reservation Diagram currently in force for that reservoir, except when storage of floodwater is necessary as prescribed in paragraph (d) of this section. The Flood-Control Storage Reservation Diagram in force as of the promulgation of this section is that dated 4 April 1956, File No. TU–1–26–7, and is on file in the Office of the Chief of Engineers, Department of the Army, Washington, D.C., in the office of the Turlock Irrigation District, Turlock, California, and in the office of the Modesto Irrigation District, Modesto, California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the Districts. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the presidents of the Districts and from that date until replaced shall be the Flood-Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, the office of the Turlock Irrigation District, Turlock, California, and the office of the Modesto Irrigation District, Modesto, California.

(b) Storage space in Hetch Hetchy Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Storage Reservation Diagram for that reservoir currently in force, except when storage of floodwater is necessary as prescribed in paragraph (e) of this section. The Flood-Control Storage Reservation Diagram in force as of the promulgation of this section is that dated April 4, 1956, File No. TU–3–26–1, and is on file in the Office. Chief of Engineers, Department of the Army, Washington, D.C., and in the office of the Public Utilities Commission of the City and County of San Francisco, California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the City. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the Public Utilities Commission of the City and County of San Francisco, California, and from that date until replaced shall be the Flood-Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, and the office of the Public Utilities Commission of the City and County of San Francisco, California.

(c) Storage space in Cherry Valley Reservoir shall be kept available for flood-control purposes in accordance with the Flood-Control Reservation Diagram currently in force for that reservoir except when storage of floodwater is necessary as prescribed in paragraph (e) of this section. The Flood-Control Storage Reservoir Diagram in force as of the promulgation of this section is that dated April 4, 1956, File No. TU–2–26–6, and is on file in the Office, Chief of Engineers, Corps of Engineers, Department of the Army, Washington, D.C., and in the office of the Public Utilities Commission of the City and County of San Francisco,

California. Revisions of the Flood-Control Storage Reservation Diagram may be developed from time to time as necessary by the Corps of Engineers and the City. Each such revision shall be effective upon the date specified in the approval thereof by the Chief of Engineers and by the Public Utilities Commission of the City and County of San Francisco, California, and from that date until replaced shall be the Flood-Control Storage Reservation Diagram currently in force for the purpose of this section. Copies of the Flood-Control Storage Reservation Diagram currently in force shall be kept on file in and may be obtained from the office of the District Engineer, Corps of Engineers, in charge of the locality, and the office of the Public Utilities Commission of the City and County of San Francisco, California.

(d) Any water temporarily stored in the flood-control space indicated by the Flood-Control Storage Reservation Diagram currently in force for Don Pedro Reservoir shall be released as rapidly as can be accomplished without causing flows in Tuolumne River below LaGrange Dam to exceed 7,000 c.f.s. during rain floods or to exceed 9,000 c.f.s. at all other times.

(e) Any water temporarily stored in the flood-control space indicated by the Flood-Control Storage Reservation Diagrams currently in force for Hetch Hetchy and Cherry Valley Reservoirs shall be released as rapidly as can be accomplished without exceeding the respective safe channel capacities, and without materially contributing to major encroachment into the flood-control space at Don Pedro Reservoir. Such releases shall be proportioned between Hetch Hetchy and Cherry Valley Reservoirs in such manner as to assure that the percentage of encroachment into the flood-control space at the two reservoirs will tend toward equality insofar as possible. Whenever the storage space in Don Pedro Reservoir is less than 90 percent of that indicated by the Flood-Control Storage Reservation Diagram currently in force for that reservoir, releases from Hetch Hetchy and Cherry Valley Reservoirs shall be restricted to those required in connection with the generation of hydroelectric power in the power system of the City and in connection with diversion into the water supply system of the City.

(f) In the event that the water level in Don Pedro Reservoir rises above elevation 605.55 at the dam (top of spillway gates), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (d) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(g) In the event that the water level in Hetch Hetchy Reservoir rises above elevation 3806 at the dam (top of spillway gates), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (e) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(h) In the event that the water level in Cherry Valley Reservoir rises above elevation 4700 at the dam (spillway crest), subsequent operation of the dam shall be such as to cause downstream flows to exceed as little as possible the criteria prescribed in paragraph (e) of this section, and in no event to cause the maximum subsequent release from the reservoir to exceed the estimated maximum subsequent inflow to the reservoir.

(i) Nothing in the regulations of this section shall be construed to require dangerously rapid changes in magnitudes of releases from any of the reservoirs.

(j) The Districts shall procure such current basic hydrologic data, make such current determinations of required flood-control storage reservation in Don Pedro Reservoir, and current calculations of permissible releases from Don Pedro Reservoir as are required to accomplish the flood-control objectives of the regulations of this section.

(k) The City shall procure such current basic hydrologic data, and make such current calculations of permissible releases from Hetch Hetchy and

Cherry Valley Reservoirs as are required to accomplish the flood-control objectives of the regulations of this section.

(l) The City shall keep the District Engineer, Corps of Engineers, in charge of the locality, and the Districts currently advised of reservoir releases, reservoir storages, basic operating criteria which affect the schedule of operations, and such other operating data as the District Engineer, Corps of Engineers, may request for Hetch Hetchy, Eleanor, and Cherry Valley Reservoirs.

(m) The Districts shall keep the District Engineer, Corps of Engineers, in charge of the locality, and the City currently advised of reservoir releases, reservoir storages, basic operating criteria which affect the schedule of operations, and such other operating data as the District Engineer, Corps of Engineers, may request for Don Pedro Reservoir.

(n) The flood-control regulations of this section are subject to temporary modification by the District Engineer, Corps of Engineers, if found necessary in time of flood emergency. Request for and action on such modifications may be made by any available means of communication, and such action shall be confirmed in writing under date of same day to the operating agency for the reservoir affected.

[21 FR 2682, Apr. 26, 1956]

PART 209—ADMINISTRATIVE PROCEDURE

Sec.

209.50 Mississippi River Commission: Public observation of Commission meetings.
209.138a Authorization for exploratory drilling in the Gulf of Santa Catalina, Calif.
209.140 Operations of the Corps of Engineers under the Federal Power Act.
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APPENDIX A TO PART 209—PUBLIC LAW 90–483, 90TH CONGRESS, S. 3710, AUGUST 13, 1968

AUTHORITY: 5 U.S.C. 301; 33 U.S.C. 1; 10 U.S.C. 3012.

SOURCE: 33 FR 18670, Dec. 18, 1968, unless otherwise noted.

§ 209.50 Mississippi River Commission: Public observation of Commission meetings.

(a) *Purpose.* (1) The purpose of this regulation is to afford to the public, to the fullest possible extent, information regarding the decisionmaking processes of the Mississippi River Commission and to open all meetings of the Mississippi River Commission to public observation except in instances where a portion or portions of a meeting may be closed to the public in accordance with this regulation in order to protect the rights of individuals and/or in order to permit the Mississippi River Commission to carry out its statutory and assigned functions and responsibilities. This regulation is issued in accordance with section (g) of the Government in the Sunshine Act and implements sections (b) through (f) of said Act (5 U.S.C. 552b (b) through (f)).

(2) Public observation of Mississippi River Commission meetings includes public participation in the deliberations of the Commission only to the extent specifically provide in public notices of such meetings.

(b) *Definitions.* The following definitions apply to the regulation in this section.

(1) *Commission* means The Mississippi River Commission.

(2) *President* means the duly appointed President and Executive Officer of the Commission.

(3) *Commissioner* means a duly appointed member of the Commission.

(4) *Secretary* means the Secretary of the Commission.

(5) *Chief Legal Officer* means the Division Counsel or the acting Division Counsel of the Lower Mississippi Valley Division, Corps of Engineers.

(6) *Meeting* means the deliberations of at least a majority of the Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include:

(i) Deliberations of the Commission in determining whether or not to close a portion or portions of a meeting in accordance with paragraphs (e)(4) and (e)(5) of this section.

(ii) Deliberations of the Commission in determining whether or not to withhold from disclosure information pertaining to a portion or portions of a meeting as provided in paragraphs (e)(4) and (e)(5) of this section.

(iii) Deliberations of the Commission pertaining to changes in the subject matter of a meeting or changes in the determination to open or close a portion or portions of a meeting to the public following the public announcement of such meeting in accordance with paragraph (d)(4) of this section.

(iv) Deliberations of the Commission in determining whether to waive the one-week public notice requirement in accordance with paragraph (d)(2) of this section.

(c) *Time, place, and agenda of meetings.* (1) The meetings of the Commission, except those held on Government boats during inspection trips of the Commission, shall be held at Vicksburg, Mississippi. The time of such meetings shall be fixed by the President of the Commission, who shall cause due notice of such meetings to be given members of the Commission and the public.

(33 U.S.C. 646)

(2) The President shall, after consultation with the Commissioners, prepare a detailed agenda for planned Commission meetings at the earliest practicable time. Suggestions from the public of proposed agenda items are invited.

(d) *Public notices and Federal Register publication.* (1) At least one week before each Commission meeting the Secretary shall issue a public announcement which (i) States the time and place of the meeting,

(ii) Lists the agenda items or subjects to be discussed at the meeting,

(iii) States whether the meeting or portions of the meeting are to be closed or open to public observation,

(iv) States whether or not public participation in the meeting will be permitted, and

(v) States the name and business phone number of the official who will respond to requests for information about the meeting. Public announcements of Commission meetings shall include releases to the news media in the Lower Mississippi River Valley and mailing notices of such meetings to all persons and agencies known to have an interest in the Commission's work and to others who request such announcements.

(2) The one-week period for public notice required by paragraph (d)(1) of this section shall not be applicable when a majority of the entire membership of the Commission determines by a recorded vote that Commission business requires that a meeting be called at an earlier date. The Secretary shall, however, issue the public notice required by paragraph (d)(1) of this section at the earliest practicable time.

(3) When due to unforeseen circumstances it is necessary to change the time or place of a meeting following the public announcement required by paragraph (d)(1) of this section, the Secretary will publicly announce such change at the earliest practicable time.

(4) The subject matter of a meeting, or the determination of the Commission to open or close a portion or portions of a meeting to the public, may be changed following the public announcement required by paragraph (d)(1) of this section only if: (i) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Secretary publicly announces such change and the vote of each member on such change at the earliest practicable time.

(5) Immediately following each public announcement required by this section,

notice of the time, place, and subject matter of a meeting, whether a portion or portions of the meetings are open or closed to public observation, any change in one of the preceding, and the name and business telephone number of the official of the Commission who will respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

(e) *Closing a portion or portions of a meeting.* (1) All Commission meetings shall be open to the public except when the Commission determines that public disclosure of information to be discussed in a portion or portions of a meeting is likely to:

(i) Disclose matters that are (A) specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(ii) Relate solely to the internal personnel rules and practices of the Commission;

(iii) Disclose matters specifically exempted from disclosure by statute [other than the Freedom of Information Act (5 U.S.C. 552), provided that such statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Involve accusing any person of a crime, or formally censuring any person;

(vi) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(vii) Disclose investigatory records compiled for law-enforcement purposes, or information which, if written, would be contained in such records. But only to the extent that the production of such records or information would: (A) Interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or to an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, or (D) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national-security intelligence investigation, confidential information furnished only by the confidential source:

(viii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except: (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(ix) Specifically concerns the Commission's participation in a civil action or proceeding.

(2) In each instance where the Commission determines that a portion or portions of a meeting may be closed to the public, or determines that information may be withheld from the public for one or more of the exemptions listed in paragraph (e)(1) of this section, the Commission shall consider and determine whether or not the public interest requires that the portion or portions of the meeting be open to the public and whether or not the public interest requires that the information be released to the public.

(3) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (e)(1) (v), (vi) or (vii) of this section, the Commission, upon the request of any one of its members, shall vote by recorded vote whether to close such meeting.

(4) Action to close a portion or portions of a meeting for one or more of the reasons listed in paragraphs (e)(1) (i) through (ix) of this section, or to withhold information from the public for one or more of the reasons listed in paragraphs (e)(1) (i) through (ix) of this

section shall be taken only when a majority of the entire membership of the Commission votes to take such action.

(5) A separate recorded vote of the Commission shall be taken with respect to each meeting a portion or portions of which the Commission proposes to close to the public, and a separate vote of the members of the Commission shall be taken to determine whether to withhold information from the public. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(6) Within one day of any vote taken pursuant to paragraphs (e)(4) and (e)(5) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion or portions of a meeting are to be closed to the public, the Commission shall within one day of the vote taken pursuant to paragraphs (e)(4) and (e)(5) of this section make publicly available a written explanation of its action in closing a portion or portions of the meeting together with a list of all persons expected to attend the meeting and their affiliations.

(7) For every portion or portions of a meeting closed pursuant to paragraphs (e)(1) (i) through (ix) of this section, the Chief Legal Officer of the Commission shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained in the Commission files.

(f) *Records*. (1) The Secretary shall maintain in the official files:

(i) A complete transcript or electronic recording (disclosing the identity of each speaker) adequate to record fully the proceedings of the Commission at a portion or portions of a meeting closed to the public for the reasons specified in paragraphs (e)(1) (i) through (ix) of this section.

(ii) The statement of the presiding officer of each Commission meeting, a portion or portions of which were closed to the public, as required by paragraph (e)(7) of this section.

(iii) The certification of the Chief Legal Officer, as required by paragraph (e)(7) of this section, for each Commission meeting, a portion or portions of which were closed to the public.

(2) The records required by paragraph (f)(1) of this section shall be retained for at least two years following any meeting or not less than one year following conclusion of Commission action with respect to any matter discussed at such meeting, whichever occurs later.

(g) *Public access to records*. (1) All records required to be maintained in accordance with the provisions of (f)(1) of this section shall promptly be made available to the public by the Secretary except for information which the Commission has determined may be withheld from the public for the reasons stated in paragraphs (e)(1) (i) through (ix) of this section.

(2) Public inspection of such records shall take place at the headquarters of the Mississippi River Commission, 1400 Walnut Street, Vicksburg, Mississippi 39180.

(3) The Secretary shall provide (subject to withholding of information for the reasons stated in paragraphs (e)(1) (i) through (ix) of this section) upon request of any person, copies of the records required by the provisions of (f)(1) of this section, including transcriptions of electronic recordings at the actual cost of transcription or duplication.

(5 U.S.C. 552b)

[42 FR 13286, Mar. 10, 1977]

§ 209.138a Authorization for exploratory drilling in the Gulf of Santa Catalina, Calif.

(a) Department of the Army authorization is required pursuant to section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 462; 43 U.S.C. 1333(f)) in coastal waters and the water covering the Outer Continental Shelf. The determination whether or not to issue a Department of the Army authorization for structures on the Outer Continental Shelf related to exploration of minerals is based upon the proposed activities' effect on navigation and national security. All other

matters concerning offshore drilling, including environmental considerations, are the responsibility of the Department of the Interior.

(b) The following rules have been developed jointly by the Los Angeles district engineer and the 11th Coast Guard District, in consultation with the Bureau of Land Management and the U.S. Geological Survey for drilling in the Gulf of Santa Catalina:

(1) All drilling with a single tract will be covered by a single application.

(2) Where practicable, applications shall be submitted at least 120 days in advance of drilling for tracts where drilling is expected to be accomplished within the traffic separation scheme, the precautionary zone or within 2 nautical miles of a traffic lane.

(3) Applications shall include the location of any known proposed drilling site and the estimated start and completion dates for each. Updated information on the plan shall be furnished as soon as available. One individual (and alternate) shall be designated by the applicant as responsible for maintaining close liaison with all involved agencies.

(4) Where it is not feasible to perform exploratory work from outside the traffic lanes or ¼ mile buffer zones, or precautionary zone, authorizations will include the following conditions:

(i) Exploratory vessels within a traffic lane will, to the degree practicable, be sited near traffic lane boundaries.

(ii) Exploratory vessels within one traffic lane, or in the precautionary zone, shall be separated by at least 8 nautical miles in the direction of the lane axis.

(iii) Exploratory vessels located within the traffic lanes, or the precautionary zone, shall not have their pendant buoys within 3,000 yards from the pendant buoys of any other vessel.

(iv) Exploratory rigs and vessels engaged in offshore development may have no cables, anchors, buoys, or other associated equipment within the traffic lanes, ¼ mile buffer zones, or the precautionary zone, at a depth of less than 100 feet, unless such equipment is marked with class I private aids to navigation in accordance with current Federal regulations.

(67 Stat. 462 (43 U.S.C. 1333(f))

[43 FR 28475, June 30, 1978]

§ 209.140 Operations of the Corps of Engineers under the Federal Power Act.

(a) *General.* This section outlines policies and procedures applicable to those operations in which the Corps of Engineers may be called upon to participate under the Federal Power Act. Such operations include: Investigations and reports on applications for permits and licenses for development of power affecting navigable waters; supervision of investigations, construction, and operation of projects under such permits and licenses; preparation of special reports as required by the Federal Power Commission; and review of plans of dams or other structures affecting navigation. The foregoing functions are performed by the Corps of Engineers only upon request of the Federal Power Commission.

(b) *Authority of Division and District Engineers.* Section 2 of the revised Federal Power Act provides that the Federal Power Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army, to serve the Commission as Engineer officer or officers, or in any other capacity, in field work outside the seat of government, their duties to be prescribed by the Commission. By authority of the Secretary of the Army, and in accordance with the instructions issued by the President in a letter to the Secretary of the Army dated May 18, 1931, Division Engineers will be detailed to serve the Commission as engineer officers in field work outside the seat of government, their duties to be prescribed by the Commission, and to be performed under the supervision of the Chief of Engineers. District Engineers will be designated to carry out the field inspections and investigations under supervision of the Division Engineer. When a Division Engineer is detailed by the Chief of Engineers to assist the Commission in either the investigation or supervision of

a project he will be the accredited representative of the Commission. The actual field work will be done by the designated District Engineer who will make a report to the Division Engineer. All reports and such correspondence as would normally be forwarded to the Commission will be addressed to the Chief of Engineers.

(c) *Procedure for investigations and report on applications for permits and licenses.* (1) Upon request by the Federal Power Commission, the Chief of Engineers will assign the investigation of an application for permit or license under the Federal Power Act to a Division Engineer, who will submit a report on the investigation as provided herein. The date that the report is to be submitted will be specified. The Division Engineer, upon assignment of an investigation involving extensive studies, will when requested by the Chief of Engineers submit an estimate of the cost of the investigation, listing the probable expenditures for salaries separate from the estimated costs of nonpersonal services.

(2) If in the investigation of an application or a declaration of intention filed under the Federal Power Act the Division Engineer considers a public hearing desirable in the interests of navigation or flood control, the Chief of Engineers will be notified whereupon the matter will be brought to the attention of the Commission. No public hearing will be held unless specifically authorized by the Commission or by the Chief of Engineers. If a hearing is authorized it will be limited strictly to consideration of the purpose for which approval is granted.

(3) The report will describe and discuss material facts having a definite bearing on the interests of navigation and flood control and the general effect the project would have on a comprehensive plan of developing the water resources of the basin. Specific reference will be made to pertinent published documents containing the results of studies and/or resolutions directing studies to be made. In the case of an application for permit or license for an unconstructed project the report will include a recommendation as to whether development should be undertaken by the United States rather than by a licensee. A recommendation for Federal development will be supported by a showing as to how this would serve the Corps of Engineers programs and policies. In the case of an application for permit or license for a constructed project the report should contain appropriate comments concerning possible redevelopment to improve the usefulness of the project in relation to the objectives of the Corps program in the basin.

(4) The report on an application for license will contain recommendations of the Division Engineer concerning the inclusion in the license of any terms and conditions that are considered to be necessary or desirable in the public interest from the standpoint of Corps of Engineers responsibilities.

(5) The report on an application for permit will contain such recommendations as required to insure coordination of the applicant's studies with the Division or District Engineer in cases where interests of the Corps of Engineers are involved. In all cases, the report will contain, in lieu of specific recommendations, a discussion of interests which should be protected by articles in a license issued subsequent to the permit period.

(6) If the project is on a Federal reservation or contemplates the use of a dam, either of which is under the jurisdiction of the Department of the Army, the report should state, giving reasons:

(i) Whether the project will interfere or be inconsistent with the purpose for which such reservation was created or acquired and what conditions, if any, should be imposed for the adequate protection and utilization of the reservation.

(ii) Whether the dam may be advantageously used by the United States for public purposes in addition to authorized purposes and whether it should be reserved for such use.

(iii) Whether the development should be undertaken by the United States.

(7) The reports will not be released or made public except by specific authority of the Chief of Engineers, nor will copies of a report, its findings, or recommendations be furnished to the applicant, to interested parties, or to the Commission until released by the Chief of Engineers.

(d) *Procedure for supervision of operations under permits and licenses.* (1) When supervision of the operations of an applicant under a permit or a license is requested by the Federal Power Commission, the Chief of Engineers will assign responsibility for supervision to the Division Engineer. The operations to be supervised, such as investigations being conducted by a permittee, construction of a project under a license or operation of completed projects, will be as specified by the Commission.

(2) Projects will be classified as major, minor, minor part or transmission line projects as indicated in the Federal Power Act and as specified in the instructions from the Commission.

(3) Inspection during the construction of a major project will be made monthly, or as often as may be necessary for the Division Engineer to assure himself that the terms of the license are being complied with and the work is of acceptable quality and in accordance with the approved plans. The frequency of inspections of minor, minor part, and transmission line projects is left to the discretion of the Division Engineer.

(4) After a project has been completed and placed in operation and is under the supervision of the Division Engineer, annual inspection will be made of major and minor projects but inspection of transmission line projects will not be made unless specifically requested by the Commission.

(5) Reports on supervision and inspections of operations under Federal Power Commission permits and licenses will be submitted in accordance with instructions in paragraph (e) of this section.

(e) *Reports on supervision and inspection of operations under Federal Power Commission permits licenses.* Periodic reports, as appropriate to assigned responsibilities and as described in paragraphs (e) (1) through (3), inclusive, of this section will be submitted for each Federal Power Commission permit or license for which a Division Engineer has been assigned responsibility for supervision of operations under provisions of the Federal Power Act. All of the described reports will be submitted in triplicate to the Chief of Engineers for transmittal to the Federal Power Commission. Unless otherwise stated transmittal letters will not be required and the reports will be mailed so as to reach the Chief of Engineers not later than the 15th of the month following the end of the report period.

(1) *Reports on supervision of construction under a FPC License.* When a Division Engineer is assigned responsibility for supervision and inspection of construction of a licensed project, the requirements for submission of reports will be specified.

(2) *Annual Report on operation of project under supervision of the Division Engineer.* Reports on the operation and maintenance of each major and minor licensed project for which supervision of operations has been assigned to a Division Engineer will be submitted annually after the initial installation covered by the license has been completed. Such reports will be made on Federal Power Commission Form 10, ''Operation Report'' and, pursuant to paragraph 39u of AR 335–15, do not require a reports control symbol. A special report will be made in case of severe flood or interruption in operation due to failure of material or accident. Reports on operation and maintenance of transmission line projects are not required unless requested by the Commission.

(3) *Annual Report on operation of projects with licenses containing conditions prescribed in the interest of navigation.* When the Federal Power Commission notifies the Chief of Engineers that it will assume the supervision of operation of a licensed project, the Division Engineer will not be required to make detailed inspections and reports. However, the Division Engineer will continue to be responsible for the project insofar as it affects the interest of navigation. The inspection of projects in this class is left to the discretion of the Division Engineer but annual reports will be submitted in triplicate, through the Chief of Engineers, on Federal Power Commission Form 10, ''Operation Report'', omitting the items under ''Supervision expense for period'', but including the following information only under ''Memorandum Report''.

(i) Whether the operation of the project has been satisfactory insofar as the interests of navigation are concerned.

(ii) Whether any infraction by the licensee of the conditions in the interest of navigation has come to the attention of the Division Engineer.

(f) *Delegation of authority for approval of structural plans for non-Federal hydroelectric projects affecting navigation.* The authority vested in the Secretary of the Army by section 4(e) of the Federal Power Act is hereby delegated to the Chief of the Engineers for promulgation with regard to approval of plans of structures filed with the Federal Power Commission in connection with licensing of non-Federal hydroelectric projects.

(Sec. 4(e), 49 Stat. 840; 16 U.S.C. 797(e); Secretary of the Army memorandum for the Chief of Engineers, dated March 11, 1975)

[33 FR 18670, Dec. 18, 1968, as amended at 40 FR 17023, Apr. 16, 1975]

CROSS REFERENCE: For regulations of the Federal Energy Regulatory Commission, see 18 CFR chapter I.

§ 209.141 Coordination of hydroelectric power operations with power marketing agencies.

(a) *Purpose.* This regulation establishes policies and procedures for coordinating the operation of the Corps of Engineers' hydroelectric generating facilities with the power marketing agencies.

(b) *Applicability.* This regulation applies to all civil works field operating agencies (FOA) having generating facilities producing marketable electric power.

(c) *References.* (1) Section 5, Pub. L. 534, 78th Congress, Flood Control Act of 1944, December 22, 1944 (58 Stat. 889).

(2) Section 302, Pub. L. 95–91, 95th Congress, Department of Energy Organization Act, August 4, 1977 (91 Stat. 565).

(d) *Background.* Section 5 of the Act of December 22, 1944 (Pub. L. 534, 78th Congress), provides that electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of Army not required in the operation of such projects shall be delivered to the Secretary of Interior for transmittal and disposal in a manner to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. Section 302 of the Department of Energy Organization Act (Pub. L. 95–91) transfers all functions of the Secretary of Interior under section 5 of the 1944 Act to the Secretary of Energy together with all other functions of the Secretary of Interior, and officers and components of the Department of the Interior, with respect to the Southeastern Power Administration; the Southwestern Power Administration; the Alaska Power Administration; the Bonneville Power Administration; and the power marketing functions of the Bureau of Reclamation.

(e) *Policies.* (1) The Corps is responsible for operating the hydroelectric power projects and providing information affecting cost and availability of power to the power marketing agencies. Marketing the generated power declared excess to the needs of the projects and recovering Federal investment are the responsibilities of the power marketing agencies.

(2) All FOA Commanders will develop, in coordination with their respective power marketing agency, a system for exchanging operating information. The system will include general operating information and information on conditions that could substantially affect costs or power availability.

(f) *Delegation.* Responsibility for coordinating the exchange of information may be delegated to the District Engineer at the discretion of the Division Engineer.

(g) *Procedures*—(1) *Specific requirements*—(i) *Continuing.* Prompt written notification will be provided to the appropriate power marketing agency each time a change in power operations or conditions which could substantially affect costs or power availability is anticipated.

(ii) *Annual.* Annually, when no changes in power operations or costs are expected for the succeeding 12-month period, the marketing agency will be notified of that fact in writing.

(2) *FOA responsibility.* The FOA directly responsible for communicating

with the marketing agency will develop appropriate reporting procedures in coordination with that agency.

[43 FR 8258, Mar. 1, 1978]

§ 209.155 Expenditure of Federal funds for work shoreward of harbor lines.

(a) Section 5 of the River and Harbor Act of July 13, 1892 (27 Stat. 111; 33 U.S.C. 628), prohibits the expenditure of money appropriated for the improvement of rivers and harbors for dredging inside of harbor lines duly established.

(b) It is not the policy of the Department to expend Federal funds for the removal of wrecks or other obstructions shoreward of established harbor lines.

§ 209.160 The California Debris Commission.

Section 1 of the Act of Congress of March 1, 1893 (27 Stat. 507; 33 U.S.C. 661), created the California Debris Commission, consisting of three officers of the Corps of Engineers, to regulate under the supervision of the Chief of Engineers and direction of the Secretary of the Army, hydraulic mining in the territory drained by the Sacramento and San Joaquin River systems, California. Under section 9 of the act (27 Stat. 508; 33 U.S.C. 669), the individual proprietor or proprietors, or in case of a corporation, its manager or agent appointed for that purpose, owning mining ground in this territory which it is desired to work by the hydraulic process, must file with the Commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by the Commission. The law contains detailed instructions with regard to facts required to be shown by the petitioner and the procedure to be followed by the Commission in issuing an order directing the methods and specifying the manner in which operations shall proceed. Full information on law and procedure can be obtained from the Secretary, California Debris Commission, 650 Capitol Mall, Sacramento, California 95814.

§ 209.170 Violations of laws protecting navigable waters.

(a) [Reserved]

(b) *Injuries to Government works.* Section 14 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works. (The Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest).

(c) *Injurious deposits.* (1) Section 13 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), makes it unlawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft, or from the shore, wharf, manufacturing establishment, or mill, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water, or to deposit or cause, suffer, or procure to be deposited material of any kind in any place on the bank of any navigable water or on the bank of any tributary of any navigable water, where the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed. Section 13 does not apply

to the operations in connection with the improvement of navigable waters or construction of public works considered necessary and proper by the United States officers supervising such improvement or public work.

(2) An Act of Congress approved June 29, 1888 (25 Stat. 209; 33 U.S.C. 441–451), as amended on August 28, 1958 (72 Stat. 970–971; 33 U.S.C. 441–451b) forbids the placing, discharging, or depositing of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbors of New York, Hampton Roads, and Baltimore or its adjacent or tributary waters, within the limits which shall be prescribed by the Supervisor of the Harbor. The provisions of this act are enforced by the Supervisor under the direction of the Secretary of the Army.

(d) *Penalties for violations.* (1) Section 12 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 406), as amended, provides that every person and every corporation that shall violate any of the provisions of sections 9 and 10 shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine, imprisonment, or both, in the discretion of the court. The removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General.

(2) Section 16 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 412), provides that every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize or instigate a violation of the provisions of sections 13, 14 and 15, shall be guilty of a misdemeanor. On conviction thereof violators shall be punished by a fine, imprisonment, or both, in the discretion of the court. Any master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section 13 to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of the Army, or who shall willfully injure or destroy any work of the United States contemplated in section 14, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section 15, shall be deemed guilty of a violation of the Act. Upon conviction he shall be punished as provided in this section, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. Any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections 13, 14, and 15 shall be liable for the pecuniary penalties specified in this section, and in addition for the amount of the damages done by said boat, vessel, scow, raft, or other craft. The latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred, and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.

(e) *Enforcement.* (1) Section 17 of the River and Harbor Act of March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413) provides that the Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 9 to 16, inclusive, of the Act. It shall be the duty of district attorneys of the United States to prosecute vigorously all offenders against the same whenever requested to do so by the Secretary of the Army or by any of his designated representatives.

(2) Under the provisions of section 17, District Engineers and the United States collectors of customs and other revenue officers, have power and authority to swear out process and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by sections 9 to 16, inclusive, or who may violate any of the provisions of the same. No person shall

be arrested without process for any offense not committed in the presence of some one of the aforesaid officials. Whenever any arrest is made under the provisions of the Act, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him. Such commissioner, judge, or court shall proceed as authorized by law in case of crimes against the United States.

(3) It is the duty of each District Engineer to take notice of any violations of the laws for the protection of the navigable waters and the works of improvement therein that may occur in his district and to take the necessary steps to secure enforcement of the law. Whenever any violation of any of these provisions of law comes to his attention he will investigate carefully the circumstances of the case and will determine the amount of the damage for which the parties committing the violation are responsible under section 16 of the River and Harbor Act of March 3, 1899. He will advise the responsible parties to remove the illegal structure or deposit or to repair the damage at their own expense within a time specified by him. When there is reasonable doubt as to legal liability or the facts do not appear to warrant legal action, the District Engineer will report the case to the Chief of Engineers for decision before communicating with the responsible parties. When the damage must be repaired within a reasonable time, if the responsible parties so request in writing and if, when considered advisable by the District Engineer to protect the interests of the United States, they furnish a satisfactory bond or other guaranty, he may cause the repairs to be made by employees of the United States and then call upon the responsible parties to pay over to him the cost of the damages when finally ascertained. Where the damage is not to be repaired within a reasonable time, the District Engineer will make final settlement with the responsible parties as promptly as possible by collecting the estimated amount of the damages. All sums so received will be deposited promptly to the credit of the Treasurer of the United States for recredit to the appropriation affected and will be accounted for in the District Engineer's money accounts by proper vouchers. With reference to the method of ascertaining the amount of the damages under section 16 of the Act, a distinction should be made between cases involving property that should be repaired and those involving property that should be abandoned. In the former cases the amount of the damages should be the total cost of repairs, less any salvage value and any enhanced value. In the latter cases, the amount of the damages should be the fair value of the property, less any salvage value. Whether or not there has been any enhanced value (*i.e.*, whether the fair value of the structure immediately after the repairs is greater than its fair value immediately before the damage occurred) is a matter to be determined from an actual survey of the structure and knowledge of its age and condition. Where maintenance has equalled depreciation there probably would be no enhanced value.

(4) If the parties deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within the time specified by the District Engineer, the matter will be reported to the Chief of Engineers with such evidence as the District Engineer may be able to obtain and his recommended action under section 17 of the Act of March 3, 1899. In a situation requiring immediate action, the District Engineer may report the case directly to the U.S. attorney for the district. The Chief of Engineers will be advised of such action by a written report. Although the Corps of Engineers has certain police powers under this Act it has been the long standing policy to secure compliance with its provisions short of legal proceedings. Accordingly every effort will be made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, while minor and unintentional or accidental violations of the provisions of the Act need not be reported to the Chief of Engineers, all willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make

good the damages suffered should be reported promptly to the Chief of Engineers in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

(5) The procedure in cases involving injurious deposits is similar to that described for other violations of law except that as the damage caused thereby cannot be repaired readily there will be no reason for serving any notice on the parties responsible for the violations further than to bring to their attention the consequences thereof.

(6) Section 6 of the river and Harbor Act approved March 3, 1905 (33 Stat. 1148; 33 U.S.C. 417) provides that expenses incurred by the Corps of Engineers in all investigations, inspections, hearings, reports, service of notice, or other action incidental to examinations into alleged violations of laws for protection and preservation of navigable waters shall be payble from any funds which may be available for the improvement, maintenance, operation, or care of the waterways or harbors affected. If such funds are not available in sums judged by the Chief of Engineers to be adequate, they shall be payable from any funds available for examinations, surveys, and contingencies of rivers and harbors.

[33 FR 18670, Dec. 18, 1968, as amended at 36 FR 17855, Sept. 4, 1971; 51 FR 45765, Dec. 22, 1986; 53 FR 27512, July 21, 1988]

§ 209.180 Temporary closure of waterway to navigation.

(a) When an application is received for the temporary closure of a waterway for the construction of a structure or the performance of other work in the waterway, the District Engineer will assure himself of the necessity for the closure and arrange after informal communication with any important navigation interests concerned the time and duration of the closure which will enable the operations to be completed with the least interference with navigation. If there is no question as to the necessity and propriety of the closure, the District Engineer is authorized to inform the applicant as follows: ''The Department of the Army will interpose no objection to the closure for a stated period beginning at a specified date: *Provided*, That prior thereto the applicant will notify navigation interests by an advertisement in the press or otherwise as the District Engineer may approve and on the understanding that the waiver of objection does not affect the liability of the applicant for any damages that may arise by reason of the closure.'' The letter to the applicant will be signed ''By Authority of the Secretary of the Army'' and distribution made as prescribed for permits.

(b) District Engineers will give careful consideration to the effect of any closure on through navigation. Should coordination with other districts be necessary the case will be forwarded to the Division Engineer for such coordination.

(c) Cases not falling within the authority above conferred will be forwarded to the Chief of Engineers with the recommendations of the Division and District Engineers.

§ 209.190 [Reserved]

§ 209.200 Regulations governing navigable waters.

(a) *Publication of regulations*. (1) Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, are contained in the Code of Federal Regulations, title 33, Navigation and Navigable Waters, Chapter II.

(2) District engineers (or division engineers if considered preferable by the latter to avoid duplication in cases where the regulations involved apply to more than one district) will distribute copies of departmental regulations to all known interested parties as soon as their publication has been noted in the FEDERAL REGISTER. In the case of regulations applicable to more than one division, distribution will be handled as agreed upon by the division engineers concerned. Under the Administrative Procedure Act (5 U.S.C. 551–553), publication in the FEDERAL REGISTER shall be not less than 30 days prior to the effective date except as

otherwise provided upon good cause found and published with the regulations.

(b) *Navigation regulations.* (1) Section 7 of the River and Harbor Act approved August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) authorizes the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property, or for operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. The statute provides for the posting of regulations and punishment for violations.

(2) Section 6 of the River and Harbor Act approved June 13, 1902 (32 Stat. 374; 33 U.S.C. 499) provides that regulations prescribed by the Secretary of the Army may be enforced as provided in section 17 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413).

(3) District Engineers will take action with respect to regulations prescribed for waterways under their jurisdiction:

(i) To insure that the regulations are brought to the attention of the public.

(ii) To insure that the regulations are properly and fairly administered.

(iii) To recommend any revisions necessary to permit full use of the waterway by the public.

(c) *Danger zones.* (1) The Secretary of the Army has authority to prescribe regulations for the use and navigation of any area of the navigable waters of the United States or waters under the jurisdiction of the United States likely to be endangered by Department of Defense operations. This authority is pursuant to the provisions of Chapter XIX of the Army Act of July 9, 1918, or of section 7 of the River and Harbor Act of August 8, 1917.

(2) On receipt of a request from any element of the Department of Defense or other agency for approval by the Secretary of the Army of regulations establishing danger zones under authority of either Act, the District Engineer will, prior to issuing any public notice, make certain that the applicant: (i) Has coordinated its proposed operations with any operations being conducted or contemplated by other agencies in the same area with a view to avoiding interagency conflicts, (ii) has obtained clearance from the proper Regional Subcommittee on Airspace, Rules of the Air and Air Traffic Control (Air Coordinating Committee), where the use of airspace is involved, and (iii) has conducted preliminary discussions with local interests when considered advisable. In the case of proposed danger zones off the Atlantic and Pacific Coasts, the coordination referred to in (c)(2)(i) of this section will include the Commander, Service Force, U.S. Atlantic Fleet, or the Commander, Western Sea Frontier.

(3) The authority to prescribe danger zone regulations must be exercised so as not to interfere with or restrict unreasonably the food fishing industry. Whenever the establishment of a proposed danger zone or restricted area may affect fishing operations the District Engineer will consult with the regional director, U.S. Fish and Wildlife Service, Department of the Interior. Two copies of all notices of applications for the establishment of danger zones and restricted areas will be forwarded to the Chief of Staff, U.S. Air Force. In addition, notices of all applications relating to the establishment of aerial gunnery and bombing areas will be sent to local Army, Navy, and Federal Aviation Agency representatives.

(4) If the use of water areas is desired only for such temporary, occasional, or intermittent periods that operations can be conducted safely without imposing restrictions on navigation, applicants may be informed that formal regulations by the Secretary of the Army are not required. However, proper notices for mariners requesting that vessels avoid the areas will be issued by the District Engineer to all interested persons. Copies will be sent to the Commandant, U.S. Coast Guard, Washington, D.C. 20226 and the Commander, U.S. Naval Oceanographic Office, Washington, D.C. 20390.

(d) *Dumping grounds.* (1) Section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419), authorizes the Secretary of the Army to prescribe regulations to govern the

transportation and dumping into any navigable water, or waters adjacent thereto, of dredgings and other refuse materials whenever in his judgment such regulations are required in the interest of navigation.

(2) Section 13 of the river and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) authorizes the Secretary of the Army to permit the deposit of refuse matter in navigable waters, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, within limits to be defined and under conditions to be prescribed by him. Although the Department has exercised this authority from time to time, it is considered preferable to act under Section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419). As a means of assisting the Chief of Engineers in determining the effect on anchorage of vessels, the views of the U.S. Coast Guard will be solicited by coordination with the Commander of the local Coast Guard District.

(3) Under the authority contained in an Act of Congress to prevent obstructive and injurious deposits within the harbor and adjacent waters of New York City of June 29, 1888 (25 Stat. 209; 33 U.S.C. 441), the Supervisor of New York Harbor has established dumping areas in those waters and has prescribed regulations for their use. The provisions of the act are enforced by the Supervisor under the direction of the Secretary of the Army.

(4) In considering requests for the establishment of dumping grounds, District and Division Engineers will give careful consideration to the requirements of navigation and will take action to prevent unreasonable injury to fish and wildlife.

(e) *Public notice and consultation with interested parties.* (1) When applications are received for the promulgation of regulations as outlined in paragraphs (b) through (f), inclusive, of this section, District Engineers will issue public notices to all parties deemed likely to be interested and specifically to the agencies referred to in these paragraphs. The notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after the actual mailing of the notice. If time is an essential element when adequately explained by the applicant, the District Engineer is authorized to give interested parties a minimum of 10 days after receipt of the notice in which to present protests. A copy of every notice issued will be sent to the Chief of Engineers, Attention: ENGCW-ON.

(2) Copies of the notices sent to interested parties, together with a list of parties to whom sent, will accompany reports on all applications for promulgation of regulations submitted to the Chief of Engineers for necessary action.

(3) In all instances when response to a public notice has been received from a Member of Congress, the District Engineer will inform the Member of Congress of the final action taken on the application.

(f) *Public hearings.* (1) It is the policy of the Chief of Engineers to conduct his civil works activities in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to public needs and desires. To this end, public hearings are helpful and will be held whenever there appears to be sufficient public interest to justify such action. In case of doubt, a public hearing should be held.

(2) Among the instances warranting public hearings are general public opposition to the promulgation of regulations governing the use and navigation of navigable waters. District Engineers will notify the Division Engineer of the need for a hearing, state the proposed arrangements therefor and obtain his concurrence therein. Public hearings will be held in any case when Congressional interests or responsible local authorities make an official and valid request therefor and such action will fulfill the above-stated policy and objectives.

[33 FR 18670, Dec. 18, 1968, as amended at 51 FR 45765, Dec. 22, 1986; 52 FR 24157, June 29, 1987]

§ 209.220 Flood control regulations.

(a) *Local protection works.* On projects authorized subject to specified conditions of local cooperation, no construction is undertaken by the Department of the Army until satisfactory assurances of the required local cooperation have been accepted by the Secretary of

the Army and until any lands, easements, and rights-of-way required to be furnished by local interests have been made available for at least a complete unit of the project. The District Engineers notify local interests concerned of the requirements of local cooperation and request assurances by registered mail prior to the preparation of final plans and specifications. Regulations prescribed by the Secretary of the Army for the maintenance and operation of local flood protection works are contained in § 208.10 of this chapter. When assurances satisfactory to the District Engineer are received, they are forwarded through the Division Engineer to the Chief of Engineers for consideration of the Secretary of the Army. The District Engineers advise local interests of the action taken by the Department. Completed projects or completed useful units thereof are normally turned over to local interests for maintenance and operation as soon as the construction and testing of equipment is completed and the project is in proper condition for the assumption of maintenance and operation by local interests. The transfer is accomplished by formal notice from the District Engineer to the local interests that the completed facilities are being turned over to them for maintenance and operation as of a specific date. During construction, District Engineers keep the local interests concerned advised as to the probable date of transfer.

(b) *Use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds.* Regulations prescribed by the Secretary of the Army in accordance with section 7 of the Flood Control Act of December 22, 1944 (58 Stat. 890; 33 U.S.C. 709) are for the purpose of coordinating the operation of the flood control features of reservoirs constructed wholly or in part with Federal funds and other flood control improvements to obtain the maximum protection from floods which can reasonably be obtained with the proper operation of all flood control improvements. Proposed regulations are determined by the District Engineer in cooperation with the persons responsible for the maintenance and operation of the reservoir involved after a detailed study of the flood problems and the characteristics of the reservoir project. The proposed regulations are forwarded by the District Engineer through the Division Engineer to the Chief of Engineers for consideration of the Secretary of the Army. When approved by the Secretary of the Army, these regulations are published in part 208 of this chapter.

§ 209.230 Use of reservoir areas for recreation.

The Department of the Army in accordance with Section 4 of the Flood Control Act of December 22, 1944, as amended by section 4 of the Flood Control Act of July 24, 1946 (60 Stat. 641) prepares and administers plans to obtain the maximum sustained public benefit from the use of reservoir areas under its control for recreation and other related purposes, when such use is consistent with the operation and maintenance of the reservoir project for the specific purposes of the reservoir project as authorized by law and when such use is determined not to be contrary to the public interest. The plans are prepared and administered by the District Engineers, subject to review and approval of the Division Engineers and the Chief of Engineers, in close cooperation with other Federal agencies and local interests. The views and desires of these agencies and local interests are obtained normally by conferences with the District Engineers. In many cases, public hearings are held by the District Engineers at appropriate times in the vicinity of the reservoir area at which time anyone can express his views relative to these plans for consideration of the Department of the Army. Rules and regulations are prescribed by the Secretary of the Army to govern the public use of the reservoir areas in accordance with the law as a part of the master plan for recreational and related uses of the reservoir area. These rules and regulations are published in 36 CFR parts 311 to 326. Licenses and leases are granted under the law containing conditions and provisions to govern the use of specific portions of the reservoir area. Full information concerning such matters may be obtained from the District Engineer in charge of the reservoir.

§ 209.300 Flood control regulations.

(a) Regulations for the operation and maintenance of local flood protection works approved by the Secretary of the Army under the authority contained in Section 3 of the Flood Control Act of June 22, 1936, as amended and supplemented, are codified as § 208.10 of this chapter. These regulations cover conditions normally and regularly required. Whenever the regulations are not sufficiently broad to cover the specific maintenance and operation requirements of a particular project, District Engineers will submit through the Division Engineers recommended additional regulations needed for that particular project. Such supplemental regulations will require approval of the Secretary of the Army and will be made applicable only to the individual project concerned. Local interests will be advised of the approved regulations for operation and maintenance of local flood protection works at the time assurances of local cooperation are requested. District Engineers will keep informed as to the extent of compliance with approved regulations for operation and maintenance through regular, periodic inspection of the projects concerned and through careful analysis of the semiannual reports which the operating and maintaining agencies are required to submit in accordance with the regulations. The District Engineer's views as to any measures required to conform to the approved regulations will be furnished to the agencies responsible. In any case where the District Engineer has been unable to arrange satisfactory compliance or where there is question or disagreement as to the measures required for compliance, a report of the circumstances, together with the recommendations of the District and Division Engineers, will be submitted to the Chief of Engineers for consideration.

(b) Regulations for the use of storage allocated for flood control or navigation at reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, are contained in § 208.16 *et seq.* of this chapter.

§ 209.310 Representation of submarine cables and pipelines on nautical charts.

(a) The policy of the Corps of Engineers with respect to showing the locations of submarine cables and pipelines on nautical charts published by the Corps of Engineers is as follows:

(1) Within protected waters such as harbors, rivers, bays, estuaries or other inland waterways the location of submarine cables and pipelines is to be indicated by shaded areas marked ''Pipeline area'' or ''Cable area''. The extent of the limits of the area will be governed by local conditions but shall include the immediate area which overlies the cable or pipeline.

(2) Ordinarily, the shaded area on a chart which depicts a cable area or pipeline area should not exceed 500 feet on each side of the location of the cable or pipeline except on small scale charts where an area of that width would not be of sufficient prominence.

(3) The shaded area will be designated ''cable area'' or ''pipeline area'' as appropriate, but no other information as to the character or ownership of the installation will appear on the chart.

(b) District engineers will furnish copies of all permits issued for submarine cable and pipelines to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, ATTN: N/CG222, Rockville, MD 20852, with his/her recommendation of whether or not the installation should be shown on NOAA nautical charts. National Ocean Service must be notified of the commencement and completion dates for all permitted activities under this section. (Note: Decisions to publish these cables and pipelines on NOAA nautical charts lie solely within NOAA's discretion.)

[51 FR 45765, Dec. 22, 1986]

§ 209.315 Public access to navigation works.

While the regulations prescribed by the Secretary of the army for various navigation improvements usually strictly prohibit trespass on Government property, those regulations will not be construed as prohibiting access to navigation works of general public interest subject to the following criteria:

(a) The public will not be permitted in areas where their presence would subject themselves or Government operating personnel to serious accident hazards.

(b) The public will not be permitted in areas where their presence would interfere with any phases of navigation operations.

(c) The public will be given access to all areas other than those specified under paragraphs (a) and (b) of this section, subject only to the normal legal requirements with respect to property and personal rights.

§ 209.320 Policy on release of commercial statistics.

The collection of commercial statistics pertaining to rivers, harbors, and waterways, and annual reports thereof to Congress, are required by the River and Harbor Act of June 23, 1866 (14 Stat. 70), the act of February 21, 1891 (26 Stat. 766), the River and Harbor Act of June 13, 1902 (32 Stat. 376), the River and Harbor Act of July 25, 1912 (37 Stat. 201), the River and Harbor Act of September 22, 1922 (42 Stat. 1043), and Pub. L. No. 16, February 10, 1932 (47 Stat. 42). It is the policy of the Department to hold in strict confidence any data or information which has been furnished by shippers and others upon the understanding that it will not be disclosed and will only be used in the compilation of port or waterway statistics. In case Federal or State agencies or local interests request other than general information made permissible hereunder, their attention will be called to the policy indicated in this section.

§ 209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.

(a) *Purpose*. This regulation prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities.

(b) This regulation will be applied by all elements of the Corps of Engineers with Civil Works responsibilities.

(c) *Reference*. Public Law 85–480, Publication Authority (72 Stat. 279).

(d) *Cooperation with Coast Guard*. (1) District Engineers will consult with the Coast Guard District Commander during design of channel and harbor improvement projects to discuss the aids to navigation requirements and all other facets of the projects that involve Coast Guard responsibility. Project material furnished direct to Coast Guard Commanders will include:

(i) Information as to the authorization by Congress of a project involving changes affecting aids, such as channel limits, breakwaters, including a copy of the project document;

(ii) The proposed operations on such projects during the next fiscal year, to be furnished annually on the release of the budget estimates;

(iii) Plans showing the final location of the channel limits or structures to be furnished at the time work is undertaken.

(2) Changes in channel limits affecting navigation aids, made under general or specific provisions of the law, should be made the subject of a conference with the Coast Guard District Commander. He will be promptly informed as to the approval of such changes and the probable date of completion of the work.

(3) District Engineers will furnish direct to the various Coast Guard District Commanders, for their immediate information, any facts which may come to their attention in connection with their duties which will be of benefit to the Coast Guard in maintaining its system of aids to navigation. This should include statements as to the displacement of or defects in any such aids to navigation.

(4) If work involving harbor or channel improvements directly affects any existing aids to navigation or any structures of the Coast Guard, Districts Engineers will, when practicable, give notice to the Coast Guard District Commander sufficiently in advance to permit taking such steps as may be deemed necessary by the Coast Guard. If the Coast Guard District Commander specifically requests that the affected structure be replaced, the District Engineer will inform him of the estimated cost and will proceed with the work if so authorized by the Chief of Engineers. On completion of the work, the

District Engineer will promptly furnish the Coast Guard District Commander, for settlement, an account of the expense incurred.

(e) *Navigation Aids of the Corps of Engineers.* (1) Whenever channel dredging or other channel improvements are being performed, necessary temporary markers, such as ranges and light poles, should be installed and maintained by the District Engineer pending the installation of permanent aids by the Coast Guard. The Coast Guard desires that information regarding aids to navigation installed or maintained by District Engineers in connection with harbor or channel improvement be furnished promptly. Such information is needed for inclusion in Notice to Mariners as published by the Coast Guard, and where desirable on the charts of the waters concerned.

(2) District Engineers will notify the Coast Guard District Commander in every case where aids to navigation for marking works of harbor or channel improvements are established or discontinued. Notice should be given of such aids as may be of use or interest to general navigation. Notice need not be given as to such buoys, lights, or fog signals as are of temporary or unimportant character, or of importance only to the Corps of Engineers. Omit also lights or fog signals on ferry slips and on piers used only by certain vessels, and stakes, bushes, and barrel buoys marking shallow and little-used channels.

(3) In placing aids to navigation in connection with harbor or channel improvement works, District Engineers should see that they do not conflict in character or otherwise with other aids to navigation in the vicinity. District Engineers should confer with the Coast Guard District Commander on this subject.

(4) The necessary blank forms for reporting information regarding Corps of Engineers aids will be furnished upon request by the Coast Guard District Commander.

(5) It is essential that the Coast Guard by furnished with information for publication concerning markers installed by the Corps of Engineers as temporary aids to navigation, for new improvements, in advance of permanent aids, and also concerning other markers that may be established in connection with Corps of Engineers operations that may also serve as important aids to navigation. Care will be exercised to see that all markers established are not misleading to general navigation and do not interfere with aids to navigation estabished by the Coast Guard.

(f) *Colors of dredging buoys established by Corps of Engineers.* (1) In order to distinguish buoys placed and maintained by the Corps of Engineers for dredging purposes from aids to navigation placed by the Coast Guard, Corps buoys will be painted white with the top 2 feet painted light green.

(2) If buoys with special markings are needed to indicate the different sides of the navigable channel, prior arrangements will be made with the Coast Guard District Commander having jurisdiction.

(g) *Information to be furnished by the Corps of Engineers.* (1) District Engineers responsible for harbors and waterways shown on charts of the National Ocean Survey (NOAA), will report the channel conditions promptly, using standard tabular forms, to:

Director, Defense Mapping Agency, ATTN: Hydrographic Center, Washington, D.C. 20390.

National Oceanic and Atmospheric Administration, ATTN: National Ocean Survey C–32, Rockville, Md. 20852.

Commandant and District Commanders, U.S. Coast Guard.

(2) Channel survey drawings furnished to the Coast Guard are to include:

(i) Either NAD 27 or State Plane grids.

(ii) Plots of the positions of aids to navigation.

(iii) Written notations of the coordinates in NAD 27 or State Plane Coordinates of the fixed aids to navigation found during the survey.

(3) The standard tabular forms with illustrated data follow:

(i) For channels 400 feet wide and greater (ENG Form 4020–R).

(ii) For channels 100 to 400 feet wide (ENG Form 4021–R).

[_____ Harbor, _____ (State)]

Name of channel	Date survey	Project			Minimum depths in channel entering from seaward		
		Feet width	Miles length	Feet depth	Left outside quarter feet	Mid-channel for half project width feet	Right outside quarter feet
Kings Island Channel	3–78	300	1.14	26	24	23	26
Whitehall Channel	3–78	200	1.81	26	27	26	25

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(iii) For channels less than 100 feet in width, report controlling depths only based on at least 80 percent of project width, 40 percent on either side of centerline. (The submission of tabular forms is not required for channels having a project depth less than 10 feet except coastal inlets and harbors of refuge.)

(4) The tabulations of depths should be amplified by footnotes or otherwise to show clearly and definitely the location of controlling shoals, tendency of shoals to recur, and all other critical information of special value and importance for safe navigation of the channel. Reaches of channel not presently named should be identified in the tabular form by reference to chartered aids or features, or assigned identifying names, numbers or letters. For localized irregular project areas where the application of the tabular form would not be practical, the controlling depth based on a safe navigable width will be described as well as unusual or critical conditions of shoaling.

(5) The prompt dissemination of the latest detailed information concerning channel conditions is of utmost importance, and necessary measures will be taken to insure that such information is reported without delay simultaneously to the U.S. Naval Oceanographic Office, the Coast Guard, the National Ocean Survey and Defense Mapping Agency. When a dangerous shoaling is found during the progress of a survey, information thereon will be furnished immediately to the abovementioned agencies, so that such information may be made available to mariners promptly, and buoys shifted to mark the shoal. Descriptions of any dredging or other operations in important channels in tidal waters—either in progress and not already reported, or soon to be undertaken—together with a statement of the work and expected duration, will also be reported in order that Naval and other vessels may be warned to look out for dredges and other plant, temporary markers and lights.

(6) District Engineers having charge of improvements of harbors and waterways shown on charts of the Defense Mapping Agency or of the National Ocean Survey will send to both offices promptly, as ascertained for the correction of such charts, the following information: Descriptions of changes in channel location and depth, or of obstructions that may be discovered, with such prints and other information as may be necessary to permit the existing charts to be corrected to date. All maps should contain sufficient data to permit the fixed plane or reference, bench marks, base lines, etc., to be determined and located. The survey stations should be shown and, when no unreasonable expenditure of time or labor is involved, the map will show one or more triangulation station(s) of the National Ocean Survey in such a way as to facilitate connection of old or new work. The source of authority for the shoreline and topography should be stated on the map. The data supplied should indicate what charts are affected.

(7) When any survey of areas covered by charts of the Defense Mapping Agency or the National Ocean Survey is completed, a print of each tracing will be sent direct to both the Defense Mapping Agency and the National Ocean Survey. It is not necessary that tracings be fully complete as to form and title when such prints are made. An informal manuscript title marked

''Advance Sheets'', and containing a description sufficient to identify the locality and to identify the source of the map, will be sufficient.

(8) Information relative to the improvement of harbors and waterways such as dredging operations, and precautions rendered necessary due to the presence of dredging or other plant will, when considered necessary, be brought to the attention of vessel owners or operators regularly using the waterway. This will be done through issuing bulletins or notices by District Engineers.

(h) *Special Reports*. Changes affecting navigation will be made promptly whenever information of immediate concern to navigation becomes known. Items of information especially desired are channel conditions as revealed by surveys, changes in channel conditions, either by natural causes or by dredging or other work, changes in approved projects for improvement with statements of results expected from proposed operations, descriptions of proposed dredging or other Federal work of improvement such as breakwater, pier, and revetment construction or alterations, descriptions of proposed or completed municipal or private improvements in or affecting navigable waters. Additional items of information desired are descriptions of wrecks, uncharted shoals, and other obstructions to navigation and particulars as to proposed or completed removal of same, changes in buoys or lights, erection of new, or changes in existing bridges, new or revised Federal or local rules and regulations for harbors and channels, and establishment or existence of danger areas in navigable waters. Reproductions of drawings or sketches which will be helpful in interpreting the data shall accompany the reports. The reports will not be limited to a reference to an accompanying drawing or sketch, but will contain a complete description in form suitable for publication in notices to mariners and the monthly supplements to the U.S. Coast Pilot. In this respect, the reports will provide enough information that a single notification to navigational interests will suffice. In the case of dredging or construction work, the bare statement that work will commence or has commenced on a certain date is insufficient. All additional information possible, such as probable duration of operations and object of work, will be given—the latter in the case of dredging being such data as the area to be covered and the depth expected to be provided. The reports required by this paragraph will be identified by reference to the appropriate Engineer Manual or regulation and will be numbered consecutively by each District during the calendar year, starting with number 1 at the beginning of each year.

(i) *Information pamphlets, maps, brochures and other material*. (1) Pub. L. 85–480, approved 2 July 1958, authorizes the Chief of Engineers to publish information pamphlets, maps, brochures, and other material on river and harbor, flood control, and other Civil Works activities, including related public park and recreation facilities under his jurisdiction, as he may deem to be of value to the general public.

(2) This Public Law authorizes the Chief of Engineers to provide for the sale of any of the material prepared under authority of the act—and of publications, charts, or other material prepared under his direction pursuant to other legislative authorization or appropriation, and to charge therefor a sum of not less than the cost of reproduction.

(3) District Engineers are authorized to publish the material covered in paragraph 8a above, and to sell such material. Except for material specifically prepared for free distribution to the general public, the charges for such other published information will be not less than the cost of its reproduction.

(4) Condition survey maps or charts, sold or otherwise distributed to the public, showing depths will specifically state the date or dates that the surveys were made. They shall also have the following notation printed or stamped thereon:

''The information depicted on this map represents the results of surveys made on the dates indicated and can only be considered as indicating the general conditions existing at that time.''

[43 FR 19661, May 8, 1978]

§ 209.335 Publication.

(a) Section 4 of the Administrative Procedure Act requires publication of general notice of proposed rule making in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law), except to the extent that there is involved: (1) Any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Except where notice of hearing is required by statute, this requirement does not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) General notice of proposed rule making published in accordance with the above will include: (1) A statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

§ 209.340 Laboratory investigations and materials testing.

(a) *Purpose*. The purpose of this section is to define and establish policies and procedures applicable to the performance of investigations and tests at Corps of Engineers laboratory installations for other governmental agencies and private organizations.

(b) *Applicability*. This regulation applies to Corps of Engineers Divisions and Districts operating soils, concrete, water quality and hydraulic laboratories, and to the Inter-Agency Sedimentation Project.

(c) *References*. (1) AR 37–20.

(2) AR 37–27.

(3) ER 1–1–6.

(4) ER 10–1–3, Appendix XIII.

(5) ER 1110–1–8100.

(6) ER 1140–2–303.

(d) *Policy*. Subject to the authority limitations contained in paragraph (f) of this section, laboratory investigations and materials testing may be performed for other agencies of the Federal Government, State and local units of government, foreign governments and private firms under the following conditions:

(1) The work will be performed on a cost reimbursable basis.

(2) Work may be performed for State and local units of government, foreign governments or private firms only when it is firmly established that private commerical laboratory facilities capable of performing such work are not available, or because of location or for other reasons it is clearly impractical to utilize such private commerical laboratory services. The requesting entity must further certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(3) Performance of the work will not interfere with provisions of services essential to the mission of the Corps.

(4) Performance of the work will not require an increase in the permanent staff of the facility.

(5) Performance of the work will not require expansion of normal facilities.

(6) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(7) Performance of the work will not be adverse to the public interest.

(8) Prior to undertaking laboratory investigations or materials testing for private firms, written certification will be obtained from such firms stating that the results of the work will not be used in litigation or for promotional purposes.

(e) *Terms of providing reimbursement for work performed*—(1) *Federal agencies*. Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37–27.

(2) *State and local units of Government*. Funds to cover the total estimated cost of the work or an initial increment of

the esitmated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule no obligations or expenses will be incurred in connection with the work in excess of funds on deposit.

(3) *Private concerns and foreign governments*. Funds will be deposited in advance of the work as required in paragraph (e)(2) of this section. Charges shall include a surcharge of 15 percent of all applicable costs, except under the following conditions.

(i) When the final product will directly contribute to a specific planning, design, or construction activity which derives its principal support from Federal funds in the form of a grant or otherwise.

(ii) Where an exception is granted based on a direct benefit to the Government. Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-CWE-DC) Washington, DC 20314, for review and approval prior to deletion of the surcharge.

(f) *Authority*. The following delegations of authority to perform laboratory investigations and materials testing apply.

(1) *Division materials laboratories*. Division Engineers are delegated the authority to approve laboratory work for Federal, State and local units of government when the total estimated cost of each investigation or test project is $15,000 or less. Division Engineers are also delegated the authority to approve laboratory work for private firms and foreign Governments when the total estimated cost of each investigation or test project is $5,000 or less. Approval is required when the estimated or actual costs exceed those delegations of authority. Requests for approval shall be addressed to DAEN-CWE-DC.

(2) *Hydraulic laboratories*. Division Engineers and District Engineers operating hydraulic laboratories or hydraulic model laboratories are delegated the authority to approve laboratory work for others within the same limitations and in accordance with the same procedures as apply to Division Materials Laboratories.

(3) *Inter-Agency Sedimentation Project, St. Anthony Falls Laboratory, University of Minnesota, Minneapolis, Minnesota*. The District Engineer, St. Paul is authorized to perform work required in procurement, testing and calibration of specialized sediment sampling equipment developed at the Inter-Agency Sedimentation Project. Equipment of this nature will be made available to Federal, State and local governmental agencies at cost. The District Engineer, St. Paul, is also authorized to approve the performance of testing and calibration work for U.S. private firms that fabricate this specialized equipment for commercial sale when the estimated cost for services of Corps personnel is $5,000 or less for a single order. Approval is required when the estimated single order cost for a private firm exceeds $5,000 and when the total cost of work during a fiscal year for any one private firm exceeds $15,000. Requests for approval shall be addressed to HQDA (DAEN-CWE-HY) Washington, DC 20314.

(g) *Reports of testing results*. Final reports of results will be submitted in accordance with instructions provided by the sponsoring organization, with two copies to HDQA (DAEN-CWE-DC) Washington, DC 20314.

Copies of reports of scientific or technical activities will be transmitted to the Defense Documentation Center as required by AR 70–31. (RCS OSD–1366)

(Sec. 3012, 70A Stat 157; 10 U.S.C. 3012)

[44 FR 50338, Aug. 28, 1979]

§ 209.345 Water resource policies and authorities.

REIMBURSEMENT FOR ADVANCE NON-FEDERAL PARTICIPATION IN CIVIL WORKS PROJECTS

(a) *Purpose*. This regulation gives general instructions on use of section 215 of the Flood Control Act of 1968 (Pub. L. 90–483) to reimburse a non-Federal public body for construction of part of an authorized Federal project, part of an authorized Federal project. It establishes general policies, outlines procedures to be followed in reaching

an agreement with an eligible non-Federal entity, and provides guidance on the provisions of such an agreement. All authorized projects are subject to this Act and regulation.

(b) *Applicability*. This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References*. (1) Section 215, FCA of 1968 (Pub. L. 90–483, 42 U.S.C. 1962d–5a.). (APP A, this regulation).

(2) Senate Document No. 10, 90th Congress, 1st Session, ''Study of Federal Reimbursement Policy for Work by States and other Non-Federal Entities on Authorized Water Resources Projects.''

(3) Section 221, FCA of 1970 (Pub. L. 91–611, 42 U.S.C. 1962d–5b).

(4) ER 405–2–680.

(5) ER 1140–2–301.

(6) ER 1180–1–1, (para. A–310, App. A).

(d) *General policy*. (1) The specific limitations put upon the allotment of funds authorized by section 215 indicate that only limited use should be made of the authority. It will, therefore, be Corps of Engineers policy to restrict the use of this authority to cases that meet all of the following conditions:

(i) The work, even if the Federal Government does not complete the authorized project, will be separately useful or will be an integral part of a larger non-Federal undertaking that is separately useful;

(ii) The work done by the non-Federal entity will not create a potential hazard;

(iii) Approval of the proposal will be in the general public interest;

(iv) Only work commenced after project authorization and execution of an agreement pursuant to this Regulation will be eligible for reimbursement or credit;

(v) Proposed reimbursement will not exceed the amount that the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from construction of the project component by the non-Federal entity.

(2) Before finally approving any agreement under section 215, the Chief of Engineers will inform the Secretary of the Army and the Chairman (Senate and House), Subcommittee on Public Works, Committee on Appropriations of the proposed arrangements. The Chief of Engineers will not sign an agreement until Secretarial and Committee concurrences are obtained.

(3) Section 215 authority will not be used where it might appear to circumvent the intent of Congress. It will not, for example, be used to initiate work on projects to which Congressional committees have indicated general opposition or refused to provide requested funds, or to accelerate portions of work on which construction has already been commenced by the Federal Government.

(4) Section 215(f) authorizes a specific allotment of funds to reimburse non-Federal entities for work accomplished under the Section. No allotment has been established, nor is one proposed at this time. Until one is, and firm procedures are established, any agreement with a non-Federal entity shall call for reimbursement, or for credit against required contributions, only when construction funds for the Federal project which incorporates the part constructed by the non-Federal entity are appropriated and allocated.

(5) The non-Federal entity will normally be required to develop the design memorandum, engineering plans, and specifications for the work it proposes to undertake. Subject to policies established in ER 1140–2–301, as modified in paragraph (e)(2) of this section, the District Engineer may provide engineering services with funds advanced by the non-Federal entity if he determines it to be impracticable for the entity to obtain the services elsewhere. Non-Federal engineering and overhead costs for the part of the Federal project that the non-Federal entity proposes to construct will be part of the reimbursement agreement.

(6) The agreement shall include local cooperation items required by the project authorization and by Section 221, FCA of 1970.

(7) Reimbursement of non-Federal work under Section 215 is not applicable to small projects authorized under the general authority of Section 107, Pub. L. 86–645, as amended. (33 U.S.C. 577); Section 205, Pub. L. 858, 80th Congress, as amended, (33 U.S.C. 701s); and Section 103, Pub. L. 87–874, as amended,

(33 U.S.C. 426g); and Section 14, Pub. L. 79–526 (33 U.S.C. 701r).

(e) *Procedures*. (1) Non-Federal entities desiring reimbursement under Section 215 for constructing part of an authorized Federal project should confer with the District Engineer and submit a written proposal to him. This proposal will form the basis for consulting, as needed, with OCE and for deciding whether the proposal meets the policy criteria of paragraph (d) of this section, and whether to continue under the procedures below and what sequence to follow.

(2) If Federal preconstruction planning funds are not available to the project and it is considered impractical for the non-Federal entity to prepare a partial design memorandum and/or plans and specifications, the draft agreement may propose that this work be accomplished by the Corps of Engineers through an advance of non-Federal funds for this purpose. Certain advances of funds will be necessary, in any event, to cover other costs which are required on the part of the Corps of Engineers. Paragraph 11 of ER 1140–2–301 requires that requests to the Appropriations Committees for approval of advances of funds should normally be submitted to the Committees by non-Federal interests outside of Corps of Engineers channels. An exception to this procedure will be made in the case of Section 215 proposals in that the request for approval of advances will be made a part of the request to the committees for approval of the overall arrangement referred to in paragraph (d)(2) of this section. Thus, proposed advances of funds for the following purposes will be clearly set forth in the draft agreement: (i) Preparation of a partial design memorandum and/or plans and specifications (ii) corps review of design scheduled for accomplishment by local interests, and (iii) periodic and final inspections.

(3) The District Engineer will submit for review an unsigned draft agreement to OCE. All agreements will be prepared for the signature of the Chief of Engineers.

(4) The District Engineer will be notified of any changes in the draft agreement that the Chief of Engineers may require, and will negotiate a final agreement with the non-Federal entity. After signature of the agreement by the non-Federal entity, the District Engineer will forward three copies to HQDA (DAEN-CWO-C) WASH DC 20314, for signature by the Chief of Engineers.

(5) Upon receipt from OCE of the full executed agreement, the District Engineer will transmit the signed agreement to the non-Federal entity.

(6) The Division Engineer will review the (partial) design memorandum, and, if it meets the relevant criteria in paragraph (d)(1) of this section, will submit it to OCE with the recommendations on whether or not the work may proceed subject to reimbursement under the agreement.

(7) The Division Engineer will approve plans and specifications.

(8) The non-Federal entity will award contract.

(9) The District Engineer will conduct periodic and final inspections.

(10) Upon completion of the local work, the District Engineer will certify the cost data, and that performance has been in accordance with the agreement.

(f) *Agreements*. Agreements under Section 215 should follow the general format presented in paragraph (c)(6) of this section, adapted as warranted by the specific case. Each agreement shall:

(1) Expire 3 years after the date of execution if the non-Federal entity has not commenced the work contemplated by the agreement.

(2) State the time allowed for completion of the work. A reasonable time shall be allowed, but normally not over 2 construction seasons.

(3) Fully describe the work to be accomplished by the non-Federal entity and specify the manner in which it will be carried out.

(4) The agreement will specify that reimbursement by the Federal Government will not exceed $1,000,000.

(5) Provide for necessary review of designs, plans, and specifications, by the District Engineer.

(6) Provide for examination and review of proposed contracts and for inspection of the work by the District Engineer for conformance with the terms of the agreement.

(7) State fully the basis on which reimbursement or credit shall be determined, and provide for the final adjustment when the balance of the Federal project is constructed. If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(8) State that such reimbursement shall depend upon appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority.

(9) Specify that reimbursement or credit for non-Federal work shall apply only to that work undertaken after execution of the agreement. The term ''work'' shall include advance engineering and design as well as actual construction.

(10) State that the agreement is not to be construed as committing the United States to reimbursement if the Federal project is not undertaken, or if the Federal project should be modified in such a way that the work performed by the non-Federal entity does not constitute a part thereof.

(11) Contain applicable equal employment clauses from Armed Services Procurement Regulations.

(g) *Nature and amount of reimbursement.* (1) The non-Federal entity may be reimbursed by a payment of cash, or, preferably, by reductions in any non-Federal contribution to the Federal project that may have been required by the legislation authorizing it, or by a combination of cash and such reductions.

(2) The amount of reimbursement shall equal the approved expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers, and as covered in the agreement under paragraphs (f) (7) and (10) of this section. The amount of reimbursement will not exceed, however, the amount that the District Engineer finds to be a reasonable estimate of the reduction in Federal expenditure resulting from construction by the non-Federal entity.

APPENDIX A TO PART 209—PUBLIC LAW 90–483, 90TH CONGRESS, S. 3710, AUGUST 13, 1968

An act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purpose. (82 Stat. 731).

* * * * *

Sec. 215. (a) The Secretary of the Army, acting through the Chief of Engineers, may, when he determines it to be in the public interest, enter into agreement providing for reimbursement to States or political subdivisions thereof for work to be performed by such non-Federal public bodies at water resources development projects authorized for construction under the Secretary of the Army and the supervision of the Chief of Engineers. Such agreements may provide for reimbursement of installation costs incurred by such entities or an equivalent reduction in the contributions they would otherwise be required to make, or in appropriate cases, for a combination thereof. The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $1,000,000.

(b) Agreements entered into pursuant to this section shall (1) fully describe the work to be accomplished by the non-Federal public body, and be accompanied by an engineering plan if necessary therefor; (2) specify the manner in which such work shall be carried out; (3) provide for necessary review of design and plans, and inspection of the work by the Chief of Engineers or his designee; (4) state the basis on which the amount of reimbursement shall be determined; (5) state that such reimbursement shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending projects of higher priority for improvements; and (6) specify that reimbursement or credit for non-Federal installation expenditures shall apply only to work undertaken or Federal projects after project authorization and execution of the agreement, and does not apply retroactively to past non-Federal work. Each such agreement shall expire three years after the date on which it is executed if the work to be undertaken by the non-Federal public body has not commenced before the expiration of that period. The time allowed for completion of the work will be determined by the Secretary of the Army, acting through the Chief of Engineers, and stated in the agreement.

(c) No reimbursement shall be made, and no expenditure shall be credited, pursuant to this section, unless and until the Chief of Engineers or his designee, has certified that the work for which reimbursement or credit is

requested has been performed in accordance with the agreement.

(d) Reimbursement for work commenced by non-Federal public bodies no later than one year after enactment of this section, to carry out or assist in carrying out projects for beach erosion control, may be made in accordance with the provisions of section 2 of the Act of August 13, 1946, as amended (33 U.S.C. 426f). Reimbursement for such work may, as an alternative, be made in accordance with the provisions of this section, provided that agreement required herein shall have been executed prior to commencement of the work. Expenditures for projects for beach erosion control commenced by non-Federal public bodies subsequent to one year after enactment of this section may be reimbursed by the Secretary of the Army, acting through the Chief of Engineers, only in accordance with the provisions of this section.

(e) This section shall not be construed (1) as authorizing the United States to assume any responsibilities placed upon a non-Federal body by the conditions of project authorization, or (2) as committing the United State to reimburse non-Federal interests if the Federal project is not undertaken or is modified so as to make the work performed by the non-Federal Public body no longer applicable.

(f) The Secretary of the Army is authorized to allot from any appropriations hereafter made for civil works not to exceed $10,000,000 for any one fiscal year to carry out the provisions of this section. This limitation does not include specific project authorizations providing for reimbursement.

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[42 FR 24050, May 12, 1977]

PART 210—PROCUREMENT ACTIVITIES OF THE CORPS OF ENGINEERS

Sec.

210.1 Advance notice to prospective bidders.
210.2 Notice of award.
210.3 Notice to proceed.
210.4 Rules of the Corps of Engineers Board of Contract Appeals for cases not subject to the Contract Disputes Act of 1978.
210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.

AUTHORITY: Secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012.

§210.1 Advance notice to prospective bidders.

In connection with all construction contracts estimated to cost $100,000 or more for which an invitation is scheduled to be issued, an advance notice to prospective bidders will be prepared sufficiently in advance of the actual issuance of the invitation to stimulate interest on the part of the greatest possible number of contractors. Advance notices may also be prepared on projects estimated to cost less than $100,000 and for supplies where considered desirable. ENG Form 3132–R or ENG Form 3133–R [set out in paragraphs 205 and 206, Appendix A, Engineer Contract Instructions (ER 1180–1–1)] will be used to send advance notices to prospective bidders. Lengthy notices may be reproduced and mailed using ENG Form 3133–R as a foldover wrapper fastened with a wire staple. Advance notices will contain the information required by ENG Form 3132–R, but additional information may be added as appropriate. The advance notices will:

(a) Describe the proposed work in sufficient detail to permit prospective general contractors, subcontractors and suppliers to determine reasonably whether the work is of a nature and volume to warrant their buying plans;

(b) Specify the date by which bidders should return the request card in order to receive a complete bid set;

(c) State the various locations (offices) where plans will be on public display, available for inspection without charge; and

(d) Include for construction contracts a statement as to the approximate value of the proposed construction. That statement of value shall be in increments as follows: (1) Less than $25,000; (2) the nearest multiple of $25,000 up to $100,000; (3) the nearest multiple of $100,000 from $100,000 to $1 million; (4) the nearest multiple of $500,000 for from $1 million to $10 million; (5) over $10 million for all projects of greater estimated value.

Information on several projects for which invitations are scheduled to be issued may be grouped in one advance notice provided that information on any project or projects is not unduly delayed in order to be grouped with others. When an advance notice is used to circularize bidders, copies of the invitation, when issued, will be furnished only to those prospective bidders who

have returned a request card indicating a desire to submit a bid.

[26 FR 11732, Dec. 7, 1961]

§ 210.2 Notice of award.

The successful bidder will be notified in writing of the acceptance of his bid. Under construction contracts, this notice may accompany the contract papers which are forwarded for execution. To avoid error, or confusing the notice of award with a notice to proceed, the notice of award will be substantially in the following format:

> You are hereby notified that your bid dated _____ in the sum of $_____ covering _____ is accepted. A formal contract will be prepared for execution. Acceptable performance and payment bonds (if required) must be furnished upon execution of the formal contract. If approval of the contract is required by its express terms, the contract is not fully executed until such approval is obtained.

Under supply contracts a written award mailed (or otherwise furnished) to the successful bidder either on Standard Form 26 or Standard Form 33, results in a binding contract without further action by either party.

[26 FR 11732, Dec. 7, 1961]

§ 210.3 Notice to proceed.

(a) *General*. When the contract specifies the time when the contractor is to proceed with the work under the contract, a notice to proceed will not be required. However, in any case where the contract requires the issuance of a notice to proceed the notice will fix the time for the commencement of the work and also, if appropriate, will fix the time for the completion of the work. The notice to proceed should be issued on a form letter, reproduced on local letterhead paper from a master copy, which will preclude repetitive typing of stereotype data. The notice to proceed will be executed in a sufficient number of copies to meet the contract distribution requirements in paragraph 30–206, Engineer Contract Instructions (ER 1180–1–1), and will bear the contract number in the upper right-hand corner of the notice.

(b) *Contractor's acknowledgment*. When a notice to proceed is issued, the contractor will acknowledge receipt thereof by signing and dating all copies of the acknowledgment and returning all but one copy to the contracting officer.

(c) *Proceeding before approval of bonds*. It is not necessary to delay commencement under the contract pending approval of bonds by The Judge Advocate General. Such action will be at the discretion of the contracting officer. In the event exceptions are taken to the bonds the contractor will immediately take steps to remove such exceptions or submit new bonds.

(d) *Commencing performance*. Contractors in no case will be required to commence performance prior to the commencement date fixed in the contract or in the notice to proceed. If they voluntarily do so and the contract is not ultimately signed, or approved when required, such action is at their own risk and without liability on the part of the Government. Contractors will not be required to commence performance until:

(1) Performance and payment bonds have been furnished, when required;

(2) The award has been approved when approval is required; and

(3) Notice to proceed has been forwarded to the contractor where required.

[26 FR 11732, Dec. 7, 1961]

§ 210.4 Rules of the Corps of Engineers Board of Contract Appeals for cases not subject to the Contract Disputes Act of 1978.

(a) *Preface to rules*. (1) The Corps of Engineers Board of Contract Appeals is the authorized representative of the Chief of Engineers for the purpose of hearing, considering and determining, as fully and finally as he might, appeals by contractors from decisions of contracting officers or their authorized representative or other authorities on disputed questions, taken pursuant to the provision of contracts requiring the determination of such appeals by the Chief of Engineers or his duly authorized representative or Board.

(2) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider and decide all questions of law necessary for the complete adjudication of

the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(3) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board may order exchange of complicated exhibits prior to hearing in order to expedite the hearing.

(5) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(6) Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

(b) *Rule 1, Appeals, how taken.* Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal shall be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

(c) *Rule 2, Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number) and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(d) *Rule 3, Forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal, together with a copy of the decision appealed from, to the Board. Following receipt by the Board of the papers described in the next rule (Rule 4), the contractor will be promptly advised of its receipt and that the appeal is then considered docketed, and the contractor will be furnished a copy of these rules.

(e) *Rule 4, Preparation, contents, organization, forwarding and status of appeal file*—(1) *Duties of contracting officer.* Following receipt of a notice of appeal or advice that an appeal has been filed, the contracting officer shall compile and transmit to the Board and the government trial attorney an appeal file consisting of all documents pertinent to the appeal including in particular:

(i) The decision and findings of fact from which the appeal was taken;

(ii) The contract including pertinent amendments, specifications, plans and drawings;

(iii) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which a decision was issued;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

The contracting officer shall at the same time furnish to the appellant a copy of each document in the appeal file except those set forth in paragraph (e)(1)(ii) of this section, as to which a

list furnished appellant indicating the specific contractual documents included in the file will suffice, and those set forth in paragraph (e)(4) of this section.

(2) *Supplementation of appeal file.* Within 30 days after receipt of its copy of the appeal file the appellant may supplement the same by furnishing to the Board any document not contained therein which he considers pertinent to the appeal and furnishing two copies of each document to the government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies thereof and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed and indexed to identify the contents of the file.

(4) *Lengthy documents.* The Board, on motion of a party, may waive the requirement of furnishing to the other party copies of bulky, lengthy or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the office of the Board or of the party filing the same.

(5) *Status of documents in appeal file.* Documents in the appeal file are considered as evidence in the case. A party to the appeal may at any time prior to the conclusion of a hearing or in the case of an appeal submitted on the record prior to the date of the notice that the case is ready for decision object to the inclusion of any document in the appeal file. The Administrative Judge hearing the case will rule on the objection as on any other objection to the admission of evidence.

(f) *Rule 5, Dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(g) *Rule 6, Pleadings.* (1) Within 30 days after receipt of notice of docketing of the appeal, as provided in the last sentence of Rule 3, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Recorder of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(2) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(h) *Rule 7, Ammendments of pleadings or record.* (1) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(2) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper

scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

(i) *Rule 8, Hearing—election.* (1) Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), appellant shall advise the Board whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11.

(2) In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

(j) *Rule 9, Pre-hearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may in its discretion require the parties to submit pre-hearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board. In any case where a pre-hearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

(k) *Rule 10, Pre-hearing or pre-submission conference.* (1) When the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative Judge of the Board for a conference to consider:

(i) The simplification or clarification of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(iii) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(iv) The possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the appeal.

(2) The results of the conference shall be reduced to writing by the Administrative Judge in the presence of the parties, and this writing shall thereafter constitute part of the record.

(l) *Rule 11, Submission without a hearing.* Although both parties are entitled to a hearing under these rules, either party may elect to waive a hearing and to submit his case upon the Board record as settled pursuant to Rule 13. Such an election by one party shall not preclude the other party from requesting and obtaining a hearing. Affidavits, depositions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral arguments, transcribed if requested, and by briefs arranged in accordance with Rule 23.

(m) *Rule 12, Optional accelerated procedure.* (1) In appeals involving $25,000 or less the appellant may elect to have the appeal processed under this rule. The election may be made in the notice of appeal, the complaint or by separate correspondence. In the event of such election the case will be assigned to a single Administrative Judge who will make every effort to render his decision within 30 days of the settlement of the record and without regard to the place of the appeal on the docket. To

assist in expediting decisions the parties should consider waiving pleadings and submitting the case on the record.

(2) In cases involving $5,000 or less where there is a hearing the presiding Administrative Judge may in his discretion at the conclusion of the hearing and after such oral argument as he deems appropriate render oral summary findings of fact, conclusions and a decision on the appeal. The Board will subsequently furnish the parties a typed copy of the decision for record and payment purposes and to establish the date on which the period for filing a motion for reconsideration under Rule 29 commences.

(3) Except as herein modified, these rules otherwise apply in all respects.

(n) *Rule 13, Settling the record.* (1) The record upon which a Board decision is rendered shall consist of the pleadings, the appeal file described in Rule 4, prehearing orders, memoranda of pre-hearing conferences and all evidence admitted by the Board both documentary and oral as appearing in the transcript. The record shall at all reasonable times be available for inspection by the parties at the office of the Board.

(2) A case submitted on the record pursuant to Rule 11 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of the transcript or upon receipt of the briefs when briefs are to be submitted.

(3) The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal. Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or after notification by the Board that the case is ready for decision in cases submitted on the record.

(o) *Rule 14, Discovery—depositions*—(1) *General policy.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the appeal. The parties are encouraged to engage in voluntary discovery procedures.

(2) *When permitted.* The Board may, upon timely motion filed by a party after the answer has been filed, order the taking of the testimony of any person by deposition upon oral examination or by written questions for the purpose of discovery or for use as evidence or for both.

(3) *Before who taken—time and place.* Depositions shall be taken before a person authorized to administer oaths at the place of examination. The time, place and manner of taking depositions shall be as mutually agreed by the parties or as set forth in the order of the Board.

(4) *Protective orders.* The Board may in connection with the taking of any deposition make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense.

(5) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until it is offered and received as evidence at the hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such cases, however, the deposition may be used to contradict or impeach testimony of the witness given at the hearing. In cases submitted on the record the Board may in its discretion receive depositions as evidence.

(6) *Expenses.* Each party shall bear its own expenses associated with taking of any deposition.

(p) *Rule 15, Interrogatories; inspection of documents; admission of facts.* (1) The Board may upon a timely motion filed by either party after the filing of the answer permit a party to serve written interrogatories upon the opposing party, order a party to produce and permit inspection and copying or photographing of designated documents or permit the service on a party of a request for the admission of facts. The Board in its order shall establish the date for responding to the motion.

(2) The Board may issue protective orders as in the case of depositions.

(q) *Rule 16, Service of papers.* Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, or certified, postage prepaid, addressed to the party upon whom service shall be made and the date of delivery as shown by return

receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof or on a separate paper, signed by the parties and filed with the Board.

(r) *Rule 17, Hearings—Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that, upon request reasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

(s) *Rule 18, Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

(t) *Rule 19, Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(u) *Rule 20, Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits and other evidence not ordinarily admissible under the generally accepted rules of evidence may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

(v) *Rule 21, Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the presiding administrative Judge shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of title 18, United States Code, sections 287 and 1001 and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(w) *Rule 22, Copies of papers.* When books, records, papers or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(x) *Rule 23, Post hearing briefs*—(1) *General.* Briefs must be compact, concise, logically arranged and free from burdensome, irrelevant, immaterial and scandalous matter. Briefs not complying with this rule may be disregarded by the Board.

(2) *Time of submittal.* Briefs, including reply briefs, shall be submitted at such times and upon such terms as may be agreed to by the parties and the presiding Administrative Judge at the conclusion of the hearing.

(3) *Length of briefs.* Except by permission of the Board on motion, principal briefs shall not exceed 100 8½″ by 11″ pages typewritten double space exclusive of any table of contents and table of statutes, regulations and cases cited. Reply briefs shall not exceed 20 such pages.

(y) *Rule 24, Transcript of proceedings.* Testimony and argument at hearings

shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

(z) *Rule 25, Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(aa) *Rule 26, Representation—The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, Commonwealth, Territory or in the District of Columbia.

(bb) *Rule 27, Representation—The respondent.* Government counsel shall be designated to represent the interests of the Government before the Board. They shall file notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

(cc) *Rule 28, Decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C.

(dd) *Rule 29, Motions for reconsideration.* A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(ee) *Rule 30, Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed.

(ff) *Rule 31, Dismissal for failure to prosecute.* Whenever a record discloses the failure of the appellant to file documents required by these rules, respond to notice or correspondence from the Board, comply with orders of the Board or otherwise to indicate an intention to continue the prosecution of an appeal filed, the Board may issue an order requiring appellant to show cause within thirty days why the appeal should not be dismissed for lack of prosecution. If the appellant shall fail to show such cause, the appeal may be dismissed with prejudice.

(gg) *Rule 32, Ex Parte communications.* No Administrative Judge or member of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(hh) *Rule 33, Effective date and applicability*. These revised rules shall take effect on January 14, 1975. They govern all proceedings in appeals after they take effect and also all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending when the Rules take effect would not be feasible or would work an injustice, in which event the former procedure applies.

[Regs., Jan. 7, 1975, DAEN]

[40 FR 2582, Jan. 14, 1975, as amended at 45 FR 19202, Mar. 24, 1980]

§210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.

(a) *Preface to rules*—(1) *Jurisdiction for considering appeals*. The Corps of Engineers Board of Contract Appeals (referred to herein as the ''Board'') shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613) relating to: (i) Civil Works Contracts of the Corps of Engineers, (ii) contracts made by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, or (iii) with the approval of the Chief of Engineers, contracts made by any other agency when such agency has designated the Board to decide the appeal.

(2) *Location and organization of the Board*. (i) The Board's address is Room 4108, Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314, telephone (202) 272–0369.

(ii) The Board consists of a chairman, vice chairman, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members who decide the case by a majority vote. Board members are designated Administrative Judges.

(3) *Applicability of the Contract Disputes Act of 1978*. (i) If a contract with an executive agency was awarded before 1 March 1979, and if the contracting officer's final decision was issued 1 March 1979 or thereafter, the contractor may elect to proceed under the Contract Disputes Act of 1978.

(ii) If a contract with an executive agency was awarded on 1 March 1979 or thereafter, the Contract Disputes Act is automatically applicable.

(iii) All other appeals are not subject to the Contract Disputes Act of 1978 and are controlled by the Board's rules published 14 January 1975 (33 CFR 210.4).

(iv) If the Contract Disputes Act is applicable to the appeal, the contractor can elect an accelerated procedure if the disputed amount is $50,000 or less. If the disputed amount is $10,000 or less the contractor has a further right to elect a small claims (expedited) procedure. Both of these procedures are described in Rule 12. Particular note should be made of the 180 day limit on processing accelerated procedure cases and the 120 day limit on processing small claims (expedited) procedure cases.

(4) *General guidelines*. (i) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(ii) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board expects the parties to exchange complicated exhibits prior to hearing in order to expedite the hearing.

(iii) Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, this shall include respective counsel for the parties as soon as appropriate notices of appearance have been filed with the Board.

(b) *Rule 1, Appeals, how taken*. (1) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of

receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(2) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (b)(1) of this section, citing the failure of the contracting officer to issue a decision.

(3) Where the contractor has submitted a claim to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (b)(1) of this section, citing the failure to issue a decision.

(4) Upon docketing of appeals filed pursuant to paragraph (b)(2) or (3) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(5) In lieu of filing a notice of appeal under paragraph (b)(2) or (3) of this section, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

(c) *Rule 2, Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), or by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(d) *Rule 3, Docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

(e) *Rule 4, Preparation, content, organization, forwarding, and status of appeal file*—(1) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;

(ii) The contract including specifications and pertinent amendments, plans and drawings;

(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(v) Any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in paragraph (e)(1)(ii) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(2) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(4) *Lengthy documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file

when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(5) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(6) Notwithstanding the foregoing, the filing of the Rule 4 (1) and (2) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

(f) *Rule 5, Motions.* (1) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(2) The Board may entertain and rule upon other appropriate motions.

(g) *Rule 6, Pleadings*—(1) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(2) *Government.* Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(h) *Rule 7, Amendments of pleadings or record.* The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

(i) *Rule 8, Hearing election.* After filing of the Government's answer or notice from the Board that it has entered

a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

(j) *Rule 9, Prehearing briefs.* Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

(k) *Rule 10, Prehearing or presubmission conference.* (1) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(i) Simplification, clarification, or severing of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(iii) Agreements and rulings to facilitate discovery;

(iv) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(v) The possibility of agreement disposing of any or all of the issues in dispute; and

(vi) Such other matters as may aid in the disposition of the appeal.

(2) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pre-trial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

(l) *Rule 11, Submission without a hearing.* Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

(m) *Rule 12, Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures.* These procedures are available solely at the election of the appellant.

(1) Sub-Rule 12.1 *Elections to utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures.* (i) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in sub-Rule 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(ii) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in sub-Rule 12.3 of this Rule.

(iii) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(2) *Sub-Rule 12.2, The SMALL CLAIMS (EXPEDITED) procedure.* (i) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(A) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(B) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (*1*) Identify and simplify the issues; (*2*) establish a simplified procedure appropriate to the particular appeal involved; (*3*) determine whether either party wants a hearing, and if so, fix a time and place therefor; (*4*) require the Government to furnish all the additional documents relevant to the appeal; and (*5*) establish an expedited schedule for resolution of the appeal.

(ii) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(iii) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(iv) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

(3) *Sub-Rule 12.3, The ACCELERATED procedure.* (i) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(ii) Written decisions by the Board in cases processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or the Vice Chairman or other designated Administrative Judge, or by a majority among these

two and an additional designated member in case of desagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the Accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under Rule 29.

(4) *Sub-Rule 12.4, Motions for reconsideration in Rule 12 Cases.* Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

(n) *Rule 13, Settling the record.* (1) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(o) *Rule 14, Discovery—depositions*—(1) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(2) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(4) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(5) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(6) *Subpoenas.* Where appropriate, a party may request the issuance of a

subpoena under the provisions of Rule 21.

(p) *Rule 15, Interrogatories to parties, admission of facts, and production and inspection of documents.* After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (2) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (3) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after service. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(1) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

(q) *Rule 16, Service of papers other than subpoenas.* Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

(r) *Rule 17, Hearings: Where and when held.* Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

(s) *Rule 18, Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirements for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

(t) *Rule 19, Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(u) *Rule 20, Hearings: Nature, examination of witnesses*—(1) *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(2) *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(v) *Rule 21, Subpoenas*—(1) *General.* Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at

another location convenient for him that is specifically determined by the Board;

(ii) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) *Production of books and papers.* In addition to paragraph (v)(1) (i) or (ii) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena

(2) *Voluntary cooperation.* Each party is expected: (i) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(3) *Requests for subpoenas.* (i) A request for subpoena shall normally be filed at least:

(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(ii) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(4) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may: (i) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where ciurcumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(5) *Form; issuance.* (i) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(ii) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(6) *Service.* (i) The party requesting issuance of a subpoena shall arrange for service.

(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(iii) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(7) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be

punished by the Court as a contempt thereof.

(w) *Rule 22, Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(x) *Rule 23, Post-hearing briefs.* Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

(y) *Rule 24, Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under sub-rule 12.2. Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost of duplication.

(z) *Rule 25, Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its descretion as a condition of granting permission for such withdrawal.

(aa) *Rule 26, Representation: The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(bb) *Rule 27, Representation: The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time of time.

(cc) *Rule 28, Decisions.* Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(dd) *Rule 29, Motion for reconsideration.* A motion for reconsideration may be file by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(ee) *Rule 30, Suspensions; dismissal without prejudice.* The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(ff) *Rule 31, Dismissal or default for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good

cause is not shown, the Board may take appropriate action.

(gg) *Rule 32, Remand from court.* Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

(hh) *Rule 33, Time, computation and extensions.* (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(ii) *Rule 34, Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(jj) *Rule 35, Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

(kk) *Rule 36, Effective date.* These rules shall apply: (1) Mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

[45 FR 19202, Mar. 24, 1980]

PART 211—REAL ESTATE ACTIVITIES OF THE CORPS OF ENGINEERS IN CONNECTION WITH CIVIL WORKS PROJECTS

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AUTHORITY: Sections 211.1 through 211.4 issued under 5 U.S.C. 301, unless otherwise noted.

SOURCE: 13 FR 8747, Dec. 30, 1948, unless otherwise noted.

REAL ESTATE; GENERAL

§211.1 Real estate defined.

The term *real estate* as used in this part includes land; buildings; piers and wharves; office and storage space; rights-of-way or easements, whether temporary or permanent; and any interests which may be acquired or held therein for the use or benefit of the United States by the Department of the Army or any branch thereof.

§211.2 Authority to acquire real estate.

(a) *Congressional authority necessary*. No land shall be acquired on account of the United States except under a law authorizing such acquisition. (See R. S. 3736; 41 U. S. C. 14.)

(b) *Authority of the Secretary*. The authority of the Secretary of the Army to acquire real estate for river and harbor improvements, flood control projects and allied purposes, is based upon enactments of the Congress authorizing the particular projects and appropriating funds therefor. These enactments are generally termed Flood Control Acts and are passed following the submission by the Secretary of the Army of preliminary plans and surveys to the Congress for consideration and approval.

(c) *Local cooperation*. As a general rule in river and harbor and flood control projects, except channel improvements, channel rectifications, dam and reservoir, and certain other types of projects, local interests are required to provide without cost to the United States, all lands, easements and rights-of-way necessary for the construction of the projects.

§211.3 Function of Chief of Engineers.

(a) The Chief of Engineers, under the authority of the Secretary of the Army, is charged with the responsibility for the acquisition, management and disposal of all real estate or interests therein required for use by the Department of the Army for river and harbor, flood control and allied purposes.

§211.4 Acquisition of land.

(a) Real property and interests therein may be acquired by the Department of the Army by:

(1) Purchase.

(2) Condemnation.

(3) Transfer from other Government departments and agencies.

(4) Lease or similar instrument.

(5) Donation or gift.

(b) *Methods of acquisition*—(1) *Purchase*. It is the policy of the Department of the Army to secure title to lands, or the desired interest therein, by direct negotiation and purchase, where possible. Each tract of land to be acquired is approved by qualified appraisers for the purpose of determining the market value. Options for the purchase of land will not be negotiated containing reservations or exceptions by landowners or subject to outstanding rights in third parties which may interfere with the use of the land for which it is being acquired. In no case will an option be negotiated in which a vendor excepts or reserves the right to repurchase the property, or undertakes to convey subject to rights in a third party. Generally, landowners or tenants are authorized to reserve, or except from the sale, crops, timber, buildings and improvements with the right to remove same within a specified period, provided such buildings, etc., are not required for use by the Department of the Army. Land is acquired subject to public highways, roads, railroads, pipelines, and other utilities, and if it is determined that they interfere with the Government's use of the property, will be relocated or extinguished by contract between the Government and State, county or utility involved. If at any time in the course of acquisition by direct purchase, it becomes apparent that acquisition by such means will involve substantial delay or cannot be accomplished because of title defects which cannot be eliminated within a reasonable time, or because of failure to agree on the price to be paid, action is taken to acquire the land by condemnation.

(2) *Condemnation*. Condemnation of land is accomplished by the Secretary of the Army requesting the Attorney General to file a condemnation petition and procure an order from the court in the Federal Judicial District where the land is located, granting to the United States the right of immediate possession. The declaration of taking act (40 U.S.C. 258a–d) permits the Government to file a declaration of taking in conjunction with the condemnations proceedings, and provides that title to the property described therein vests immediately upon filing of the declaration in court and deposit of the Government's estimate of compensation, named in the declaration, in the registry of the court. The court may enter orders directing that all or part of the money deposited by the Government be paid to the owner of the land or other persons having an interest therein. This payment is without prejudice to the landowner's right to seek a higher value for his land in the trial of the case before the court. Pending or during the trial under condemnation proceedings, negotiations may still be conducted with the landowner for the direct purchase of his property, and in the event an agreement is reached, action is taken to dismiss the land in question from the condemnation proceedings.

(3) *Transfer of land*. Transfer of land from other Government agencies to the Department of the army is generally accomplished by obtaining a use permit, or if the land is desired permanently, then by transfer under applicable legislative authority. In the absence of such authority, a permit is obtained pending enactment of special legislation by the Congress. Public domain land under the Department of the Interior may be withdrawn and set aside for the use of the Department of the Army by Executive order or a Public Land Order.

(4) *Lease*. The negotiation of leases for river and harbor and flood control purposes must be approved by the Chief of Engineers or his duly authorized representative.

TEMPORARY USE BY OTHERS OF CIVIL WORKS REAL ESTATE

AUTHORITY: Sections 211.5 through 211.9 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8748, Dec. 30, 1948, unless otherwise noted.

§ 211.5 Temporary use; how granted.

There are three methods by which the temporary use of real estate under the control of the Department of the Army may be granted: Lease, easement and licenses, or permit.

§211.6 Rights which may be granted by the Secretary of the Army in river and harbor and flood control property.

(a) *Leases.* (1) The Secretary of the Army is authorized, whenever he shall deem it to be advantageous to the Government, to lease such real property under the control of his Department as is not surplus to the needs of the Department within the meaning of the act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Army shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary of the Army may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary of the Army to revoke the lease at any time, unless he shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary of the Army during a national emergency declared by the President. Notwithstanding section 321 of the act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department of the Army to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise provided in this paragraph, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority granted in this section shall not apply to oil, mineral, or phosphate lands (10 U.S.C. 2667).

(2) The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas under the control of the Department of the Army and to permit the construction, maintenance, and operation of such facilities. The Secretary of the Army is authorized to grant leases of lands, including structures or facilities thereon, in reservoir areas for such periods and upon such terms as he may deem reasonable: *Provided,* That leases to non-profit organizations may be granted at reduced or nominal rentals in recognition of the public service to be rendered in utilizing the leased premises: *Provided further,* That preference shall be given to Federal, State, or local governmental agencies, and licenses may be granted without monetary considerations to such agencies for the use of all or any portion of a reservoir area, when the Secretary of the Army determines such actions to be in the public interest, and for such periods of time and upon such conditions as he may find advisable. The water areas of all such reservoirs shall be open to the public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received

for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (Sec. 4, act of December 22, 1944, 58 Stat. 887, 889, as amended by sec. 4, act of July 24, 1946, 60 Stat. 641, as amended by Sec. 209, act of Sept. 3, 1954, 68 Stat. 1266.)

(b) *Easements*. (1) The Secretary of the Army is authorized to grant easements for rights-of-way across real estate acquired for civil purposes as follows:

(i) *Poles and wires*. The Secretary of the Army may grant easements for rights-of-way, for periods not exceeding 50 years, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, over lands under his jurisdiction, upon a finding that the same is not incompatible with the public interest (see act of March 4, 1911; 36 Stat. 1253, as amended by the act of May 27, 1952, 66 Stat. 95; 43 U.S.C. 961). Form of easement is ENG Form 1360.

(ii) *Pipelines*. The Secretary of the Army may grant easements for rights-of-ways for gas, water, and sewer pipelines across lands under his control provided that such grants will be in the public interest and will not substantially injure the interest of the United States in the property affected thereby (10 U.S.C. 2669). Form of easement is ENG Form 1361.

(iii) *Other easements*. The Secretary of the Army is authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way over, across, in and upon acquired lands under his jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Department of the Army, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for:

(A) Railroad tracks;

(B) Oil pipelines;

(C) Substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipelines;

(D) Canals;

(E) Ditches;

(F) Flumes;

(G) Tunnels;

(H) Dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements;

(I) Roads and streets;

(2) *Provided*, That:

(i) Such rights-of-way shall be granted only upon a finding by the Secretary of the Army that the same will not be incompatible with the public interest.

(ii) Such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted.

(iii) All or any part of such rights-of-way may be annulled and forfeited by the Secretary of the Army for failure to comply with the terms and conditions of the grant or for the nonuse for a period of two consecutive years or abandonment of rights granted (10 U.S.C. 2668).

§ 211.7 Rights which may be granted by Division and District Engineers.

(a) *Authority of Division and District Engineers*. Division Engineers, the President of the Mississippi River Commission, and District Engineers of districts to which real estate functions have been or may be assigned are authorized to lease, in the name of and by authority of the Secretary of the Army, lands of the United States and improvements thereon, acquired for reservoirs for navigation and flood control, subject to the prior approval of the Chief of Engineers. Recommendations of District Engineers will be considered by Division Engineers and the President of the Mississippi River Commission in granting leases and District Engineers will administer the provisions of the leases, including the collection and deposit of payments.

§ 211.8 Limitations on rights which may be granted.

(a) *Advertising*. It is the policy to grant leases to the highest responsible bidders after advertising, where competition is practicable. Advertising consists of the circularization of notices among former owners of the land, owners of adjacent lands, and others known to be interested and by the posting of notices in public places, and

publication of notices in newspapers where such publication is deemed advisable. Exceptions have been made to this policy in favor of former owners in granting leases for agricultural and grazing purposes in reservoir areas.

(b) *Consideration.* Title 10 U.S.C. 2667 provides that notwithstanding section 321 of the act of June 30, 1932 (47 Stat 412; 40 U.S.C. 303b) or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. The consideration will be adequate but may consist of money and/or maintenance, protection, repair, or restoration by the lessee, of the property leased.

(c) *Consideration in easements and licenses.* In order to fully protect the interests of the United States, the Secretary of the Army will not, without substantial compensation grant to nongovernment agencies, for the purpose of private profit, valuable rights in Government property. A fair charge will be made for such privileges, the amount to be determined by all the circumstances surrounding the case, including an estimate as to what private interest in the vicinity would charge for a similar privilege.

§ 211.9 Applications for leases, easements, licenses, and permits.

Applications for use of Civil Works property should be made to the District Engineer of the district within the boundaries of which the real estate is located. The District Engineer will determine whether the property will be required for public use during the period of the contemplated grant and whether the requested grant will interfere with any operations of the United States.

DISPOSAL OF REAL ESTATE ACQUIRED FOR CIVIL WORKS PURPOSES

AUTHORITY: Sections 211.10 through 211.13 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8749, Dec. 30, 1948, unless otherwise noted.

§ 211.10 Disposition of lands.

(a) Acts authorizing the Secretary of the Army to dispose of land acquired for the improvements of canals, rivers and harbors, or for flood control purposes are as follows:

(1) Section 7 of the act of Congress approved August 30, 1935 (49 Stat. 1048; 33 U.S.C. 558a) as extended by section 6 of the act approved August 18, 1941 (55 Stat. 650; 33 U.S.C. 701c–2, 77th Congress) authorizing sale of lands no longer needed for the purpose for which acquired.

§ 211.11 Sale or salvage of buildings, improvements, or crops.

(a) *Authority of law.* When any property (except land) which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors or for flood control work is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of the Army may direct and the proceeds credited to the appropriation for the work for which it was purchased or acquired. (Section 5, act of June 13, 1902 (32 Stat. 373; 33 U.S.C. 558), as extended by section 3, act of March 1, 1917 (39 Stat. 450; 33 U.S.C. 701).)

(b) *Division Engineers.* Sales are conducted by the Division Engineers, Corps of Engineers.

(c) *Removal of buildings, improvements, or crops other than by sale.* If the buildings, improvements, or crops cannot be sold, they may be salvaged or razed as a part of the work under the project if they are in the way of new construction or interfere with the efficient operation of the project.

§ 211.12 Exchange of lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately owned lands required for such purposes. (Sec. 2 of the act of June 20, 1938 (52 Stat. 804; 33 U.S.C. 558b) as extended by sec. 3 of the act of August 11, 1939 (53 Stat. 1414, 33 U.S.C. 558b–1).)

§ 211.13 Approval of the Office of the Chief of Engineers.

In any case in which it may be necessary or advisable in the execution of

an authorized project to exchange real property of the Government for real property required for such project, the Chief of Engineers receives a directive from the Secretary of the Army, and effects the exchange through the Division Engineers, Corps of Engineers.

REAL ESTATE CLAIMS

AUTHORITY: Sections 211.14 through 211.24 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8749, Dec. 30, 1948, unless otherwise noted.

§ 211.14 Definition.

The term *real estate claims* refers to those demands for payment submitted by individuals, partnerships, associations or corporations, including States, territories, and political subdivisions thereof, for rent, damages, utilities, out-of-pocket expenses and other payments, arising under the terms and conditions, whether express or implied, of leases or other contracts for the use and occupancy of real estate by the Department of the Army or the Army, including right of entry permits, options to purchase, and other instruments sufficient to support a contractual relationship between the United States and property owner, or arising from the use and occupancy of real estate by the Department of the Army or the Army with the express or implied consent of the owner thereof in the absence of any formal lease or other contract therefor.

§ 211.15 Statutory provisions.

(a) All claims and demands whatever against the Government, unless there is some special authority for the settlement thereof by the department concerned, shall be settled and adjusted in the General Accounting Office (see R.S., sec. 236, as amended by act of June 10, 1921, 42 Stat. 24; 31 U.S.C. 71).

(b) *Meritorious Claims Act*. When there is filed in the General Accounting Office a claim or demand against the United States that may not lawfully be adjusted by the use of an appropriation theretofore made, but which claim or demand in the judgment of the Comptroller General of the United States contains such elements of legal liability or equity as to be deserving of the consideration of the Congress, he shall submit the same to the Congress, by a special report containing the material facts and his recommendations thereon (act of April 10, 1928; c. 334, 45 Stat. 413; 31 U.S.C. 236).

(c) *Limitations of time on claims and demands under (a) and (b) of this section*. The act of October 9, 1940 (54 Stat. 1061; 31 U.S.C. 71a) provides that every claim or demand (except a claim or demand by any State, Territory, possession or the District of Columbia) against the United States cognizable by the General Accounting Office under the act of June 10, 1921, and the act of April 10, 1928, will be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, will be received in said office within ten full years after the date such claim first accrued: *Provided, however*, That when such a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established. The act further provides that whenever any claim barred by the preceding provision will be received in the General Accounting Office, it will be returned to the claimant, with a copy of this act (act of October 9, 1940) and such action will be a complete response without further communication.

(d) *Domestic Claims Act*. The act of July 3, 1943 (57 Stat. 372; 31 U.S.C. 223b, 223c) as amended by the act of May 29, 1945 (Pub. L. 67, 79th Congress) and as further amended by the act of June 28, 1946 (Pub. L. 466, 79th Congress), provides for the payment of claims arising on or after May 27, 1941, for damage to or loss or destruction of property, real or personal, caused by military personnel or civilian employees of the Department of the Army or of the Army while acting within the scope of their employment or otherwise incident to noncombat activities of the Department of the Army or of the Army, including claims for damages to real property incident to the use and occupation thereof, whether under a lease, express or implied, or otherwise, and including claims of the foregoing categories arising out of civil works, provided they do not exceed $1,000. The act

further provides that the damage to or loss or destruction of property shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent or employee; that no claim shall be settled under the act unless presented in writing within one year after the incident out of which such claim arises shall have occurred except that if the incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may, on good cause shown, be presented within one year after peace is established. The Secretary of the Army is authorized to report such claims as exceed $1,000 to Congress for its consideration.

§ 211.16 Scope and application of Army Regulations.

(a) AR (Army Regulations) 25–25 has been issued in furtherance of the act of July 3, 1943. The regulations in this part, in keeping with the terms of the act, apply to claims for damages only. Paragraph 7 of AR 25–25 provides that claims for damages to real property incident to the use and occupancy thereof by the government under a lease express or implied, or otherwise, are payable under this section even though legally enforceable against the Government as contract claims. However, if deemed preferable in the best interest of the Government claims payable under paragraph 7 may be processed to the General Accounting Office for direct settlement under sec. 236, Revised Statutes. Claims for rent of real property are not payable under AR 25–25.

(b) AR 100–64 has been issued in furtherance of Section 236, Revised Statutes, as amended by the act of June 10, 1921; 42 Stat. 24, 31 U.S.C. 71. These regulations provide exclusive authority for the consideration and settlement of claims for rent and other payments of an express or implied contractual nature, and optional authority with AR 25–25 for settlement of damages, in excess of $1,000 arising out of the use and occupancy of real estate by the Department of the Army or the Army under an agreement expressed or implied. AR 100–64 applies to all claims for rent regardless of amount and for other payments of a contractual nature, for example, claims for electricity, heat, light, water, and other out-of-pocket expenses, repairs, etc., where such expenses are not included in the lease as a part of the rental consideration.

§ 211.17 Authority of Division Engineers, Corps of Engineers to settle claims.

(a) Authority has been delegated to Division Engineers, within the geographical limits of their respective jurisdictions, to approve or disapprove, in amounts not exceeding $1,000, any claim within the purview of the act of July 3, 1943, as amended. Insofar as real estate claims are concerned this delegation of authority applies only to claims for damages incident to the use and occupancy of real property by the Department of the Army or the Army.

(b) Division Engineers have no authority to settle and make payment of claims for damages in excess of $1,000 or for rents or other payments of a contractual nature regardless of amount arising out of the use and occupation of real estate under an agreement, express or implied, or otherwise.

§ 211.18 Action by claimant.

Real estate claims may be presented by the owner of the property or his duly authorized agent or legal representative. The word ''owner'', as so used, includes lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. The claim, if filed by an agent or legal representative, should show the title of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

§ 211.19 Place of filing claims.

All real estate claims should be submitted to the United States Division Engineer in whose jurisdiction the claim arises.

§ 211.20 Form of claim.

Claims should be submitted by presenting in triplicate a signed statement, giving the claimant's address, setting forth the amount of the claim, and, so far as possible, the detailed facts and circumstances giving rise to

the claim, indicating and describing the property involved, the date or dates, and the nature and extent of the damage, loss or destruction claimed, and the agency or branch of the Department of the Army or Army using the property. Upon receipt of such a claim the Division Engineer will, where practicable or necessary, furnish the claimant with Department of the Army forms for a more formal presentation of his claim including instructions as to their use.

§ 211.21 Evidence to be submitted by claimant.

(a) All claims must be substantiated by competent evidence. If the claim is for rent or other payment the claimant should furnish evidence as to the value of the property, income from the property if previously rented, or rental value of similar property in the vicinity. If the property is under a formal lease to the Government, the claimant should identify the lease and state the covenants of the lease upon which he predicates his claim. Where the claim is for damage to the property which has been or can be economically repaired the claimant should submit in triplicate an itemized signed statement or estimate of the cost of repairs and copies of itemized receipts, evidencing payment for any expenditures made in relation to the property for which reimbursement is claimed.

(b) In support of claims for damage to crops the claimant should submit a statement showing the number of acres, or other unit measure of crops damaged, the normal yield per unit, the gross amount which would have been realized from normal yield, and an estimate of the further cost of cultivation, harvesting and marketing; if the crops are one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. All such statements or estimates should, if possible, be by disinterested competent witnesses, preferably responsible dealers of the type of property damaged.

§ 211.22 Real estate Claims Officers.

In each Division Office the Division Engineer has appointed a Claims Officer or Assistant Claims Officers who have the duty and responsibility under the direction of the Division Real Estate Officer, to investigate all real estate claims. The activities and responsibilities of these Claims Officers are described more fully under § 211.23.

§ 211.23 Procedure.

Upon the receipt of any real estate claim it is submitted to a Claims Officer who investigates the matter and secures all evidence necessary for a full consideration of the claim and upon which a determination can be made as to the liability of the Government. For this purpose the Claims Officer is authorized and charged with the duty of securing sufficient evidence to establish with certainty the following general points:

(a) The nature of the claim.

(b) The interest of the claimant in the property and the interest that others may have in the property.

(c) Date and circumstances under which occupation of premises occurred and date of vacation. If under a lease, the lease number and date of lease.

(d) Inspection of the premises and determination of the amount of damages.

(e) If claim is for rental without formal lease or agreement, data as to the market and rental value of the property.

(f) Any other pertinent evidence the particular facts of the case require.

The above obligations of the Claims Officer does not relieve the claimant from the burden of proving his claim and it is the duty and obligation of the claimant to furnish such evidence within his particular knowledge as the Claims Officer may require.

Upon completion of his investigation the Claims Officer prepares a report setting forth completely but briefly the nature and amount of the claim, all pertinent facts necessary to determine the rights and liabilities of the claimant and the Government, and the Claims Officer's conclusions and recommendations as to allowance or disallowance of the claim in whole or in part and reasons therefor, including citations to any laws, statutes, or other decisions which it is believed will substantiate his recommendation.

§ 211.24 Disposition of claims.

(a) *Real estate claims for damages*. Real estate claims for damages not exceeding $1,000 may be settled by the Division Engineer. If the Division Engineer allows the claim in toto it is transmitted to the local Disbursing Officer who transmits a check to claimant in payment of the claim. Where the claim is disallowed by the Division Engineer, in whole or in part, the claimant is so advised and in the event that he is unwilling to accept the decision of the Division Engineer, he may appeal within 30 days after receipt of such notice, through the Division Engineer's Office, to the Secretary of the Army. This appeal should state in full reasons for not accepting the Division Engineer's award.

(b) *Claims for damages in excess of $1,000*. Claims for damages in excess of $1,000 arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office for settlement.

(c) *Claims for rent or other payments*. Claims for rent or other payments of a contractual nature regardless of amount arising out of the use and occupancy of real estate under an agreement, express or implied, or otherwise, are forwarded to the General Accounting Office.

(d) *Mixed claims for rental and damages*. When a claim arising from the use and occupancy of real estate has been received, the elements of the claim are first determined. If the claim is for damages not in excess of $1,000 and rental, these elements are if practicable, separated and the damages settled under AR 25–25, otherwise the claims are forwarded to the General Accounting Office for direct settlement.

FEDERAL JURISDICTION OVER REAL ESTATE

AUTHORITY: Sections 211.25 through 211.28 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8751, Dec. 30, 1948, unless otherwise noted.

§ 211.25 General considerations in the acquiring of Federal jurisdiction.

(a) *Laws governing the acquisition of Federal jurisdiction*—(1) *Constitution of the United States*. By Article 1, Section 8, Clause 17, of the Constitution, Congress has the power to exercise exclusive legislation in all cases in the District of Columbia and to exercise like authority over all land acquired by the United States with the consent of the legislature of the State in which the land is located for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

(2) *Section 355, Revised Statutes of the United States*. Under this section as amended by the acts of Congress approved February 1, 1940 (54 Stat. 19) and October 9, 1940 (54 Stat. 1083; 40 U.S.C. 255), jurisdiction over lands acquired by the Department of the Army does not vest until the Secretary of the Army has indicated acceptance of such jurisdiction by filing a notice of acceptance with the Governor of the State or in such manner as may be prescribed by the laws of the State where the land is situated.

(3) *State laws*. The laws of the various States indicate the type of jurisdiction ceded or to be ceded, and prescribe the requirements, if any, to be complied with prior to the vesting of jurisdiction in the United States.

§ 211.26 Functions in acquiring Federal jurisdiction.

(a) *The Division Engineer*. Upon determination that Federal jurisdiction is desired over a Civil Works Project, the Office of the Division Engineer concerned prepares such maps and descriptions of the lands involved as may be required and forwards them to the Office of the Chief of Engineers with any further information called for by the laws of the State where the lands are located.

(b) *Chief of Engineers*. All letters and other papers required to procure cessions of jurisdiction and all notices of acceptance are prepared in the Office of the Chief of Engineers.

§ 211.27 Method of acquiring Federal jurisdiction.

Jurisdiction is acquired in accordance with the laws of the various States.

§ 211.28 Acceptance of jurisdiction.

The jurisdiction ceded by the State laws, by deeds of cession and by the enactment of special legislation shall be accepted in accordance with section 355, Revised Statutes, as amended, in order to establish Federal jurisdiction. This is accomplished by a letter from the Secretary of the Army addressed to the Governor of the State concerned or by an indorsement on the deed of cession giving notice of such acceptance.

SALE OF LANDS IN RESERVOIR AREAS UNDER JURISDICTION OF DEPARTMENT OF THE ARMY FOR COTTAGE SITE DEVELOPMENT AND USE

AUTHORITY: Sections 211.71 through 211.81 issued under sec. 2, 70 Stat. 1065; 16 U.S.C. 460f.

SOURCE: 28 FR 3450, Apr. 9, 1963, unless otherwise noted.

§ 211.71 Statutory provisions.

The Act of Congress approved August 6, 1956 (70 Stat. 1065).

§ 211.72 Definitions.

(a) *The Act.* The Act of Congress approved 6 August 1956 (70 Stat. 1065; Pub. L. 999, 84th Congress).

(b) *Cottage site.* Cottage site as used in §§ 211.71 through 211.80, includes:

(1) *Individual cottage site.* A parcel of land developed or to be developed by the construction of a private cottage thereon and used, or to be used, for private recreational purposes.

(2) *Group cottage site.* A parcel of land containing multiple cottage sites developed or to be developed individually by members of an organization to which the land is currently leased by the construction on each site of a private cottage owned individually and used, or to be used, for private recreational purposes.

(3) *Colony cottage site.* A parcel of land containing (i) multiple cottage sites developed or to be developed individually by members of an organization to which the land is currently leased by the construction on each site of a private cottage owned individually and used or to be used for private recreational purposes, and (ii) a site or sites developed or to be developed by the lessee by construction of community recreational facilities for joint use by all members of the lessee organization incident to occupancy of their privately owned cottages on the leased premises and/or an area of land to be preserved in an undeveloped state for such joint use by all members of the lessee organization.

§ 211.73 Determination of land available for sale.

The Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is hereby delegated authority to determine that lands in reservoir areas under the jurisdiction of the Department of the Army, other than lands withdrawn or reserved from the public domain, (a) are not required for project purposes or for public recreational use, and (b) are being used for or are available for cottage site development and use, and to determine that such lands are available for sale for cottage site development and use. The Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is authorized to withdraw any lands determined available for sale for cottage site development and use at any time prior to the execution of a contract of sale for such lands, provided, he determines that such withdrawal will facilitate the administration of the reservoir area or will otherwise be in the public interest.

§ 211.74 Public notice of the availability of land for sale.

Upon determination in accordance with §§ 211.71 through 211.80 that land is available for sale for cottage site development and use, the appropriate District Engineer, U.S. Army Engineer District (hereinafter referred to as the District Engineer) will give public notice of the availability of such land for sale, subject to such conditions, reservations and restrictions as are required by the Act and such other conditions, reservations and restrictions as the Chief of Engineers or the Director

of Civil Works (Assistant to the Chief of Engineers for Civil Works) may determine to be necessary for the management and operation of the project, or for the protection of lessees or owners of cottage sites within the area. Public notice of the availability of such land for sale will be by: (a) Publication at least twice, at no less than 15 day intervals, in two newspapers having general circulation in the vicinity in which the land is located; (b) written notification to any persons or organizations known to be interested in acquiring a cottage site in the area; (c) posting of notices in public places; and (d) in addition, where any site on which a lease for cottage site purposes existed on August 6, 1956, is available, notice will be given by registered letter to the lessee at his last known address.

§ 211.75 Price.

The Chief of Engineers, or his designee, is authorized to determine the fair market value of any site determined available for sale for cottage site development and use based on an appraisal thereof by a qualified appraiser. Sale of a cottage site to a lessee holding a lease on the date of the Act will be made for a price equal to the fair market value of the site at the time of the sale.

§ 211.76 Costs of surveys.

The costs of any surveys or the relocation of boundary markers deemed necessary by the District Engineer as an incident of the conveyance of lands under §§ 211.71 through 211.80 shall be borne by the grantee.

§ 211.77 Sale procedure.

Any individual cottage site offered for sale generally will not contain more than approximately one acre. Such sites shall not be subdivided but shall remain intact as single units, and no more than one cottage may be constructed on each site. Not more than one site at any one reservoir will be sold to any person or organization. Sales to lessees of lands determined available for sale for cottage site development and use, who have a priority to purchase under the provisions of the Act, will be accomplished by negotiation. Sales to lessees who do not have a priority to purchase under the provisions of the Act may be accomplished by negotiation in the discretion of the Chief of Engineers or the Director of Real Estate (Assistant to the Chief of Engineers for Real Estate). Sales to persons other than lessees will be accomplished by public auction, or sealed bids, in accordance with procedure prescribed by the Chief of Engineers. If no acceptable bid or offer is received as a result of a public auction or solicitation for sealed bids, sale may be accomplished by negotiation in accordance with procedure prescribed by the Chief of Engineers.

§ 211.78 Maintenance and conveyance of access roads.

The Government will not construct any roads for the sole purpose of providing access to lands sold or to be sold for cottage site development and use. The Government shall be under no obligation to service or maintain existing roads used primarily for access to lands sold for cottage site development and use. Any lands determined by the Chief of Engineers or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) as being used or to be used for roads primarily to serve any cottage site area sold under the authority of the Act may be offered by the District Engineer for transfer to the State, any political subdivision thereof, or organization in accordance with the provisions of the Act.

§ 211.79 Contract of sale.

The agreement between the purchaser and the Government will be evidenced by a contract of sale. Authority is hereby delegated to the Chief of Engineers or the District Engineer to accept any offer which meets the requirements of the Act and §§ 211.71 through 211.80 and to execute the contract of sale on behalf of the United States of America.

§ 211.80 Conveyance.

(a) Authority to execute quitclaim deeds conveying land for cottage site development and use or for access roads is delegated to the Chief of Engineers, with authority to redelegate to Division and/or District Engineers.

(b) The authority delegated to the Chief of Engineers in paragraph (a) of this section to execute quitclaim deeds conveying land for cottage site development and use or for access roads has been redelegated by the Chief of Engineers to the Division Engineer, U.S. Army Engineer Division, New England, and to District Engineers having responsibility for real estate activities.

§ 211.81 Reservoir areas.

Delegations, rules and regulations in §§ 211.71 to 211.80 are applicable to:

(a) Fort Gibson Reservoir Area, Oklahoma.

(b) Lake Texoma and the Denison Reservoir Area, Oklahoma and Texas.

(c) Tenkiller Ferry Reservoir Area, Oklahoma.

(d) Harlan County Reservoir Area, Nebraska.

(e) Fort Randall Reservoir Area, South Dakota.

(f) Garrison Reservoir Area, North Dakota.

(g) Kanopolis Reservoir Area, Kansas.

(h) Arkabutla Reservoir Area, Mississippi.

(i) Enid Reservoir Area, Mississippi.

(j) Sardis Reservoir Area, Mississippi.

(k) Narrows Reservoir Area, Arkansas.

(l) Wappapello Reservoir Area, Missouri.

(m) Norfork Reservoir Area, Arkansas and Missouri.

(n) Clark Hill Reservoir Area, Georgia and South Carolina.

(o) Alatoona Reservoir Area, Georgia.

(p) Center Hill Reservoir Area, Tennessee.

(q) Dale Hollow Reservoir Area, Tennessee.

(r) Lake Cumberland, Kentucky.

(s) Fort Supply Reservoir, Oklahoma.

[28 FR 4357, May 2, 1963, as amended at 30 FR 4475, Apr. 7, 1965]

RECONVEYANCE OF LAND OR INTERESTS THEREIN ACQUIRED FOR GRAPEVINE, GARZA-LITTLE ELM, BENBROOK, BELTON, AND WHITNEY RESERVOIR PROJECTS IN TEXAS AND ALSO FOR THE VERDIGRIS RIVER PORTION OF THE MCCLELLAN-KERR NAVIGATION PROJECT IN OKLAHOMA, TO FORMER OWNERS

AUTHORITY: Secs. 211.101 to 211.111 issued under sec. 205, 72 Stat. 316.

§ 211.101 Statutory provisions.

Section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316) and section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800).

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§ 211.102 Definitions.

(a) *General*. Any term used in §§ 211.101 to 211.111 which is defined in section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316) or in section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800), shall have the meaning given to it in said act.

(b) *Land*. Any land or interest in land acquired by the United States for the Grapevine, Garza-Little Elm, Benbrook, Belton, and Whitney Reservoir projects, Texas, or for the Verdigris River portion of the McClellan-Kerr Navigation Project Oklahoma.

(c) *The Act*. The term ''the act'' when used in §§ 211.101 to 211.111 shall mean either section 205 of the Act of Congress approved July 3, 1958 (72 Stat. 316), or section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800).

(d) *District Engineer*. The term ''District Engineer'' when used in §§ 211.101 to 211.111 shall mean the District Engineer, U.S. Army Engineer District, Fort Worth, at Fort Worth, Tex., or the District Engineer, U.S. Army Engineer District, Tulsa, at Tulsa, Okla.

(e) *Director of Civil Works*. The term ''Director of Civil Works'' when used herein shall mean the Director of Civil Works, Office, Chief of Engineers or the

Assistant Chief of Engineers for Civil Works.

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§211.103 Determination of whether land is required for public purposes, including public recreational use.

The Chief of Engineers and the Director of Public Works are hereby delegated authority to determine which lands are not required for public purposes, including public recreational use, and to determine the exceptions, restrictions and reservations, as are in the public interest, to be included in any reconveyance, including the reservation of such mineral rights as are determined necessary for the efficient operation of the project. This delegation of authority shall not apply to lands below the level of 529 feet in the Garza-Little Elm Reservoir project and below 560 feet in the Grapevine Reservoir project as the lands below these levels will not be available for reconveyance pursuant to the act.

[23 FR 7348, Sept. 28, 1958, as amended at 37 FR 15371, Aug. 1, 1972]

§211.104 Notice to former owners of availability of land for reconveyance.

Upon determination in accordance with §§211.101 to 211.111 that land is not required for public purposes, including public recreational use, the appropriate District Engineer shall give notice to the former owners thereof (a) by registered letter, addressed to the last known address of the former owner; and (b) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation in the vicinity in which the land is located.

[37 FR 15371, Aug. 1, 1972]

§211.105 Filing of application.

Application for reconveyance of land shall be filed with the appropriate District Engineer. Said application shall be in writing, dated and signed by the former owner, or by his attorney in fact, and shall identify the land for which he is making application for reconveyance. Any such application will be considered as filed timely when mailed to or delivered to the appropriate District Engineer within ninety (90) days from the date of the last publication of availability of the land for reconveyance to said former owners. The appropriate District Engineer may extend said ninety (90) day period for a good cause. Any application may be withdrawn by written notice, executed by the former owner, or by his attorney in fact, to the appropriate District Engineer at any time prior to the execution of the contract of sale.

[37 FR 15371, Aug. 1, 1972]

§211.106 Filing of objection by abutting owner.

An objection by an abutting owner to reconveyance of land to a former owner shall be filed with the appropriate District Engineer. Such objection shall be in writing, dated and signed by the abutting owner, or his attorney in fact, and shall include identification of the land to which the objection pertains, the name of the former owner, the reasons for the objection, and a reference to the land records where the ownership of the abutting owner is recorded. A copy of the letter addressed to the former owner objecting to the reconveyance shall be attached to the letter addressed to the appropriate District Engineer, or other evidence of such notice of objection shall be furnished to the appropriate District Engineer. No objection will be considered valid unless the party or individual making the objection is the record owner of land abutting or adjoining the land to which the objection pertains.

[37 FR 15371, Aug. 1, 1972]

§211.107 Notice of agreement between former owner and abutting owner.

After an objection has been made by an abutting owner to a reconveyance, and agreement reached concerning the reconveyance shall be furnished in writing, signed by both the abutting owner and the former owner, or their attorneys in fact, to the appropriate District Engineer. Such agreement must be mailed or delivered to the appropriate District Engineer within ninety (90) days after the date of receipt of the notice of objection by the

appropriate District Engineer and the former owner. In the event an agreement in writing as prescribed herein is not mailed or delivered to the appropriate District Engineer, the appropriate District Engineer is hereby authorized to report the land involved to the General Services Administration for disposal as prescribed by the Act.

[37 FR 15371, Aug. 1, 1972]

§ 211.108 Determination of price.

Upon receipt of an application from a former owner, the Chief of Engineers and/or the appropriate District Engineer is hereby delegated authority to determine the price at which the land will be sold pursuant to the provisions of section 205(d) of the Act of Congress approved July 3, 1958 (72 Stat. 316) or pursuant to the provisions of section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800) and the cost of any surveys or boundary markings necessary as an incident to the conveyance.

[37 FR 15371, Aug. 1, 1972]

§ 211.109 Contract of sale.

Upon determination of the price at which the land will be reconveyed, and after the reaching of an agreement by the former owner and the abutting owner if an objection to the reconveyance was made by the abutting owner, the appropriate District Engineer will prepare a contract of sale containing the terms and conditions of the reconveyance and deliver it to the applicant for acceptance. The contract of sale shall provide for the deposit of earnest money equal to twenty (20) percent of the price at which the land will be sold or the estimated cost of any surveys or boundary markings necessary as an incident to the reconveyance, whichever is greater. The deposit will be applied to the price at the time of settlement. In the event of default, the deposit will be retained by the Government as liquidated damages. Failure of the applicant to execute the contract of sale or to deposit the earnest money with the appropriate District Engineer within thirty (30) days after receipt of the contract, unless a written extension of said thirty (30) days is granted by the appropriate District Engineer, in accordance with section 205(e) of the Act of Congress approved July 3, 1958 (72 Stat. 316) or in accordance with section 11 of the Act of Congress approved December 23, 1971 (85 Stat. 800) and the delegation contained in § 211.111, that within a reasonable time after receipt of a proper application for any reconveyance of such land, the parties have been unable to reach a satisfactory agreement with respect to the reconveyance of such land. Authority is hereby delegated to the Chief of Engineers and/or the appropriate District Engineer to execute the contract of sale for and on behalf of the United States of America.

[37 FR 15371, Aug. 1, 1972]

§ 211.110 Conveyance.

Reconveyance of the land will be by quitclaim deed executed by the Secretary of the Army.

[23 FR 7348, Sept. 28, 1958]

§ 211.111 Certification terminating rights of former owners.

If no application for reconveyance is made by a former owner within ninety (90) days, or authorized extension thereof, from the date of the last publication of the notice in a newspaper or, if within a reasonable time after receipt of a proper application for any reconveyances, the appropriate District Engineer and the former owner are unable to reach a satisfactory agreement with respect to the reconveyance, the Chief of Engineers and/or the appropriate District Engineer is hereby delegated authority to certify (a) that notice has been given to the former owner of such land pursuant to the Act and §§ 211.101 to 211.111, and that no qualified applicant has made timely application for reconveyance of such land; or (b) that within a reasonable time after receipt of a proper application for reconveyance the parties have been unable to reach a satisfactory agreement with respect to the reconveyance of such land. After such certification has been executed, disposition of the land shall be made pursuant to the Federal Property Administrative Services Act of 1949, as amended, subject to such reservations, restrictions, exceptions,

and conditions, as the Chief of Engineers or the Director of Civil Works consider necessary for the operation of the project or in the public interest.

[37 FR 15372, Aug. 1, 1972]

CONVEYANCES FOR PUBLIC PORT OR INDUSTRIAL FACILITIES

AUTHORITY: Sections 211.141 through 211.147 issued under sec. 108(d), 74 Stat. 487; 33 U.S.C. 578.

SOURCE: 26 FR 2117, Mar. 11, 1961, unless otherwise noted.

§211.141 Statutory provisions.

Section 108 of the Act of Congress approved 14 July 1960 (74 Stat. 486).

§211.142 Definitions.

(a) *This Act*. The term ''this Act'' shall mean Section 108 of the Act of Congress approved 14 July 1960 (74 Stat. 486).

(b) *Land*. Any land under the jurisdiction of the Department of the Army acquired for a project which was authorized for water resource development purposes.

(c) *Project*. Any project under the jurisdiction of the Department of the Army which was authorized for water resource development purposes.

(d) *Agency*. The term ''agency'' shall mean any state, political subdivision thereof, port district, port authority, or other body created by a state or through a compact between two or more states for the purpose of developing or encouraging the development of public port or industrial facilities.

(e) *District Engineer*. The term ''District Engineer'' shall mean the District Engineer of the United States Army Engineer District having immediate jurisdiction over the land available for conveyance.

§211.143 Delegations.

(a) The Chief of Engineers and/or the Director of Civil Works (Assistant to the Chief of Engineers for Civil Works) is hereby delegated authority to determine:

(1) That the development of public port or industrial facilities on land within a project will be in the public interest;

(2) That such development will not interfere with the operation and maintenance of the project;

(3) That disposition of the land for these purposes under this Act will serve the objectives of the project;

(4) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purposes for which the project was authorized; and

(5) The conditions, reservations and restrictions to be included in a conveyance under this Act.

(b) The District Engineer is hereby delegated authority to:

(1) Give notice of any proposed conveyance under this Act and to afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase as hereinafter provided; and

(2) Determine the period of time in which applications for conveyances may be filed.

§211.144 Notice.

The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (a) by publication at least twice at not less than 15 day intervals in two newspapers having general circulation within the State in which the available land is located and, if any agency of an adjoining State or States may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15 day intervals in two newspapers having general circulation within such State or States, and (b) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

§211.145 Filing of application.

Any agency interested in the development of public port or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of the proposed development.

§ 211.146 Price.

No conveyance shall be made for a price less than the fair market value of the land.

§ 211.147 Conveyance.

Any conveyance of land under this Act will be subject to the final approval of the Secretary of the Army and will be by quitclaim deed executed by the Secretary of the Army.

PART 214—EMERGENCY SUPPLIES OF DRINKING WATER

Sec.
214.1 Purpose.
214.2 Applicability.
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214.7 Delegation of authority.
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214.9 Requirements.
214.10 Types of assistance.
214.11 Costs.

AUTHORITY: Pub. L. 84–99, as amended, Emergency Flood Control Work 33 U.S.C. 701n; (69 Statute 186), dated June 28, 1955.

SOURCE: 41 FR 7506, Feb. 19, 1976, unless otherwise noted.

§ 214.1 Purpose.

This provides information, guidance, and policy for execution of the Chief of Engineers' authority to furnish supplies of clean drinking water pursuant to Pub. L. 84–99, as amended by section 82(2), Pub. L. 93–251 (88 Stat. 34).

§ 214.2 Applicability.

This regulation is applicable to Corps of Engineers field operating agencies assigned Civil Works activities, including the USAED Alaska, and the Pacific Ocean Division. Its provisions are applicable within the 50 states, and the District of Columbia, Puerto Rico, Virgin Islands, American Samoa, and Guam.

§ 214.3 Reference.

(a) Pub. L. 84–99, as amended (33 U.S.C. 701n).

(b) Pub. L. 93–251, Section 82(2).

(c) Pub. L. 93–523.

(d) ER 500–1–1.

§ 214.4 Additional authority.

Section 82(2), Pub. L. 93–251, dated 7 March 1974, revised Pub. L. 84–99, as amended, by adding the following new sentence. ''The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality.'' This authority expands the measures the Chief of Engineers may employ in providing emergency relief pursuant to Pub. L. 84–99.

§ 214.5 Policy.

Emergency work under this authority will be applied to situations in which the source of water has become contaminated. The contamination may be accidental, deliberate, or caused by natural events. The maximum contaminent levels in drinking water are set forth by the Environmental Protection Agency pursuant to Pub. L. 93–523. However, loss of the water source or supply due to any cause is not included in the language of Section 82(2), Pub. L. 93–251, and furnishing emergency supplies by the Corps of Engineers under those situations was not intended by this legislation. Approval of measures to furnish clean drinking water will be pursuant to this regulation, and in accordance with procedures outlined in ER 500–1–1 by HQDA (DAEN-CWO-E) WASH DC 20314. DAEN-CWO-E will be notified by telephone when the emergency water situation becomes known.

§ 214.6 Discussion.

(a) The amendment provides for furnishing emergency supplies of drinking water. The method of furnishing those supplies is not provided for in the amendment, and is left to the discretion of the Chief of Engineers. Any feasible method, including restoration of service from an alternate source when the main source has been contaminated, is authorized where most feasible (however, see paragraphs (d) and (e) of this section).

(b) The scope of work is limited solely to providing emergency supplies of clean drinking water. Sewage treatment and disposal, and other sanitary requirements, are not included. In addition, the Corps of Engineers role in providing emergency supplies is a temporary measure until the locality is able to assume their responsibility. The locality is ultimately responsible for providing supplies of drinking water.

(c) The cause of the contamination may be due to any situation, not necessarily flood related. It encompasses all situations involving a contaminated source of drinking water, whether caused by flooding or otherwise.

(d) To be eligible, a locality must be confronted with a source of water that is contaminated. The loss of clean drinking water must not be solely the result of a failure in the distribution system. For example, the emergency could be due to a failure of a reservoir purification system, and the locality might thus be faced with a contaminated source. Furnishing of emergency supplies of clean drinking water may not be undertaken in these cases since the distribution system is not considered to be a source. A loss of supply is not in itself a justification for furnishing supplies of water by the Corps of Engineers under this authority.

(e) Employment of the authority under the amendment requires a finding by the Chief of Engineers, or his delegate, that there is, in fact, a contaminated source of drinking water.

(f) The contamination must cause or be likely to cause a substantial threat to the public health and welfare. An identifiable and defined threat of impairment to the public health and welfare is considered necessary. There is no requirement, however, that actual sickness exist from contaminated water to invoke the authority. But a clear threat must be established. Lack of palatability, in itself, may not constitute a serious health threat (see §214.9(d)).

(g) Inhabitants of the locality, rather than commercial enterprises, are identified as the group threatened. A business firm faced with contamination of water used in its process is not eligible. The drinking water used by the people in the area must be affected.

§214.7 Delegation of authority.

The authority to approve measures for furnishing emergency supplies of clean drinking water pursuant to the section 82(2), Pub. L. 93–251 amendment of Pub. L. 84–99, is delegated to division engineers, up to a $50,000 expenditure for the incident. Additional obligational authority of Code 400 funds will be obtained from DAEN-CWO-E prior to authorizing the proposed added work.

§214.8 Exclusions.

The authority does not require correcting the contamination, or repair of water systems so that clean drinking water supplies become available again. Reestablishing community water supplies remains the responsibility of local government and other Federal programs. These methods may be employed under the authority, if they are the most feasible ways to provide emergency supplies of clean drinking water, but there is no mandate to do so. To the extent state or local governments can provide water with their own resources, the locality will be excluded from the provision of emergency supplies under Pub. L. 84–99. In general, the following situations are not considered to be appropriate for Corps action under this authority:

(a) Contamination which causes a loss of palatability, but poses no material threat to public health and welfare.

(b) Contamination, such as by bacteria, which can be reduced to a safe level by the users boiling the water.

(c) Confrontation with normal levels of impurities or contaminants in a drinking water source that does not pose substantial threat to the public health.

(d) Contamination by natural intrusions over a period of time, which are known to be occurring and which may accumulate in sufficient concentrations to pose a future health threat, but which have not yet reached the level of a present hazard.

(e) Loss or diminishing of a water source, due to such things as an earthquake or drought.

(f) Contamination of a drinking water source as a regular occurrence due to recurring events such as drought or flooding, when no corrective community action has yet been initiated.

(g) Contamination which, while posing a substantial threat to health and welfare, can be corrected by local authorities, other Federal authorities, or other appropriate means before emergency supplies are deemed necessary.

§ 214.9 Requirements.

Providing emergency supplies of clean drinking water pursuant to the emergency functions of the Corps of Engineers is supplemental to the efforts of the community. Such actions must be in accordance with both Federal and municipal authorities. Corps response must be restricted to requests for assistance received from an appropriate state official. Each request must be considered on its own merits. The factors in each case may vary, but the following should be included in the evaluation.

(a) Whether the criteria required by the law and outlined in § 214.6 have been met.

(b) The extent of state and local efforts to provide clean drinking water and their capability to do so. Corps efforts to provide temporary supplies of drinking water must be limited to measures clearly beyond the resources reasonably available to the state and locality.

(c) The adequacy of the state or local community agreement to mutually participate with the Federal government, on terms determined advisable by the Chief of Engineers, or his delegate, which must include the following:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way necessary for the authorized work.

(2) To hold and save the United States free from damages in connection with the authorized work other than negligence attributable to the United States or its contractor.

(3) To maintain and operate in a manner satisfactory to the Chief of Engineers all installed work during the emergency.

(4) To remove when determined feasible by the district engineer, at no cost to the Federal government, the installed equipment at the end of the emergency and return it to the Corps of Engineers.

(5) As soon as possible to actively initiate measures required to resolve the emergency situation.

(d) The provision of water quality statements with the request, and the identification of the threat to public health and welfare as determined by recognized authorities such as the State Health Department, Environmental Protection Agency, or recognized commercial laboratory.

(e) The identification of the affected area as a legally recognized governmental body or public entity that exercises a measure of control in the common interest of the inhabitants.

§ 214.10 Types of assistance.

The temporary emergency supplies of clean drinking water may be provided through such actions as:

(a) The use of water tank trucks to haul clean drinking water from a nearby known safe source to water points established for local distribution.

(b) Procurement and distribution of bottled water.

(c) Laying of temporary above ground water lines from a nearby safe source of water to the affected community where water points for local distribution can be established.

(d) Installation of temporary filtration.

§ 214.11 Costs.

Costs incurred by the Corps of Engineers in furnishing emergency supplies of clean drinking water are chargeable to Pub. L. 84–99 funds, 96X3125, Code 910–400 and repayment by the community generally will not be required. Costs of necessary measures for the decontamination of the water supply source are the responsibility of local governments and are not authorized under Pub. L. 84–99.

PART 220—DESIGN CRITERIA FOR DAM AND LAKE PROJECTS

§ 220.1 Low level discharge facilities for drawdown of impoundments.

(a) *Purpose*. This regulation states the policy, objectives, and procedures in regard to facilities for drawdown of lakes to be impounded by Civil Works projects.

(b) *Applicability*. This regulation is applicable to all Divisions and Districts having responsibility for design of Civil Works projects.

(c) *Policy*. It is the policy of the Chief of Engineers that all future lakes impounded by Civil Works projects be provided with low level discharge facilities to meet the criteria for drawdown set forth in this ER. Low level discharge facilities, capable of essentially emptying the lake, provide flexibility in future project operation for unanticipated needs, such as, major repair of the structure, environmental controls or changes in reservoir regulation. The criteria set forth in this ER will govern in the majority of impoundment projects. However, it may be impracticable to provide the drawdown capability to meet the criteria for certain projects because of their size (unusually small or large) or because of their unique function. Such projects may be exempt from the criteria upon presentation of information in accordance with paragraph (e) of this section.

(d) *Design criteria*. As a minimum, low level discharge facilities will be sized to reduce the pool, within a period of four months, to the higher of the following pool levels: (1) A pool level that is within 20 feet of the pre-project ''full channel'' elevation, or (2) a pool level which will result in an amount of storage in the reservoir that is 10 percent of that at the beginning pool level. The beginning pool level for drawdown will be assigned at spillway crest for uncontrolled spillways and at top of spillway gates for controlled spillways. Inflow into the lake during the drawdown period will be developed by obtaining the average flow for each month of the year. The drawdown period inflow will then be assumed equivalent to the average flow of the highest consecutive four-month period.

(e) *Design Study and Report Requirements*. Feasibility (survey) reports and subsequent pertinent design memoranda should include the results of studies made to determine facilities required for drawdown of impoundments. The discharge capacity required to satisfy project purposes and diversion requirements during construction may be sufficient to meet the drawdown criteria set forth in paragraph (d) of this section. Where additional capacity is required, studies will be made to determine the most practical and economical means of increasing the capacity to meet the drawdown criteria. A synopsis of the alternatives considered and details of the recommended plan should be included in the Phase II General Design Memorandum or a feature design memorandum. The reporting should include the effects of the required discharge capacity on project costs, on existing downstream projects, and on the potential for downstream damage. When, due to specific project conditions, a drawdown capacity is recommended which does not meet the criteria set forth in paragraph (d) of this section, the following information should be presented:

(1) The drawdown period using the maximum drawdown capability of the proposed project facilities, under the situation described in paragraph (d) of this section. Information should be included on the pool elevation and corresponding storage volume at end of the period.

(2) Information on facilities that would be required to meet the design criteria for drawdown, including the estimated first cost and annual cost of these facilities. If the estimated cost for such facilities is significantly greater than for the proposed project facilities, similar information on intermediate facilities should be provided.

Reporting subsequent to the Phase I General Design Memorandum should include related discharge rating curves; hydrographs with inflow, outflow and pool stage plots; lake regulation plans needed for project purposes and needed to satisfy the drawdown criteria; and

other data essential in evaluating the study.

(49 Stat. 1571, 33 U.S.C. 701c)

[40 FR 20081, May 8, 1975, as amended at 40 FR 36774, Aug. 22, 1975]

PART 221—WORK FOR OTHERS

Sec.

221.1 Investigation and supervision of hydropower projects under the Federal Power Act (ER 1140–2–4).

APPENDIX A TO PART 221—PART 16–PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

APPENDIX B TO PART 221—FEDERAL ENERGY REGULATORY COMMISSION FORM L–3 (REVISED OCTOBER 1975)

LIST OF FPC STANDARD ARTICLES FORMS USED IN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS

AUTHORITY: Secs. 2 and 4(e) of the Federal Power Act of 1920 (41 Stat. 1603, 16 U.S.C. 791–823), as amended; sec. 10 of the River and Harbour Act of 1899 (30 Stat. 1151, 33 U.S.C. 403); and sec. 404 of Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816, 33 U.S.C. 1344)

SOURCE: 43 FR 4979, Feb. 7, 1978, unless otherwise noted.

§ 221.1 Investigation and supervision of hydropower projects under the Federal Power Act (ER 1140–2–4).

(a) *Purpose*. This regulation[1] establishes procedures for executing Corps of Engineers functions under the authority of the Federal Power Act (FPA) administered by the Department of Energy, Federal Energy Regulatory Commission (FERC), formerly Federal Power Commission. Based on a specific request from FERC, these functions include:

(1) Investigation of applications filed with FERC for permits and licenses, and for relicensing of projects to ascertain impacts on Corps of Engineers responsibilities.

(2) Investigation of applications for surrender or termination of license to ascertain impacts on Corps of Engineers responsibilities.

(3) Supervision and inspection of operations of licensed hydroelectric projects to ascertain impacts on Corps of Engineers responsibilities.

(b) *Applicability*. This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References*. (1) Federal Power Commission publication entitled ''Federal Power Act'', as amended, dated 1 April 1975. The Act was originally enacted 10 June 1920 (41 Stat. 1063, 16 U.S.C. 791–823). This publication can be obtained from the U.S. Government Printing Office, Washington, D.C. 20402.

(2) Code of Federal Regulations, Title 18, part 1 to 149 relating to FERC General Rules and Regulations, available at the U.S. Government Printing Office, Washington, D.C. 20402.

(3) ER 1145–2–303 (33 CFR 209.120),[2] Permits for Activities in Navigable Waters or Ocean Waters.

(4) ER 1140–2–1, Submission of Data for Headwater Benefits Determination.

(d) *Definitions*—(1) *Licensed project*. A non-Federal hydroelectric project for which the FERC has issued a license granting authority for either construction, in the case of a proposed project, or for continued operation and maintenance of an existing project.

(2) *Major projects*. Hydroelectric projects with more than 2,000 horsepower installed capacity.

(3) *Minor projects*. Hydroelectric projects having installed capacity of 2,000 horsepower or less.

(4) *Preliminary permit application*. An application filed by a non-Federal entity with the FERC as a preliminary step in anticipation of filing for a license to construct and operate a hydroelectric project. A preliminary permit does not authorize construction. It merely gives the permittee priority of application for a FERC license over other non-Federal entities for a period of time. The permittee then develops information necessary for inclusion in an application for license to construct and operate a hydroelectric project. Analysis of this information may result in a decision to apply for the license or to withdraw the intent.

(5) *Relicensing*. A procedure applicable to projects for which the original period of license (usually 50 years) will

[1] This regulation supersedes ER 1140–2–4, 8 December 1967, and ER 1140–2–2, 10 September 1965.

[2] 33 CFR 209.120 was removed at 42 FR 37133, July 19, 1977.

expire or has expired and application for new license has been or will be filed with the FERC.

(6) *Take over*. An act whereby the Federal government assumes project ownership. Upon expiration of a license for a hydroelectric project, the United States, under certain specific conditions set forth in section 14 of the Federal Power Act may ''take over'', maintain and operate the project. This does not apply to any project owned by a State or local government. Take over procedures are not applicable to ''Minor Projects.''

(e) *Authorities*. The Federal Power Act as amended delegates to the Secretary of the Army, the Chief of Engineers and the Corps of Engineers certain functions necessary for the FERC's administration of the Act. Implementation was provided through instructions issued by the President in a letter dated 18 May 1931 to the Secretary of War. These functions are set forth in the following excerpts from the Act:

(1) Section 2 of the Act provides in part that:

> The Commission may request the President to detail an officer or officers from the Corps of Engineers, or other branches of the United States Army to serve the Commission as engineer officer or officers * * *.

(2) Section 4(e) of the Act provides in part that:

> The Commission is hereby authorized and empowered * * * to issue licenses to citizens of the United States, or to any associations of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of construction, operating, and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization, of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction * * *.
>
> * * *Provided that no license affecting the navigable capacity of any navigable water of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of the Army.

(f) *Investigation of application for permits, licenses, or relicensing of projects*. Upon referral by the FERC, the Chief of Engineers will assign the investigation of an application for permit, license or relicensing to the appropriate Division Engineer who will submit a report on the investigation as specified herein to HQDA (DAEN-CWE-HY) WASH DC 20314 (exempt from reports control, Paragraph 7–2y, AR 335–15). The investigation should be coordinated with all interested organization elements including Engineering, Construction/Operations, Planning and Office of the Counsel. The date that the report is to be submitted will be specified. The nature of investigation and report by the Division Engineer will depend upon the nature of the request from the FERC. In general, reports as appropriate for the type of application filed with the Commission will consider the following items as pertinent and will include recommendation of pertinent license provisions:

(1) *License applications*. (i) The effect of the project on navigation and flood control, including adequacies of the plans of the structures affecting navigation. Section 4(e) of the Federal Power Act provides for approval of plans for hydroelectric power projects as noted in paragraph (e)(2) of this section. Section 4(e) approval normally will obviate the need for a Department of Army permit under section 10 of the 1899 River and Harbor Act. The basis for Corps approval under section 4(e) will be limited to effects on navigation; however, section 4(e) does not obviate the need for a Department of the Army permit pursuant to section 404 of the Federal Water Pollution Control Act (see paragraph (i)(2)) of this section. Such a permit is subject to a full public interest review pursuant to 33 CFR part 320 and the application of the Environmental Protection Agency's guidelines in 40 CFR part 230.

(ii) Recommendations for license provisions required to protect the interest of navigation. This item is discussed under paragraphs 7, 8 and 9.

(iii) Consideration of the project in relation to a comprehensive plan for developing the basin water resources from the standpoint of the Corps of Engineers' programs and responsibilities.

Specific references should be made to pertinent published Congressional documents containing results of studies and/or to Congressional resolutions directing studies to be made to provide identification.

(iv) Consideration of environmental aspects of a project as related to navigation and flood control matters or other specific Corps interests and responsibilities in particular cases.

(v) The matter of possible redevelopment of an existing project to improve the usefulness of the project in relation to the objectives of the Corps program in the basin. In the case of an unconstructed project, based on request from the Commission, a recommendation along with justification, should be included as to whether or not development should be undertaken by the United States.

(vi) Consideration of structural safety and adequacy of spillway design flood for FERC licensed projects are the responsibility of the FERC. The Dam Safety Act, Pub. L. 92–367 provides that dams constructed pursuant to license issued under the authority of Federal Power Act are specifically exempted from the Corps National inspection program. This does not preclude the Corps District and Division offices from making comments on license applications for the FERC information, about any design deficiencies that are brought to their attention.

(2) *Relicensing (new license) application.* (i) Consider paragraphs (f) (1) through (6) of this section.

(ii) Recommendations should be furnished to the FERC with respect to possible need for ''take over'' of a project by the Federal Government. Details on ''take over'' under the Federal Power Act are provided in part 16 of the CFR, Title 18 (part 1 to 149). A copy of part 16 is provided for ready reference in Appendix A of this part.

(iii) FERC Preliminary Permit Application. Consider appropriate recommendations to insure coordination of applicant's studies with the Division or District Engineer in cases where responsibilities and interests of the Corps of Engineers would be affected. The report should include discussion of Corps interests which could result in recommendations for provisions to be included in a subsequent license. In general proposed construction of power facilities at or in conjunction with a Corps reservoir project will be reviewed with the objective of recommending design, construction and operation factors that the applicant must consider in its studies in order for the proposed power development to be compatible, physically and economically, with the authorized function of the Corps project(s).

(g) *Terms and conditions for insertion in FERC permits and licenses.* In investigation of an application for FERC license or permit, consideration will be given to aspects of the project affecting authorized functions of the Corps as well as to the responsibilities assigned to the Corps by the Federal Power Act. Accordingly, the Division engineer in his report on an application to the Chief of Engineers will always consider the necessity for including in any license or permit terms and conditions to protect the interests of navigation. Recommendations involving other responsibilities of the Corps in the area of water control management such as flood control, low flow augmentation minimum instantaneous releases, and other purposes should also be considered.

(h) *Standard terms and conditions used by the FERC in its permits and licenses.* Appendix B to this Regulation includes standard terms and conditions used by the FERC in licenses for projects affecting navigable waters of the U.S. The standard articles, included in Appendix B, are identified by the FERC in the following Forms:

(1) Form L–3 (Revised October 1975)

Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States.

(2) Form L–4 (Revised October 1975)

Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters of the United States.

Any special terms and conditions pertaining to the Corps of Engineers responsibilities, in addition to those identifed in Appendix B should be tailored to suit the situation involved. Appendix B also provides a list of other FERC standard articles Forms that could be obtained from FERC offices.

(i) *Distinction between Corps of Engineers and FERC jurisdiction with respect to non-Federal Hydroelectric projects.* (1) The following procedures are currently being followed in connection with Department of Army permit responsibilities involving pre-1920 legislation:

(i) In regard to FERC licensing of projects, Corps responsibilities under section 10 of the River and Harbor Act of 1899, for power related activities, may normally be met through the FERC licensing procedure including insertion of terms and conditions in the license of the interest of navigation. Section 4(e) of the Federal Power Act provides for approval of plans of project works by the Chief of Engineers and Secretary of the Army from the standpoint of interests of navigation. The consideration for our approval under section 4(e) will be limited to effects of project power related activities on navigation.

(ii) Applications to Corps Divsion or District Engineers for approval of repairs, maintenance or modification of non-Federal water power projects authorized under River and Harbor Acts as well as special Acts of Congress prior to 1920, or requests for advice with respect thereto should be referred to the FERC for consideration in accordance with the provisions of the Federal Power Act. The permittee should be advised that the application is being referred to the FERC for consideration and that if a FERC license is required Corps recommendations will be furnished to the FERC.

(2) Responsibilities under section 404 of the Federal Water Pollution Control Act as amended in 1972 (33 U.S.C. 1151) pertinent to discharge of dredged or fill material into the navigble waters at specified disposal sites will be met only through the Department of Army permit procedures as specified in ER 1145–2–303. In regard to FERC cases involving section 404, our report to the FERC through (DAEN-CWE-HY) will specify the need for a Department of Army permit (section 404) if, on the basis of the Division and District Engineers' reports, such permit is deemed necessary. A Department of the Army permit will be required for any portion of a proposed project which involves the discharge of dredged or fill material into the waters of the United States. This includes the placement of fill necessary for construction of a project's dam and appurtenant structures.

(3) When applicable, FERC will be advised that the requirement for Department of the Army permit pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 for the transport of dredged material from the project site for the purpose of dumping it into the ocean waters will be met only through the Department of the Army permit program.

(4) In connection with FERC licensed projects there may be proposed nonpower water oriented activities, such as recreational development, which are associated with the overall project but may not be a part of the hydroelectric power facilities at the project. Such cases, if involving navigable waters should be reviewed from the standpoint of need for a section 10 permit. Such section 10 permit actions would involve consideration of the overall public interest, including water quality, fish and wildlife, recreation, general environmental concerns and the needs and welfare of the people. Corps responsibilities for permit requirements under section 10 of the River and Harbor Act of 1899 for nonpower activities affecting navigable waters at the FERC projects will be met only through the Corps permit procedures. The Corps' report to FERC through (DAEN-CWE-HY) will specify the need for such permit when recommended by the Division and District Engineers' report.

(j) *Investigation of applications for surrender or termination of license.* The period of the FERC license for hydroelectric projects is usually 50 years. During and/or upon the expiration of the period of a license, a licensee may file with the FERC an application for surrender or termination of its license. These applications may encompass requests for physical removal of an existing dam and/or powerhouse structures from a stream. Division Engineers who would be assigned by the Chief of Engineers to review such applications will consider, in their review and report to DAEN-CWE-HY, the possibility that sediment discharge resulting from removal of a dam structure from a navigable river or from any site that may

affect navigable waters would impair the anchorage and navigation and/or flood carrying capacity of the stream. In cases where there is a possibility of significant downstream shoaling (sedimentation) as the result of removal of a dam and its appurtenant structures, recommendation may be made to the FERC, through DAEN-CWE-HY, requiring licensee as a condition of approval of dam removal to agree to bear the expense for removal of any shoaling at the navigable river(s) which would be determined by the Corps to be detrimental to navigation. Other recommendations to be considered include gradual lowering of a dam over a period of time and/or possibility of sediment removal prior to dam removal. It should also be noted that a Department of the Army permit under section 404 of the Federal Water Pollution Control Act amendments of 1972 (33 U.S.C. 1151), as discussed in Paragraph 9b of this regulation, may be needed in connection with removal of dams on or affecting the navigable waters if a discharge of dredged or fill material also occurs during the removal operation. Other recommendations within the Corps authority that should be considered in reviewing applications for surrender or termination of licenses for projects where their power facilities have been removed, or recommended for removal, is that upon any approval of such application by the FERC, continuation of existence of the nonpower project on or affecting the navigable waters of the U.S. will require a Department of the Army permit in compliance with section 10 of the River and Harbor Act of 1899. Furthermore, it should be noted that in the absence of FERC nonpower use license, pursuant to 16 U.S.C. 808(b), the structural safety and maintenance of dam and reservoir for a nonpower project will be governed by the laws and regulations of the State in which the project is located.

(k) *Supervision and inspection of operation of licensed hydroelectric projects.* Corps Division and District Engineers responsibilities with respect to any project affecting navigable waters include surveillance of operation and maintenance to insure that the interests of navigation are not adversely affected. In addition, in certain cases the Corps, at the request of the FERC, may act as agent for the FERC for overall supervision of project operation and maintenance. Corps Division Engineers have, in the past, represented the FERC in supervision and inspection of a number of FERC licensed projects within their respective divisions. The Commission by letter dated March 4, 1976 relieved the Corps of Engineers from acting as the Commission's representative for supervision and inspection of its licensed projects. This responsibility has been transferred by the Commission to its own regional engineers. There are no requirements for any periodic or annual reports from the Division offices regarding the operation of FERC licensed hydroelectric projects. However, Division Engineers will report to DAEN-CWE-HY on a current basis any significant detrimental effects with respect to Corps of Engineers responsibilities or other matters which come to their attention.

(l) *Safety of licensed hydroelectric projects.* The Dam Safety Act, Public Law 92–367, provides that dams constructed pursuant to licenses issued under the authority of the Federal Power Act are specifically exempted from the national inspection program administered by the Corps. However, the law further provides that the Secretary of the Army upon request of the FERC may inspect dams which have been licensed under the Federal Power Act. The Commission by letter dated August 29, 1972 informed the Corps that the Commission does not expect to request the Corps' assistance for inspecting the projects licensed under the Federal Power Act.

(m) *Supervision of construction of licensed hydroelectric projects.* In cases where the FERC may request the Corps to supervise the actual construction of licensed hydroelectric project on behalf of the Commission, instructions will be furnished to the appropriate District Engineer through the Division Engineer at the time the request is made.

(n) *Other investigation under the Federal Power Act.* Corps of Engineers operations under the Federal Power Act also include participation in FERC procedures in determining headwater benefits from Corps reservoir projects

(RCS, 1461–FPC). This matter is discussed in ER 1140–2–1.

(o) *Funding of operations under the Federal Power Act.* (1) The salaries of the Corps of Engineers personnel involved in investigations discussed herein will be charged against funds for ''Special Investigations'' under the appropriation for ''General Expenses.'' The FERC may provide reimbursement if requested by the Chief of Engineers to cover the nonpersonal expenses which may be incurred in the investigation and supervision of projects under permits and licenses.

(2) Non-personal costs amounting to less than $100 for any single investigation will not be reimbursed from the Commission funds but will be charged also to ''Special Investigations'' under the appropriations for ''General Expenses.'' Each Division Engineer charged with a detailed investigation of an application for license or the supervision of a project that will require more than a nominal amount of nonpersonal costs will be specifically requested to submit an estimate of the funds required upon assignment of the work by the Chief of Engineers.

(3) Reimbursement from the FERC funds for nonpersonal costs in excess of $100 will be made by the Chief of Engineers upon submission of a voucher on Standard Form 1080 by the District Engineer through the Division Engineer. The voucher will show the fiscal year during which the work was done and the Commission project number on which the money was spent.

APPENDIX A TO PART 221—PART 16–PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

Sec.

16.1 Purpose and coverage.
16.2 Public notice of projects under expiring license.
16.3 When to file.
16.4 Notice upon filing of application.
16.5 Annual licenses.
16.6 Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.
16.7 Application for nonpower license.
16.8 Departmental recommendations for takeover.
16.9 Commission recommendation to Congress.
16.10 Motion for stay by Federal department or agency.
16.11 Procedures upon congressional authorization of takeover.
16.12 Renewal of minor or minor part licenses not subject to sections 14 and 15.
16.13 Acceptance for filing or rejection of application.

AUTHORITY: Federal Power Act, secs. 7(c), 14, 15, 309 (16 U.S.C. 800, 807, 808, 825h.

SOURCE: Order 141, 12 FR 8461, Dec. 19, 1947; as amended by Order 175, 19 FR 5212, Aug. 18, 1954; Order 260, 28 FR 814, Jan. 11, 1963; 28 FR 1680, Feb. 21, 1963; 28 FR 2270, Mar. 8, 1963; Order 288, 29 FR 14106, Oct. 14, 1964; Order 384, 34 FR 12269, July 25, 1969 and as otherwise noted.)

§ 16.1 *Purpose and coverage.*

This part implements the amendments of sections 7(c), 14, and 15 of part I of the Federal Power Act, as amended, enacted by Public Law 90–451, 82 Stat. 616, approved August 3, 1968. It applies to projects subject to sections 14 and 15 of the Federal Power Act including projects for which a nonpower license may be issued. Procedures are provided for the filing of applications for either power or nonpower licenses for projects whose licenses are expiring. A license for a power project issued to either the original licensee or another licensee is referred to in this part as a ''new license'' and a license for a nonpower project as a ''non-power license''. Also provided are procedures for the filing of recommendations for takeover by Federal departments or agencies and applications for renewal of licenses not subject to section 14.

§ 16.2 *Public notice of projects under expiring license.*

In order that there should be adequate notice and opportunity to file timely applications for a license the Commission's Secretary will give notice of the expiration of license of a project (except transmission line and minor projects) 5 years in advance thereof in the same manner as provided in section 4(f) of the Act. The Secretary shall upon promulgation of the rules herein give notice, as provided in section 4(f) of the Act, of all whose license terms have expired since January 1, 1968, or which will expire within 5 years of the effective date of this rule. In addition, the Commission each year will publish in its annual report and in the FEDERAL REGISTER a table showing the projects which will expire during the succeeding 5 years. The table will list these licenses according to their expiration dates and will contain the following information: (a) License expiration date; (b) licensee's name; (c) project number; (d) type of principal project works licensed, e.g., dam and reservoir, powerhouse, transmission lines; (e) location by State, county,

and stream; also by city or nearby city when appropriate; and (f) plant installed capacity.

§ 16.3 *When to file.*

(a) An existing licensee must file an application for a ''new license'' or ''nonpower license'' or a statement of intention not to file an application for a ''new license'' no earlier than 5 years and no later than 3 years prior to the expiration of its license, except that, where the license will expire within 3½ years of the issuance of this part, such applications or statements shall be filed within 6 months from the effective date of this part. Applicants which have applications pending which were filed under previous Commission regulations shall supplement their applications in accordance with pertinent provisions of this part within 6 months of the effective date of this part.

(b) Any other person or municipality may file an application for a ''new license'' or ''non-power license'' within 5 years of the expiration of the license, but in no event, unless authorized by the Commission, later than 6 months after issuance of notice of the filing of an application or statement by the licensee under § 16.4 or 2½ years before the expiration of the license, whichever is earlier.

(c) Any application submitted after the expiration of the time specified herein for filing must be accompanied by a motion requesting permission to file late, which motion shall detail the reasons of good cause why the application was not timely filed and how the public interest would be served by its consideration.

§ 16.4 *Notice upon filing of application.*

When any timely application or statement within the meaning of § 16.3 is received, or when the Commission grants any motion for consideration of a late filed application, notice of receipt thereof will be furnished the applicant, and public notice will be given in the same manner as provided in sections 4(f) and 15(b) of the Act (49 Stat. 838; 41 Stat. 1072; 82 Stat. 616; 16 U.S.C. 797, 808) §§ 1.37 and 2.1 of this chapter, the Fish and Wildlife Coordination Act, 48 Stat. 401, as amended, 16 U.S.C. 661 *et seq.*, and by publication in the FEDERAL REGISTER.

§ 16.5 *Annual licenses.*

No application for annual license need be filed nor will such application be accepted under section 15 of the Act. An existing licensee making timely filing for a new license will be deemed to have filed for an annual license. If the Commission has not acted upon an application by licensee for a new license at the expiration of the license terms, by the issuance of an order granting, denying or dismissing it, an annual license shall be issued by notice of the Secretary.

§ 16.6 *Applications for new license for projects subject to sections 14 and 15 of the Federal Power Act and all other major projects.*

(a) Each application for a new license hereunder shall conform in form to § 131.2 of this chapter, and shall set forth in appropriate detail all information and exhibits prescribed in §§ 4.40 through 4.42 of this chapter, inclusive and in § 4.51 of this chapter, as well as additional information specified in paragraphs (b) through (e) of this section, except that Exhibit A may be incorporated in an application by reference where one applicant files applications for several projects, one of which already contains an Exhibit A or in any case where applicant has filed an Exhibit A within 10 years preceding the filing of the application, and that Exhibits N and O as specified in § 4.41 of this chapter need only be filed as provided in paragraph (c) of this section. An original and fourteen conformed copies of the application and all accompanying exhibits shall be submitted to the Commission plus one additional conformed copy for each interested State Commission.

(b) An application for a ''new license'' hereunder shall include a statement showing the amount which licensee estimates would be payable if the project were to be taken over at the end of the license term pursuant to the provisions of sections 14 and 15 of the Federal Power Act. This statement shall include estimates of: (1) Fair value; (2) net investment; and (3) severance damages. (This subsection is not applicable to State, municipal, or nonlicensee applicants.)

(c) If the applicant proposes project works in addition to those already under license, the maps, plans, and descriptions of the project works (Exs. I, J, L and M) shall distinguish the project works of parts thereof which have been constructed from those to be constructed. Exhibits N and O shall also be included in the application relating to new construction.

(d) Applicant shall furnish its plans for the future modification or redevelopment of the project, if any, and shall set forth in detail why technically feasible, additional capacity is not proposed for installation at the time of relicensing.

(e) Applicant shall file a statement on the effect that takeover by the United States or relicensing to another applicant would have upon the supply of electric energy to the system with which it is interconnected, the rates charged its customers, the licensee's financial condition, and taxes collected by local, State, and Federal Governments. (This subsection is not applicable to State, municipal or nonlicensee applicants.)

§ 16.7 *Application for nonpower license.*

Each application for ''non-power license'' shall generally follow the form prescribed in § 131.6 of this chapter, except for subsections 7 and 8 thereof. It shall be accompanied by

Exhibits K, L, R, and S prepared as described in section 4.41, and shall include the information specified in paragraphs (a) through (c) of this section. Unless otherwise specified, an original and 14 conformed copies of the application and all accompanying exhibits shall be submitted with one additional conformed copy for each interested State commission. Additional information may be requested by the Commission if desired.

(a) Applicant shall furnish a description of the nonpower purpose for which the project is to be utilized and a showing of how such use conforms with a comprehensive plan for improving or developing a waterway or waterways for beneficial uses, including a statement of the probable impact which conversion of the project to nonpower use will have on the power supply of the system served by the project.

(b) Applicant shall identify the State, municipal, interstate or Federal agency, if any, which is authorized or willing to assume regulatory supervision over the land, waterways and facilities to be included within the nonpower project. (If there is such an agency, applicant shall foward one copy of the application to such agency.)

(c) Applicant shall submit a proposal for the removal or other disposition of power facilities of the project.

A ''non-power license'' shall be effective until such time as in the judgement of the Commission a State, municipal, interstate, or Federal agency is authorized and willing to assume regulatory supervision over the land, waterways, and facilities included within the ''non-power license'' or until the project structures are removed. Such State, municipal, interstate or Federal agency may petition the Commission for termination of a ''non-power license'' at any time. Where the existing project is located on the public lands or reservations of the United States, and there is no application for relicensing as a power project either by the original licensee, or some other entity, or a takeover recommendation, the Commission may, in its discretion, and upon a showing by the agency having jurisdiction over the lands or reservations that it is prepared to assume requisite regulatory supervision for the nonpower use of the project, terminate the proceeding without issuing any license for nonpower use.

§ 16.8 *Departmental recommendations for takeover.*

A recommendation that the United States exercise its right to take over a project may be filed by any Federal department or agency no earlier than 5 years and no later than 2 years prior to the expiration of the license term; *Provided, however,* That such recommendation shall not be filed later than 9 months after the issuance of a notice of application for a new license. Departments or agencies filing such recommendations shall thereby become parties to the relicensing-takeover proceeding. An original and 14 copies of the recommendation shall be filed together with one additional copy for each interested State commission. The recommendation shall specify the project works which would be taken over by the United States, shall include a detailed description of the proposed Federal operation of the project, including any plans for its redevelopment and shall indicate how takeover would serve the public interest as fully as non-Federal development and operation. It shall also include a statement indicating whether the agency making the recommendation intends to undertake operation of the project. A copy of the recommendation shall be served upon the licensee by the Commission's Secretary. Any applicant for a new license covering all or part of the project involved in the takeover recommendation shall have 120 days within which to serve a reply to the recommendation upon the Commission with copies to any parties in the proceeding.

§ 16.9 *Commission recommendation to Congress.*

If the Commission, after notice and opportunity for hearing, concludes upon departmental recommendation, a proposal of any party, or its own motion, that the standards of section 10(a) of the Act would best be served if a project whose license is expiring is taken over by the United States, it will issue its findings and recommendations to this effect, and after any modification thereof, upon consideration of any application for reconsideration, made in conformity with the provisions of § 1.34 of this chapter governing applications for rehearing, forward copies of its findings and recommendations to the Congress.

§ 16.10 *Motion for stay by Federal department or agency.*

If the Commission does not recommend to the Congress that a project be taken over, a Federal department or agency which has filed a timely recommendation for takeover as provided in this part may, within thirty (30) days of issuance of an order granting a license, file a motion, with copies to the parties in the proceeding, before the Commission requesting a stay of the license order. Upon the filing of such a motion, the license order automatically will be stayed for 2 years from the date of issuance of the order, unless the stay is terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission will notify Congress of any such stay. Upon expiration or termination of the stay, including any extension thereof by act of Congress, the Commission's license order shall automatically become effective in accordance with its terms. The Commission will notify Congress of each license order

which has become effective by reason of the expiration or termination of a stay.

§ 16.11 *Procedures upon congressional authorization of takeover.*

A determination whether or not there is to be a Federal takeover of a project would ultimately be made by Congress through the enactment of appropriate legislation. If Congress authorizes takeover, the Secretary will immediately give the Licensee not less than 2 years' notice in writing of such action. Within 6 months of issuance of such notice the Licensee shall present to the Commission any claim for compensation consistent with the provisions of section 14 of the Federal Power Act and the regulations of the Commission.

§ 16.12 *Renewal of minor or minor part licenses not subject to sections 14 and 15.*

Licenses whose minor or minor part licenses are not subject to sections 14 and 15 of the Act and wish to continue operation of the project after the end of the license term shall file an application for a ''new license'' 1 year prior to the expiration of their original license in accordance with applicable provisions of part 4 of this chapter.

§ 16.13 *Acceptance for filing or rejection of application.*

Acceptance for filing or rejection of applications under this part shall be in accordance with the provisions of § 4.31 of this chapter.

APPENDIX B TO PART 221—FEDERAL ENERGY REGULATORY COMMISSION FORM L–3 (REVISED OCTOBER 1975)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgement have produced or will produce any of such results shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and projects works in the performance of their

official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in projects lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsiblity for payment and discharge of, all liens or encumbrances upon the projects or project property created by the Licensee or created or incurred after the issuance of the license: *Provided,* That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for

interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all time be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding of eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the proj- ect operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for

the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representatives of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the

surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be constructed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

FEDERAL ENERGY REGULATORY COMMISSION

FORM L–4 (REVISED OCTOBER, 1975)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alterations thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and

across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within 5 years from the date of issuance of the license, shall acquire title in fee or other right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the License: *Provided*, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United

States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United

States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to

restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 27. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 28. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

LIST OF FPC STANDARD ARTICLES FORMS USED IN PERMITS AND LICENSES FOR HYDROELECTRIC PROJECTS

The following FPC standard articles Forms, in addition to the standard Forms L–3, and L–4 which are provided in this appendix, are available from the FPC offices:

FPC Forms [1]	Title
P–1	Terms and conditions of preliminary permit.
L–1	Terms and conditions of license for constructed major project affecting lands of the United States.
L–2	Terms and conditions of license for unconstructed major project affecting lands of the United States.
L–5	Terms and conditions of license for constructed major projects affecting navigable waters and lands of the United States.
L–6	Terms and conditions of license for unconstructed major project affecting navigable waters and lands of the United States.
L–9	Terms and conditions of license for constructed minor projects affecting navigable waters of the United States.
L–10	Terms and conditions of license for constructed major project affecting the interests of interstate or foreign commerce.
L–11	Terms and conditions of license for unconstructed major project affecting the interests of interstate or foreign commerce.
L–14	Terms and conditions of license for unconstructed minor project affecting navigable waters of the United States.
L–15	Terms and conditions of license for unconstructed minor project affecting the interests of interstate or foreign commerce.
L–16	Terms and conditions of license for constructed minor project affecting lands of the United States.
L–17	Terms and conditions of license for unconstructed minor project affecting lands of the United States.
L–18	Terms and conditions of license for constructed minor project affecting navigable waters and lands of the United States.
L–19	Terms and conditions of license for unconstructed minor project affecting navigable waters and lands of the United States.

[1] Revised Oct. 1975.

PART 222—ENGINEERING AND DESIGN

Sec.
222.2 Acquisition of lands downstream from spillways for hydrologic safety purposes.
222.3 Clearances for power and communication lines over reservoirs.
222.4 Reporting earthquake effects.
222.5 Water control management (ER 1110–2–240).
222.6 National Program for Inspection of Non-Federal Dams.

AUTHORITY: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 *et seq*.; 33 U.S.C. 701, 701b, and 701c–1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

§ 222.2 Acquisition of lands downstream from spillways for hydrologic safety purposes.

(a) *Purpose*. This regulation provides guidance on the acquisition of lands downstream from spillways for the purpose of protecting the public from hazards imposed by spillway discharges. Guidance contained herein is in addition to ER 405–2–150.

(b) *Applicability*. This regulation is applicable to all OCE elements and all field operating agencies having civil works responsibilities.

(c) *Reference*. ER 405–2–150.

(d) *Discussion*. A policy of public safety awareness will be adhered to in all phases of design and operation of dam and lake projects to assure adequate security for the general public in areas downstream from spillways. A real estate interest will be required in those

areas downstream of a spillway where spillway discharge could create or significantly increase a hazardous condition. The real estate interest will extend downstream to where the spillway discharge would not significantly increase hazards. A real estate interest is not required in areas where flood conditions would clearly be nonhazardous.

(e) *Hydrologic criteria*. The construction and operation of a dam and spillway may create or aggravate a potential hazard in the spillway discharge area. Therefore, an appropriate solution should be developed in a systematic manner. All pertinent facts need to be considered to assure that the risk to non-Federal interests does not exceed conditions that would prevail without the project. General hydrologic engineering considerations are as follows:

(1) *Probability of spillway use*. Pool elevation versus probability of filling relationships can change materially after initial construction. Spillway use may be more frequent than anticipated. The infrequent use of a spillway is not a basis for the lack of adequate downstream real estate interest.

(2) *Changes in project functions*. Water resource needs within river basins change and pool levels may be adjusted to provide more conservation storage, particularly when high-level limited-service spillways are provided. Such changes normally increase spillway use and are to be considered.

(3) *Volume and velocity of spillway flow*. The amount of flow and destructive force of the flow from a spillway during floods up to the spillway design flood can vary from insignificant to extremely hazardous magnitudes. The severity and area of hazard associated with spillway discharge will vary depending on specific project site conditions. Therefore, the hazard is to be analyzed on a project-by-project basis.

(4) *Development within floodway*. If development within the floodway downstream from a spillway is not present at the time of project construction, the existence of the reservoir may encourage development. Adverse terrain conditions do not preclude development. Sparse present development is not a basis for lack of real estate acquisition.

(5) *Debris movement within floodway*. The availability of erodible material in a spillway flow area intensifies the hazards of spillway flow. In fact, debris may be transported to downstream areas that otherwise would not be adversely affected. Extreme erosion may result from high velocities and turbulence. Both debris and erosion must be evaluated and considered.

(6) *Flood warning and response potential*. Small projects generally have short time periods available to warn downstream inhabitants and may be unattended prior to spillway use. The ability to convince individuals to leave most of their worldly possessions to the ravages of spillway flow may be severely limited. In some cases flood warning systems may be necessary; however, this subject is beyond the scope of this regulation. Warning systems are not an adequate substitute for a real estate interest in lands downstream of spillways.

(7) *Location of spillway*. Spillways should be located to minimize the hazards associated with their discharge and the total project cost (cost of spillway structure and downstream lands). Spillways, outlet works, stilling basins, and outlet channels should be designed to minimize hazards to downstream interest insofar as is engineeringly and economically reasonable.

(f) *Real estate*. The real estate interest required downstream of spillways will be adequate to assure carrying out project purposes and to protect non-Federal interest from hazards created by spillway flows. The interest may be either fee or permanent easement. A permanent easement must exclude all overnight and/or permanent habitation, structures subject to damage by spillway flows and activities that would increase the potential hazards. No real estate interest is required for:

(1) Areas where the imposed or aggravated flood condition is non-hazardous. Affected interest should be informed of the nature of the imposed non-hazardous flood condition.

(2) Areas where the construction and operation of a dam and spillway do not increase or create a hazardous condition.

(g) *Alternative land uses.* In some cases land downstream from spillways can be effectively used for purposes other than hydrologic safety. Therefore, the entire cost of these lands may not be an additional project cost. For example, the lands downstream of a spillway may be used for wildlife management essential to project purposes in lieu of other lands suitable for similar purposes at another location.

(h) *Procedural guidance.* Procedures regarding the application of the principles outlined in the above paragraphs are as follows:

(1) For various flood magnitudes up to the probable maximum flood determine the ''with'' and ''without project'' flood conditions downstream of a dam spillway for the following:

(i) Flooded area.

(ii) Flood depth.

(iii) Flood duration.

(iv) Velocities.

(v) Debris and erosion.

(2) Determine the combinations of flood magnitudes and the above flood conditions that could be the most hazardous and/or result in the greatest increase in hazard from ''without'' to ''with project'' flood conditions. Designate these combinations of flood magnitude and flood conditions as the critical conditions.

(3) For the critical conditions selected above outline the areas where the project could increase and/or create (impose) one or more of the critical conditions. Areas where spillway flows do not create or increase flood conditions are excluded from further analysis.

(4) Determine where the imposed critical conditions as outlined above would be hazardous and non-hazardous. Non-hazardous areas are defined as those areas where:

(i) Flood depths are maximum of 2 feet in urban and rural areas.

(ii) Flood depths are essentially non-damaging to urban property.

(iii) Flood durations are a maximum of 3 hours in urban areas and 24 hours in agricultural areas.

(iv) Velocities do not exceed 4 feet per second.

(v) Debris and erosion potentials are minimal.

(vi) Imposed flood conditions would be infrequent. That is, the exceedence frequency should be less than 1 percent. Hazardous areas are those where any of the above criteria are exceeded.

(5) Based upon the information developed above and the principles outlined in paragraphs (c) through (f) of this section, decide on the extent of area and estate required for hydrologic safety purposes.

(i) *Reporting.* Lands to be acquired downstream from spillways and intended purposes will be identified and the cost included in feasibility reports and real estate design memoranda. Additional specific information in support of land acquisition should be provided in Phase I or Phase II general design memoranda (GDM) and dam modernization reports. This information should include topographic maps, area flooded maps, velocities, erosion and debris areas ''with'' and ''without'' the project. Real estate boundaries and discussions of items in paragraph (h)(4) are also essential in the GDM's and dam modernization reports.

[43 FR 35481, Aug. 10, 1978. Redesignated at 60 FR 19851, Apr. 21, 1995]

§ 222.3 Clearances for power and communication lines over reservoirs.

(a) *Purpose.* This regulation prescribes the minimum vertical clearances to be provided when relocating existing or constructing new power and communication lines over waters of reservoir projects.

(b) *Applicability.* This regulation applies to all field operating agencies having Civil Works responsibilities.

(c) *References.* (1) ER 1180–1–1 (Section 73).

(2) National Electrical Safety Code (ANSI C2), available from IEEE Service Center, 445 Hoes Lane, Piscataway, N.J. 08854.

(d) *Definitions*—(1) *Design high water level.* The design high water level above which clearances are to be provided shall be either: (i) The elevation of the envelope profile of the 50 year flood, or flood series, routed through the reservoir with a full conservation pool after 50 years of sedimentation, or (ii) the elevation of the top of the flood control pool, whichever is higher.

(2) *Low point of line*. The low point of the line shall be the elevation of the lowest point of the line taking into consideration all factors including temperature, loading and length of spans as outlined in the National Electrical Safety Code.

(3) *Minimum vertical clearance*. The minimum vertical clearance shall be the distance from the design high water lever (paragraph (d)(1) of this section) to the low point of the line (paragraph (d)(2) of this section).

(e) *Required clearances*. Minimum vertical clearances for power and communication lines over reservoirs shall not be less than required by section 23, rule 232 of the latest revision of the National Electrical Safety Code (ANSI C2).

(1) In general, minimum vertical clearances shall not be less than shown in Table 232–1, Item 7, of ANSI C2, even for reservoirs or areas not suitable for sailboating or where sailboating is prohibited.

(2) If clearances not in accordance with Table 232–1 of ANSI C2 are proposed, justification for the clearances should be provided.

(f) *Navigable waters*. For parts of reservoirs that are designated as navigable waters of the United States, greater clearances will be provided if so required. The clearances required over navigable waters are covered by 33 CFR 322.5(i)(2) and are not affected by this regulation.

[43 FR 14013, Apr. 4, 1978. Redesignated at 60 FR 19851, Apr. 21, 1995]

§ 222.4 Reporting earthquake effects.

(a) *Purpose*. This regulation states policy, defines objectives, assigns functions, and establishes procedures for assuring the structural integrity and operational adequacy of major Civil Works structures following the occurrence of significant earthquakes. It primarily concerns damage surveys following the occurrences of earthquakes.

(b) *Applicability*. This regulation is applicable to all field operating agencies having Civil Works responsibilities.

(c) *References*. (1) ER 1110–2–100 (§ 222.2).

(2) ER 1110–2–1806.

(3) ER 1110–2–8150.

(4) ER 1130–2–419.

(5) State-of-the-Art for Assessing Earthquake Hazards in the United States—WES Miscellaneous Papers S–73–1—Reports 1 thru 14. Available from U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180.

(d) *Policy*. Civil Works structures which could be caused to fail or partially fail by an earthquake and whose failure or partial failure would endanger the lives of the public and/or cause substantial property damage, will be evaluated following potentially damaging earthquakes to insure their continued structural stability, safety and operational adequacy. These structures include dams, navigation locks, powerhouses, and appurtenant structures, (intakes, outlet works, buildings, tunnels, paved spillways) which are operated by the Corps of Engineers and for which the Corps is fully responsible. Also included are major levees, floodwalls, and similar facilities designed and constructed by the Corps of Engineers and for whose structural safety and stability the Corps has a public obligation to be aware of although not responsible for their maintenance and operation. The evaluation of these structures will be based upon post-earthquake inspections which will be conducted to detect conditions of significant structural distress and to provide a basis for timely initiation of restorative and remedial measures.

(e) *Post-earthquake inspections and evaluation surveys*—(1) *Limitations of present knowledge*. The design of structures for earthquake loading is limited by the infrequent opportunity to compare actual performance with the design. Damage which would affect the function of the project is unlikely if peak accelerations are below 0.1g.; but it cannot be assumed that a structure will not be damaged from earthquake loadings below that for which it was designed. Furthermore, earthquakes have occurred in several parts of the country where significant seismic activity had not been predicted by some seismic zoning maps. This indicates the possibility that earthquake induced loads may not have been adequately considered in the design of older structures.

(2) *Types of reportable damage.* Many types of structural damage can be induced by ground motion from earthquakes or from large nuclear blasts (which also tend to induce ground vibrations in the more damaging lower frequency ranges). Any post-earthquake change in appearance or functional capability of a major Civil Works structure should be evaluated and reported. Examples are symptoms of induced stresses in buildings made evident by cracked plaster, windows or tile, or in binding of doors or windows; cracked or shifted bridge pier footings or other concrete structures; turbidity or changed static level of water wells; cracks in concrete dams or earth embankments; and misalignment of hydraulic control structures or gates. Induced dynamic loading on earth dams may result in loss of freeboard by settlement, or cause localized quick conditions within the embankment sections or earth foundations. Also, new seepage paths may be opened up within the foundation or through the embankment section. Ground motion induced landslides may occur in susceptible areas of the reservoir rim, causing embankment overtopping by waves and serious damage. All such unusual conditions should be evaluated and reported.

(f) *Inspection and evaluation programs.* (1) If the project is located in an area where the earthquake causes significant damage (Modified Mercalli Intensity VII or greater) to structures in the vicinity, the Chief, Engineering Division, should be immediately notified and an engineering evaluation and inspection team should be sent to the project.

(2) If the project is located in an area where the earthquake is felt but causes no or insignificant damage (Modified Mercalli Intensity VI or less) to structures in the vicinity of the project, project operations personnel should make an immediate inspection. This inspection should determine: (i) Whether there is evidence of earthquake damage or disturbance, and (ii) whether seismic instrumentation, where present, has been triggered. The Chief, Engineering Division should be notified by phone of the results of the inspection. If damage is observed, which is considered to threaten the immediate safety or operational capability of the project, immediate action should be taken as covered in paragraph (f)(1) of this section. For other situations, the Chief of Engineering Division will determine the need for and urgency for an engineering inspection.

(3) When an engineering inspection of structures is deemed necessary following a significant earthquake, HQDA (DAEN-CWE) WASH DC 20314 will be notified of the inspection program as soon as it is established.

(4) As a general rule, the structures which would be of concern following an earthquake are also the structures which are involved in the inspection program under ER 1110–2–100. Whenever feasible, instrumentation and prototype testing programs undertaken under ER 1110–2–100 to monitor structural performance and under ER 1110–2–8150 to develop design criteria will be utilized in the post-earthquake safety evaluation programs. Additional special types of instrumentation will be incorporated in selected structures in which it may be desirable to measure forces, pressures, loads, stresses, strains, displacements, deflections, or other conditions relating to damage and structural safety and stability in case of an earthquake.

(5) Where determined necessary, a detailed, systematic engineering inspection will be made of the post-earthquake condition of each structure, taking into account its distinctive features. For structures which have incurred earthquake damage a formal technical report will be prepared in a format similar to inspection reports required under ER 1110–2–100. (Exempt from requirements control under paragraph 7–2b, AR 335–15.) The report will include summaries of the instrumentation and other observation data for each inspection, for permanent record and reference purposes. This report will be used to form a basis for major remedial work when required. Where accelerometers or other types of strong motion instruments have been installed, readings and interpretations from these instruments should also be included in the report. The report will contain recommendations for remedial work when appropriate, and will be

transmitted through the Division Engineer for review and to HQDA (DAEN-CWE) WASH DC 20314 for review and approval. For structures incurring no damage a simple statement to this effect will be all that is required in the report, unless seismic instrumentation at the project is activated. (See paragraph (h)(4) of this section.)

(g) *Training*. The dam safety training program covered by paragraph 6 of ER 1130–2–419 should include post-earthquake inspections and the types of damage operations personnel should look for.

(h) *Responsibilities*. (1) The Engineering Divisions of the District offices will formulate the inspection program, conduct the post-earthquake inspections, process and analyze the data of instrumental and other observations, evaluate the resulting condition of the structures, and prepare the inspection reports. The Engineering division is also responsible for planning special instrumentation felt necessary in selected structures under this program. Engineering Division is responsible for providing the training discussed in paragraph (g) of this section.

(2) The Construction Divisions of the District offices will be responsible for the installation of the earthquake instrumentation devices and for data collection if an earthquake occurs during the construction period.

(3) The Operations Division of the District offices will be responsible for the immediate assessment of earthquake damage and notifying the Chief, Engineering Division as discussed in paragraphs (f)(1) and (2). The Operations Division will also be responsible for earthquake data collection after the construction period in accordance with the instrumental observation programs, and will assist and participate in the post-earthquake inspections.

(4) The U.S. Geological Survey has the responsibility for servicing and collecting all data from strong motion instrumentation at Corps of Engineers dam projects following an earthquake occurrence. However, the U.S. Army Waterways Experiment Station (WES) is assigned the responsibility for analyzing and interpreting these earthquake data. Whenever a recordable earthquake record is obtained from seismic instrumentation at a Corps project, the Division will send a report of all pertinent instrumentation data to the Waterways Experiment Station, ATTN: WESGH, P.O. Box 631, Vicksburg, Mississippi 39180. The report on each project should include a complete description of the locations and types of instruments and a copy of the instrumental records from each of the strong motion machines activated. (Exempt from requirements control under paragraph 7–2v, AR 335–15).

(5) The Engineering Divisions of the Division offices will select structures for special instrumentation for earthquake effects, and will review and monitor the data collection, processing, evaluating, and inspecting activities. They will also be specifically responsible for promptly informing HQDA (DAEN-CWE) WASH DC 20314, when evaluation of the condition of the structure or analyses of the instrumentation data indicate the stability of a structure is questionable. (Exempt for requirements control under paragraph 7–2o, AR 335–15.)

(6) Division Engineers are responsible for issuing any supplementary regulations necessary to adapt the policies and instructions herein to the specific conditions within their Division.

(i) *Funding*. Funding for the evaluation and inspection program will be under the Appropriation 96X3123, Operations and Maintenance, General. Funds required for the inspections, including Travel and Per Diem costs incurred by personnel of the Division office or the Office, Chief of Engineers, will be from allocations made to the various projects for the fiscal year in which the inspection occurs.

[44 FR 43469, July 25, 1979. Redesignated at 60 FR 19851, Apr. 21, 1995]

§ 222.5 Water control management (ER 1110–2–240).

(a) *Purpose*. This regulation prescribes policies and procedures to be followed by the U.S. Army Corps of Engineers in carrying out water control management activities, including establishment of water control plans for Corps and non-Corps projects, as required by Federal laws and directives.

(b) *Applicability*. This regulation is applicable to all field operating activities having civil works responsibilities.

(c) *References*. Appendix A lists U.S. Army Corps of Engineers publications and sections of Federal statutes and regulations that are referenced herein.

(d) *Authorities*—(1) *U.S. Army Corps of Engineers projects*. Authorities for allocation of storage and regulation of projects owned and operated by the Corps of Engineers are contained in legislative authorization acts and referenced project documents. These public laws and project documents usually contain provisions for development of water control plans, and appropriate revisions thereto, under the discretionary authority of the Chief of Engineers. Some modifications in project operation are permitted under congressional enactments subsequent to original project authorization. Questions that require interpretations of authorizations affecting regulation of specific reservoirs will be referred to CDR USACE (DAEN-CWE-HW), WASH DC 20314, with appropriate background information and analysis, for resolution.

(2) *Non-Corps projects*. The Corps of Engineers is responsible for prescribing flood control and navigation regulations for certain reservoir projects constructed or operated by other Federal, non-Federal or private agencies. There are several classes of such projects: Those authorized by special acts of Congress; those for which licenses issued by the Federal Energy Regulatory Commission (formerly Federal Power Commission) provide that operation shall be in accordance with instructions of the Secretary of the Army; those covered by agreements between the operating agency and the Corps of Engineers; and those that fall under the terms of general legislative and administrative provisions. These authorities, of illustrative examples, are described briefly in Appendix B.

(e) *Terminology: Water control plans and reservoir regulation schedules*. (1) Water control plans include coordinated regulation schedules for project/system regulation and such additional provisions as may be required to collect, analyze and disseminate basic data, prepare detailed operating instructions, assure project safety and carry out regulation of projects in an appropriate manner.

(2) The term ''reservoir regulation schedule'' refers to a compilation of operating criteria, guidelines, rule curves and specifications that govern basically the storage and release functions of a reservoir. In general, schedules indicate limiting rates of reservoir releases required during various seasons of the year to meet all functional objectives of the particular project, acting separately or in combination with other projects in a system. Schedules are usually expressed in the form of graphs and tabulations, supplemented by concise specifications.

(f) *General policies*. (1) Water control plans will be developed for reservoirs, locks and dams, reregulation and major control structures and interrelated systems to comform with objectives and specific provisions of authorizing legislation and applicable Corps of Engineers reports. They will include any applicable authorities established after project construction. The water control plans will be prepared giving appropriate consideration to all applicable Congressional Acts relating to operation of Federal facilities, *i.e.*, Fish and Wildlife Coordination Act (Pub. L. 85–624), Federal Water Project Recreation Act-Uniform Policies (Pub. L. 89–72), National Environmental Policy Act of 1969 (Pub. L. 91–190), and Clean Water Act of 1977 (Pub. L. 95–217). Thorough analysis and testing studies will be made as necessary to establish the optimum water control plans possible within prevailing constraints.

(2) Necessary actions will be taken to keep approved water control plans up-to-date. For this purpose, plans will be subject to continuing and progressive study by personnel in field offices of the Corps of Engineers. These personnel will be professionally qualified in technical areas involved and familiar with comprehensive project objectives and other factors affecting water control. Organizational requirements for water control management are further discussed in ER 1110–2–1400.

(3) Water control plans developed for specific projects and reservoir systems will be clearly documented in appropriate water control manuals. These

manuals will be prepared to meet initial requirements when storage in the reservoir begins. They will be revised as necessary to conform with changing requirements resulting from developments in the project area and downstream, improvements in technology, new legislation and other relevant factors, provided such revisions comply with existing Federal regulations and established Corps of Engineers policy.

(4) Development and execution of water control plans will include appropriate consideration for efficient water management in conformance with the emphasis on water conservation as a national priority. The objectives of efficient water control management are to produce beneficial water savings and improvements in the availability and quality of water resulting from project regulation/operation. Balanced resource use through improved regulation should be developed to conserve as much water as possible and maximize all project functions consistent with project/system management. Continuous examination should be made of regulation schedules, possible need for storage reallocation (within existing authority and constraints) and to identify needed changes in normal regulation. Emphasis should be placed on evaluating conditions that could require deviation from normal release schedules as part of drought contingency plans (ER 1110–2–1941).

(5) Adequate provisions for collection, analysis and dissemination of basic data, the formulation of specific project regulation directives, and the performance of project regulation will be established at field level.

(6) Appropriate provisions will be made for monitoring project operations, formulating advisories to higher authorities, and disseminating information to others concerned. These actions are required to facilitate proper regulation of systems and to keep the public fully informed regarding all pertinent water control matters.

(7) In development and execution of water control plans, appropriate attention will be given to project safety in accordance with ER 1130–2–417 and ER 1130–2–419 so as to insure that all water impounding structures are operated for the safety of users of the facilities and the general public. Care will be exercised in the development of reservoir regulation schedules to assure that controlled releases minimize project impacts and do not jeopardize the safety of persons engaged in activities downstream of the facility. Water control plans will include provisions for issuing adequate warnings or otherwise alerting all affected interests to possible hazards from project regulation activities.

(8) In carrying out water control activities, Corps of Engineers personnel must recognize and observe the legal responsibility of the National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), for issuing weather forecasts and flood warnings, including river discharges and stages. River forecasts prepared by the Corps of Engineers in the execution of its responsibilities should not be released to the general public, unless the NWS is willing to make the release or agrees to such dissemination. However, release to interested parties of factual information on current storms or river conditions and properly quoted NWS forecasts is permissible. District offices are encouraged to provide assistance to communities and individuals regarding the impact of forecasted floods. Typical advice would be to provide approximate water surface elevations at locations upstream and downstream of the NWS forecasting stream gages. Announcement of anticipated changes in reservoir release rates as far in advance as possible to the general public is the responsibility of Corps of Engineers water control managers for projects under their jurisdiction.

(9) Water control plans will be developed in concert with all basin interests which are or could be impacted by or have an influence on project regulation. Close coordination will be maintained with all appropriate international, Federal, State, regional and local agencies in the development and execution of water control plans. Effective public information programs will be developed and maintained so as to inform and educate the public regarding Corps of Engineers water control management activities.

(10) Fiscal year budget requests for water control management activities

will be prepared and submitted to the Office of the Chief of Engineers in accordance with requirements established in Engineer Circular on Annual Budget Requests for Civil Works Activities. The total annual costs of all activities and facilities that support the water control functions, (excluding physical operation of projects, but including flood control and navigation regulation of projects subject to 33 CFR 208.11) are to be reported. Information on the Water Control Data Systems and associated Communications Category of the Plant Replacement and Improvement Program will be submitted with the annual budget. Reporting will be in accordance with the annual Engineer Circular on Civil Works Operations and Maintenance, General Program.

(g) *Responsibilities: US Army Corps of Engineers projects*—(1) *Preparation of water control plans and manuals.* Normally, district commanders are primarily responsible for background studies and for developing plans and manuals required for reservoirs, locks and dams, reregulation and major control structures and interrelated systems in their respective district areas. Policies and general guidelines are prescribed by OCE engineer regulations while specific requirements to implement OCE guidance are established by the division commanders concerned. Master Water Control Manuals for river basins that include more than one district are usually prepared by or under direct supervision of division representatives. Division commanders are responsible for providing such management and technical assistance as may be required to assure that plans and manuals are prepared on a timely and adequate basis to meet water control requirements in the division area, and for pertinent coordination among districts, divisions, and other appropriate entities.

(2) *Public involvement and information*—(i) *Public meeting and public involvement.* The Corps of Engineers will sponsor public involvement activities, as appropriate, to appraise the general public of the water control plan. In developing or modifying water control manuals, the following criteria is applicable.

(A) Conditions that require public involvement and public meetings include: Development of a new water control manual that includes a water control plan; or revision or update of a water control manual that changes the water control plan.

(B) Revisions to water control manuals that are administratively or informational in nature and that do not change the water control plan do not require public meetings.

(C) For those conditions described in paragraph (g)(2)(i)(A) of this section, the Corps will provide information to the public concerning proposed water control management decisions at least 30 days in advance of a public meeting. In so doing, a separate document(s) should be prepared that explains the recommended water control plan or change, and provides technical information explaining the basis for the recommendation. It should include a description of its impacts (both monetary and nonmonetary) for various purposes, and the comparisons with alternative plans or changes and their effects. The plan or manual will be prepared only after the public involvement process associated with its development or change is complete.

(D) For those conditions described in paragraph (g)(2)(i)(A) of this section, the responsible division office will send each proposed water control manual to the Army Corps of Engineers Headquarters, Attn: CECW-EH-W for review and comments prior to approval by the responsible division office.

(ii) *Information availability.* The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers. Public notice shall be given in the event of occurring or anticipated significant changes in reservoir storage or flow releases. The method of conveying this information shall be commensurate with the urgency of the situation and the lead time available.

(3) *Authority for approval of plans and manuals.* Division commanders are delegated authority for approval of water control plans and manuals, and associated activities.

(4) *OCE role in water control activities.* OCE will establish policies and guidelines applicable to all field offices and for such actions as are necessary to assure a reasonable degree of consistency in basic policies and practices in all Division areas. Assistance will be provided to field offices during emergencies and upon special request.

(5) *Methods improvement and staff training.* Division and district commanders are responsible for conducting appropriate programs for improving technical methods applicable to water control activities in their respective areas. Suitable training programs should be maintained to assure a satisfactory performance capability in water control activities. Appropriate coordination of such programs with similar activities in other areas will be accomplished to avoid duplication of effort, and to foster desirable exchange of ideas and developments. Initiative in re-evaluating methods and guidelines previously established in official documents referred to in paragraph (e) of this section is encouraged where needs are evident. However, proposals for major deviations from basic concepts, policies and general practices reflected in official publications will be submitted to CDR USACE (DAEN-CWE) WASH DC 20314 for concurrence or comment before being adopted for substantial application in actual project regulation at field level.

(h) *Directives and technical instruction manuals.* (1) Directives issued through OCE Engineer Regulations will be used to foster consistency in policies and basic practices. They will be supplemented as needed by other forms of communication.

(2) Engineering Manuals (EM) and Engineer Technical Letters (ETL) are issued by OCE to serve as general guidelines and technical aids in developing water control plans and manuals for individual projects or systems.

(3) EM 1110–2–3600 discusses principles and concepts involved in developing water control plans. Instructions relating to preparation of ''Water Control Manuals for speicfic projects'' are included. EM 1110–2–3600 should be used as a general guide to water control activities. The instructions are sufficiently flexible to permit adaptation to specific regions. Supplemental information regarding technical methods is provided in numerous documents distributed to field offices as ''hydrologic references.''

(4) Special assistance in technical studies is available from the Hydrologic Engineering Center, Corps of Engineers, 609 Second Street, Davis, California 95616 and DAEN-CWE-HW.

(i) *Water control manuals for US Army Corps of Engineers projects.* (1) As used herein, the term ''water control manual'' refers to manuals that relate primarily to the functional regulation of an individual project or system of projects. Although such manuals normally include background information concerning physical features of projects, they do not prescribe rules or methods for physical maintenance or care of facilities, which are covered in other documents. (References 15 and 23, appendix A.)

(2) Water control manuals prepared in substantially the detail and format specified in instructions referred to in paragraph 8 are required for all reservoirs under the supervision of the Corps of Engineers, regardless of the purpose or size of the project. Water Control manuals are also required for lock and dam, reregulation and major control structure projects that are physically regulated by the Corps of Engineers. Where there are several projects in a drainage basin with interrelated purposes, a ''Master Manual'' shall be prepared. The effects of non-Corps projects will be considered in appropriate detail, including an indication of provisions for interagency coordination.

(3) ''Preliminary water control manuals,'' for projects regulated by the Corps of Engineers should contain regulation schedules in sufficient detail to establish the basic plan of initial project regulation.

(4) As a general rule, preliminary manuals should be superseded by more detailed interim or ''final'' manuals within approximately one year after the project is placed in operation.

(5) Each water control manual will contain a section on special regulations to be conducted during emergency situations, including droughts.

Preplanned operations and coordination are essential to effective relief or assistance.

(6) One copy of all water control manuals and subsequent revisions shall be forwarded to DAEN-CWE-HW for file purposes as soon as practicable after completion, preferably within 30 days from date of approval at the division level.

(j) *Policies and requirements for preparing regulations for non-Corps projects.* (1) Division and district commanders will develop water control plans as required by section 7 of the 1944 Flood Control Act, the Federal Power Act and section 9 of Pub. L. 436–83 for all projects located within their areas, in conformance with ER 1110–2–241, 33 CFR part 208. That regulation prescribes the policy and general procedures for regulating reservoir projects capable of regulation for flood control or navigation, except projects owned and operated by the Corps of Engineers; the International Boundary and Water Commission, United States and Mexico; those under the jurisdiction of the International Joint Commission, United States and Canada, and the Columbia River Treaty. ER 1110–2–241, 33 CFR part 208 permits the promulgation of specific regulations for a project in compliance with the authorizing acts, when agreement on acceptable regulations cannot be reached between the Corps Engineers and the owners. Appendix B provides a summary of the Corps of Engineers responsibilities for prescribing regulations for non-Corps reservoir projects.

(2) Water control plans will be developed and processed as soon as possible for applicable projects already completed and being operated by other entities, including projects built by the Corps of Engineers and turned over to others for operation.

(3) In so far as practicable, water control plans for non-Corps projects should be developed in cooperation with owning/operating agencies involved during project planning stages. Thus, tentative agreements on contents, including pertinent regulation schedules and diagrams, can be accomplished prior to completion of the project.

(4) The magnitude and nature of storage allocations for flood control or navigation purposes in non-Corps projects are governed basically by conditions of project authorizations or other legislative provisions and may include any or all of the following types of storage assignments:

(i) Year-round allocations: Storage remains the same all year.

(ii) Seasonal allocations: Storage varies on a fixed seasonal basis.

(iii) Variable allocations of flood control from year to year, depending on hydrologic parameters, such as snow cover.

(5) Water control plans should be developed to attain maximum flood control or navigation benefits, consistent with other project requirements, from the storage space provided for these purposes. When reservoir storage capacity of the category referred to in paragraph (j)(4)(iii) is utilized for flood control or navigation, jointly with other objectives, the hydrologic parameters and related rules developed under provisions of ER 1110–2–241, 33 CFR part 208 should conform as equitably as possible with the multiple-purpose objectives established in project authorizations and other pertinent legislation.

(6) Storage allocations made for flood control or navigation purposes in non-Corps projects are not subject to modifications by the Corps of Engineers as a prerequisite for prescribing 33 CFR 208.11 regulations. However, regulations developed for use of such storage should be predicated on a mutual understanding between representatives of the Corps and the operating agency concerning the conditions of the allocations in order to assure reasonable achievement of basic objectives intended. In the event field representatives of the Corps of Engineers, and the operating agency are unable to reach necessary agreements after all reasonable possibilities have been explored, appropriate background explanations and recommendations should be submitted to DAEN-CWE-HW for consideration.

(7) The Chief of Engineers is responsible for prescribing regulations for use of flood control or navigation storage and/or project operation under the provisions of the referenced legislative acts. Accordingly, any regulations established should designate the division/

district commander who is responsible to the Chief of Engineers as the representative to issue any special instructions required under the regulation. However, to the extent practicable, project regulations should be written to permit operation of the project by the owner without interpretations of the regulations by the designated representative of the Commander during operating periods.

(8) Responsibility for compliance with 33 CFR 208.11 regulations rests with the operating agency. The division or district commander of the area in which the project is located will be kept informed regarding project operations to verify reasonable conformance with the regulations. The Chief of Engineers or his designated representative may authorize or direct deviation from the established water control plan when conditions warrant such deviation. In the event unapproved deviations from the prescribed regulations seem evident, the division or district commander concerned will bring the matter to the attention of the operating agency by appropriate means.

If corrective actions are not taken promptly, the operating agency should be notified of the apparent deviation in writing as a matter of record. Should an impasse arise, in that the project owner or the designated operating entity persists in noncompliance with regulations prescribed by the Corps of Engineers, the Office of Chief Counsel should be advised through normal channels and requested to take necessary measures to assure compliance.

(9) Regulations should contain information regarding the required exchange of basic data between the representative of the operating agency and the U.S. Army Corps of Engineers, that are pertinent to regulation and coordination of interrelated projects in the region.

(10) All 33 CFR 208.11 regulations shall contain provisions authorizing the operating agency to temporarily deviate from the regulations in the event that it is necessary for emergency reasons to protect the safety of the dam, to avoid health hazards, and to alleviate other critical situations.

(k) *Developing and processing regulations for non-Corps projects.* Guidelines concerning technical studies and development of regulations are contained in ER 1110–2–241, 33 CFR part 208 and EM 1110–2–3600. Appendix C of this regulation summarizes steps normally followed in developing and processing regulations for non-Corps projects.

(l) *Water control during project construction stage.* Water control plans discussed in preceding paragraphs are intended primarily for application after the dam, spillway and outlet structures; major relocations; land acquisitions, administrative arrangements and other project requirements have reached stages that permit relatively normal project regulation. With respect to non-Corps projects, regulations normally become applicable when water control agreements have been signed by the designated signatories, subject to special provisions in specific cases. In some instances, implementation of regulations has been delayed by legal provisions, contract limitations, or other considerations. These delays can result in loss of potential project benefits and possible hazards. Accordingly, it is essential that appropriate water control and contingency plans be established for use from the date any storage may accumulate behind a partially completed dam until the project is formally accepted for normal operations. Division commanders shall make certain that construction-stage regulation plans are established and maintained in a timely and adequate manner for projects under the supervision of the Corps of Engineers. In addition, the problems referred to should be discussed with authorities who are responsible for non-Corps projects, with the objective of assuring that such projects operate as safely and effectively as possible during the critical construction stage and any period that may elapse before regular operating arrangements have been established. These special regulation plans should include consideration for protection of construction operations; safety of downstream interests that might be jeopardized by failure of partially completed embankments; requirements for minimizing adverse effects on partially completed relocations or incomplete land acquisition; and the need for obtaining benefits from project storage

that can be safely achieved during the construction and early operation period.

(m) *Advisories to OCE regarding water control activities*—(1) *General.* Division commanders will keep the Chief of Engineers currently informed of any unusual problems or activities associated with water control that impact on his responsibilities.

(2) *Annual division water control management report (RCS DAEN-CWE–16(R1)).* Division commanders will submit an annual report on water control management activities within their division. The annual report will be submitted to (DAEN-CWE-HW) by 1 February each year and cover significant activities of the previous water year and a description of activities to be accomplished for the current year. Funding information for water control activities will be provided in the letter of transmittal for in-house use only. The primary objective of this summary is to keep the Chief of Engineers informed regarding overall water management activities Corps-wide, thus providing a basis to carry out OCE responsibilities set forth in paragraph (g)(4) of this section.

(3) *Status of water control manuals.* A brief discussion shall be prepared annually by each division commander, as a separate section of the annual report on water control management activities discussed in paragraph (m)(2) of this section listing all projects currently in operation in his area, or expected to begin operation within one-year, with a designation of the status of water control manuals. The report should also list projects for which the Corps of Engineers is responsible for prescribing regulations, as defined in ER 1110–2–241, 33 CFR part 208.

(4) *Monthly water control charts (RCS DAEN-CWE–6 (R1)).* A monthly record of reservoirs/lakes operated by the Corps of Engineers and other agencies, in accordance with 33 CFR 208.11, will be promptly prepared and maintained by district/division commanders in a form readily available for transmittal to the Chief of Engineers, or others, upon request. Record data may be prepared in either graphical form as shown in EM 1110–2–3600, or tabular form as shown in the sample tabulation in Appendix D.

(5) *Annual division water quality reports (RCS DAEN-CWE–15).* By Executive Order 12088, the President ordered the head of each Executive Agency to be responsible for ensuring that all necessary actions are taken for prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under control of the agency. General guidance is provided in references 24 and 25, Appendix A, for carrying out this agency's responsibility. Annual division water quality reports are required by reference 24, Appendix A. The report is submitted in two parts. The first part addresses the division Water quality management plan while the second part presents specific project information. A major objective of this report is to summarize information pertinent to water quality aspects of overall water management responsibilities. The annual division water quality report may be submitted along with the annual report on water control management activities discussed in paragraph 13b above.

(6) *Master plans for water control data systems (RCS DAEN-CWE–21).* (i) A water control data system is all of the equipment within a division which is used to acquire, process, display and distribute information for real-time project regulation and associated interagency coordination. A subsystem is all equipment as defined previously within a district. A network is all equipment as defined previously which is used to regulate a single project or a group of projects which must be regulated interdependently.

(ii) Master plans for water control data systems and significant revisions thereto will be prepared by division water control managers and submitted to DAEN-CWE-HW by 1 February each year for review and approval of engineering aspects. Engineering approval does not constitute funding approval. After engineering approval is obtained, equipment in the master plan is eligible for consideration in the funding processes described in ER 1125–2–301

and engineering circulars on the annual budget request for civil works activities. Master plans will be maintained current and will:

(A) Outline the system performance requirements, including those resulting from any expected expansions of Corps missions.

(B) Describe the extent to which existing facilities fulfill performance requirements.

(C) Describe alternative approaches which will upgrade the system to meet the requirements not fulfilled by existing facilities, or are more cost effective then the existing system.

(D) Justify and recommend a system considering timeliness, reliability, economics and other factors deemed important.

(E) Delineate system scope, implementation schedules, proposed annual capital expenditures by district, total costs, and sources of funding.

(iii) Modified master plans should be submitted to DAEN-CWE-HW by 1 February, whenever revisions are required, to include equipment not previously approved or changes in scope or approach. Submittal by the February date will allow adequate time for OCE review and approval prior to annual budget submittals.

(iv) Division commanders are delegated authority to approve detailed plans for subsystems and networks of approved master plans. Plans approved by the division commander should meet the following conditions:

(A) The plan conforms to an approved master plan.

(B) The equipment is capable of functioning independently.

(C) An evaluation of alternatives has been completed considering reliability, cost and other important factors.

(D) The plan is economically justified, except in special cases where legal requirements dictate performance standards which cannot be economically justified.

(v) Copies of plans approved by the division commander shall be forwarded to appropriate elements in OCE in support of funding requests and to obtain approval of Automatic Data Processing Equipment (ADPE), when applicable.

(vi) Water control data systems may be funded from Plant Revolving Fund; O&M General; Flood Control, MR&T, and Construction, General. Funding for water control equipment that serves two or more projects will be from Plant Revolving Fund in accordance with ER 1125–2–301. District and division water control managers will coordinate plant revolving fund requests with their respective Plant Replacement and Improvement Program (PRIP) representatives following guidance provided in ER 1125–2–301. Budget funding requests under the proper appropriation title should be submitted only if the equipment is identified in an approved master plan.

(vii) Justification for the Automatic Data Processing Equipment (ADPE) aspects of water control data systems must conform to AR 18–1, Appendix I or J as required. The ''Funding for ADPE'' paragraph in Appendixes I and J must cite the source of funds and reference relevant information in the approved master plan and detailed plan.

(viii) Division water control managers will submit annual letter summaries of the status of their respective water control systems and five-year plan for improvements. These summaries will be submitted to DAEN-CWE by 1 June for coordination with DAEN-CWO, CWB and DSZ-A, prior to the annual budget request. Summaries should not be used to obtain approval of significant changes in master plans. Sources of funding for all items for each district and for the division should be delineated so that total system expenditures and funding requests are identified. Changes in the master plan submitted 1 February should be documented in this letter summary if the changes were approved.

(7) *Summary of runoff potentials in current season (RCS DAEN-CWO–2).* (i) The Chief of Engineers and staff require information to respond to inquiries from members of Congress and others regarding runoff potentials. Therefore, the division commander will submit a snowmelt runoff and flood potential letter report covering the snow accumulation and runoff period, beginning generally in February and continuing monthly, until the potential no longer exist. Dispatch of supplemental reports will be determined by the urgencies of situations as they occur. The reports

will be forwarded as soon as hydrologic data are available, but not later than the 10th of the month. For further information on reporting refer to ER 500–1–1, 33 CFR part 203.

(ii) During major drought situations or low-flow conditions, narrative summaries of the situation should be furnished to alert the Chief of Engineers regarding the possibility of serious runoff deficiencies that are likely to call for actions associated with Corps of Engineers reservoirs.

(iii) The reports referred to in paragraphs (m)(7) (i) and (ii) of this section will include general summaries regarding the status of reservoir storage, existing and forecasted at the time of the reports.

(8) *Reports on project operations during flood emergencies.* Information on project regulations to be included in reports submitted to the Chief of Engineers during flood emergencies in accordance with ER 500–1–1 include rate of inflow and outflow in CFS, reservoir levels, predicted maximum level and anticipated date, and percent of flood control storage utilized to date. Maximum use should be made of computerized communication facilities in reporting project status to DAEN-CWO-E/CWE-HW in accordance with the requirements of ER 500–1–1, 33 CFR part 203.

(9) *Post-flood summaries of project regulation.* Project regulation effects including evaluation of the stage reductions at key stations and estimates of damages prevented by projects will be included in the post flood reports required by ER 500–1–1, 33 CFR part 203.

(n) *Water Control Management Boards.* (1) The Columbia River Treaty Permanent Engineering Board was formed in accordance with the Columbia River Treaty with Canada. This board, composed of U.S. and Canadian members, oversees the implementation of the Treaty as carried out by the U.S. and Canadian Entities.

(2) The Mississippi River Water Control Management Board was established by ER 15–2–13. It consists of the Division Commanders from LMVD, MRD, NCD, ORD, and SWD with the Director of Civil Works serving as chairman. The purposes of the Board are:

(i) To provide oversight and guidance during the development of basin-wide management plans for Mississippi River Basin projects for which the US Army Corps of Engineers has operation/regulation responsibilities.

(ii) To serve as a forum for resolution of water control problems among US Army Corps of Engineers Divisions within the Mississippi River Basin when agreement is otherwise unobtainable.

(o) *List of projects.* Projects owned and operated by the Corps of Engineers subject to this regulation are listed with pertinent data in Appendix E. This list will be updated periodically to include Corps projects completed in the future. Federal legislation, Federal regulations and local agreements have given the Corps of Engineers wide responsibilities for operating projects which it does not own. Non-Corps projects subject to this regulation are included in Appendix A of ER 1110–2–241.

APPENDIX A TO § 222.5—REFERENCES

1. The Federal Power Act, Pub. L. 436–83, approved 10 June 1920, as amended (41 Stat. 1063; 16 U.S.C. 791(a))
2. Section 3 of the Flood Control Act approved 22 June 1936, as amended (49 Stat. 1571; 33 U.S.C. 701(c))
3. Section 9(b) of Reclamation Project Act of 1939, approved 4 August 1939 (53 Stat. 1187; 43 U.S.C. 485)
4. Section 7 of the Flood Control Act approved 22 December 1944 (58 Stat. 890; 33 U.S.C. 709)
5. Section 5 of Small Reclamation Projects Act of 6 August 1956, as amended (70 Stat. 1046; 43 U.S.C. 422(e))
6. Section 9 of Pub. L. 436–83d Congress (68 Stat. 303)
7. The Fish and Wildlife Coordination Act of 1958, Pub. L. 85–624
8. The Federal Water Project Recreation Act Uniform Policies, Pub. L. 89–72
9. The National Environmental Policy Act of 1969, Pub. L. 91–190
10. The Clean Water Act of 1977, Pub. L. 95–217
11. Executive Order 12088, Federal Compliance with Pollution Control Standards, 13 October 1978
12. 33 CFR 208.10, Local flood protection works; maintenance and operation of structures and facilities (9 FR 9999; 9 FR 10203)
13. 33 CFR 208.11, Regulations for use of Storage Allocated for Flood Control or Navigation and/or Project Operation at Reservoirs

subject to Prescription of Rules and Regulations by the Secretary of the Army in the Interest of Flood Control and Navigation (43 FR 47184)
14. AR 18–1
15. ER 11–2–101
16. ER 15–2–13
17. ER 500–1–1, 33 CFR part 203
18. ER 1110–2–241, 33 CFR part 208
19. ER 1110–2–1400
20. ER 1110–2–1402
21. ER 1110–2–1941
22. ER 1125–2–301
23. ER 1130–2–303
24. ER 1130–2–334
25. ER 1130–2–415
26. ER 1130–2–417
27. ER 1130–2–419
28. EM 1110–2–3600

APPENDIX B TO § 222.5—SUMMARY OF CORPS OF ENGINEERS RESPONSIBILITIES FOR PRESCRIBING REGULATIONS FOR NON-CORPS RESERVOIR PROJECTS

Summary

1. (a) ''Regulations for Use of Storage Allocated for Flood Control or Navigation and/or Project Operation at Reservoirs subject to Prescription of Rules and Regulations by the Secretary of the Army in the Interest of Flood Control and Navigation'' (33 CFR 208.11) prescribe the responsibilities and general procedures for regulating reservoir projects capable of regulation for flood control or navigation and the use of storage allocated for such purposes and provided on the basis of flood control and navigation, except projects owned and operated by the Corps of Engineers; the International Boundary and Water Commission, United States and Mexico; and those under the jurisdiction of the International Joint Commission, United States and Canada, and the Columbia River Treaty.

(b) Pertinent information on projects for which regulations are prescribed under Section 7 of the 1944 Flood Control Act, (Pub. L. 78–58 Stat. 890 (33 U.S.C. 709)) the Federal Power Act (41 Stat. 1063 (16 U.S.C. 791(A))) and Section 9 of Pub. L. 436–83d Congress (68 Stat. 303) is published in the FEDERAL REGISTER in accordance with 33 CFR 208.11.

Publication in the FEDERAL REGISTER establishes the fact and the date of a project's regulation plan promulgation.

2. Section 7 of Act of Congress approved 22 December 1944 (58 Stat. 890; 33 U.S.C. 709), reads as follows:

''Hereafter, it shall be the duty of the Secretary of War to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds provided on the basis of such purposes, and the operation of any such project shall be in accordance with such regulations: *Provided*, That this section shall not apply to the Tennessee Valley Authority, except that in case of danger from floods on the Lower Ohio and Mississippi Rivers the Tennessee Valley Authority is directed to regulate the release of water from the Tennessee River into the Ohio River in accordance with such instructions as may be issued by the War Department.''

3. Section 9(b) of the Reclamation Project Act of 1939, approved 4 August 1939 (53 Stat. 1189, 43 U.S.C. 485), provides that the Secretary of the Interior may allocate to flood control or navigation as part of the cost of new projects or supplemental works; and that in connection therewith he shall consult with the Chief of Engineers and may perform any necessary investigations under a cooperative agreement with the Secretary of the Army. These projects are subject to 33 CFR 208.11 regulations.

4. Several dams have been constructed by State agencies under provisions of legislative acts wherein the Secretary of the Army is directed to prescribe rules and regulations for project operation in the interest of flood control and navigation. These projects are subject to 33 CFR 208.11 regulations.

5. There are few dams constructed under Emergency Conservation work authority or similar programs, where the Corps of Engineers has performed major repairs or rehabilitation, that are operated and maintained by local agencies which are subject to 33 CFR 208.11 regulations.

6. The Federal Power Act, approved 10 June 1920, as amended (41 Stat. 1063, 16 U.S.C. 791 (A)), established the Federal Power Commission, now Federal Energy Regulatory Commission (FERC), with authority to issue licenses for constructing, operating, and maintaining dams or other project works for the development of navigation, for utilization of water power and for other beneficial public uses in any streams over which Congress has jurisdiction. The Chief of Engineers is called upon for advice and assistance as needed in formulating reservoir regulation requirements somewhat as follows:

a. In response to requests from the FERC, opinions and technical appraisals are furnished by the Corps of Engineers for consideration prior to issuance of licenses by the FERC. Such assistance may be limited to general presentations, or may include relatively detailed proposals for water control plans, depending upon the nature and scope of projects under consideration. The information furnished is subject to such consideration and use as the Chairman, FERC, deems appropriate. This may result in inclusion of simple provisions in licenses without elaboration, or relatively detailed requirements for reservoir regulation schedules and plans.

b. Some special acts of Congress provide for construction of dams and reservoirs by non-Federal agencies or private firms under

licenses issued by the FERC, subject to stipulation that the operation and maintenance of the dams shall be subject to reasonable rules and regulations of the Secretary of the Army in the interest of flood control and navigation. Ordinarily no Federal funds are involved, thus Section 7 of the 1944 Flood Control Act does not apply. However, if issuance of regulations by the Secretary of the Army is required by the authority under which flood control or navigation provisions are included as functions of the specific project or otherwise specified in the FERC license, regulation plans will be prescribed in accordance with 33 CFR 208.11 regulations.

7. Projects constructed by the Corps of Engineers for local flood protection purposes are subject to conditions of local cooperation as provided in Section 3 of the Flood Control Act approved 22 June 1936, as amended. One of those conditions is that a responsible local agency will maintain and operate all works after completion in accordance with regulations prescribed by the Secretary of the Army. Most such projects consist mainly of levees and flood walls with appurtenant drainage structures. Regulations for operation and maintenance of these projects has been prescribed by the Secretary of the Army in 33 CFR 208.10. When a reservoir is included in such a project, it may be appropriate to apply 33 CFR 208.10 in establishing regulations for operation, without requiring their publication in the FEDERAL REGISTER. For example, if the reservoir controls a small drainage area, has an uncontrolled flood control outlet with automatic operation or contains less than 12,500 acre-feet of flood control or navigation storage, 33 CFR 208.10 may be suitable. However, 33 CFR 208.11 regulations normally would be applicable in prescribing flood control regulations for the individual reservoir, if the project has a gated flood control outlet by which the local agency can regulate floods.

8. Regulation plans for projects owned by the Corps of Engineers are not prescribed in accordance with 33 CFR 208.11. However, regulation plans for projects constructed by the Corps of Engineers and turned over to other agencies or local interests for operation may be prescribed in accordance with 33 CFR 208.11.

9. The Small Reclamation Projects Act of 6 August 1956 provides that the Secretary of the Interior may make loans or grants to local agencies for the construction of reclamation projects. Section 5 of the Act provides in part that the contract covering any such grant shall set forth that operation be in accordance with regulations prescribed by the head of the Federal department or agency primarily concerned. Normally, 33 CFR 208.11 is not applicable to these projects.

APPENDIX C TO § 222.5—PROCEDURES FOR DEVELOPING AND PROCESSING REGULATIONS FOR NON-CORPS PROJECTS IN CONFORMANCE WITH 33 CFR 208.11

1. *Sequence of actions.* a. Discussions leading to a clarification of conditions governing allocations of storage capacity to flood control or navigation purposes and project regulation are initiated by District/Division Engineers through contacts with owners and/or operating agencies concerned at regional level.

b. Background information on the project and conditions requiring flood control or navigation services, and other relevant factors, are assembled by the District Engineer and incorporated in a ''Preliminary Information Report''. The Preliminary Information Report will be submitted to the Division Engineer for review and approval. Normally, the agency having jurisdiction over the particular project is expected to furnish information on project features, the basis for storage allocations and any other available data pertinent to the studies. The Corps of Engineers supplements this information as required.

c. Studies required to develop reservoir regulation schedules and plans usually will be conducted by Corps of Engineers personnel at District level, except where the project regulation affects flows in more than one district, in which case the studies will be conducted by or under supervision of Division personnel. Assistance as may be available from the project operating agency or others concerned will be solicited.

d. When necessary agreements are reached at district level, and regulations developed in accordance with 33 CFR 208.11 and EM 1110–2–3600, they will be submitted to the Division Commander for review and approval, with information copies for DAEN-CWE-HW. Usually the regulations include diagrams of operating parameters.

e. For projects owned by the Bureau of Reclamation, the respective Regional Directors are designated as duly authorized representatives of the Commissioner of Reclamation. By letter of 20 October 1976, the Commissioner delegated responsibilities to the Regional Directors as follows: ''Regarding the designated authorization of representatives of the Commissioner of Reclamation in matters relating to the development and processing of Section 7 flood control regulations, we are designating each Regional Director as our duly authorized representative to sign all letters of understanding, water control agreements, water control diagrams, water control release schedules and other documents which may become part of the prescribed regulations.

The Regional Director also will be responsible for obtaining the signature of the designated operating agency on these documents where such is required. Regarding internal coordination within the Bureau of Reclamation, the Regional Directors will obtain the review and approval of this office and at appropriate offices with our Engineering and Research Center, Denver, Colorado, prior to signing water control documents.''

f. In accordance with the delegation cited in paragraph e, 33 CFR 208.11 regulations pertaining to Bureau of Reclamation projects will be processed as follows:

(1) After regulation documents submitted by District Commanders are reviewed and approved by the Division Commander they are transmitted to the respective Regional Director of the Bureau of Reclamation for concurrence of comment, with a request that tracings of regulation diagrams be signed and returned to the Division Commander.

(2) If any questions arise at this stage appropriate actions are taken to resolve differences. Otherwise, the duplicate tracings of the regulation diagram are signed by the Division Commander and transmitted to the office of the project owner for filing.

(3) After full agreement has been reached in steps (1) and (2), the text of proposed regulations is prepared in final form. Copies of any diagrams involved are included for information only.

(4) A letter announcing completion of action on processing the regulations, with pertinent project data as specified in paragraph 208.11(d)(11) of 33 CFR 208.11, and one copy of the signed tracings of diagrams are forwarded to HQDA (DAEN-CWE-HW) WASH DC 20314 for promulgation and filing. The office of the Chief of Engineers will forward the pertinent project data to the Liaison Officer with the Federal Register, requesting publication in the FEDERAL REGISTER.

g. Regulations developed in accordance with 33 CFR 208.11 and applicable to projects that are not under supervision of the Bureau of Reclamation are processed in substantially the manner described above. All coordination required between the Corps of Engineers and the operating agency will be accomplished at field level.

h. Upon completion of actions listed above, Division Commanders are responsible for informing the operating agencies at field level that regulations have been promulgated.

2. *Signature blocks:* Some 33 CFR 208.11 regulations contain diagrams of parameter curves that cannot be published in the FEDERAL REGISTER, but are made a part thereof by appropriate reference. Each diagram bears a title block with spaces for the signature of authenticating officials of the Corps of Engineers and the owner/operating agency of the project involved.

3. *Designation of Corps of Engineers Representatives.* Division Commanders are designated representatives of the Chief of Engineers in matters relating to development and processing of 33 CFR 208.11 regulations for eventual promulgation through publication of selected data specified in paragraph (d)(11) § 208.11. Division Commanders are designated as the Corps of Engineers signee on all letters of understanding, water control agreements and other documents which may become part of prescribed regulations for projects located in their respective geographic areas, and which are subject to the provisions of 33 CFR 208.11.

APPENDIX D TO § 222.5—SAMPLE TABULATION

Bardwell Lake, Monthly Lake Report, May 1975

Day	Elevations 0800: 2,400 feet-MSL		Storage 2400 A-F	Evap DSF	Pump DSF	Release DSF	Inflow adj. DSF	Rain, inch
1	421.30	421.31	55979	28	2.0	0	84	0.00
2	421.32	421.37	56196	5	2.0	0	117	.00
3	421.43	421.44	56449	23	1.9	0	152	.14
4	421.45	421.47	56558	1	1.8	0	58	.00
5	421.49	421.34	56088	1	2.0	324	50	.00
6	421.20	421.01	54902	14	1.9	632	50	.00
7	420.88	420.89	54473	4	2.0	269	59	.09
8	420.89	420.91	54544	5	2.3	0	44	.00
9	420.90	420.89	54473	11	1.5	0	38	.00
10	420.90	420.90	54509	28	3.0	0	27	.00
11	420.91	421.35	56124	26	1.8	0	824	.00
12	421.54	421.65	57213	31	2.1	0	582	1.61
13	421.70	421.75	57578	29	2.2	0	216	.00
14	421.78	421.76	57614	34	1.9	249	303	.03
15	421.69	421.52	56739	22	1.9	643	225	.57
16	421.39	421.28	55871	39	2.1	535	138	.00
17	421.19	421.09	55188	10	2.2	393	119	.00
18	421.03	421.05	55045	46	2.0	143	60	.00
19	421.04	421.07	55116	17	2.3	0	55	.00
20	421.06	421.30	55943	21	2.1	0	440	.21
21	421.39	421.47	56558	20	2.1	0	332	.97
22	421.50	421.39	56268	42	2.1	247	145	.00
23	421.37	424.91	69726	31	2.0	328	7146	.22

APPENDIX D TO § 222.5—SAMPLE TABULATION—Continued

Bardwell Lake, Monthly Lake Report, May 1975

Day	Elevations 0800: 2,400 feet-MSL		Storage 2400 A-F	Evap DSF	Pump DSF	Release DSF	Inflow adj. DSF	Rain, inch
24	425.61	426.15	74825	22	2.0	0	2595	2.38
25	426.15	426.55	76523	18	2.3	0	876	.11
26	426.72	426.80	77598	42	2.1	0	586	.00
27	426.95	427.00	78465	23	2.0	0	462	.00
28	427.14	427.15	79116	31	2.1	0	361	.19
29	427.31	427.70	81528	61	1.9	0	1279	.20
30	427.94	428.05	83082	11	2.0	0	796	1.02
31	428.20	428.22	83837	7	2.1	0	389	.00
Monthly total:								
(DSF)				700	64	3763	18626	7.74
(A-F)			27966	1389	126	7464	36945	

APPENDIX E TO § 222.5—LIST OF PROJECTS

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Lower Mississippi Valley Division									
Alligator—Catfish FG	MS Issaquena	Little Sunflower	F	0.0	0.0	0.0	0	0	FCA Jun 36.
Arkabutla Lk	MS Desoto	Coldwater	F	525.0	238.3	209.3	33,400	5,100	FCA Jun 36.
Ascalmore—Tippo FG & CS	MS Tallahatchie	Ascalmore	F	0.0	136.0	118.0	0	0	FCA Jun 36.
Bienvenue FG	LA St Bernard	Bayou Bienvenue	F	0.0	2.0	2.0	0	0	PL 298–89
Big Lk Ditch #81 CS	AR Mississippi	Ditch 81 Extension.	C	0.0	0.0	230.0	0	0	FCA Oct 65.
Big Lk Div CS	AR Mississippi	Little R	C	0.0	0.0	230.0	0	0	FCA Oct 65.
Big Lk North End CS	AR Mississippi	Little R	C	0.0	0.0	230.0	0	0	FCA Oct 65.
Big Lk South end CS	AR Mississippi	Ditch 28	C	0.0	0.0	230.0	0	0	FCA Oct 65.
Birds Point—New Madrid Div Floodway.	MO New Madrid	Mississippi	F	0.0	330.5	328.5	131,000	71,000	FCA May 28.
Bodcau Lk	LA Bossier	Bayou Bodcau	F	35.3	199.5	157.0	21,000	110	PL 74–839.
Bonnet Carre Div Spillway	LA St Charles	Mississippi R	F	0.0	24.0	20.0	0	0	FCA May 28.
Bowman Lock	LA Vermilion	GIWW	I	0.0	1.2	1.2	0	0	PL 79–14.
Caddo Lk	LA Caddo	Cypress Bayou	N	128.6	182.7	168.5	59,000	26,800	FCA Oct 65.
Cairo 10th & 20th St PS	IL Pulaski	Ohio	F	0.0	310.5	299.0	0	0	PL 90–483.
Calcasieu SW Barrier & Lock	LA Calcasieu	Calcasieu R	I	0.0	1.2	1.2	0	0	RHA Oct 62. PL 79–525.
Calion L&D	AR Union	Ouachita	N	0.0	77.0	77.0	12,200	12,200	RHA 1950.
Calument FG East & West	LA St Mary	Wax Lake Outlet Bayou Teche.	FN	0.0	3.0	3.0	0	0	FCA Jun 36.
Cannon Re-reg	MO Ralls	Salt R	PCA	5.8	528.0	521.0	1,020	460	HD 507.
Carlyle Lk	IL Clinton	Kaskaskia R	F	699.0	462.5	445.0	50,440	24,580	SD 44.
			NMCAR	233.0	445.0	429.5	0	7,100	
Catahoula Lk CS	LA LaSalle	Catahoula Div	CR	118.0	34.0	27.0	25,000	94	RHA 1960.
Catfish Point CS	LA Cameron	Mermentau R	FN	0.0	1.2	1.2	0	0	FCA Aug 41, RHA Jul 64.
Charenton FG	LA St Mary	Grand Lk	FN	0.0	0.0	0.0	0	0	RHA Jul 46, FCA May 28.
Cocodrie FG FG	LA Concorida	Bayou Cocodrie	F	0.0	46.0	13.0	0	0	FCA Aug 41.
Collins Cr	MS Warren	Collins Cr	F	0.0	84.0	67.0	0	0	FCA 1941.
Columbia L&D	LA Caldwell	Ouachita	N	0.0	52.0	52.0	7,070	7,070	RHA 1950.
Connerly CS	AR Chicot	Connerly Bayou	FCR	0.0	116.0	106.0	0	0	FCA Aug 68.
Courtableau Drainage CS	LA St Landry	Bayou Courtableau	F	0.0	18.0	16.0	0	0	FCA May 28, PL 391–70.
Darbonne CS	LA St. Landry	Bayou Darbonne	FI	0.0	18.0	16.0	0	0	FCA May 28, PL 391–70.
DeGray LK	AR Desoto	Caddo	FNPMRA	881.9	423.0	345.0	23,800	6,400	RHA 1950, WSA 1958.
DeGray Rereg. St	AR Clark	Caddo	NMRA	3.6	221.0	209.0	430	90	RHA 1950. WSA 1958.
Ditch Bayou Dam	AR Chicot	Ditch Bayou	FCR	0.0	106.0	93.0	0	0	FCA Aug 68.
Drainage Dist #17 PS	AR Mississippi	Ditch 71	F	3.0	236.0	228.0	4,100	0	FCA Aug 68, PL 90–483.
Drinkwater PS	MO Mississippi	Drinkwater Sewer	F	20.6	315.0	307.0	4,000	700	FCA May 50, PL 516.
Dupre FG	LA St Bernard	Bayou Dupre	F	0.0	2.0	2.0	0	0	PL 298–89.
East St Louis PS	IL St. Clair	IDD	F	0.0	0.0	0.0	0	0	FC Act 36.
Empire FG Hurr Prot & Lock	LA Plaque mines	Mississippi R	F	0.0	5.0	5.0	0	0	PL 874–87.
Enid Lk	MS Yalobusha	Yacona	F	660.0	268.0	230.0	28,000	6,100	FCA Jun 36.
Felsenthal L&D	AR Union	Ouachita	N	32.5	70.0	65.0	46,500	17,500	RHA 1950.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Finley Street PS	TN Dyer	Forked Deer	F	0.5	269.0	257.0	94	22	FCA 1948, PL 85–500.
Freshwater Lock	LA Vermilion	Freshwater Bayou	I	0.0	0.0	0.0	0	0	PL 86–645.
			NI						
Graham Burke PS	AR Phillips	White	F	2,805.0	174.8	140.0	149,000	2,500	FCA May 28, PL 85–500.
Grenada Lk	MS Grenada	Yalobusha Skuna	F	1,357.4	231.0	193.0	64,600	9,800	FCA Jun 36.
Huxtable PS	AR Lee	St Francis	F	2,863.0	207.2	165.0	18,500	1,400	FCA May 50.
Jonesville L&D	LA Catahoula	Black	N	0.0	34.0	34.0	7,120	7,120	RHA 1950.
Kaskaskia L&D	IL Randolph	Kaskaskia R	N	1.1	368.0	363.0	1,300	1,200	SD 44.
L&D 1	LA Catahula	Red R	N	0.0	40.0	40.0	0	0	PL 90–483.
L&D 2	LA Rapides	Red R	N	0.0	71.2	64.0	0	0	PL 90–483.
L&D 3	LA Rapides	Red R	N	0.0	95.0	91.5	0	0	PL 90–483.
L&D 4	LA Natchitoches	Red R	N	0.0	120.0	119.6	0	0	PL 90–483.
L&D 5	LA Red R	Red R	N	0.0	145.0	140.2	0	0	PL 90–483.
L&D 24	MO Pike	Mississippi R	N	29.7	449.0	445.0	13,000	12,000	R&H Act, Jul 3/30. R&H Act, Aug 30/35.
L&D 25	MO Lincoln	Mississippi R	N	49.7	434.0	429.7	18,000	16,600	R&H Act, Jul 3/30. R&H Act, 8/30/35.
L&D 26	IL Madison	Mississippi R	N	107.1	419.0	414.0	30,000	27,700	R&H Act, Jul 3/30. R&H Act, 8/30/1935.
Larose to Golden Meadow Hurr Prot FG.	LA LaFourche	Bayou LaFourche	F	0.0	3.0	3.0	0	0	FCA Oct 65, PL 89–298.
Little Sun flower CS	MS Issaquena	Lit. Sunflower	F	0.0	85.0	60.0	0	0	FCA 1941.
Lk #9 Culvert & PS	KY Fulton	Mississippi	F	6.5	286.0	282.0	0	0	FCA Oct 65.
Lk Chicot PS	AR Chicot	Macon Lk	FCR	0.0	118.2	90.0	0	0	FCA Aug 68.
Lk Greeson	AR Pike	Little Missouri	P	0.0	563.0	436.9	0	0	FCA 1941.
			FP	407.9	563.0	504.0	9,800	2,500	
Lk Ouachita	AR Garland	Ouachita	P	0.0	592.0	480.0	0	0	FCA Dec 44.
Long Branch DS	LA Catahoula	Catahoula Div	F	0.0	32.5	32.5	0	0	FCA May 50.
Mark Twain Lk	MO Ralls	Salt R	F	894.0	638.0	606.0	38,400	18,600	HD 507.
			PMCAR	457.0	606.0	567.2	18,600	5,900	
Marked Tree Siphon	AR Poinsett	St. Francis	F	0.0	229.0	198.3	0	0	FCA Jun 30.
Morganza Div CS	LA Point Coupee	Morganza Floodway	F	0.0	59.5	49.0	0	0	FCA May 28.
Muddy Bayou CS	MS Warren	Muddy Bayou	FC	30.0	76.9	70.0	4,350	2,860	FCA Oct 65.
Old River Div CS Low Sill Overbank & Aux.	LA W. Feliciana	Old R	F	0.0	70.0	5.0	0	0	PL 83–780.
Old River Lock	LA W Feliciana	Old R	N	0.0	65.4	10.0	0	0	FCA Sep 54, PL 780–83.
Port Allen Lock	LA Port Allen	GIWW	N	0.0	46.1	2.6	0	0	RHA Jul 46.
Prairie Dupont East & West PS	IL St Clair	IDD	F	0.0	0.0	0.0	0	0	FC Act 62.
Rapides-Boeuf Div Canal CS	LA Rapides	Bayou Rapides	F	0.0	66.0	62.2	0	0	FCA Aug 41, GD 359–77.
Rend Lk	IL Franklin	Big Muddy R	F	109.0	405.0	410.0	24,800	18,900	HD 541.
			MA	160.0	405.0	391.3	18,900	5,400	
Sardis Lk	MS Panola	Little Sunflower	F	1,569.9	281.4	236.0	58,500	10,700	FCA Jun 36.
Schooner Bayou CS & Lock	LA Vermilion	Schooner Bayou	I	0.0	1.2	1.2	0	0	FCA Aug 41.
Shelbyville Lk	IL Shelby	Kaskaskia R	F	474.0	626.5	599.7	25,300	11,100	HD 232.

			NMCAR	180.0	599.7	573.0	11,100	3,000	
Sorrell Lock	LA Iberville	GIWW	N	0.0	29.7	3.5	0	0	FCA May 28.
St Francis Lk CS	AR Poinsett	Oak Donnick Floodway	C	0.0	0.0	210.0	0	2,240	FCA Oct 65.
Steele Bayou CS	MS Issaquena	Steele Bayou	F	0.0	68.5	60.0	0	0	FCA 1941.
Tchula Lk Lower FG	MS Humphreys	Tchula Lk	F	0.0	110.0	84.0	0	0	FCA Jun 36.
Tchula Lk Upper FG	MS Humphreys	Tchula Lk	F	0.0	108.0	92.0	0	0	FCA Jun 36.
Teche-Vermilion PS & CS	LA St Mary	Atchafalaya R	MI	0.1	18.0	16.0	0	0	PL 89–789, FCA May 28.
Tensas-Cocodrie PS	LA Cocordia	Bayou Corcodrie	F	0.0	37.0	23.0	0	0	FCA Oct 65.
Treasure Island PS	MO Dunklin	Little R	F	23.4	252.0	235.0	7,800	180	FCA Jul 46.
Wallace Lk	LA Caddo	Cypress Bayou	F	96.1	158.0	142.0	9,300	2,300	RHA Mar 45, PL 75–761.
Wappapello Lk	MO Wayne	St Francis R	F	613.2	394.7	354.7	23,200	5,200	HD 159.
Wasp Lk	MS Humphreys	Wasp Lk-Bear Cr	F	0.0	111.6	88.5	0	0	FCA Jun 36.
West Hickman PS	KY Fulton	Mississippi	F	0.0	302.0	296.0	9	4	FCA 1948.
Wood R PS	IL Madison	IDD	F	0.0	0.0	0.0	0	0	FC Act 38.
Yazoo City PS	MS Yazoo	Yazoo	F	0.0	96.0	69.0	0	0	FCA Jun 36.
			Missouri River Division						
Bear Creek Dam & Res	CO Jefferson	Bear Cr	F	28.8	5,635.5	5,558.0	718	109	PL 90–483.
			FCR	1.9	5,558.0	5,528.0	109	17	SD 87–90.
Big Bend Dam & Lk Sharpe	SD Lyman Buffalo Hughes.	Missouri R	F	61.0	1,423.0	1,422.0	61,000	60,000	PL 78–534.
			FNPIMCAR	117.0	1,422.0	1,420.0	60,000	57,000	SD 247–78.
Blue Springs Dam & Lk	MO Jackson	Little Blue R	F	15.8	820.0	802.0	982	722	PL 90–483.
			FRC	10.8	802.0	760.0	722	0	HD 169–90.
Blue Stem Lake & Dam 4	NE Lancaster	Olive Br. Salt Creek	F	7.2	1,322.5	1,307.4	660	315	PL 85–500.
			FCR	3.0	1,307.4	1,277.0	315	1	HD 396–84.
Bowman-Haley Dam & Res	ND Bowman	No Fk Grand River	F	72.7	2,777.0	2,754.8	5,131	1,732	PL 87–874.
			FMCR	15.5	2,754.8	2,740.0	1,732	565	HD 574–87.
Branched Oak Lk & Dam 18	NE Lancaster	Oak Creek trib. Salt Creek.	F	71.6	1,311.0	1,284.0	3,640	1,780	PL 85–500.
			FCR	26.0	1,284.0	1,250.0	1,780	0	HD 396–84.
Bull Hook Dam	MT Hill	Bull Hook Cr Scott Coulee.	F	6.5	2,593.0	2,540.0	283	0	PL 78–534.
Cedar Canyon Dam	SD Pennington	Deadman's Gulch	F	0.1	3,545.0	3,526.0	11	2	PL 80–858.
Chatfield Dam & Res	CO Douglas	S Platte	F	204.7	5,500.0	5,432.0	4,742	1,412	PL 81–516.
			FQ	26.7	5,432.0	5,385.0	1,412	12	HD 669–80.
Cherry Cr Dam & Res	CO Araphahoe	Cherry Cr	F	80.0	5,598.0	5,550.0	2,637	852	PL 77–228.
			FR	14.0	5,550.0	5,504.0	852	0	HD 426–76, PL 78–534.
Clinton Dam & Lk	KS Douglas	Wakarusa R	F	267.8	903.4	875.5	12,891	7,006	PL 87–874.
			FMCAR	129.2	875.5	820.0	7,006	0	SD 122–87.
Cold Brook Dam & Res	SD Fall River	Cold Brook	F	6.7	3,651.4	3,585.0	198	36	PL 77–228.
			FR	0.5	3,585.0	3,548.0	36	0	HD 655–76.
Conestoga Lake & Dam 12	NE Lancaster	Holmes Cr Trib to Salt Cr.	F	8.0	1,252.0	1,232.9	620	230	PL 85–500.
			FCR	2.6	1,232.9	1,197.0	230	1	HD 396–84.
Cottonwood Springs Dam & Res	SD Fall River	Cottonwood Springs Cr	F	7.7	3,936.0	3,875.0	214	44	PL 77–228.
			FR	0.2	3,875.0	3,868.0	44	30	HD 655–76.
Fort Peck Dam & Res	MT Valley, Mc Cone Garfield.	Missouri R	F	977.0	2,250.0	2,246.0	249,000	240,000	PL 73–409.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
			FNPIMCAR	13,649.0	2,246.0	2,160.0	240,000	92,000	PL 75–529, HD 238–73. PL 78–534, SD 247–78.
Fort Randall Dam, Lk Francis Case	SD Gregory Charles	Missouri R	F	985.0	1,375.0	1,365.0	102,000	95,000	PL 78–534.
			FNPIMCAR	3,021.0	1,365.0	1,320.0	95,000	41,000	SD 247–78.
Garrison Dam, Lk Sakakawea	ND Mercer McLean	Missouri R	F	1,494.0	1,854.0	1,850.0	382,000	365,000	PL 78–534.
			FNPIMCAR	17,440.0	1,850.0	1,775.0	365,000	129,000	SD 247–78.
Gavins Point Dam, Lewis & Clark Lk	SD Yankton	Missouri R	F	61.0	1,210.0	1,208.0	32,000	29,000	PL 78–534.
	NE Knox		FNPIMCAR	95.0	1,208.0	1,204.5	29,000	25,000	SD 247–78.
Glenn Cunningham Lk, Dam 11	NE Douglas	Little Papillion Cr	F	14.0	1,142.0	1,121.0	922	392	PL 90–483.
			FRCA	3.9	1,121.0	1,085.0	392	0	HD 349–90.
Harlan County Lk	NE Harlan	Republican R	F	498.0	1,973.5	1,946.0	23,064	13,249	PL 77–228.
			FI	342.6	1,946.0	1,875.0	13,249	0	HD 892–76, PL–78–534.
Harry S Truman Dam & Res	MO Benton	Osage R	F	4,005.9	739.6	706.0	209,300	55,600	PL 83–780.
			FPCR	1,203.4	706.0	635.0	55,600	0	HD 549–81, PL 87–874. HD 578–87.
Hillsdale Lk	KS Miami	Big Bull Cr	F	83.6	931.0	917.0	7,410	4,580	PL 83–780.
			FNMCAR	76.3	917.0	852.4	4,580	0	HD 642–81.
Holmes Park Lk & Dam 17	NE Lancaster	Antelope Cr Trib to Salt Cr.	F	5.7	1,266.0	1,242.4	410	100	PL 85–500.
			FCR	0.8	1,242.4	1,218.0	100	3	HD 396–84.
Kanopolis Lk	KS Ellsworth	Smoky Hill R	F	370.0	1,508.0	1,463.0	13,999	3,560	PL 75–761.
			FI	55.8	1,463.0	1,425.0	3,560	0	PL 78–534, HD 842–76.
Kelly Road Dam	CO Araphoe	Westerly Cr	F	0.3	5,362.0	5,342.0	38	0	PL 80–858, PL 84–99.
Long Branch Lk	MO Randolph	Little East Fk Chariton R	F	30.4	801.0	791.1	3,670	2,429	PL 89–298.
			FCAR	34.6	791.0	751.1	2,429	0	HD 238–89.
Longview Lk	MO Jackson	Little Blue R	F	24.8	909.0	891.0	1,960	930	PL 90–483.
			FCAR	22.1	891.0	810.0	930	0	HD 169–90.
Melvern Lk	KS Osage	Marais des Cygnes R	F	208.4	1,057.0	1,036.0	13,948	6,928	PL 83–780.
			FNMCAR	154.4	1,036.0	960.0	6,928	0	PL 75–761, HD 549–81.
Milford Lk	KS Geary	Republican R	F	756.7	1,176.2	1,144.4	27,255	17,270	PL 83–780.
			FCA	388.8	1,144.4	1,080.0	15,709	0	HD 642–81, PL 75–761.
Oahe Dam & Lk	ND 4 Counties	Missouri R	F	1,097.0	1,620.0	1,617.0	373,000	359,000	PL 78–534.
	SD 8 Counties		FNPIMCAR	16,789.0	1,617.0	1,540.0	359,000	117,000	SD 247–78.
Olive Cr Lk & Dam 2	NE Lancaster	Olive Br of Salt Cr	F	4.0	1,350.0	1,335.0	355	174	HD 396–84.
			FCR	1.5	1,335.0	1,314.0	174	4	PL 85–500.
Papio Dam Site #18 & Lk	NE Douglas	Boxelder Cr Papio Cr	F	7.1	1,128.2	1,110.0	595	255	PL 90–483.
			FCAR	3.4	1,110.0	1,060.5	255	0	HD 349–90.
Papio Dam Site #20 & Lk	NE Sarpy	Trib South Branch Papio	F	6.1	1,113.1	1,096.0	493	246	PL 90–483.
			FCAR	2.7	1,096.0	1,069.0	246	10	HD 349–90.
Pawnee Lk & Dam 14	NE Lancaster	No. Middle Cr of Salt Cr	F	21.0	1,263.5	1,244.3	1,470	728	PL 85–500.
			FCR	8.5	1,244.3	1,206.0	728	1	HD 396–84.
Perry Lk	KS Jefferson	Delaware R	F	521.9	920.6	891.5	25,342	12,202	PL 83–780.
			FN	243.2	891.5	825.0	122	0	HD 642–81.
Pipestem Dam & Res	ND Stutsman	Pipestem Cr	F	137.0	1,496.3	1,442.4	4,754	885	PL 89–298.

			FRC	9.6	1,442.4	1,415.0	885	62	HD 266–89.
Pomme De Terre Lk	MO Polk	Pomme De Terre R	F	407.2	874.0	839.0	15,980	7,890	PL 75–761.
			FNPCAR	241.6	839.0	750.0	7,890	0	HD 549–81, PL 83–780.
Pomona Lk	KS Osage	110 Mile Cr	F	176.8	1,003.0	974.0	8,520	400	PL 83–780.
			FNMAR	70.6	974.0	912.0	4,000	0	HD 549–81.
Rathbun Lk	IA Appanoose	Chariton R	F	346.3	926.0	904.0	20,948	11,013	PL 83–780.
			FNM	205.4	904.0	844.0	11,013	0	HD 561–81.
Smithville Lk	MO Clay	Little Platte R	F	101.8	876.2	864.2	9,995	7,192	PL 89–298.
			FMCAR	144.6	864.2	799.0	7,192	0	HD 262–89.
Spring Gulch Imbankment	CO Douglas	Spring Gulch	F	1.8	5,600.00	5,535.0	88	0	PL 81–516, HD 669–80.
Stagecoach Lk & Dam 9	NE Lancaster	Hickman Br of Salt Cr	F	4.7	1,285.0	1,271.1	490	196	PL 85–500.
			FRC	1.9	1,271.1	1,246.0	196	0	HD 396–84.
Standing Bear Lk & Dam 16	NE Douglas	Trib Big Papillion Cr	F	3.7	1,121.0	1,104.0	302	137	PL 90–483.
			FRC	1.5	1,104.0	1,060.0	137	0	HD 349–90.
Stockton Lk	MO Cedar	Sac R	F	779.6	892.0	867.0	38,288	24,777	PL 83–780.
			FARPN	887.1	867.0	760.0	24,777	0	HD 549–89.
Tuttle Creek Lk	KS Riley	Big Blue R	F	1,937.4	1,136.0	1,075.0	54,179	14,875	PL 75–761.
			FN	177.1	1,075.0	1,061.0	14,875	0	HD 842–76.
Twin Lakes & Dam 13	NE Seward	Middle Cr Salt Cr	F	5.3	1,355.0	1,341.0	505	255	PL 85–500.
			CFR	2.8	1,341.0	1,306.0	255	1	HD 396–84.
Wagon Train Lk & Dam 8	NE Lancaster	Hickman Br of Salt Cr	F	6.8	1,302.0	1,287.8	660	303	PL 85–500.
			FCR	2.5	1,287.8	1,260.0	303	4	HD 396–84.
Wehrspann Lk & Dam 20	NE Sarpy	Trib South Branch Papio	F	6.1	1,113.1	1,096.0	493	246	PL 90–483.
			FCAR	2.7	1,096.0	1,069.0	246	10	HD 349–90.
Wilson Lk	KS Russell	Saline R	F	530.7	1,554.0	1,516.0	19,980	9,040	PL 78–534.
			FRC	247.8	1,516.0	1,440.0	9,040	0	SD 191–78, SD 247–78.
Yankee Hill Lk & Dam 10	NE Lancaster	Cardwell Br of Salt Cr	F	5.6	1,262.0	1,244.9	475	208	PL 85–500.
			FCR	2.0	1,244.9	1,218.0	208	0	HD 396–84.
North Atlantic Division									
Almond Lake	NY Steuben	Canacadea Cr	F	14.6	1,300.0	1,255.0	489	124	PL 74–738.
Alvin R. Bush Dam	PA Clinton	Kettle Cr	F	73.4	937.0	840.0	1,430	160	FCA Sep 54.
Arkport Dam	NY Steuben	Canisteo R	F	8.0	1,304.0	1,218.0	192	0	PL 74–738.
Aylesworth Cr Lk	PA Lackawanna	Aylesworth Cr	F	1.7	1,150.0	1,108.0	87	7	PL 87–874.
Beltzville Dam & Lk	PA Carbon, Monroe	Pohopoco Cr	F	27.0	651.0	628.0	1,411	947	PL 87–874.
			FMA	39.8	628.0	537.0	947	113	
Bloomington Lk	MD Garret	North Branch Potomac R	F	36.2	1,500.0	1,466.0	1,184	952	PL 87–874.
			FMA	92.0	1,466.0	1,255.0	952	42	
Blue Marsh Dam & Lk	PA Lebanon Berks	Tulpehocken CR	F	27.1	307.0	290.0	2,159	1,147	PL 87–874.
			FMA	19.9	290.0	261.0	1,147	323	
Cowanesque Lk	PA Tioga	Cowanesque R	F	82.0	1,117.0	1,045.0	2,060	410	PL 85–500.
Curwensville Lk	PA Clearfield	West Branch Susquehanna R.	F	114.7	1,228.0	1,162.0	3,020	790	FCA Sep 54.
East Sidney Lk	NY Delaware	Ouleout Cr	F	30.2	1,203.0	1,150.0	1,100	210	PL 74–738.
Foster Joseph Sayers Dam	PA Centre	Bald Eagle Cr	F	70.2	657.0	630.0	3,450	1,730	FCA Sept 54.
Francis E. Walter Dam & Res	PA Carbon, Luzerne, Monroe.	Lehigh R	F	107.8	1,450.0	1,300.0	1,830	80	PL 79–526.
Gathright Dam & Lk Moomaw	VA Alleghany, Bath	Jackson R	F	79.9	1,610.0	1,582.0	3,160	2,530	PL 79–526.
			AR	60.7	1,582.0	1,554.0	2,530	1,780	

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
General Edgar Jadwin Dam	PA Wayne	Dyberry Cr	F	24.5	1,053.0	973.0	659	0	PL 80–858.
Prompton Dam & Res	PA Wayne	W Br Lackawaxen R	F	48.5	1,205.0	1,125.0	910	290	PL 80–858.
Raystown Lk	PA Huntingdon	Raystown Br	F	248.0	812.0	786.0	10,800	8,300	PL 87–874.
			FR	514.0	786.0	622.8	8,300	150	
Stillwater Lk	PA Susquehanna	Lackawanna R	F	11.6	1,621.0	1,572.0	422	83	PL 77–228.
Tioga-Hammond Lakes Hammond	PA Tioga	Crooked Cr	F	54.2	1,131.0	1,086.0	1,770	680	PL 85–500.
Tioga-Hammond Lakes Tioga	PA Tioga	Tioga R	F	52.5	1,131.0	1,081.0	1,630	470	PL 85–500.
Whitney Piont Lk	NY Broome	Otselic R	F	66.5	1,010.0	973.0	3,340	1,200	PL 74–738.
York Indian Rock Dam	PA York	Codorus Cr	F	28.0	435.0	370.0	1,430	0	PL 74–738.
North Central Division									
Badhill Dam & Res	ND Barnes	Sheyenne R	FM	68.6	1,266.0	1,257.2	5,430	4,430	FCA Dec 44.
Brandon Road L&D	IL Will	Illinois R	N	8.0	539.0	538.0	300	250	PL 71–126.
Cedars L&D	WI Outagamie	Fox R	N	1.8	703.6	698.7	255	140	RHA of 1882, 1885.
Coralville Dam & Res	IA Johnson	Iowa R	F	439.0	712.0	680.0	24,800	3,580	PL 75–761.
			C	40.3	680.0	652.0	3,580	0	PL 75–761.
Depree L&D	WI Brown	Fox R	N	9.4	591.0	586.7	926	0	PL 71–126.
Dresden Island L&D	IL Grundy	Illinois R	N	1.0	505.0	504.0	1,690	1,550	FCA 1958.
Eau Galle Dam & Res	WI Pierce	Eau Galle R	FCR	1.6	940.0	938.5	1,500	1,350	PL 78–534.
Farmdale Dam	IL Tazwell	Farm Cr	F	11.3	616.0	551.0	385	0	PL 78–534.
Fondulac Dam	IL Tazwell	Fondulac Cr	F	2.3	579.0	530.0	97	0	PL 78–534.
Gull Lk Dam & Res	MN Cass	Gull R	N	70.4	1,194.0	1,192.7	13,100	12,700	RHA 1899.
Highway 75 Dam & Res	MN Bigstone, Lacqui, Parle.	Minnesota R	FC	11.1	952.3	947.3	2,790	910	FCA Oct 65.
Homme Dam & Res	ND Walsh	Park R	FM	3.7	1,080.0	1,074.0	190	176	FCA of 22 Dec 44.
L&D 1	MN Hennepin, Ramsey	Mississippi R	N	13.0	725.1	722.8	5,800	5,500	RHA 1910.
L&D 2	MN Dakota, Wash	Mississippi R	N	8.0	687.2	686.5	11,810	11,000	RHA 1927.
L&D 3	MN Goodhue, Pierce	Mississippi R	N	17.8	675.0	674.0	17,950	17,650	RHA 1930.
L&D 4	WI Wabasha, Buffalo	Mississippi R	N	18.0	667.0	666.5	38,820	36,600	RHA 1930.
L&D 5	MN Winona, Buffalo	Mississippi R	N	6.2	660.0	659.5	12,680	12,000	RHA 1930.
L&D 5A	MN Winona, Buffalo	Mississippi R	N	7.2	651.0	650.0	7,500	7,000	RHA 1930.
L&D 6	MN Winona	Mississippi R	N	8.4	645.5	644.5	8,870	8,000	RHA 1930.
L&D 7	MN Winona WI LaCrosse	Mississippi R	N	2.6	639.0	639.0	13,440	13,400	RHA 1930.
L&D 8	MN Houston WI Vernon	Mississippi R	N	20.4	631.0	630.0	20,800	20,000	RHA 1930.
L&D 9	WI Crawford IA Allamakee	Mississippi R	N	28.7	620.0	619.0	29,125	28,300	RHA 1930.
L&D 10	IA Clayton WI Grant	Mississippi R	N	16.8	611.0	610.0	17,070	16,500	RHA 1930.
L&D 11	IA Dubuque	Mississippi R	N	19.1	603.1	602.0	21,100	20,000	PL 71–520.
L&D 12	IA Jackson	Mississippi R	N	12.2	592.1	591.0	13,000	12,400	PL 71–520.
L&D 13	IL Whiteside	Mississippi R	N	24.2	583.1	582.0	30,000	28,500	PL 71–520.

L&D 14	IA Scott	Mississippi R	N	9.0	572.1	571.0	10,500	9,980	PL 71–520.
L&D 15	IL Rock Island	Mississippi R	N	5.5	561.1	559.0	3,725	3,540	PL 71–520.
L&D 16	IL Rock Island	Mississippi R	N	12.1	545.1	544.0	13,000	12,400	PL 71–520.
L&D 17	IL Mercer	Mississippi R	N	7.5	537.1	536.0	7,580	7,200	PL 71–520.
L&D 18	IL Henderson	Mississippi R	N	11.0	529.1	528.0	13,300	12,600	PL 71–520.
L&D 19	IA Lake	Mississippi R	N	55.0	518.2	517.2	33,500	31,800	PL 71–520.
L&D 20	MO Lewis	Mississippi R	N	5.8	481.5	476.5	7,960	7,550	PL 71–520.
L&D 21	IL Adams	Mississippi R	N	8.6	470.1	469.6	9,390	8,910	PL 71–520.
L&D 22	MO Polke	Mississippi R	N	8.4	459.6	459.1	8,660	8,230	PL 71–520.
Lac qui Parle Dam & Res	MN Chippewa Swift	Minnesota R	FC	119.3	941.1	931.2	13,500	6,400	FCA of 22 Jun 36.
Lagrange L&D	IL Brown	Illinois R	N	0.0	429.0	429.0	10,500	10,500	PL 73–184.
Leech Lake Dam & Res	MN Cass	Leech R	N	300.2	1,295.7	1,293.2	139,000	107,200	RHA of 1882 1895.
Little Kaukauna L&D	WI Brown	Fox R	N	3.6	601.0	592.8	447	42.0	RHA of 1882 1885.
Little Chute L&D	WI Outagamie	Fox R	N	0.4	694.2	688.9	74	67	RHA of 1882 1885.
Lockport Lock	IL Will	Chicago San Ship Canal	FNP	2.7	579.0	577.5	1,850	1,800	RHA 1930.
Lower Appleton L&D	WI Outagamie	Fox R	N	0.2	710.9	706.3	43	40	RHA of 1882 1895.
Marseilles Lk & Dam	IL LaSalle	Illinois R	N	0.7	483.0	482.8	1,400	1,320	PL 71–126.
Marsh Lake Dam & Res	MN Swift, Lacqui, Parle	Minnesota R	FC	23.9	941.1	937.6	8,650	5,150	FCA Jun 36.
Menasha Dam Lk Winnebago	WI Winnebago	Fox R	FN	452.0	746.8	743.5	181,120	168,500	
Mount Morris Dam	NY Livingston	Genesee R	F	337.4	760.0	585.0	3,300	0	PL 74–738.
O'Brien L&D	IL Cook	Calumet	N	0.3	581.9	578.2	50	50	RHA of 1946.
Peoria L&D	IL Peoria	Illinois R	N	0.0	440.0	440.0	27,800	27,800	PL 73–184.
Pine Dam & Res	MN Crow Wing	Pine R	N	40.4	1,230.3	1,227.3	13,900	13,000	RHA of 1899.
Pokegama Dam & Res	MN Itasca	Mississippi R	N	52.4	1,274.4	1,270.3	13,700	12,000	RHA of 1899.
Rapid Croche L&D	WI Outagamie	Fox R	N	3.4	608.5	602.1	568	0	RHA 1885.
Red Lake Dam & Res	MN Clearwater	Red Lake R	FA	1,810.0	1,174.0	1,173.5	288,800	287,300	FCA Dec 44.
Red Rock Dam & Res	IA Marion	Des Monies R	F	1,670.0	780.0	728.0	65,400	8,000	PL 75–761.
			R	72.0	728.0	690.0	8,000	0	PL 75–761.
Reservation Control Res	MN Traverse SD Roberts.		FC	58.8	981.0	976.0	12,400	10,950	FCA 1936.
Sandy Lake Dam & Res	MN Aitkin	Sandy R	N	37.5	1,218.3	1,214.3	10,600	8,200	RHA of 1899.
Saylorville Dam & Res	IA Polk	Des Moines R	F	586.0	890.0	836.0	16,700	5,950	FCA 1936.
			P	90.0	836.0	810.0	5,950	0	FCA.
St Anthony Falls Lwr L&D	MN Hennepin	Mississippi R	N	0.0	750.0	750.0	50	50	RHA of 1937 1945.
St Anthony Falls Upr L&D	MN Hennepin	Mississippi R	N	17.4	801.0	799.0	8,800	8,600	RHA of 1937 1945.
Starved Rock L&D	IL LaSalle	Illinois R	N	1.0	459.0	458.0	1,155	1,020	PL 69–100.
Upper Appleton L&D	WI Outagamie	Fox R	N	7.4	738.7	735.4	1,171	1,040	RHA of 1882 1885.
Upper Kaukauna L&D	WI Outagamie	Fox R	N	1.1	656.8	652.8	134	115	RHA of 1882 1885.
White Rock Dam & Res	MN Traverse SD Roberts.	Bois De Souix	FC	78.6	981.0	972.0	10,500	4,000	FCA 1936.
Winnibigoshish Dam & Res	MN Cass Itasca	Mississippi R	N	98.7	1,300.9	1,296.9	98,700	62,000	RHA of 1899.
New England Division									
Ball Mountain Lk	VT Windham	West R	F	52.4	1,017.0	830.5	810	20	PL 78–534, 83–780.
Barre Falls Dam	MA Worcester	Ware R	F	24.0	807.0	761.0	1,400	0	PL 78–228.
Birch Hill Dam	MA Worcester	Millers R	F	49.9	852.0	815.0	3,200	0	PL 75–761.
Black Rock Lk	CT Litchfield	Branch Brook	F	8.5	520.0	437.0	190	21	PL 86–45.
Blackwater Dam	NH Merrimack	Blackwater R	F	46.0	566.0	515.0	3,280	0	PL 75–111.
Buffumville Lk	MA Worcester	Little R	F	11.3	524.0	492.5	530	200	PL 77–228.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Colebrook River Lk	CT Litchfield MA Bekshire	West Branch Farmington R.	F	50.2	761.0	708.0	1,185	750	PL 86–645.
Conant Brook Dam	MA Hampden	Conant Brook	F	3.7	757.0	694.0	158	0	PL 86–645.
East Brimfield Lk	MA Hampden, Worcester.	Quinebaug R	F	29.9	653.0	632.0	2,300	360	PL 77–228.
Edward MacDowell Lk	NH HIllsboro	Nubanusit Brook	F	12.8	946.0	911.0	840	165	PL 75–111.
Everett Lk	NH Hillsboro, Merrimack	Piscataquog R	F	91.5	418.0	340.0	2,900	130	PL 75–761.
Franklin Falls Dam	NH Belknap, Merrimack	Pemigewasset R	F	150.6	389.0	307.0	2,800	440	PL 75–111.
Hancock Brook Lk	CT Litchfield	Hancock Brook	F	3.9	484.0	460.0	266	40	PL 86–645.
Hodges Village Dam	MA Worcester	French R	F	13.3	501.0	465.5	740	0	PL 77–228.
Hop Brook Lk	CT New Haven	Hop Brook	F	6.9	364.0	310.0	270	21	PL 86–645.
Hopkinton Lk	NH Merrimack	Contoocook R	F	70.1	416.0	380.0	3,700	220	PL 75–761.
Knightville Dam	MA Hampshire	Westfield R	F	49.0	610.0	480.0	960	0	PL 75–761.
Littleville Lk	MA Hampden, Hampshire.	Middle Br, Westfield R	F	23.0	576.0	518.0	510	275	PL 85–500.
Mansfield Hollow Lk	CT Tolland	Natchaug R	F	49.2	257.0	205.5	1,880	200	PL 77–228.
New Bedford-Fairhaven Hurr Barrier	MA Bristol		F	0.0	0.0	0.0	0	0	PL 85–500.
North Hartland Lk	VT Windsor	Ottauquechee R	F	68.8	546.5	425.0	1,100	215	PL 75–761.
North Springfield Lk	VT Windsor	Black R	F	50.0	545.5	467.0	1,200	100	PL 75–761.
Northfield Br Lk	CT Litchfield	Northfield Br	F	2.4	576.0	500.0	67	7	PL 86–645.
Otter Br Lk	NH Cheshire	Otter Brook	F	17.6	781.0	701.0	374	70	PL 83–780.
Stamford Hurr Barrier	CT Fairfield		F	0.0	0.0	0.0	0	0	PL 86–645.
Surry Mountain Lk	NH Cheshire	Ashuelot R	F	31.7	550.0	500.0	970	260	PL 75–761.
Thomaston Dam	CT Litchfield	Naugatuck R	F	42.0	494.0	380.0	960	0	PL 78–534.
Townshend Lk	VT Windham	West R	F	32.9	553.0	478.0	735	95	PL 78–534, PL 83–780.
Tully Lk	MA Worcester	East Br Tully R	F	20.5	668.0	636.0	1,130	78	PL 75–761.
Union Village Dam	VT Orange	Ompompanoosuc R	F	38.0	564.0	420.0	740	0	PL 74–738.
West Hill Dam	MA Worcester	West R	F	12.4	264.0	234.0	1,025	0	PL 78–534.
West Thomspon	CT Windham	Quinebaug R	F	25.6	342.5	305.0	1,250	200	PL 86–645.
Westville Lake	MA Worcester	Quinebaug R	F	11.0	572.0	525.0	913	23	PL 77–228.
North Pacific Division									
Albeni Falls Dam, Lk Pend, Oreille	ID Bonner	Pend Oreille R	FNP	1,155.0	2,062.5	2,049.7	95,000	86,000	PL 81–516.
Applegate Lk	OR Jackson	Applegate R	FIR	75.2	1,987.0	1,854.0	988	221	FCA 1962, PL 87–874, PL 87–874.
Big Cliff Dam	OR Marion, Linn	N Santiam R	P	3.5	1,206.0	1,182.0	130	98	HD 544, PL 75–761, PL 87–874.
Blue River Lk	OR Lane	Blue R	F	6.5	1,357.0	1,350.0	975	940	HD 531.
			FNI	78.8	1,350.0	1,180.0	940	133	PL 81–516.
Bonneville L&D Lk	WA Skamania	Columbia R	NP	138.0	77.0	70.0	20,800	19,850	RHA 1935.
Chena River Lakes	AK North Star Burough	Chena R	F	34.0	506.7	490.0	5,400	400	PL 90–483.
Chief Joseph Dam Rufus Woods Lk	WA Douglas, Okanogan	Columbia R	P	192.3	956.0	930.0	8,400	6,800	HD 693, PL 79–525.
Cottage Grove Lk	OR Lane	Coast Fk, Willamete R	F	29.8	791.0	750.0	1,155	295	HD 544, PL 75–761.

Cougar Lk	OR Lane	South Fk	F	11.3	1,699.0	1,690.0	1,280	1,235	HD 531.
			FNPI	143.9	1,690.0	1,532.0	1,235	635	PL 81–516.
			P	9.9	1,532.0	1,516.0	635	602	PL 83–870.
Detroit Lk	OR Marion	North Santiam	F	19.1	1,569.0	1,563.0	3,490	3,455	HD 544, PL 75–761.
			FNPI	281.6	1,563.5	1,450.0	3,455	1,725	
			P	40.3	1,450.0	1,425.0	1,725	1,415	
Dexter Dam	OR Lane	Middle Fk, Willamette R	FNPI	4.8	695.0	690.0	990	940	HD 544, PL 75–761.
Dorena Lk	OR Lane	Cow R	F	5.5	835.0	832.0	1,885	1,815	HD 544.
			FNI	65.0	832.0	770.5	1,815	520	PL 75–761.
Dworshak Dam and Res	ID Clearwater	North Fk, Clearwater R	FNP	2,016.0	1,600.0	1,445.0	17,090	9,050	HD 403, PL 87–874.
Fall Cr Dam and Lk	OR Lane	Fall Cr	F	7.5	834.0	830.0	1,865	1,760	HD 531.
			FNI	107.5	830.0	728.0	1,760	460	PL 81–516
Fern Ridge Lk	OR Lane	Long Tom R	F	15.7	375.1	373.5	10,305	9,340	HD 544.
			FNI	93.9	373.5	353.0	9,340	1,515	PL 75–761
Foster Lake	OR Linn	South Santiam R	F	4.9	641.0	637.0	1,260	1,195	HD 544
			FNPI	24.9	637.0	613.0	1,195	895	PL 86–645
Green Peter Lk	OR Linn	Middle Fk, Santiam R	F	18.3	1,015.0	1,010.0	3,705	3,605	HD 531.
			FNPI	249.9	1,010.0	992.0	3,605	2,072	PL 81–516, PL 83–780.
Hills Creek Lk	OR Lane	Middle Fk, Willamette R	F	5.6	1,543.0	1,541.0	2,850	2,710	HD 531.
			FNPI	194.6	1,541.0	1,448.0	2,710	1,575	PL 81–516.
Howard Hanson Dam	WA King	Green R	F	80.0	1,206.0	1,141.0	1,750	763	HD 531.
			FA	25.6	1,141.0	1,040.0	763	13	PL 81–516.
Ice Harbor Dam Lk Sacajawea	WA Walla, Walla, Franklin.	Snake R	NP	24.9	440.0	437.0	8,370	8,210	HD 704, PL 79–14.
John Day Dam Lk Umatilla	OR Sherman	Columbia R	F	158.0	268.0	265.0	55,000	52,000	HD 531.
			FNP	150.0	265.0	262.0	52,000	49,000	PL 81–516.
			F	192.0	262.0	257.0	49,000	42,000	
Libby Dam Lk Koocanusa	MT Lincoln	Kootenai R	FP	4,979.5	2,459.0	2,287.0	46,365	14,391	HD 531, PL 81–516.
Little Goose L&D Lk Bryan	WA Columbia, Whitman	Snake R	PN	49.0	638.0	633.0	10,030	9,620	HD 704, PL 79–14.
Lookout Point Lk	OR Lane	Middle Fk, Willamette R	P	12.2	825.0	819.0	2,090	1,860	HD 544.
			FNPI	324.2	926.0	825.0	4,255	2,090	PL 75–761.
Lost Creek Lk	OR Jackson	Rogue R	FPIR	315.0	1,872.0	1,751.0	3,430	1,800	HD 566, PL 87–874.
Lower Granite L&D	WA Garfield, Whitman	Snake R	NPI	43.6	738.0	733.0	8,900	8,540	HD 704, PL 79–14.
Lucky Peak Dam and Lk	ID Ada	Boise R	F	13.9	3,060.0	3,055.0	2,817	2,745	PL 79–526.
			FI	264.4	3,055.0	2,905.0	2,817	802	
Lwr Monumental L&D Lk HG West	WA Walla, Walla, Franklin.	Snake R	NP	20.0	540.0	537.0	6,700	6,550	HD 704, PL 79–14.
McNary L&D, Dam Lk Wallula	WA Benton	Columbia R	NP	185.0	340.0	335.0	38,800	36,000	HD 704, PL 79–14.
	OR Umatilla			.....	.....	.....	.....	.....	
Mill Creek Dam Lk	WA Walla, Walla	Mill Cr	F	7.5	1,265.0	1,205.0	225	53	HD 578, PL 75–761.
Mud Mountain Dam	WA King, Pierce	White R	F	106.3	1,215.0	895.0	963	0	PL 74–738.
The Dalles L&D Lk Celilo	WA Klickitat	Columbia R	NP	52.5	160.0	155.0	11,200	10,350	HD 531, PL 81–516.
	OR Wasco			.....	.....	.....	.....	.....	
Willow Creek Lk	OR Morrow	Willow Cr	F	11.6	2,113.5	2,047.0	269	96	PL 89–298.
Wynoochee Dam and Lk	WA Grays, Harbor	Wynoochee R	FMCA	65.4	800.0	700.0	1,170	193	HD 601, PL 93–251.
Ohio River Division									
Allegheny L&D 2	PA Allegheny	Allegheny R	N	0.0	721.0	710.0	0	0	RHA 1935.
Allegheny L&D 3	PA Allegheny	Allegheny R	N	0.0	734.5	721.0	0	0	RHA 1935.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Allegheny L&D 4	PA Allegheny Westmoreland.	Allegheny R	N	0.0	745.0	734.5	0	0	RHA 1912.
Allegheny L&D 5	PA Armstrong	Allegheny R	N	0.0	756.8	745.0	0	0	RHA 1912
Allegheny L&D 6	PA Armstrong	Allegheny R	N	0.0	769.0	756.8	0	0	RHA 1912.
Allegheny L&D 7	PA Armstrong	Allegheny R	N	0.0	782.1	769.0	0	0	RHA 1912.
Allegheny L&D 8	PA Armstrong	Allegheny R	N	0.0	800.0	782.1	0	0	RHA 1912, 1935.
Allegheny L&D 9	PA Armstrong	Allegheny R	N	0.0	822.0	800.0	0	0	RHA 1935.
Allegheny Res Kinzua Dam	PA Warren	Allegheny R	F	607.0	1,365.0	1,328.0	21,180	12,080	PL 74–738.
			FPCAR	549.0	1,328.0	1,240.0	12,080	1,900	
Alum Cr Lk	OH Delaware	Alum Cr	F	53.1	901.0	888.0	4,852	3,387	PL 87–874.
			FMCR	79.2	888.0	885.0	3,387	3,105	
Atwood Lk	OH Tuscarawas	Indian Fk Cr	F	26.1	941.0	928.0	2,460	1,540	PW 1933.
			FCR	7.6	928.0	922.5	1,540	1,250	
Barkley Dam Lk Barkley	Ky Lyon, Livgst	Cumberland R	F	1,213.0	375.0	359.0	93,430	57,920	PL 79–525.
			FP	259.0	359.0	354.0	57,920	45,210	
			N	610.0	354.0	233.0	45,210	0	
Barren River Lk	KY Allen, Barren	Barren R	F	558.8	590.0	552.0	20,150	10,000	PL 75–261.
			FMR	190.3	552.0	525.0	10,000	4,340	
Beach City Lk	OH Tuscarawas	Sugar Cr	F	69.9	976.5	948.0	6,150	420	PW 1933.
			FCR	0.0	0.0	0.0	0	420	
Beech Fk Lk	WV Wayne	Beech Fk Cr	F	28.3	614.5	592.0	1,847	725	PL 87–874.
			FCR	5.0	592.0	583.5	725	460	
Belleville L&D	WV Wood	Ohio R	N	0.0	582.0	560.0	0	0	RHA 1909.
	OH Meigs								
Berlin Lk	OH Mahoning, Portage	Mahoning R	F	38.3	1,032.0	1,024.7	5,500	3,590	PL 75–761.
			FMCAR	56.6	1,024.7	1,016.5	3,590	2,200	
Bluestone Lk	WV Summers	New R	F	592.6	1,520.0	1,410.0	9,180	2,040	PL 74–738.
			FCR	7.5	1,410.0	1,406.0	2,040	1,800	PL 75–761.
Bolivar Dam	OH Stark, Tuscarawas	Sandy Cr	F	149.6	962.0	895.0	6,500	0	PW 1933.
Brookville Lk	IN Franklin	E Fork of Whitewater R	FMR	128.4	748.0	713.0	5,260	2,430	PL 75–761.
Buckhorn Lk	KY Leslie	Middle Fk of Kentucky R	F	135.8	840.0	782.0	3,610	1,230	PL 75–761.
			FR	21.8	782.0	757.0	1,230	550	
Burnsville Lk	WV Braxton	L Kanawha R	F	51.5	825.0	789.0	1,902	965	PL 75–761.
			FCAR	10.2	789.0	776.0	965	553	
CJ Brown Dam & Res	OH Clark	Buck Cr	F	26.8	1,023.0	1,012.0	2,720	2,120	PL 87–874.
CM Harden Lk	IN Parke	Raccoon Cr	F	83.5	690.0	661.0	3,910	2,060	PL 75–761
			FAR	33.1	661.0	640.0	2,060	1,100	
Caesar Cr Lk	OH Warren	Caesar Cr	F	140.2	883.0	849.0	6,110	2,830	PL 75–761.
			FMAR	88.7	849.0	800.0	2,830	700	
Cagles Mill Lk	IN Putman	Mill Cr	F	201.0	704.0	636.0	4,840	1,400	PL 75–761.
Cannelton L&D	KY Hancock	Ohio R	N	0.0	383.0	358.0	0	0	RHA 1909
	IN Perry								
Carr Fk Lk	KY Knott	Carr Cr	F	25.1	1,055.0	1027.0	1,120	710	PL 87–874.
			FAR	10.8	1,027.0	1009.0	710	530	

Cave Run Lk	KY Rowan	Licking R	F	391.5	765.0	730.0	14,870	8,270	PL 74–738
			FAR	75.3	730.0	720.0	8,270	6,790	
Center Hill Lk	TN Dekalb	Caney FK	F	762.0	685.0	648.0	23,060	18,220	PL 75–761.
			P	492.0	648.0	618.0	18,220	14,590	
Charles Mill Lk	OH Ashland	Black Fk	F	80.6	1,020.0	997.0	6,050	1,350	PW 1933.
			FCR	4.5	997.0	993.0	1,350	827	
Cheatham L&D	TN Cheatham	Cumberland R	P	19.8	385.0	382.0	7,450	5,630	RHA 1946, PL 396.
			N	84.2	382.0	345.0	5,630	0	PL 396.
Clendening Lk	OH Harrison	Brush Fk	F	27.5	910.5	898.0	2,620	1,800	PW 1933.
			FCR	8.0	898.0	893.0	1,800	1,430	
Conemaugh River Lk	PA Indiana, Westmoreland.	Conemaugh R	F	270.0	975.0	880.0	6,820	300	PL 74–738, PL 75–761.
Cordell Hull Dam & Res	TN Smith	Cumberland R	PR	17.8	504.5	499.0	12,200	9,820	RHA 1946.
			NR	0.0	499.0	424.0	9,820	0	
Crooked Cr Lk	PA Armstrong	Crooked Cr	F	89.4	920.0	840.0	1,940	350	PL 74–738, PL 75–761.
Dale Hollow Lk	TN Clay	Obey R	F	353.0	663.0	651.0	30,990	27,700	PL 75–761.
			P	496.0	651.0	631.0	27,700	21,880	
Dashields L&D	PA Allegheny	Ohio R	N	0.0	692.0	682.0	0	0	RHA 1909.
Deer Cr Lk	OH Pickaway	Deer Cr	F	81.5	844.0	810.0	4,046	1,277	PL 75–761.
			FCR	14.6	810.0	796.0	1,277	727	
Delaware Lk	OH Delaware	Olentangy R	F	118.0	947.0	915.0	8,550	1,270	PL 75–761
			FCAR	5.6	915.0	910.0	1,270	950	
Dewey Lk	KY Floyd	Johns Cr	F	76.1	686.0	650.0	3,340	1,100	PL 75–761
			FCR	4.9	650.0	645.0	1,100	880	
Dillon Lk	OH Muskingum	Licking R	F	256.5	790.0	737.0	10,280	1,560	PL 75–761.
			FCR	4.4	737.0	734.0	1,560	1,330	
Dover Dam	OH Tuscarawas	Tuscarawas R	F	203.0	916.0	858.0	10,100	0	PW 1933.
E Br Clarion River Lake	PA Elk	E Br Clarion R	F	19.0	1,685.0	1,670.0	1,370	1,160	PL 78–526.
			FCAR	19.8	1,670.0	1,651.0	1,160	920	
E Fk Res Wm H Harsha Lk	OH Clermont	E Fk Little Miami R	F	202.2	795.0	733.0	4,600	2,160	PL 75–761.
			FMCAR	73.6	733.0	683.0	2,160	820	
East Lynn Lk	WV Wayne	E Fk Twelvepole	F	65.3	701.0	662.0	2,351	1,005	PL 75–761.
			FCR	5.5	662.0	656.0	1,005	823	
Emsworth L&D	PA Allegheny	Ohio R	N	0.0	710.0	692.0	0	0	RHA 1909.
Fishtrap Lk	KY Pike	Levisa Fk	F	126.7	825.0	757.0	2,681	1,131	PL 75–761.
			FCAR	27.2	757.0	725.0	1,131	569	
Gallipolis L&D	WV Mason	Ohio R	N	0.0	538.0	515.0	0	0	RHA 1935.
	OH Gallia	.....		.....	.....	.....	.....	.....	
Grayson Lk	KY Carter	L Sandy R	F	89.6	681.0	645.0	3,633	1,509	PL 86–645.
			FCAR	10.7	645.0	637.0	1,509	1,159	
Green R L&D 1	KY Henderson	Green R	N	0.0	349.1	337.3	0	0	RHA 1888.
Green R L&D 2	KY McLean	Green R	N	0.0	363.4	349.1	0	0	RHA 1888.
Green River Lk	KY Taylor	Green R	F	479.1	713.0	675.0	19,100	8,210	PL 75–761.
			FAR	81.5	675.0	664.0	8,210	6,650	
Greenup L&D 3	KY Greenup	Ohio R	N	0.0	515.0	485.0	0	0	RHA 1909.
	OH Scioto	.....		.....	.....	.....	.....	.....	
Hannibal L&D	WV Wetzel	Ohio R	N	0.0	623.0	602.0	0	0	RHA 1909.
	OH Monroe	.....		.....	.....	.....	.....	.....	
Hildebrand L&D	WV Monongalia	Monongahela	N	0.0	835.0	814.0	0	0	RHA 1950.
Huntington Lk	IN Hunt	Wabash R	F	140.6	798.0	749.0	7,900	900	PL 85–500.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
			FR	8.4	749.0	737.0	900	500	
J Percy Priest Dam & Res	TN Davidson	Stones R	F	252.0	504.5	490.5	22,720	14,400	PL 75–761.
			FP	15.0	490.5	489.5	14,400	14,000	
			FPR	0.0	489.5	483.0	14,000	11,630	
			PR	0.0	483.0	480.0	11,630	10,570	
JW Flannagan Dam & Res	VA Dickenson	Pound R	F	78.6	1,446.0	1,396.0	2,098	1,143	PL 75–761.
			FMCR	16.5	1,396.0	1,380.0	1,143	310	
Kentucky R L&D 1	KY Carroll	Kentucky R	N	0.0	430.0	421.8	0	0	RHA 1879.
Kentucky R L&D 2	KY Henry Owen	Kentucky R	N	0.0	444.0	430.0	0	0	RHA 1879.
Kentucky R L&D 3	KY Henry Owen	Kentucky R	N	0.0	457.1	444.0	0	0	RHA 1879.
Kentucky R L&D 4	KY Franklin	Kentucky R	N	0.0	470.4	457.1	0	0	RHA 1879.
Laurel River Lk	KY Laurel, Whitley	Laurel R	P	185.0	1,018.5	982.0	6,060	4,200	PL 86–645.
			R	250.6	982.0	760.0	4,200	0	
Leesvillie Lake	OH Carroll	McGuire Cr.	F	17.9	977.5	963.0	1,470	1,000	PW 1933.
			FCR	5.5	963.0	957.0	1,000	829	
London L&D	WV Kanawha	Kanawha R	N	0.0	614.0	590.0	0	0	RHA 1930.
Loyalhanna Lk	PA Westmoreland	Loyalhanna Cr	F	93.3	975.0	910.0	3,280	210	PL 74–738.
			FC	0.0	0.0	0.0	0	0	PL 75–761.
M J Kirwan Dam & Res	OH Portage	W. Br Mahoning R	F	22.0	993.0	985.5	3,240	2,650	PL–74–738
			FCAR	52.9	985.5	951.0	2,650	570	PL 75–761.
Mahoning Cr Lk	PA Armstrong	Mahoning Cr	F	64.7	1,162.0	1,098.0	2,370	280	PL 74–738.
			FRC	5.1	1,098.0	1,075.0	280	170	PL 75–761.
Markland L&D	IN Switzerland	Ohio R	N	0.0	455.0	420.0	0	0	RHA 1909
	KY Gallatin								
Marmet L&D	WV Kanawha R	Kanawha	N	0.0	590.0	566.0	0	0	RHA 1930.
Martins Fk Lk	KY Harlan	Martins Fk of Clover R	F	14.3	1,341.0	1,310.0	578	340	PL 89–298.
			FAR	3.1	1,310.0	1,300.0	340	274	
			R	3.7	1,300.0	1,265.0	274	0	
Maxwell L&D	PA Fayette Washington	Monongahela R	N	0.0	763.0	743.5	0	0	RHA 1909.
McAlpine L&D	KY Jefferson	Ohio R	N	0.0	420.0	383.0	0	0	RHA 1909.
	IN Clark								
Meldahl L&D	KY Bracken	Ohio R	N	0.0	485.0	455.0	0	0	RHA 1909.
	OH Clermont								
Mississinewa Lk	IN Miami	MIssissinewa R	F	293.2	779.0	737.0	12,830	3,180	PL 85–500.
			FR	51.9	737.0	712.0	3,180	1,280	.
Mohawk Dam	OH Coshocton	Walhonding R	F	285.0	890.0	799.2	7,950	0	PW 1933.
Mohicanville Dam	OH Ashland	Lk Fork	F	102.0	963.0	932.0	8,800	0	PW 1933.
Monongahela R L&D 2	PA Allegheny	Monongahela R	N	0.0	718.7	710.0	0	0	RHA 1902.
Monongahela R L&D 3	PA Allegheny	Monongahela R	N	0.0	726.9	718.7	0	0	RHA 1905.
Monongahela R L&R 4	PA Washington Westmoreland.	Monongahela R	N	0.0	743.5	726.9	0	0	RHA 1909.
Monongahela R L&D 7	PA Greene, Fayette	Monongahela R	N	0.0	778.0	763.0	0	0	RHA 1922.
Monongahela R L&D 8	PA Greene, Fayette	Monongahela R	N	0.0	797.0	778.0	0	0	RHA 1922, 1950, 1973.
Monroe Lk	IN Monroe	Salt Cr	F	258.8	556.0	538.0	18,450	10,750	FCA 1958.

			FMA	159.9	538.0	515.0	10,750	3,280	.
Montgomery Island L&D	PA Beaver	Ohio R	N	0.0	682.0	664.5	0	0	RHA 1909.
Morgantown L&D	WV Monongalia Monongahela R.	N	0.0	814.0	797.0	0	0	RHA 1909.	
Mosquito Cr Lk	OH Trumbull	Mosquito Cr	F	21.7	904.0	901.4	8,900	7,850	PL 75–761.
			FMCAR	80.4	901.4	899.9	7,850	7,220	
N Br Kokosing River Lk	OH Knox	North Br of Kokosing R	F	13.9	1,146.0	1,121.0	1,140	154	PL 87–874.
N Fk Pound Lk	VA Wise	N Fk Pound R	F	8.0	1,644.0	1,611.0	349	154	PL 86–645.
			FMCR	1.3	1,611.0	1,601.0	154	106	.
New Cumberland L&D	WV Hancock OH Jefferson	Ohio R	N	0.0	664.5	644.0	0	0	RHA 1909.
Newburgh L&D	KY Henderson IN Warrick	Ohio R	N	0.0	358.0	342.0	0	0	RHA 1909.
Nolin Lk	KY Edmonson	Nolin R	F	439.2	560.0	515.0	14,530	5,790	PL 75–761.
			FR	106.4	515.0	490.0	5,790	2,890	
Ohio R L&D 52	KY McCracken IL Massac	Ohio R	N	0.0	302.0	290.0	0	0	RHA 1909, 1910, 1918.
Ohio R L&D 53	KY Ballard IL Pulaski	Ohio R	N	0.0	290.0	276.6	0	0	RHA 1909, 1910, 1918.
Old Hickory L&D	TN Davidson Sumner	Cumberland R	P	63.0	445.0	442.0	22,500	19,550	RHA 1946.
			N	357.0	442.0	375.0	19,550	0	
Opekiska L&D	WV Monongahela	Monongahela R	N	0.0	857.0	835.0	0	0	RHA 1950.
Paint Cr Lk	OH Ross, Highland	Paint Cr	F	124.7	845.0	798.0	4,761	1,190	PL 75–761.
			FMCAR	11.4	798.0	787.5	1,190	770	
Paintsville Lk	KY Johnson	Paint Cr	F	32.8	731.0	709.0	1,867	1,139	PL 89–298.
			FCAR	36.3	709.0	650.0	1,139	261	
Patoka Lk	IN DuBois	Patoka R	F	121.1	548.0	536.0	11,300	8,880	PL 89–298.
			FMCAR	167.3	536.0	506.0	8,880	2,010	
Piedmont Lk	OH Harrison	Stillwater Cr	F	32.2	924.6	913.0	3,170	2,310	PW 1933.
			FCR	8.6	913.0	909.0	2,310	1,987	
Pike Island L&D	WV Ohio OH Belmont	Ohio R	N	0.0	644.0	623.0	0	0	RHA 1909.
Pleasant Hill Lk	OH Ashland	Clear Fk	F	74.2	1,065.0	1,020.0	2,600	850	PW 1933.
			FCR	5.5	1,020.0	1,012.5	850	627	
R D Bailey Lk	WV Mingo, Wyoming	Guyandot R	F	169.5	1,155.0	1,035.0	2,850	630	PL 87–874.
			FCAR	12.2	1,035.0	1,012.0	630	440	
Racine L&D	WV Mason OH Meigs	Ohio R	N	0.0	560.0	538.0	0	0	RHA 1909.
Rough River Lk	Grayson, Breckinridge Ridge	Rough R	F	214.4	524.0	495.0	10,260	5,100	PL 75–761.
			FMR	90.2	495.0	470.0	5,100	2,180	
Salamonie Lk	IN Wabash	Salamonie R	F	202.9	793.0	755.0	9,340	2,860	PL 85–500.
			FR	47.6	755.0	730.0	2,860	976	
Senecaville Lk	OH Guernsey	Seneca Fk	F	45.1	842.5	832.2	5,170	3,550	PW 1933.
			FCR	12.8	832.2	828.2	3,550	2,912	
Shenango River Lk	PA Mercer	Shenango R	F	151.0	919.0	896.0	11,090	3,560	PL 75–761.
			FCAR	29.9	896.0	885.0	3,560	1,910	
Smithland L&D	KY Livingston IL Pope	Ohio R	N	0.0	324.0	302.0	0	0	RHA 1909.
Summersville Lk	WV Nicholas	Gauley R	F	221.9	1,710.0	1,1652.0	4,913	2,790	PL 75–761.
			FRCA	161.8	1,652.0	1,535.0	2,790	514	

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Sutton Lk	WV Braxton	Elk R	FCAR	60.0	925.0	850.0	1,520	270	PL 75–761.
Tappan Lk	OH Harrison	L Stillwater Cr	F	26.5	909.0	899.3	3,100	2,350	PW 1933.
			FCR	11.4	899.3	894.0	2,350	1,960	
Tionesta Lk	PA Forest	Tionesta Cr	F	125.6	1,170.0	1,085.0	2,770	480	PL 74–738. PL 75–761.
Tom Jenkins Dam, Burr Oak, Lk	OH Athens	E Br Sandy Cr	F	17.6	740.0	721.0	1,192	664	FCA 1944.
			FRM	5.8	721.0	710.0	664	394	PL 78–534.
Tygart Lake	WV Taylor	Tygart R	F	178.1	1,167.0	1,094.0	3,430	1,740	PWA 1934.
			FMACR	99.9	1,094.0	1,010.0	1,740	620	
Union City Res	PA Erie	French Cr	F	47.6	1,278.0	1,210.0	2,290	0	PL 87–874.
Uniontown L&D	KY Union	Ohio R	N	0.0	342.0	324.0	0	0	RHA 1909.
	IN Posey								
W FK of Mill Cr Winton Woods Lk	OH Hamilton	W Fk Mill Cr	F	9.8	702.0	675.0	557	183	PL 79–526.
Willow Island L&D	WV Pleasants	Ohio R	N	0.0	602.0	582.0	0	0	RHA 1909.
	OH Washington								
Wills Cr Lk	OH Coshockton Wills Cr, Muskingum.		F	190.0	779.0	742.0	11,450	900	PW 1933.
			CR	0.0	0.0	0.0	0	0	
Winfield L&D	WV Putnam	Kanawha R	N	0.0	566.0	538.0	0	0	RHA 1935.
Wolf Cr Dam, Lk Cumberland	KY Russell	Cumberland R	P	2,142.0	723.0	673.0	50,250	35,820	
			F	2,094.0	760.0	723.0	63,530	50,250	PL 75–761.
Woodcock Cr Lk	PA Crawford	Woodcock Cr	F	15.0	1,209.0	1,181.0	775	325	FCA 1962.
			FCAR	5.0	1,181.0	1,162.5	325	100	
Youghiogheny R Lk	PA Fayette	Youghiogheny R	F	99.5	1,470.0	1,439.0	3,570	2,840	FCA 1938.
			FCAR	149.3	1,439.0	1,419.0	2,840	2,300	
South Atlantic Division									
Aberdeen L&D and Res	MS Monroe	Tombigbee R	N	3.9	190.5	189.5	4,359	3,883	PL 79–525.
Aliceville Lock Dam & Res	AL Pickens	Tombigbee R	N	7.6	136.5	135.5	8,655	7,945	PL 79–525.
Allatoona Dam & Res	GA Bartow	Etowah R	F	302.6	860.0	840.0	19,201	11,862	PL 77–228.
			PMAR	284.6	840.0	800.0	11,862	3,251	
B Everett Jordan Dam & Lk	NC Chatham	Haw R	F	538.4	240.0	216.0	31,811	13,942	PL 88–253.
			FMCAR	140.4	216.0	202.0	13,942	6,658	
Bay Springs Lock Dam & Res	MS Tishomingo	Tombigbee R	N	37.0	414.0	408.0	6,700	5,740	PL 79–525.
Buford Dam Lk, Sidney Lanier	GA Forsyth, Gwinnett	Chattahoochee R	F	598.8	1,085.0	1,071.0	47,182	38,542	PL 79–14.
			PNMR	1,087.6	1,071.0	1,035.0	38,542	22,442	
Carters Dam & Res	GA Murray	Coosawattee R	F	89.2	1,099.0	1,074.0	3,880	3,275	PL 79–14.
			PRA	41.4	1,074.0	1,022.0	3,275	2,196	
Claiborne Lock Dam & Res	AL Monroe	Alabama R	N	16.6	35.0	32.0	5,930	5,210	PL 79–14.
Clarks Hill Dam & Lk	GA Columbia	Savannah R	F	390.0	335.0	330.0	78,500	71,100	PL 78–534.
	SC McCormick		FP	1,045.0	330.0	312.0	71,100	45,000	
Coffeeville Lock Dam & Res	AL Clark, Choctaw	Tombigbee R	N	19.9	32.5	30.0	8,500	7,500	PL 60–317.
Columbus Lock Dam & Res	MS Lowndes	Tombigbee R	N	8.5	163.5	162.5	9,400	8,500	PL 79–525.

Demopolis Lock Dam & Res	AL Sumter, Marengo	Tombigbee R	N	0.0	73.0	73.0	10,000	10,000	PL 60–317.
Falls Dam & Lk	NC Wake	Neuse R	F	220.9	264.0	250.1	20,810	11,310	PL 89–298.
			FMCAR	89.7	250.1	236.5	11,310	2,600	
G W Andrews L&D and Res	AL Houston	Chattahoochee R	N	8.2	102.0	96.0	1,540	1,190	PL 79–14.
	GA Early								
Gainesville L&D and Res	AL Sumter, Greene	Tombigbee R	N	5.8	109.5	108.5	6,920	5,900	PL 79–525.
Hartwell Dam & Lk	GA Hart	Savannah R	F	293.0	665.0	660.0	61,400	55,950	PL 81–516.
	SC Anderson		FP	1,416.0	660.0	625.0	55,950	27,650	
Holt Lock Dam & Res	AL Tuscaloosa	Black-Warrior R	NP	3.3	187.0	186.0	3,296	3,252	PL 60–317.
Inglis Dam Lk Rousseau	FL Levy, Marion, Citrus	Cross FL Barge Canal	N	13.0	27.5	24.0	4,030	2,040	PL 77–675.
Jim Woodruf L&D	FL Gadsden, Jackson	Apalachicola R	NP	20.0	77.5	76.5	38,850	36,000	PL 79–14.
John H Kerr Dam & Res	VA Mecklenburg	Roanoke R	F	1,281.4	320.0	300.0	83,200	48,900	PL 78–534.
			FP	1,027.0	300.0	268.0	48,900	19,700	
John Hollis Bankhead L&D and Res	AL Tuscaloosa	Black-Warrior R	NP	27.1	255.0	252.0	9,245	8,730	PL 60–168.
Lk Okeechobee	FL Okeechobee, Glades, Hendry, Palm Beach, Martin.	Central and Southern FL	FNIMC	2,859.0	17.5	10.5	454,900	326,000	PL 71–520, PL 75–392, PL 79–14, PL 80–858, PL 83–780, PL 90.
Lock A	MS Monroe	Tombigbee R	N	0.9	220.5	219.5	980	850	PL 79–525.
Lock B	MS Monroe	Tombigbee R	N	2.7	245.5	244.5	2,841	2,615	PL 79–525.
Lock C	MS Itawamba	Tombigbee R	N	1.6	270.5	269.5	1,699	1,586	PL 79–525.
Lock D	MS Itawamba	Tombigbee R	N	2.0	300.5	299.5	2,021	1,959	PL 79–525.
Lock E	MS Itawamba, Prentiss	Tombigbee R	N	0.9	330.5	329.5	889	821	PL 79–525.
Millers Ferry L&D	AL Wilcox	Alabama R	NP	16.7	80.0	79.0	17,201	16,160	PL 79–14.
Okatibbee Dam & Res	MS Lauderdale	Okatibbee Cr	F	46.5	352.0	343.0	6,580	3,800	PL 87–874.
		Chickasawbay R	RMA	34.3	343.0	328.0	3,800	1,275	
Philpott Dam & Lk	VA Henry	Smith R	F	34.2	985.0	974.0	3,370	2,880	PL 78–534.
			FP	111.2	974.0	920.0	2,880	1,350	
R B Russell Dam and Lk	GA Elbert	Savannah R	F	140.0	480.0	475.0	29,340	26,653	PL 89–789.
	SC Abbeville		FP	126.8	475.0	470.0	26,653	24,117	
Robert F Henry Lock Dam & Res	AL Autauga, Lowndes	Alabama R	NP	44.6	125.0	124.0	13,300	10,470	PL 79–14.
Rodman Dam & Lk Ocklawaha	FL Putman & Marion	Cross FL Barge Canal	N	48.0	23.2	20.0	17,350	12,950	PL 77–675.
S–10 & Water Cons Area 1	FL Palm Beach	Central and Southern FL	F	181.9	18.3	17.0	141,250	141,250	PL 80–858.
			FIMC	273.2	17.0	14.0	141,250	26,00	
S–11 & Water Cons Area 2A	FL Palm Beach Broward	Central and Southern FL	F	236.3	16.6	14.5	110,500	110,500	PL 80–858.
			FIMC	165.0	14.5	13.0	110,500	107,500	PL 83–780.
S–12 & Water Cons Area 3A	FL Broward & Dade	Central and Southern FL	F	1,661.0	14.5	10.5	487,200	385,000	PL 80–858.
			FIMC	465.0	10.5	9.5	385,000	316,000	PL 83–780.
Selden Lock and Res	AL Hale, Greene	Black-Warrior R	N	9.1	95.5	94.0	8,200	6,900	PL 60–317.
W Kerr Scott Dam & Res	NC Wilkes	Yadkin R	F	112.0	1,075.0	1,030.0	4,000	1,475	PL 79–526.
			FM	33.0	1,030.0	1,000.0	1,475	675	
Walter F George L&D	GA Clay	Chattahoochee R	NP	244.0	190.0	184.0	45,181	36,375	PL 81–516.
	AL Henry								
West Point Dam & Res	GA Troup	Chattahoochee R	NPMAR	306.1	635.0	620.0	25,864	15,512	PL 87–874.
William Bacon Oliver L&D and Res	AL Tuscaloosa	Black Warrior R	N	0	122.9	122.9	790	790	PL 60–317.
South Pacific Division									
Alamo Dam & Lk	AZ Mohave, Yuma	Bill Williams R	F	1,046.2	1,235.0	1,174.0	13,307	7,045	PL 78–534.
Bear Dam	CA Mariposa	Bear Cr	F	7.7	413.5	344.0	265	0	PL 78–534.
Black Butte Lk	CA Tehama	Stony Cr	FI	137.1	473.5	414.6	4,453	577	PL 78–534.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Brea Dam & Res	CA Orange	Brea Cr	F	4.0	279.0	208.0	163	0	FCA 1936.
Buchanan Dam H.V. Eastman Lk	CA Madera	Chowchilla R	F	45.0	587.0	559.0	1,785	1,482	PL 78–874.
			FI	140.0	587.0	466.0	1,785	484	
Burns Dam	CA Merced	Burns Cr	F	6.8	300.0	266.0	662	0	PL 78–534.
Carbon Canyon Dam & Res	CA Orange	Carbon Cr	F	6.6	475.0	403.0	225	0	PL 74–738.
Coyote Valley Dam Lk Mendocino	CA Mendocino	East Fork, Russian R	F	50.1	764.8	737.5	1,922	1,740	PL 75–761.
			IM	72.3	737.5	637.0	1,740	20	
Dry Cr (Warm Springs) Lk & Channel	CA Sonoma	Dry Cr	F	136.0	495.0	451.1	3,600	2,600	PL 87–874.
			MR	225.0	451.1	291.0	2,600	500	
Farmington Dam	CA San Joaquin, Stanislaus.	Littlejohn Cr	F	52.0	156.5	120.0	4,107	0	PL 78–534.
Fullerton Dam & Res	CA Orange	Fullerton Cr	F	0.8	290.0	261.0	62	0	FCA 1936.
Hansen Dam Res	CA Los Angeles	Tujunga Wash	F	25.4	1,060.0	990.0	781	0	FCA 1936.
Hidden Dam Hensley Lk	CA Madera	Fresno R	F	65.0	540.0	485.8	1,567	811	PL 87–874.
			FI	85.0	540.0	448.0	1,567	280	
Isabella Lk	CA Kern	Kern R	FI	568.1	2,605.5	2,470.0	11,454	26	PL 785–34.
Lopez Dam Res	CA Los Angeles	Pocoima Wash	F	0.4	1,272.9	1,253.7	40	0	FCA 1936.
Mariposa Dam	CA Mariposa	Mariposa Cr	F	15.0	439.5	370.0	512	0	PL 78–534.
Martis Cr Lk	CA Nevada	Martis Cr	F	19.6	5,838.0	5,780.0	762	61	PL 87–874.
Mathews Canyon Dam & Res	NV Lincoln	Mathews Canyon	F	6.3	5,461.0	5,420.0	300	0	PL 81–516.
Mojave River Dam & Res	CA San Bernardino	Mojave R	F	89.7	3,134.0	2,988.0	1,978	0	PL 86–645.
New Hogan Lk	CA Calaveras	Calaveras R	F	165.0	713.0	666.2	4,333	2,818	PL 78–534.
			FI	302.2	713.0	586.0	4,333	702	
Owens Dam	CA Mariposa	Owens Cr	F	3.6	407.5	347.0	174	0	PL 78–534.
Painted Roc Dam & Res	AZ Maricopa	Gila R	F	2,491.5	661.0	524.0	53,200	0	PL 81–516.
Pine Canyon Dam & Res	NV Lincoln	Pine Canyon	F	7.8	5,675.0	5,604.0	254	0	PL 81–516.
Pine Flat Lk Kings R	CA Fresno	Kings R	F	1,000.0	951.5	565.5	5,956	0	PL 78–534.
Prado Dam & Res	CA Riverside	Santa Ana R	F	196.2	543.0	460.0	6,630	0	FCA 1936.
San Antonio Dam & Res	CA Los Angeles	San Antonio Cr	F	7.7	2,238.0	2,125.0	145	0	FCA 1936.
Santa Fe Dam & Res	CA Los Angeles	San Gabriel R	F	32.1	496.0	421.0	1,084	0	FCA 1936, 1941.
Sepolveda Dam & Res	CA Los Angeles	Los Angeles R	F	17.4	710.0	668.0	1,335	0	FCA 1936.
Success Lk	CA Tulare	Tule R	FI	75.0	652.5	588.9	2,477	409	PL 78–534.
Terminus Dam Lk Kaweah	CA Tulare	Kaweah R	FI	136.1	694.0	570.0	1,913	276	PL 78–534.
Whitlow Ranch Dam & Res	AZ Pinal	Queen Cr	F	35.6	2,166.0	2,056.0	828	0	PL 79–526.
Whittler Marrows Dam & Res	CA Los Angeles	San Gabriel Rio Hondo R.	F	34.9	228.5	184.0	2,411	0	FCA 1936.
Southwestern Division									
Abiquiu Dam	NM Rio Arriba	Rio Chama	F	572.2	6,283.5	6,220.0	7,469	4,120	PL 80–858.
			FM	191.3	6,220.0	6,060.0	4,120	0	
Addicks Res	TX Harris	Buffalo Bayou	F	200.8	112.0	71.1	16,423	0	HD250–83–2.
Aquilla Lk	TX Hill	Aquilla Cr	F	161.4	564.5	537.5	8,980	3,280	PL 90–483.
			MR	93.6	537.5	478.6	3,280	26	

Arcadia Lk	OK Oklahoma	Deep Fork R	F	64.4	1,029.5	1,006.0	3,820	1,820	PL 91–611.
			FMCR	27.4	1,006.0	970.0	1,820	20	
B A Steinhagen Lk	TX Taylor, Jasper	Neches R	F	24.5	83.0	81.0	13,700	10,950	SD98–76–1.
Bardwell Lk	TX Ellis	Waxahachie Cr	F	79.6	439.0	421.0	6,040	3,570	PL 86–399.
			M	42.8	421.0	372.6	3,570	0	
Barker Res	TX Harris Ft Bend	Buffalo Bayou	F	209.0	106.0	73.2	16,734	0	HD250–83–2, RHA 1938.
Beaver Lk	AR Carrol, Benton, Washington.	White R	F	299.6	1,130.0	1,120.0	31,700	28,220	PL 83–780.
			FPM	925.1	1,120.0	1,077.0	28,220	15,540	PL 85–500.
Belton Lk	TX Bell	Leon R	F	640.0	631.0	594.0	23,600	12,400	PL 79–526.
			MI	372.7	594.0	470.0	12,400	42	HD88–81–1.
Benbrook Lk	TX Tarrant, Parker	Clear Fk Trinity R	F	170.4	724.0	694.0	7,630	3,770	HD103–771.
			NM	72.5	694.0	656.0	3,770	730	
Big Hill LK	KN Labette	Big HIll Cr	F	13.1	867.5	858.0	1,520	1,240	PL 87–874.
			FMR	27.2	858.0	814.0	1,240	70	HD572–87–2.
Birch Lk	OK Osage	Birch Cr	F	39.0	774.0	750.5	2,340	1,140	PL 87–874.
			FMCAR	15.8	750.5	730.0	1,140	384	HD563–87–2.
Blue Mountain Lk	AR Yell, Logan	Petit Jean R	F	233.3	419.0	384.0	11,000	2,910	PA 75–761.
Broken Bow Lk	OK McCurtain	Mountain Fk R	F	450.2	627.5	599.5	18,000	14,200	PL 85–500.
			FRPMAC	469.8	599.5	559.5	14,200	9,200	
Bull Shoals Lk	AR Baxter, Marion, Boone.	White R	F	2,360.0	695.0	654.0	71,240	45,440	PL 77–228.
	MO Ozark, Taney		PF	1,003.0	654.0	628.5	45,440	33,800	
Canton Lk	OK Blain	N Canadian R	F	265.8	1,638.0	1,615.4	15,710	7,910	PL 75–761.
			FMI	97.2	1,615.4	1,596.5	7,910	2,710	HD56–/75–3.
Canyon Lk	TX Comal	Guadalupe R	F	346.4	934.0	909.0	12,890	8,240	PL 79–14.
			M	366.4	909.0	75.0	8,240	0	
Clearwater Lk	MO Reynolds, Wayne	Black R	F	391.8	567.0	494.0	10,400	1,630	PL 75–761.
Cochiti Lk	NM Sandoval, Sante Fe, Los Alamos.	Rio Grande	F	545.0	5,460.5	5,356.6	9,361	1,200	PL 86–645.
			FRC	43.0	5,356.6	5,330.0	1,200	0	
Conchas Lk	NM San Miguel	Candian R	F	198.8	4,218.0	4,201.0	13,664	9,692	HD 308–74.
			FI	259.6	4,201.0	4,155.0	9,692	3,000	
Copan Lk	OK Washington	L Caney R	F	184.3	732.0	710.0	13,380	4,850	PL 87–874.
	KS Chautauqua		FMCA	42.8	710.0	687.5	4,850	110	HD563–87–2.
Council Grove Lk	KS Morris	Neosho R	F	63.8	1,289.0	1,274.0	5,400	3,230	PL 81–516.
			FMAR	48.5	1,274.0	1,240.0	3,230	42	
DeQueen Lk	AR Sevier	Rolling Fork R	F	101.3	473.5	437.0	4,050	1,680	PL 85–500.
			FMCRQ	25.5	437.0	415.0	1,680	710	
Dierks Lk	AR Sevier, Howard	Saline R	F	67.1	557.5	526.0	2,970	1,360	PL 85–500.
			FMCR	15.1	526.0	512.0	1,360	810	
Eldorado Lk	KS Butler	Walnut R	F	79.2	1,347.5	1,339.0	10,740	8,000	PL 89–298.
			FMAR	154.0	1,339.0	1,296.0	8,000	420	HD232–89–1.
Elk City Lk	KS Montgomery	Elk R	F	239.5	825.0	796.0	13,150	4,450	HD440–76–1.
			FMA	44.8	796.0	764.0	4,450	64	
Eufaula Lk	OK McIntosh, Pittsburg, Haskell.	Candian R	F	1,510.9	597.0	585.0	147,960	105,480	PL 79–525.
			FNPM	1,463.0	585.0	565.0	105,480	46,120	
Fall River Lk	KS Greenwood	Fall R	F	234.5	987.5	948.5	10,400	2,350	HD440–76–1.
			FA	15.0	948.5	940.0	2,350	1,170	

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

Project name [1]	State/county	Stream [1]	Project purpose [2]	Storage 1,000 AF	Elev limits feet M.S.L.		Area in acres		Auth legis [3]
					Upper	Lower	Upper	Lower	
Fort Gibson Lk	OK Wagoner	Neosho (Grand) R	F	919.2	582.0	554.0	51,000	19,900	FEC 1941.
			FP	53.9	554.0	551.0	19,100	16,950	RHA 1946.
Fort Supply Lk	OK Woodward	Wolf Cr	F	86.8	2,028.0	2,004.0	5,690	1,820	PL 74–738.
			FM	13.9	2,004.0	1,988.0	1,820	0	
Galisteo Dam	NM Santa Fe	Galisteo Cr	F	79.4	5,608.0	5,496.0	2,060	0	PL 86–645.
Georgetown Lk	TX Williamson	N.F. San Gabriel R	F	87.6	834.0	791.0	3,220	1,310	PL 87–874.
			MC	29.2	791.0	699.0	1,310	0	HD 591–82–2.
Gillham Lk	AR Howard, Polk	Cossatot R	F	188.7	569.0	502.0	4,680	1,370	PL 85–500.
			FMCQ	29.3	502.0	464.5	1,370	310	
Granger Lk	TX Williamson	San Gabriel R	F	162.2	528.0	504.0	11,040	4,400	PL 87–874.
			M	37.9	504.0	440.0	4,400	0	
Grapevine Lk	TX Denton, Tarrant	Denton Cr	F	243.1	560.0	535.0	12,710	7,280	HD103–77–1.
			M	154.3	535.0	451.0	7,380	41	
Great Salt Plains Lk	OK Alfalfa	Salt Fk	F	240.0	1,138.5	1,125.0	27,730	8,693	PL 74–738.
		Arkansas R	FC	31.4	1,125.0	1,115.0	8,690	0	
Greers Ferry Lk	AR Cleburne, Van Buren	Little Red R	F	934.0	487.0	461.0	40,480	31,460	PL 75–761.
			FP	716.5	461.0	435.0	31,460	23,740	PL 83–780.
Heyburn Lk	OK Creek	Polecat Cr	F	48.4	784.0	761.5	3,700	917	PL 79–526.
			FM	3.8	761.5	55.5	917	394	
Hords Cr Lk	TX Coleman	Hords Cr	F	16.7	1,920.0	1,900.0	1,260	510	PL 77–228.
			M	5.8	1,900.0	1,848.0	510	0	
Hugo Lk	OK Choctaw	Kiamichi R	F	809.1	437.5	404.5	34,490	13,250	PL 79–526.
			FMCAR	127.2	404.5	390.0	13,250	4,500	
Hulah Lk	OK Osage	Caney R	F	257.9	765.0	733.0	13,000	3,570	PL 74–738.
	KS Chautaugua		FMA	31.1	733.0	710.0	3,570	0	PL 84–843.
Jemez Canyon Dam	NM Sandoval	Jemez R	F	73.0	5,232.0	5,196.1	2,877	1,370	PL 80–858 PL 81–516.
Joe Pool Lk	TX Dalla, Ellis, Tarrant	Mountain Cr	F	1,238.0	536.0	522.0	10,940	7,470	PL 89–298.
			M	176.9	522.0	456.0	7,470	10	
John Martin Res	CO Bent	Arkansas R	F	270.3	3,870.0	3,851.0	17,630	11,655	PL 74–738.
			FRC	350.9	3,851.0	0.0	11,655	0	
John Redmond Dam & Res	KS Coffee	Neosho R	F	559.0	1,068.0	1,039.0	31,700	9,300	PL 81–516.
			FMAR	70.8	1,039.0	1,020.0	9,300	108	
Kaw Lk	OK Kay, Osage	Arkansas R	F	919.4	1,044.5	1,010.0	38,020	17,040	PL 87–874.
	KS Cowley		FMARC	343.5	1,010.0	978.0	17,040	5,590	
Keystone Lk	OK Tulsa	Arkansas R	F	1,180.0	754.0	723.0	54,300	23,600	PL 81–516.
			FNPMC	296.7	723.0	706.0	23,600	13,300	
L&D 01, Norrell	AR Arkansas	Arkansas Post Canal	N	0.0	142.0	142.0	140	140	HD 758–79, RHA 1946.
L&D 02, Wilbur D. Mills Dam	AR Desha, Arkansas	Arkansas R	N	18.7	162.3	160.5	10,700	9,400	HD 758–79, RHA 1946.
L&D 03	AR Jefferson, Lincoln	Arkansas R	N	8.3	182.3	180.0	3,750	3,180	HD 758–79, RHA 1946.
L&D 04	AR Jefferson	Arkansas R	N	12.9	196.3	194.0	5,820	5,200	HD 758–79, RHA 1946.
L&D 05	AR Jefferson	Arkansas R	N	14.4	213.3	211.0	6,900	5,550	HD 758–79, RHA 1946.
L&D 06, David D. Terry	AR Pulaski	Arkansas R	N	9.6	231.3	229.0	4,830	4,130	HD 758–79.
L&D 07, Murray	AR Pulaski	Arkansas R	N	24.7	249.7	247.0	10,350	8,100	RHA 1946.

L&D 08, Toad Suck Ferry	AR Faulkner, Perry	Arkansas R	N	8.7	265.3	263.0	4,130	3,600	RHA 1946.
L&D 09, Arthur V. Ormond L&D, W. Rockefeller Lk.	AR Conway	Arkansas R	N	15.8	287.0	284.0	5,660	4,910	HD 758–79.
L&D 10, Lk Dardanelle	AR Pope Yell	Arkansas R	NP	72.3	338.2	336.0	34,700	31,140	HD 758–79, RHA 1946.
L&D 11, Ozark-Jetta Taylor	AR Franklin	Arkansas	NPR	25.3	372.5	370.0	11,100	8,800	RHA 1946, HD 758–79.
L&D 13, James W. Trimble	AR Sebastian, Crawford	Arkansas R	N	18.1	392.0	389.0	6,820	5,200	RHA 1946.
L&D 14, W. D. Mayo	OK Sequoyah, Leflore	Arkansas R	N	0.0	413.0	0.0	1,600	0	PL 79–525.
L&D 15, Robert S. Kerr Res	OK Leflore, Sequoyah	Arkansas R	NP	84.7	460.0	458.0	43,800	40,760	PL 79–525.
L&D 16, Webbers Falls Res	OK Muskogee	Arkansas R	NP	32.4	490.0	487.0	10,900	9,300	PL 79–525.
L&D 17, Chouteau	OK Wagoner	Verdigris R	N	0.0	511.0	511.0	2,270	2,270	PL 79–525, HD 758–79–2.
L&D 18, Newt Graham	OK Wagoner	Verdigris R	N	0.0	532.0	532.0	1,490	1,490	PL 97–525.
Lake O' The Pines	TX Marion	Cypress Cr	F	579.5	249.5	228.5	38,200	18,700	PL 79–526.
			M	250.0	228.5	201.0	18,700	1,100	
Lavon Lk	TX Collin	East Fork, Trinity R	F	275.6	503.5	492.0	29,450	21,400	HD 533–78–2.
			M	380.0	492.0	433.0	21,400	2,87	
Lewisville Lk Garza-Little Elm Dam	TX Denton	Elm Fork Trinity R	F	525.2	532.0	515.0	39,080	23,280	HD 403–77–1.
			M	436.0	515.0	433.0	23,280	12	
Marion Lk	KS Marion	Cottonwood R	F	60.2	1,358.5	1,350.5	9,050	6,200	PL 81–516.
			FMAR	83.3	1,350.5	1,320.0	6,200	170	
Millwood Lk	AR Little R Hempstead	Little R	F	1,650.0	287.0	259.2	95,200	29,200	PL 79–526.
			FMC	153.3	259.2	252.0	29,200	13,100	HD 785–79.
Navarro Mills Lk	TX Navarro Hill	Richland Cr	F	143.2	443.0	424.5	11,700	5,070	HD 498–83–2.
			M	53.2	424.5	375.3	5,070	0	
Nimrod Lk	AR Perry, Yell	Fourche La Fave R	F	307.0	373.0	342.0	18,300	3,550	FCA 1938.
Norfork Lk	AR Baxter, Fulton	North Fork R	F	731.8	580.0	552.0	30,700	21,990	PL 75–761.
	MO Ozark		FP	707.0	552.0	510.0	21.990	12,320	FCA 1941
North Fork Lk	TX Williamson	N.F. San Gabriel R	F	87.6	834.0	791.0	3,220	1,310	PL 87–874.
			MC	29.2	791.0	699.0	1,310	0	HD 591–82–2.
O. C. Fisher Lk	TX Tom Green	N. Concho R	F	277.2	1,938.5	1,908.0	12,700	5,440	PL 77–228.
			M	80.4	1,908.0	1,836.0	5,440	3	
Oologah Lk	OK Rogers	Verdigris R	F	965.6	661.0	638.0	56,800	29,460	PL 75–761.
			FMN	544.1	638.0	592.0	29,460	1,120	
Optima Lk	OK Texas	N. Candian R	F	100.5	2,779.0	2,763.5	7,640	5,340	PL 74–738.
			FMRC	117.7	2,763.5	2,726.0	5,340	1,335	
Pat Mayse Lk	TX Lamar	Sanders Cr	F	64.6	460.5	451.0	7,680	5,993	PL 87–874.
			FMCR	119.9	451.0	415.0	5,993	996	HD 88–71.
Pine Cr	OK McCurtain	Little R	F	388.1	480.0	443.5	17,230	4,980	PL 85–500.
			FMAC	77.6	443.5	414.0	4,980	700	HD 170–85–1.
Proctor Lk	TX Comanche	Leon R	F	310.1	1,197.0	1,162.0	14,010	4,610	PL 83–780, HD 535–81–2.
Sam Rayburn Res	TX Jasper, San Augustine, Angelina.	Angelina R	F	1,099.4	173.0	164.4	142,700	114,500	HD 981–76–1.
			PMC	1,446.2	164.4	149.0	114,500	74,040	
Santa Rosa	NM Guadalupe	Pecos R	F	340.0	4,746.2	4,776.5	10,740	3,823	PL 83–780.
			FI	160.0	4,776.5	4,746.2	7,115	3,823	
Sardis	OK Pushmatah	Jackfork Cr	F	122.6	607.0	599.0	16,960	13,610	HD 602–79–2.
			FMR	274.2	599.0	542.0	13,610	40	
Somerville Lk	TX Washington, Lee, Burleson.	Yegua Cr	F	337.7	258.0	238.0	24,400	11,460	PL 83–780.

APPENDIX E TO § 222.5—LIST OF PROJECTS—Continued

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					Upper	Lower	Upper	Lower	
			M	143.9	238.0	200.0	11,460	0	
Stiatook	OK Osage	Hominy Cr	F	178.0	729.0	714.0	13,690	10,190	HD 563–87.
			FMARC	311.6	714.0	657.0	10,190	1,430	
Stillhouse H. Lk	TX Bell	Lampasas R	F	390.6	666.0	622.0	11,830	6,430	PL 83–780.
			M	204.9	622.0	498.0	6,430	0	
Table Rock Lk	MO Taney, Stone, Barry	White R	F	760.0	931.0	915.0	52,250	43,070	PL 77–228.
	AR Carroll, Boone		FP	1,181.50	915.0	881.0	43,070	27,300	FCA 1938.
Tenkiller Ferry Lk	OK Cherokee, Sequoyah	Illinois R	F	576.7	667.0	632.0	20,800	12,900	RHA 1946.
			FP	371.0	632.0	594.5	12,900	7,370	
Texoma Lk, Denison Dam	TX Marshall	Red R	F	2,669.0	640.0	617.0	144,000	88,000	PL 75–761.
	OK Bryan, Cook, Grayson.		FPM	1,612.0	617.0	590.0	88,000	41,000	
Toronto Lk	KS Woodson	Verdigris R	F	179.8	931.0	901.5	11,740	2,660	HD 440–76–1.
			FMA	10.7	901.5	896.7	2,660	1,720	
Trinidad Lk	CO Las Animas	Purgatorie R	F	58.0	6,260.0	6,230.0	2,107	1,453	PL 85–500.
			FI	20.0	6,230.0	0.0	1,453	0	
Two Rivers Dam	NM Chaves	Rio Hondo R	F	150.0	4,032.0	3,945.0	4,806	0	PL 83–780.
Waco Lk	TX Mclennan	Bosque R	F	3.3	500.0	455.0	19,440	7,270	PL 83–780.
			M	100.8	455.0	370.0	7,240	0	HD 535–81–2.
Waurika Lk	OK Jefferson	Beaver Cr	F	140.4	962.5	951.4	15,000	10,100	PL 88–253.
			FMCAR	199.7	951.4	910.0	10,100	830	
Whitney Lk	TX Hill, Bosquel	Brazos R	F	1,372.0	571.0	533.0	49,820	23,560	PL 77–228.
			PM	381.9	533.0	425.0	23,560	475	HD 390–76–1.
Wister Lk	OK Leflore	Pouteau R	F	387.0	502.5	474.6	23,070	5,000	PL 75–761.
Wright Patman Lk	TX Bowie, Cass	Sulphur R	F	2,363.7	259.5	220.0	119,700	20,300	PL 79–526.
			FM	142.7	220.0	180.0	20,300	0	

[1] Res—Reservoir; Lk—Lake; Div—Diversion: R—River; Cr—Creek; Fk—Fork; L&D—Lock & Dam; GIWW—Gulf Intercoastal Waterway; FG—Floodgate; CS—Control Structure: DS—Drainage Structure; PS—Pump Station.
[2] F—Flood Control; N—Navigation; P—Hydropower; I—Irrigation; M—Municipal and/or Industrial Water/Supply; C—Fish and Wildlife Conservation; R—Recreation; A—Low Flow Augmentation or Pollution Abatement; Q—Quality or Silt Control.
[3] PL—Public Law; HD—House Document; RHA—River & Harbor Act; PW—Public Works: FCA—Flood Control Act; WSA—Water Supply Act.

[47 FR 44544, Oct. 8, 1982, as amended at 52 FR 15804, Apr. 30, 1987; 52 FR 23816, June 25, 1987; 57 FR 35757, Aug. 11, 1992. Redesignated at 60 FR 19851, Apr. 21, 1995]

§ 222.6 National Program for Inspection of Non-Federal Dams.

(a) *Purpose*. This regulation states objectives, assigns responsibilities and prescribes procedures for implementation of a National Program for Inspection of Non-Federal Dams.

(b) *Applicability*. This regulation is applicable to all Divisions and Districts having Civil Works functions.

(c) *References*. (1) The National Dam Inspection Act, Pub. L. 92–367, 8 August 1972.

(2) Freedom of Information Act, Pub. L. 87–487, 4 July 1967.

(3) ER 500–1–1.

(d) *Authority*. The National Dam Inspection Act, Public Law 92–367, 8 August 1972 authorizes the Secretary of the Army, acting through the Chief of Engineers, to carry out a national program of inspection of non-Federal dams for the purpose of protecting human life and property.

(e) *Scope*. The program provides for:

(1) An update of the National Inventory of Dams.

(2) Inspection of the following non-Federal dams (the indicated hazard potential categories are based upon the location of the dams relative to developed areas):

(i) Dams which are in the high hazard potential category (located on Federal and non-Federal lands).

(ii) Dams in the significant hazard potential category believed by the State to represent an immediate danger to the public safety due to the actual condition of the dam.

(iii) Dams in the significant hazard potential category located on Federal lands.

(iv) Specifically excluded from the national inspection program are:

(A) Dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, the International Boundary and Water Commission and the Corps of Engineers and

(B) Dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, and

(C) Dams which have been inspected within the 12-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.

(f) *Objectives*. The objectives of the program are:

(1) To update the National Inventory of Dams by 30 September 1980.

(2) To perform the initial technical inspection and evaluation of the non-Federal dams described in paragraph 222.8(e) of this section to identify conditions which constitute a danger to human life or property as a means of expediting the correction of hazardous conditions by non-Federal interests. The inspection and evaluation is to be completed by 30 September 1981.

(3) To obtain additional information and experience that may be useful in determining if further Federal actions are necessary to assure national dam safety.

(4) Encourage the States to establish effective dam safety programs for non-Federal dams by 30 September 1981 and assist the States in the development of the technical capability to carry out such a program.

(g) *Program execution*—(1) *Responsibilities*. (i) The owner has the basic legal responsibility for potential hazards created by their dam(s). Phase II studies, as described in Chapter 4, Appendix D, and remedial actions are the owner's responsibility.

(ii) The State has the basic responsibility for the protection of the life and property of its citizens. Once a dam has been determined to be unsafe, it is the State's responsibility to see that timely remedial actions are taken.

(iii) The Corps of Engineers has the responsibility for executing the national program. The Federal program for inspection of dams does not modify the basic responsibilities of the States or dam owners. The Engineering Division of the Civil Works Directorate is responsible for overall program goals, guidance, technical criteria for inspections and inventory and headquarters level coordination with other agencies. The Water Resources Support Center (WRSC) located at Kingman Building, Fort Belvoir, Virginia 22060 is responsible for:

(A) Program Coordination of both the inventory and inspection programs.

(B) Developing and defining functional tasks to achieve program objectives.

(C) Determining resource requirements. (Budget)

(D) Compiling and disseminating progress reports.

(E) Monitoring and evaluating program progress and recommending corrective measures as needed.

(F) Collecting and evaluating data pertaining to inspection reports, dam owners' responses to inspection report recommendations, attitudes and capabilities of State officials, State dam safety legislation, Architect-Engineer performance, etc., for defining a comprehensive national dam safety program.

(G) Responding to Congressional, media, scientific and engineering organization and general public inquiries.

Division and District offices are responsible for executing the program at the State level. Assignment of Division reponsibilities for States is shown in Appendix A.

(2) *State participation.* Where State capability exists, every effort should be made to encourage the State to execute the inspection program either with State personnel or with Architect-Engineer (A-E) contracts under State supervision. If the State does not have the capability to carry out the inspection program, the program will be managed by the Corps of Engineers utilizing Corps employees or contracts with A-E firm.

(h) *Update of National Inventory of Dams.* (RCS-DAEN-CWE-17/OMB No. 49–RO421)

(1) The National Inventory of Dams should be updated and verified to include all Federal and non-Federal dams covered by the Act. Those dams are defined as all artificial barriers together with appurtenant works which impound or divert water and which: (1) Are twenty-five feet or more in height or (2) have an impounding capacity of fifty acre-feet or more. Barriers which are six feet or less in height, regardless of storage capacity or barriers which have a storage capacity at maximum water storage elevation of fifteen acre-feet or less regardless of height are not included.

(2) Inventory data for all dams shall be provided in accordance with Appendix B.

(3) The hazard potential classification shall be in accordance with paragraph 2.1.2 *Hazard Potential* of the Recommended Guideline for Safety Inspection of Dams (Appendix D to this section).

TABLE 2—HAZARD POTENTIAL CLASSIFICATION

Category	Urban development	Economic loss
Low	No permanent structure for human habitation	Minimal (Undeveloped to occasional structures or agriculture).
Significant	No urban development and no more than a small number of habitable structures.	Appreciable (Notable agriculture, industry or structures).
High	Urban development with more than a small number of habitable structures.	Excessive (Extensive community, industry or agriculture).

(4) As in the original development of the inventory, the States should be encouraged to participate in the work of completing, verifying and updating the inventory. Also, when available, personnel of other appropriate Federal agencies should be utilized for the inventory work on a reimbursable basis. Work in any State may be accomplished:

(i) Under State supervision utilizing State personnel or Architect-Engineers contracts.

(ii) Under Corps supervision utilizing Corps employees, employees of other Federal agencies or Architect-Engineer contracts.

(5) A minimum staff should be assigned in Districts and Divisions to administer and monitor the inventory activities. Generally, the work should be accomplished by architect-engineers or other Federal agency personnel under State or Corps supervision. Corps personnel should participate in the inventory only to the extent needed to assure that accurate data are collected.

(6) The National Inventory of Dams computerized data base in stored on the Boeing Computer Services (BCS) EKS computer system in Seattle, Washington. The data base uses Data Base Management System 2000 and is accessible for query by all Corps offices.

(7) Appendix B indicates details on accessing and updating inventory data.

(8) Appendix I describes the procedure for using NASA Land Satellite (LANDSAT) Multispectral Scanner data along with NASA's Surface Water Detection and Mapping (DAM) computer program to assist in updating and verifying and National Inventory of Dams.

(9) All inventory data for dams will be completed and verified utilizing all available sources of information (including LANDSAT overlay maps) and will include site visitation if required. It is the responsibility of the District Engineer to insure that the inventory of each State within his area of responsibility is accurate and contains the information required by the General Instructions for completing the forms for each Federal and non-Federal dam.

(i) [Reserved]

(j) *Inspection Program.* (RCS-DAEN-CWE-17 and OMB No. 49–RO421)

(1) *Scheduling of inspections.* The Governor of each State or his designee will continue to be involved in the selection and scheduling of the dams to be inspected. Priority will be given to inspection of those dams considered to offer the greatest potential threat to public safety.

(i) No inspection of a dam should be initiated until the hazard potential classification of the dam has been verified to the satisfaction of the Corps. Dams in the significant hazard category should be inspected only if requested by the State and only then if the State can provide information to show that the dam has deficiencies that pose an immediate danger to the public safety. Guidance for the selection of significant category non-Federal dams on Federal lands will be given in the near future.

(ii) Selection for inspection of non-Federal dams located on Federal lands or non-Federal dams designed and constructed under the jurisdiction of some Federal agency, should be coordinated with the responsible Federal agency. The appropriate State or regional representative of the Federal agency also should be contacted to obtain all available data on the dam. Representatives of the agency may participate in the inspection if they desire and should be given the opportunity to review and comment on the findings and recommendations in the inspection report prior to submission to the Governor and the dam owner. Examples of such dams are: non-Federal dams built on lands managed by National Forest Service, Bureau of Land Management, Fish and Wildlife Service, etc.; non-Federal dams designed and constructed by the Soil Conservation Service of the U.S. Department of Agriculture; high hazard mine tailings and coal mine waste dams under the jurisdiction of the Mine Safety and Health Administration, Department of Labor.

(iii) Indian-owned dams on trust lands are considered to be non-Federal dams. All dams in the high hazard potential category will be inspected. Privately-owned dams located on Indian lands are to be included in the program, however BIA-owned dams on Indian lands are Federal dams and are exempt.

(2) *Procedures.* The Division Engineer is responsible for the quality of inspections and reports prepared by the District Engineer. Close liaison between the District Engineer and the State agency or A-E firm responsible for the inspections will be required in order to obtain a dependable result. To avoid undesirable delays in the evaluation of safety of individual dams, contracts with A-E's or agreements with States which are managing the program will provide that reports be completed and furnished to the District Engineer within a specified time after completion of the on-site inspection of the dam.

(i) *Inspection guidelines.* The inspection should be conducted in accordance with the Recommended Guidelines for Safety Inspection of Dams (Appendix D to this section). Expanded Guidance for Hydrologic and Hydraulic Assessment of Dams is provided in Appendix C. The criteria in the recommended guidelines are screening criteria to be used only

for initial determinations of the adequacy of the dam. Conditions found during the investigation which do not meet the guideline recommendations should be assessed as to their importance from the standpoint of the degree of risk involved.

(ii) *Coordinators.* Experience has shown that coordination and communications among technical disciplines, Public Affairs Office, emergency officials, training officers, operations personnel, State representatives and A-E firms has been best in those districts where one person was delegated the responsiblity for coordinating the actions of all involved elements. Each district should evaluate its overall coordination procedures to insure that all involved elements have the best possible access to necessary data.

(iii) Field investigations should be carried out in a systematic manner. A detailed checklist or inspection form should be developed and used for each dam inspection and appended to the inspection report. The size of the field inspection team should be as small as practicable, generally consisting of only one representative of each required discipline in order to control the costs of the inspection without sacrificing the quality of the inspection. The inspection team for the smaller less complex dams should be limited to two or three representatives from appropriate technical areas with additional specialists used only as special conditions warrant. The larger more complex projects may require inspection teams of three or four specialists. Performance of overly detailed and precise surveys and mapping should be avoided. Necessary measurement of spillway, dam slopes, etc. can generally be made with measuring tapes and hand levels.

(iv) *Additional engineering studies.* Dam inspections should be limited to Phase I investigations as outlined in Chapter 3 of Appendix D. However, if recommended by the investigating engineer and approved by the District Engineer, some additional inexpensive investigations may be performed when a reasonable judgment on the safety of the dam cannot be made without additional investigation. Any further Phase II investigation needed to prove or disprove the findings of the District Engineer or to devise remedial measures to correct deficiencies are the responsibility of the owner and will not be undertaken by the Corps of Engineers.

(v) *Assessment of the investigation.* (A) The findings of the visual inspection and review of existing engineering data for a dam shall be assessed to determine its general condition. Dams assessed to be in generally good condition should be so described in the inspection report. Deficiencies found in a dam should be described and assessed as to the degree of risk they present. The degree of risk should consider only loss of life and/or property damage resulting from flooding due to dam failure. Loss of project benefits *i.e.*, municipal water supply, etc., should not be considered. If deficiencies are assessed to be of such a nature that, if not corrected, they could result in the failure of the dam with subsequent loss of life and/or substantial property damage, the dam should be assessed as ''Unsafe.'' If the probable failure of an ''Unsafe'' dam is judged to be imminent and immediate action is required to reduce or eliminate the hazard, the ''unsafe'' condition of the dam should be considered an ''emergency.'' If the probable failure is judged not to be imminent, the ''unsafe'' condition should be considered a ''non-emergency.''

(B) Adequacy of spillway. The ''Recommended Guidelines for Safety Inspection of Dams,'' Appendix D, provide current, acceptable inspection standards for spillway capacity. Any spillway capacity that does not meet the criteria in the ''Guidelines'' is considered inadequate. When a spillway's capacity is so deficient that it is seriously inadequate, the project must be considered *unsafe*. If all of the following conditions prevail, the Governor of the State shall be informed that such project is unsafe:

(*1*) There is high hazard to loss of life from large flows downstream of the dam.

(*2*) Dam failure resulting from overtopping would significantly increase the hazard to loss of life downstream from the dam over that which would exist just before overtopping failure.

(*3*) The spillway is not capable of passing one-half of the probable maximum flood without overtopping the dam and causing failure.

Classification of dams with seriously inadequate spillways as ''unsafe, nonemergency'' is generally a proper designation of the urgency of the unsafe condition. However, there may be cases where the spillway capacity is unusually small and the consequences of dam overtopping and failure would be catastrophic. In such cases, the unsafe dam should be classified as an emergency situation.

(vi) All inspection reports will receive one level of independent review by the Corps. If the reports are prepared by the Corps, the independent review may be performed internally within the district office. However, in cases which involve significant economic, social or political impacts and technical uncertainties in evaluating the dams, advice may be obtained from the staffs of the Division Engineer and the Office, Chief of Engineers.

(3) *Reports*—(i) *Preparation*. A written report on the condition of each dam should be prepared as soon as possible after the completion of the field inspection and assessment. A suggested report format is attached as Appendix E. It is important that the inspection report be completed in a timely manner. For inspections being done by Corps employees, it is suggested that once an inspection team has been assigned to a dam inspection it be allowed to complete the inspection and report without interruption by other work.

(ii) *Review and approval*. The coordinating engineer should determine which disciplines should review the report and establish a procedure to accomplish the review in a timely manner. A review panel, made up of the appropriate Division and Branch Chiefs has worked well in some districts. Use of a review panel should be seriously considered by all districts. All inspection reports shall be approved by the District Engineer who will maintain a complete file of final approved reports. Any State or Federal agency having jurisdiction over the dam or the land on which the dam is built should be given the opportunity to review and comment on the report prior to submission to the Governor or dam owner. The District Engineer will transmit final approved reports to the Governor of the State and the dam owner (or the Governor only, when requested in writing by State officials). If the report is initially furnished to the Governor only, a period of up to ten days may be allowed before the report is furnished to the dam owner. If the Governor or the owner indicates additional technical information is available that might affect the assessment of the dam's condition, the District Engineer will furnish the proposed final report to the Governor and the owner and establish a definite time period for comments to be furnished to the District Engineer prior to report approval.

(iii) In general the Governor will be responsible for public release of an inspection report and for initiating any public Statements. However, an approved report must be treated as any other document subject to release upon request under the Freedom of Information Act. The letters of transmittal to the Governor and owner should indicate that under the provisions of the Freedom of Information Act, the documents will be subject to release upon request after receipt by the Governor. Proposed final reports will be considered as internal working papers not subject to release under the Freedom of Information Act. Corps personnel, A-E contractor personnel and others working under supervision of the Corps will be cautioned to avoid public statements about the condition of the dam until after the District Engineer has approved the report. The Corps will respond fully to inquiries after the Governor has received the approved report or been notified of an unsafe dam. An information copy of the report should be sent to the District office normally having jurisdiction if other than the District responsible for the inspection.

(iv) *Follow-up action*. A Federal investment of the magnitude anticipated for this inspection program makes it desirable that a reporting system be established to keep the District Engineer abreast of the implementation of the recommendations in the inspection reports. The letters of transmittal to the Governor and owner will request that

the District Engineer be informed of the actions taken on the recommendations in the inspection reports. However, the National Dam Inspection Act only authorizes the initial inspection of certain dams; therefore, once a report is completed no reinspection will be undertaken.

(4) *Unsafe dams.* The investigating engineer will be required to immediately notify the District Engineer when a dam is assessed as being unsafe. He will also indicate if probable failure of the unsafe dam is judged to be imminent and immediate action is required to reduce or eliminate the threat. The District Engineer will evaluate the findings of the investigating team and will immediately notify the Governor and the owner if the findings are Unsafe Non-Emergency or Unsafe-Emergency. The appropriate State agency and the Corps of Engineers officials having emergency operation responsibility for the area in which the dam is located will also be notified. The information provided in the unsafe dam notice shall be as indicated in Appendix F. Any emergency procedures or remedial actions deemed necessary by the District Engineer will be recommended to the Governor who has the responsibility for any corrective actions. As provided in ER 500–1–1, Corps assistance under Pub. L. 84–99 ''Advance Measures,'' may be made available to complement the owner's and Governor's action under certain conditions and subject to the approval of the Director of Civil Works. The District Engineer's Emergency Operation Officer will coordinate the advance measures request in accordance with existing procedures. Coordination will be maintained between the District responsible for emergency action under Pub. L. 84–90 and the District responsible for the inspection.

(5) *Emergency action plans.* An emergency action plan should be available for every dam in the high and significant hazard category. Such plans should outline actions to be taken by the operator to minimize downstream effects of an emergency and should include an effective warning system. If an emergency action plan has not been developed, the inspection report should recommend that the owner develop such an action plan. However, the Corps has no authority to require an emergency action plan.

(k) *Progress reports.* Progress reports should be submitted monthly by the Division Engineer to WRSC. The reports shall include progress through the last Saturday of the month and should be mailed by the following Monday. The reports shall contain the information and be typewritten in the format shown in Appendix G. Copies of Unsafe Dam Data Sheets will be submitted with the progress report. Copies of the completed inspection report for Dams in the Unsafe-Emergency category will be submitted also. (RCS-DAEN-CWE-19)

(l) *Contracts*—(1) *Corps of Engineers supervision.* Contracts for performing inventory and inspection activities under supervision of the Corps of Engineers shall be Fixed-Price Architect Engineer Contracts for Services. A sample scope of work setting forth requirements is provided in Appendix H. Experience has shown that costs for individual dam inspection have been lower when multiple inspections are included in one contract. Therefore, each A-E contract should include multiple dam inspections where practicable. Corps participation in A-E inspections should be held to a minimum. Corps representatives should participate in only enough A-E inspections to assure the equality of the inspections.

(2) *State supervision.* Contracts with States for performing inventory and inspection activities under State supervision may be either a Cost-Reimbursement type A-E Contract for Services or a Fixed-Price type contract. The selection of Architect-Engineers by the State should require approval of the Corps of Engineers Contracting Officer. The negotiated price for A-E services under cost-reimbursement type contracts with States will also require approval by the Contracting Officer. Contracts with States should require *timely* submission of the inspection reports to the District Engineer for review and approval. The contract provisions should also prevent public release of or public comment on the inspection report until the District Engineer has reviewed and approved the report. Corps

of Engineers participation in State inspections should be limited to occasional selected inspections to assure the quality of the State program.

(m) *Training*. As indicated in paragraph (f) of this section, one objective of the inspection program for non-Federal Dams is to prepare the States to provide effective dam safety programs. In many States this will require training of personnel of State agencies in the technical aspects of dam inspections. The Office, Chief of Engineers is studying the need for and content of a comprehensive Corps-sponsored training program in dam inspection technology. Pending the possible adoption of such a comprehensive plan, division and district Engineers are encouraged to take advantage of suitable opportunities to provide needed training in dam safety activities to qualified employees of State agencies and, when appropriate, to employees of architect-engineer firms engaged in the program. The following general considerations should be observed in providing such training:

(1) Priority must be placed on inspection of dams and updating the national dam inventory; hence, diversion of resources to training activities should not deter or delay these principle program functions.

(2) Salaries, per diem and travel expenses relating to training activities of State employees will be a State expense. There will be no tuition charge for State employees.

(3) Architect-Engineer firms will be required to pay expenses and tuition costs for their employees participating in Corps-sponsored training activities.

(4) Corps-sponsored training will require that each trainee is a qualified engineer or geologist and will concentrate on engineering technology related directly to dam safety. (This may require screening of proposed candidates for training.)

(5) Under this program, the Corps will not sponsor training that is intended primarily to satisfy requirements for a degree.

(6) Training by participation in actual dam inspections and/or management of the inspection program should be encouraged.

APPENDIX A TO § 222.6—DIVISION ASSIGNMENTS

To facilitate better coordination with the States, the Division Engineers are responsible for the dam inspection program by States as follows:

New England Division: Maine, Rhode Island, Connecticut, Vermont, New Hampshire, Massachusetts

North Atlantic Division: New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia

Ohio River Division: West Virginia, Ohio, Kentucky, Tennessee, Indiana

South Atlantic Division: North Carolina, South Carolina, Georgia, Florida, Alabama, Puerto Rico, Virgin Islands

Lower Mississippi Valley Division: Mississippi, Louisiana, Missouri

North Central Division: Michigan, Wisconsin, Illinois, Minnesota, Iowa

Southwestern Division: Arkansas, Oklahoma, Texas, New Mexico

Missouri River Division: Kansas, Nebraska, South Dakota, North Dakota, Wyoming, Colorado

North Pacific Division: Oregon, Idaho, Montana, Washington, Alaska

South Pacific Division: Utah, California, Arizona, Nevada

Pacific Ocean Division: Hawaii, Trust Territories, American Samoa

APPENDIX B TO § 222.6—INVENTORY OF DAMS

(RCS-DAEN-CWE-17 and OMB No. 49–RO421)

1. The updating of the inventory will include the completion of all items of data for all dams now included in the inventory, verification of the data now included in the inventory, and inclusion of complete data for all appropriate existing dams not previously listed. Data completion, verification and updating will be scheduled over a three year period.

2. The inventory data will be recorded on Engineering Form 4474 and 4474A (Exhibit 2). The general instructions for completing the forms are printed on the back of the forms. Parts I and II of the forms are to be fully completed. The instruction for completing Item 29, Line 5, Para. II (Engr Form 4474A) is revised to conform identically with the hazard potential classification contained in the recommended guidelines for safety inspection of dams. Additional data has been added to designate Corps districts in which the dam is located, Federal agency owned dams, Corps owned dams, Federal agency regulated dams, dams constructed with technical or financial assistance of the U.S. Soil Conservation Service, and privately owned dams located on Federal property.

3. All inventory data will be verified utilizing all available sources of information and will include site visitation if required.

4. The Inventory Data Base is stored on the Boeing Computer Services (BCS) EKS System in Seattle, Washington. The data is available to all Corps offices for queries using Data Base Management System 2000 (S2K).

a. To access the National Data Base log on BCS and type the following:

GET,DAMS/UN=CECELB

CALL,DAMS

b. For current information and changes to the National Inventory Data Base, type:

OLD,HOTDAM/UN=CEC1AT

LIST

5. The inventory update data will be furnished and the National Data Base will be updated on a monthly basis. The monthly submission will cover all dams whose inventory data were completed since the last report. The update data will be loaded directly onto the Boeing Computer by the field office.

a. The procedure for loading the data on the Boeing Computer can be printed by accessing the Boeing Computer and listing the information file ''HOTDAM.'' (See paragraph 4b. above.)

b. It is the responsibility of the submitting office to edit the data prior to furnishing it for the update. Editing will be accomplished by processing the data using the Inventory Edit Computer program developed by the Kansas City District. This procedure is described in the ''HOTDAM'' file.

6. Federal agencies will be uniformly designated by major and minor abbreviations according to the following list whenever applicable to Items 46 through 53. Abbreviations are to be left justified within the field with one blank separating major and minor abbreviations.

	Major	Minor
a. International Boundary and Water Commission.	IBWC	
b. U.S. Department of Agriculture:		
(1) Soil Conservation Service	USDA	SCS
(2) Forest Service	USDA	FS
c. U.S. Department of Energy Federal Energy Regulatory Commission.	DOE	FERC
d. Tennessee Valley Authority	TVA	
e. U.S. Department of Interior:		
(1) Bureau of Sport Fisheries and Wildlife.	DOI	BSFW
(2) Geological Survey	DOI	GS
(3) Bureau of Land Management	DOI	BLM
(4) Bureau of Reclamation	DOI	USBR
(5) Bureau of Indian Affairs	DOI	BIA
f. U.S. Department of Labor: (1) Mine Safety and Health Administration.	DOL	MSHA
g. Corps of Engineers:		
(1) Lower Mississippi Valley Division:		
(a) Memphis District	DAEN	LMM
(b) New Orleans District	DAEN	LMN
(c) St. Louis District	DAEN	LMS
(d) Vicksburg District	DAEN	LMK
(2) Missouri River Division:		
(a) Kansas City District	DAEN	MRK
(b) Omaha District	DAEN	MRO
(3) New England Division	DAEN	NED
(4) North Atlantic Division:.		
(a) Baltimore District	DAEN	NAB
(b) New York District	DAEN	NAN
(c) Norfolk District	DAEN	NAO
(d) Philadelphia District	DAEN	NAP
(5) North Central Division:		
(a) Buffalo District	DAEN	NCB
(b) Chicago District	DAEN	NCC
(c) Detroit District	DAEN	NCE
(d) Rock Island District	DAEN	NCR
(e) St. Paul District	DAEN	NCS
(6) North Pacific Division:		
(a) Alaska District	DAEN	NPA
(b) Portland District	DAEN	NPP
(c) Seattle District	DAEN	NPS
(d) Walla Walla District	DAEN	NPW
(7) Ohio River Division:		
(a) Huntington District	DAEN	ORH
(b) Louisville District	DAEN	ORL
(c) Nashville District	DAEN	ORN
(d) Pittsburgh District	DAEN	ORP
(8) Pacific Ocean Division	DAEN	POD
(9) South Atlantic Division:		
(a) Charleston District	DAEN	SAC
(b) Jacksonville District	DAEN	SAJ
(c) Mobile District	DAEN	SAM
(d) Savannah District	DAEN	SAS
(e) Wilmington District	DAEN	SAW
(10) South Pacific Division:		
(a) Los Angeles District	DAEN	SPL
(b) Sacramento District	DAEN	SPK
(c) San Franciso District	DAEN	SPN
(11) Southwestern Division:		
(a) Albuquerque District	DAEN	SWA
(b) Fort Worth District	DAEN	SWF
(c) Galveston District	DAEN	SWG
(d) Little Rock District	DAEN	SWL
(e) Tulsa District	DAEN	SWT

7. *Procedures for Revising and Updating the Inventory of Dams Master File.*

a. *To Change Correct or Add an Item.* Submit a change card that contains the identification assigned to the dams (Columns 1 thru 7), the proper card code (Column 80) and only the item or items changed, corrected or added. Data on the master file is added or replaced on an item for item basis.

b. *To Delete an Item.* Submit a change card that contains the identification assigned to the dam, (Columns 1 thru 7), the proper card code (Column 80), and an asterisk (*) in the left most column of the item or items to be deleted. More than one item can be changed, corrected, added on or deleted from the same card.

c. *To Delete the Entire Data for a Dam from the Master File.* Submit a zero (0) card punched as follows:

Columns 1 thru 7—Item 1 identification assigned to the dam
Columns 8 thru 10—Item 2, Division Code
Columns 11 thru 16—The word DELETE
Columns 17 thru 79—Blank Spaces
Column 80—A zero

8. *Keypunch Instructions and Punched Card Formats.*

a. Table 1 describes the character set to be used for keypunch cards of Engr. Forms 4474 and 4474A.

b. Exhibit 1 is the EDPC keypunch instructions and punch card formats defining the data fields (Items) and card columns to be used in preparing punched cards in compliance with the requirements of this regulation.

c. Exhibit 2 are prints of Engr. Forms 4474 and 4474A which are laid out in punch card format to facilitate punching cards directly from the completed forms.

Table 1

STANDARD CHARACTER SET AND CARD CODES

A	12-1		0	0
B	12-2		1	1
C	12-3		2	2
D	12-4		3	3
E	12-5		4	4
F	12-6		5	5
G	12-7		6	6
H	12-8		7	7
I	12-9		8	8
J	11-1		9	9
K	11-2	space	blank	
L	11-3		,	0-3-8
M	11-4		.	12-3-8
N	11-5		-	11
O	11-6		*	11-4-8
P	11-7		/	0-1
Q	11-8		$	11-3-8
R	11-9			
S	0-2			
T	0-3			
U	0-4			
V	0-5			
W	0-6			
X	0-7			
Y	0-8			
Z	0-9			

NON-STANDARD CHARACTER SET

(	12-5-8	0-8-4
)	11-5-8	12-8-4
"	8-4	
'	11-8-5	
+	12	
%	8-6	
;	12-8-7	11-8-6
:	8-2	
#	0-8-6	
@	8-5	
=	8-3	8-6

EDPC KEYPUNCH INSTRUCTIONS (Continued)

ER 1110-2-106
26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS

JOB NO.:

CARD IDENTIFICATION: CARDS 0&1

SOURCE: ENG FORM 4474

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	Card Number 0 Identity (State)	1	2	2	A	L	
1	Identity (Number)	3	7	5	N	R	
2	Div	8	10	3	A	L	
3	State	11	12	2	A	L	
4	County	13	15	3	N	R	
5	Congr Dist	16	17	2	N	R	
6	State	18	19	2	A	L	
7	County	20	22	3	N	R	
8	Congr. Dist	23	24	2	N	R	
9	Name	25	61	39	A	L	
10	Latitude	62	66	5	N	R	No decimal point is punched.
11	Longitude	67	72	6	N	R	No decimal point is punched.
12	Report Data (Day)	73	74	2	N	R	
12	Report Data (Mo)	75	77	3	A	L	
12	Report Data (Yr)	78	79	2	N	R	
	Card Number	80	80	1	N		Punch a 0
1	CARD NUMBER 1 Identity	1	7				Repeat Item 1 card 0
13	Popular Name	8	43	36	A	L	
14	Name of Impoundment	44	79	36	A	L	
	Card Number	80	80	1	N		Punch a 1

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

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SHEET OF SHEETS

Exhibit 1

ER 1110-2-106
26 Sept 79

EDPC KEYPUNCH INSTRUCTIONS (Continued)

JOB TITLE: INVENTORY OF UNITED STATES DAMS

JOB NO.:

CARD IDENTIFICATION: CARD 2

SOURCE: ENG FORM 4474

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	CARD NUMBER 2 Identity	1	7				Repeat Item 1 card 0
15	Region	8	9	2	N	R	
16	Basin	10	11	2	N	R	
17	River or Stream	12	40	29	A	L	
18	City-Town-Village	41	68	28	A	L	
19	Distance from Dam	69	71	3	N	R	
20	Population	72	79	8	N	R	
	Card Number	80	80	1	N		Punch a 2

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

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SHEET OF SHEETS

Exhibit 1

EDPC KEYPUNCH INSTRUCTIONS (Continued)

ER 1110-2-106
26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS

JOB NO.:

CARD IDENTIFICATION: CARD 3 & 4

SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
	CARD NUMBER 3						
1	Identity	1	7				Repeat Item 1 card 0
21	Type of Dam	8	19	14	A	L	
22	Year Completed	20	23	4	N	R	
23	Purposes	24	33	10	A	L	
24	Structural Height	34	37	4	N	R	
25	Hydraulic Height	38	41	4	N	R	
26	Impounding Maximum	42	49	8	N	R	
27	Impounding Normal	50	57	8	N	R	
27A	C. E. District	58	60	3	A	L	
27B	Ownership	61	61	1	A		
27C	Fed. Regulated	62	62	1	A		
27D	Prv't Dams/Fed Land	63	63	1	A		
27E	Soil Con. Ser. Ass't.	64	64	1	A		
27F	Verif. Date (Day)	65	66	2	N	R	
27F	Verif. Date (Mo)	67	69	3	A	L	
27F	Verif Date (Yr)	70	71	2	N	R	
	Card Number	80	80	1	N		Punch a 3
	CARD NUMBER 4						
1	Identity	1	7				Repeat Item 1 card 0
28	Remarks	8	79	72	A	L	
	Card Number	80	80	1	N		Punch a 4

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

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SHEET OF SHEETS

Exhibit 1

ER 1110-2-106
26 Sept 79

EDPC KEYPUNCH INSTRUCTIONS (Continued)

JOB TITLE: INVENTORY OF UNITED STATES DAMS

JOB NO.:

CARD IDENTIFICATION: CARD 5

SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	CARD NUMBER 5 Identity	1	7				Punch from Part II Item 1
29	D/S Has	8	8	1	N		
30	Crest Length	9	13	5	N	R	
31	Spillway Type	14	14	1	A		
32	Spillway Width	15	18	4	N	R	
33	Maximum Discharge	19	25	7	N	R	
34	Volume of Dam	26	34	9	N	R	
35	Power-Installed	35	40	6	N	R	
36	Power-Proposed	41	46	6	N	R	
37	N.L. Number	47	47	1	N		
38	N.L. Length	48	51	4	N	R	
39	N.L. Width	52	54	3	N	R	
40	N.L. Length	55	58	4	N	R	
41	N.L. Width	59	61	3	N	R	
42	N.L. Length	62	65	4	N	R	
43	N.L. Width	66	68	3	N	R	
44	N.L. Length	69	72	4	N	R	
45	N.L. Width	73	75	3	N	R	
	Card Number	80	80	1	N		Punch a 5

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

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SHEET Exhibit 1 OF SHEETS

EDPC KEYPUNCH INSTRUCTIONS (Continued)

ER 1110-2-106
26 Sept 79

JOB TITLE: INVENTORY OF UNITED STATES DAMS

JOB NO.:

CARD IDENTIFICATION: CARD 6.7,8, & 9

SOURCE: ENG FORM 4474A

SOURCE BLOCK	NAME OF FIELD	COLUMNS FROM	COLUMNS TO	NO. COLS.	TYPE DATA *	JUSTIFY **	REMARKS-INSTRUCTIONS
1	CARD NUMBER 6 Identity	1	7				Repeat Item 1 card 5
46	Owner	8	31	24	A	L	
47	Engineering By	32	55	24	A	L	
48	Construction By	56	79	24	A	L	
	Card Number	80	80	1	N		Punch a 6
1	CARD NUMBER 7 Identity	1	7				Repeat Item 1 card 5
49	Design	8	25	18	A	L	
50	Construction	26	43	18	A	L	
51	Operation	44	61	18	A	L	
52	Maintenance	62	79	18	A	L	
	Card Number	80	80	1	N		Punch a 7
1	CARD NUMBER 8 Identity	1	7				Repeat Item 1 card 5
53	Inspection By	8	40	33	A	L	
54	Inspection (Day)	41	42	2	N	R	
54	Inspection (Mo)	43	45	3	N	R	
54	Inspection (Yr)	46	47	2	N	R	
55	Authority	48	79	32	A	L	
	Card Number	80	80	1	N		Punch a 8
1	CARD NUMBER 9 Identity	1	7				Repeat Item 1 card 5
56	Remarks	8	79	72	A	L	
	CARD NUMBER	80	80	1	N		Punch a 9

* A = ALPHA, N = NUMERIC ** L = LEFT, R = RIGHT

ENG FORM 1 OCT 66 0-1817B

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SHEET OF SHEETS

Exhibit 1

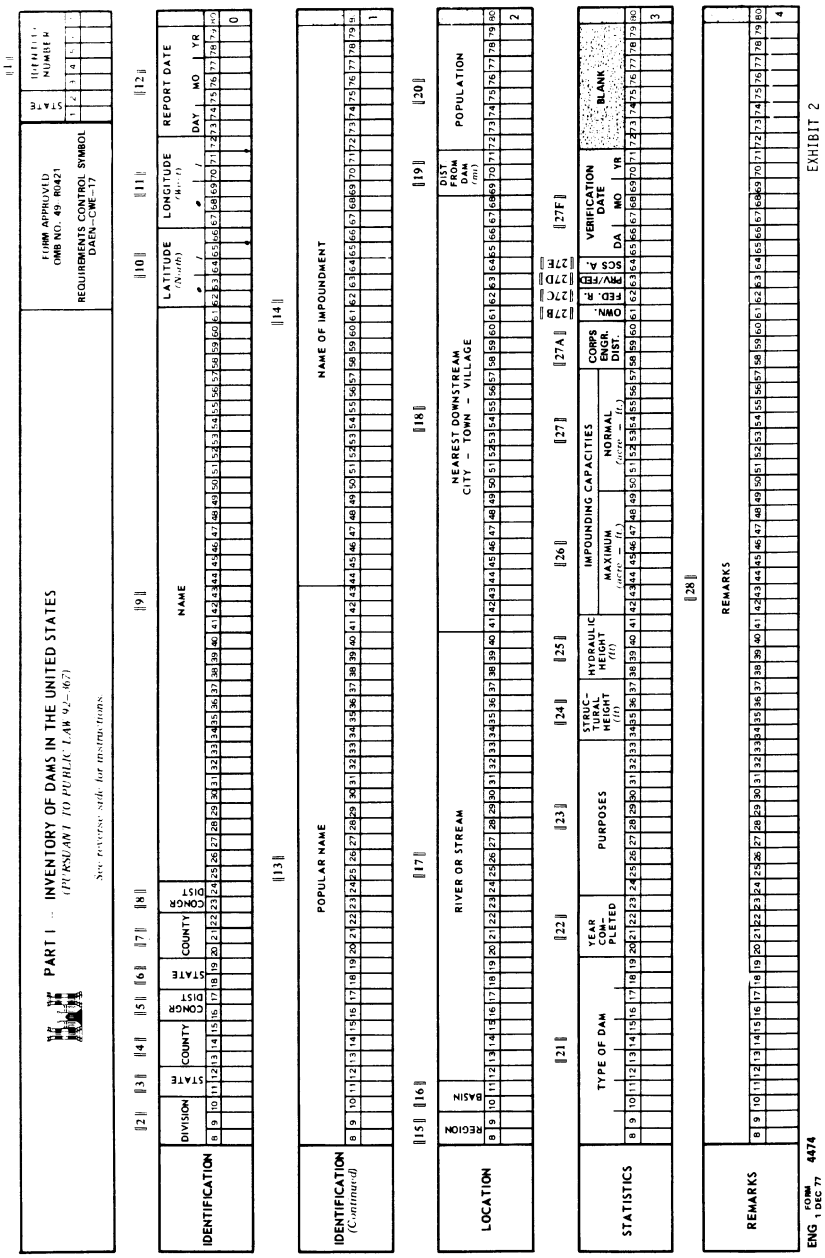
PART I — INVENTORY OF DAMS IN THE UNITED STATES
(PUBLIC LAW 92-367)
See reverse side for instructions.
FORM APPROVED
OMB NO. 49-R0421
REQUIREMENTS CONTROL SYMBOL
DAEN-CWE-17
STATE
INVENTORY NUMBER
IDENTIFICATION
DIVISION
STATE
COUNTY
CONGR DIST
STATE
COUNTY
CONGR DIST
NAME
LATITUDE (North)
LONGITUDE (West)
REPORT DATE
DAY
MO
YR
IDENTIFICATION (Continued)
POPULAR NAME
NAME OF IMPOUNDMENT
LOCATION
REGION
BASIN
RIVER OR STREAM
NEAREST DOWNSTREAM CITY - TOWN - VILLAGE
DIST FROM DAM (mi)
POPULATION
STATISTICS
TYPE OF DAM
YEAR COM-PLETED
PURPOSES
STRUC-TURAL HEIGHT (ft)
HYDRAULIC HEIGHT (ft)
IMPOUNDING CAPACITIES
MAXIMUM (acre-ft)
NORMAL (acre-ft)
CORPS ENGRS. DIST.
OWN.
FED. P.
PRV/FED
SCS A.
VERIFICATION DATE
DA
MO
YR
BLANK
REMARKS
ENG FORM 1 DEC 77 4474

EXHIBIT 2

GENERAL INSTRUCTIONS

This form is for use in preparing the inventory of dams in the United States under the requirements of the National Program for the Inspection of Dams, P.L. 92-367. All items of Part I and Part II (Lines 0-9) must be completed as instructed below. Print entries distinctly in ink or pencil. For letters o, z, and i, write Ø, Ƶ , and I.

Write only one letter or numeral in each space; do not use more letters than blocks allowed for an item. Do not abbreviate on Part I. Leave one space between words and no space between code letters.

For all letter codes or word entries place first letters in left block of field. In word fields any alphabetic, numeric or special character may be entered. For all numerical entries, use only numerals placing the last digit of number in the right block of field, including trailing zeros. Do not include a decimal point! In fields where decimals are required values are to be placed around the decimal point printed on the form.

Leave blank those spaces where item does not apply, e.g., do not write "N/A", "–", "None", etc., unless instructed to do so by specific instructions. Use the remarks line when additional space is needed for an item, or to clarify an entry. Preface each remark with the item number. (See Item ‖28‖ or ‖56‖ instructions)

PART I

Item ‖ 1 ‖ IDENTITY: The Division Engineer will assign and control the identity for dams in the states for which he is responsible. The first two characters of the identity will be the two-letter state abbreviation in accordance with Federal Information Processing Standards Publication, June 15, 1970 (FIPS PUB 6-1). In cases where a dam is physically located in two or more states, one state will be designated as the principal state for the identity. The last five (5) characters of the identity will be a sequential number assigned to identify dams within a state.

LINE 0:

Item ‖ 2 ‖ DIVISION: Enter the three (3) letter office symbol for the division making the report in accordance with ABBR Report Code, Appendix B, ER 18-2-1, Civil Works Information System; e.g., NAD, ORD, SWD, etc.

Location:

Item ‖ 3 ‖ STATE: Enter two (2) letter principal state abbreviation in accordance with FIPS PUB 6-1.
Item ‖ 4 ‖ COUNTY: Enter three (3) digit county identification in accordance with FIPS PUB 6-1.
Item ‖ 5 ‖ CONG DIST: Enter one (1) or two (2) digit number for congressional districts in which dam is located.
Item ‖ 6 ‖, ‖ 7 ‖, and ‖ 8 ‖ (Use second location for structures situated in more than one state.)

Item ‖ 9 ‖ DAM NAME: Enter official name of dam. Do not abbreviate unless the abbreviation is a part of the official name. For dams that do not have a name, create a name by combining the two (2) letter state abbreviation plus "NO NAME" plus a sequential number. Example: if two dams in the State of Alabama do not have names, they would be named as ALNONAME1 and ALNONAME2.
Item ‖10‖ & ‖11‖ LATITUDE AND LONGITUDE: Enter the latitude and longitude in degrees, minutes and tenths of a minute. All geographical location items pertain to dam as its maximum section.
Item ‖12‖ REPORT DATE: Enter the one (1) or two (2) digits for day, the first three (3) letters of the month and a two (2) digit year (e.g., 12 JAN74) in which the data has been revised, updated or otherwise changed.

LINE 1:

Item ‖13‖ POPULAR NAME OF DAM: If (other than the official name of the dam) in common use, enter the name in this space. Leave blank if not applicable.
Item ‖14‖ NAME OF IMPOUNDMENT: Enter official name of lake or reservoir. Leave blank if reservoir does not have a name.

LINE 2

Item ‖15‖ & ‖16‖ REGION AND BASIN: Enter two (2) digit numbers for Region and Basin in accordance with Appendix C ER 18-2-1, Civil Works Information System.
Item ‖17‖ RIVER OR STREAM: Enter official name of river or stream on which the dam is built. If stream is without name indicate as tributary to river named, e.g., TR-COLORADO. If off stream, enter name of river plus "OFFSTREAM".
Item ‖18‖ NEAREST DOWNSTREAM CITY-TOWN-VILLAGE: Enter the nearest downstream city-town-village of such size which can be located on a general map.
Item ‖19‖ DISTANCE FROM DAM: Enter distance from dam to nearest downstream city-town-village to the nearest mile.
Item ‖20‖ POPULATION: Enter population of city-town-village given in Item ‖18‖.

LINE 3:

Item ‖21‖ TYPE OF DAM: Enter two (2) letter codes, in any order, to describe type of dam.

EARTH	RE	BUTTRESS	CB	OTHER – OT
ROCKFILL	ER	ARCH	VA	(Describe "other" in remarks)
GRAVITY	PG	MULTI-ARCH	MV	

Item ‖22‖ YEAR COMPLETED: Enter year when the main dam structure was completed and ready for use. If only approximate year can be determined, note this in remarks.
Item ‖23‖ PURPOSES: Enter one (1) letter codes that describe the purposes for which the reservoir is used. The order entered should indicate the relative decreasing importance of the project purposes.

IRRIGATION – I	WATER SUPPLY – S	DEBRIS CONTROL – D
HYDROELECTRIC – H	RECREATION – R	OTHER – O
FLOOD CONTROL – C	STOCK OR SMALL	(Describe "other" in remarks)
NAVIGATION – N	FARM POND – P	

Item ‖24‖ STRUCTURAL HEIGHT: Enter, to the nearest foot, the structural height of the dam which is defined as: the overall vertical distance from the lowest point of foundation surface to the top of the dam.
Item ‖25‖ HYDRAULIC HEIGHT: Enter, to the nearest foot, the hydraulic height of the dam which is defined as; the effective height of the dam with respect to the maximum storage capacity, measured from the natural bed of the stream or watercourse at the downstream toe of the barrier, or if it is not across a stream or watercourse, the height from the lowest elevation of the outside limit of the barrier to the maximum storage elevation.

Impounding Capabilities:

Item ‖26‖ MAXIMUM: Enter the acre feet for maximum storage which is defined as: the total storage space in a reservoir below the maximum attainable water surface elevation, including any surcharge storage.
Item ‖27‖ NORMAL: Enter the acre feet for normal storage which is defined as; the total storage space in a reservoir below the normal retention level, including dead and inactive storage and excluding any flood control or surcharge storage.

Item ‖27A‖ CORPS OF ENGINEERS DISTRICT: Enter the three character Corps of Engineers ABBR report code in which the dam is geographically located, in accordance with Appendix B, ER 19-2-1, Civil Works Information System, e.g., NAN, ORH, SWF, etc.
Item ‖27B‖ OWNERSHIP: Enter N, for Non-Federal; G, for Federal Gov't. Agencies other than the Corps of Engineers; C for Corps of Engineers.
Item ‖27C‖ FEDERALLY REGULATED: Enter N for No; Enter Y for Yes.
Item ‖27D‖ PRIVATE DAMS ON FEDERAL LAND: Enter N for No; Enter Y for Yes.
Item ‖27E‖ ASSISTANCE BY SOIL CONSERVATION SERVICE: Enter N for None; T for Technical Assistance; F for Financial Assistance; B for Both Technical and Financial Assistance.
Item ‖27F‖ VERIFICATION: Date the data was verified as being complete and correct. Enter date as described in Item ‖12‖.

LINE 4:

Item ‖28‖ REMARKS: Preface remarks with the item number to which it pertains, e.g., 22-ORIGINALLY CONSTRUCTED IN 1928, 23-SETTLING BASIN. Only one remark line should be used for PART I remarks.

EXHIBIT 2

PART II - INVENTORY OF DAMS IN THE UNITED STATES
(PURSUANT TO PUBLIC LAW 92–367)

See reverse side for instructions.

FORM APPROVED
OMB NO. 49–R0421

REQUIREMENTS CONTROL SYMBOL
DAEN–CWE–17

[1] STATE (1 2) IDENTITY NUMBER (3 4 5 6 7)

STATISTICS

[29] D S HAZ | [30] CREST LENGTH (ft) | [31] SPILLWAY TYPE | [32] SPILLWAY WIDTH (ft) | [33] SPILLWAY MAXIMUM DISCHARGE (cfs) | [34] VOLUME OF DAM (CY) | [35] POWER CAPACITY INSTALLED (MW) | [36] POWER CAPACITY PROPOSED (MW) | [37] NAVIGATION LOCKS NO. | [38] LENGTH (ft) | [39] WIDTH (ft) | [40] LENGTH (ft) | [41] WIDTH (ft) | [42] LENGTH (ft) | [43] WIDTH (ft) | [44] LENGTH (ft) | [45] WIDTH (ft) | BLANK

MISC DATA

[46] OWNER | [47] ENGINEERING BY | [48] CONSTRUCTION BY

MISC. DATA *(Continued)*

[49] REGULATORY AGENCY: DESIGN | [50] CONSTRUCTION | [51] OPERATION | [52] MAINTENANCE

MISC. DATA *(Continued)*

[53] INSPECTION BY | [54] INSPECTION DATE (DAY | MO | YR) | [55] AUTHORITY FOR INSPECTION

REMARKS

[56] REMARKS

ENG FORM 1 DEC 77 4474A

EXHIBIT 2

PART II:

Item 1 IDENTITY: Enter Identity per GENERAL INSTRUCTIONS on PART I.

LINE 5:

Item [29] D/S HAZ: Enter the digit that most closely represents the hazard potential that could occur to the downstream (D/S) area resulting from failure or mis-operation of the dam or facilities.

HAZARD POTENTIAL

CATEGORY	LOSS OF LIFE (Extent of Development)	ECONOMIC LOSS (Extent of Development)
3 = Low	None expected (No permanent structures for human habitation)	Minimal (Undeveloped to occasional structures or agriculture)
2 = Significant	Few (No urban developments and no more than a small number of inhabitable structures)	Appreciable (Notable agriculture, industry or structures)
1 = High	More than few	Excessive (Extensive community, industry or agriculture)

Item [30] CREST LENGTH: Enter, to the nearest foot, the crest length of the dam which is defined as; the total horizontal distance measured along the axis at the elevation of the top of dam between abutments or ends of dam. Note that this includes spillway width, powerhouse sections, and navigation locks where they form a continuous part of the dam water retaining structure. Detached spillways, locks, and powerhouses shall not be included.

Spillway:

Item [31] TYPE: Enter the one letter code that applies.

CONTROLLED = C UNCONTROLLED = U NONE = N

Item [32] WIDTH: Enter to the nearest foot, the width of the spillway available for discharge when the reservoir is at its maximum designed water surface elevation.
Item [33] MAXIMUM DISCHARGE: Enter the number of cubic feet per second which the spillway is capable of discharging when the reservoir is at its maximum designed water surface elevation.

Volume of Dam:

Item [34] VOLUME OF DAM: Enter the total number of cubic yards occupied by the materials used in the dam structure. If volume of separate materials is known, enter in remarks. Include portions of powerhouses, locks and spillways only if integral with the dam and required for structural stability.

Power Capacity:

Item [35] INSTALLED: Enter installed capacity to one tenth (1/10) Megawatt as of the report date.
Item [36] PROPOSED: Enter the future additional capacity proposed to one tenth (1/10) Megawatt.

Navigation Locks:

Item ‖37‖ NUMBER: Enter the number of existing navigation locks for the project.

Item ‖38‖ LENGTH: Enter to the nearest foot the length of the navigation lock.

Item ‖39‖ WIDTH: Enter to the nearest foot the width of the navigation lock.

Item ‖40‖ thru ‖45‖ Enter the lengths and widths of additional locks.

LINE 6:

Item ‖46‖ OWNER: Enter name of owner. Abbreviate as necessary.
Item ‖47‖ ENGINEERING BY: Enter name of organization that engineered the main dam structure. Abbreviate as required.
Item ‖48‖ CONSTRUCTION BY: Enter name of construction agency responsible for construction of main structure. Abbreviate as required.

LINE 7:

Regulatory Agency:

Item ‖49‖ DESIGN: Enter the name of the organization other than the owner having regulatory or approval authority over the design of the dam. If no organization other than the owner has regulatory or approval authority over the design of the dam indicate NONE.
Item ‖50‖ CONSTRUCTION: Enter the name of the organization other than the owner having regulatory authority or inspection responsibilities over the construction of the dam. If no organization other than the owner has regulatory authority or inspection responsibilities over the construction of the dam indicate NONE.
Item ‖51‖ OPERATION: Enter the name of the organization other than the owner having regulatory authority, operational control, or surveillance responsibilities over the operation of the dam. If no organization other than the owner has regulatory authority, operational control or surveillance responsibilities over the operation of the dam indicate NONE.
Item ‖52‖ MAINTENANCE: Enter the name of the organization other than the owner having regulatory authority or inspection or surveillance responsibilities over the maintenance of the dam. If no organization other than the owner has regulatory authority or inspection or surveillance responsibilities over the maintenance of the dam indicate NONE.

LINE 8:

Inspection:

Item ‖53‖ BY: Enter the name of the organization that performed the last safety inspection. Abbreviate as required. If no inspection has been performed enter NONE.
Item ‖54‖ DATE: Enter the one (1) or two (2) digits for day, the first three (3) letters of the month and a two (2) digit year when the inspection was performed. If not applicable, leave blank.
Item ‖55‖ AUTHORITY FOR INSPECTION: Enter the legislative or regulatory authority for performing the inspection indicated in item 53, e.g., P.L. 92-367; Div 3, Water Code, State of Calif; ER 1110-2-100; etc.

LINE 9:

Item ‖56‖ REMARKS: Preface remarks with the item number to which it pertains. e.g., 34.2, 500,000 c.y. conc. 475,000 c.y. earthfill. Only one Remarks line should be used for PART II remarks.

EXHIBIT 2

APPENDIX C TO § 222.6—HYDROLOGIC AND HYDRAULIC ASSESSMENT OF DAMS

1. Phase I inspections are not intended to provide detailed hydrologic and hydraulic analyses of dam and reservoir capabilities. However, when such analyses are available, they should be evaluated for reliability and completeness. If a project's ability to pass the appropriate flood (see Table 3, page D–12 of Recommended Guidelines) can be determined from available information of a brief study, such an assessment should be made. It should be noted that hydrologic and hydraulic analyses connected with the Phase I inspections should be based on approximate methods or systematized computer programs that take minimal effort. The Hydrologic Engineering Center (HEC) has developed a special computer program for hydrologic and hydraulic analyses to be used with the Phase I inspection program. Other Field Operating Agencies have developed similar computer programs or generalized procedures which are acceptable for use. All such efforts should be completed with minimum resources.

2. A finding that a dam will not safely pass the flood indicated in the Recommended Guidelines does not necessarily indicate that the dam should be classified as unsafe. The degree of inadequacy of the spillway to pass the appropriate flood and the probable adverse impacts of dam failure because of overtopping must be considered in making such classification. The following criteria have

been selected which indicate when spillway capacity is so seriously inadequate that a project must be classified as unsafe. All of the following conditions must prevail before designating a dam unsafe:

a. There is high hazard to loss of life from large flows downstream of the dam.

b. Dam failure resulting from overtopping would significantly increase the hazard to loss of life downstream from the dam from that which would exist just before overtopping failure.

c. The spillway is not capable of passing one-half of the probable maximum flood without overtopping the dam and causing failure.

3. The above criteria are generally adequate for evaluating most non-Federal dams. However, in a few cases the increased hazard potential from overtopping and failure is so great as to result in catastrophic consequences. In such cases, the evaluation of condition 2c should utilize a flood more closely approximating the full probable maximum flood rather than one-half the flood. An example of such a situation would be a large dam immediately above a highly populated flood plain, with little likelihood of time for evacuation in the event of an emergency.

4. Conditions 2a and 2b require an approximation of housing location in relation to flooded areas. Resources available in Phase I inspections do not permit detailed surveys or time-consuming studies to develop such relationships. Therefore, rough estimates will generally be made from data obtained during the inspection and from readily available maps and drawings. Brief computer routings such as the HEC–1 dam break analysis, using available data, are recommended in marginal cases. The HEC–1, dam break version, is available on the Boeing Computer Services or may be obtained from the Hydrologic Engineering Center, Davis, California. Available resources do not permit detailed studies or investigations to establish the amount of overtopping that would cause a dam to fail, as designated in condition 2c. Professional judgment and available information will have to be used in these determinations. When detailed investigations and studies are required to make a reasonable judgment of the conditions which designate an unsafe dam, the inspection report should recommend that such studies be the responsibility of the dam owner.

5. During the inspection of a dam, consideration should be given to impacts on other dams located downstream from the project being inspected. When failure of a dam would be likely to cause failure of another dam(s) downstream, its designation as an unsafe dam could result in multiple impacts. Therefore, the information should be explicitly described in the inspection report. Such information may be vital to the priorities established by State Governors for dam improvements. Similarly, when the failure of an upstream dam (classified as unsafe) could cause failure of the dam being inspected, this information should be prominently displayed in the inspection report.

6. The criteria established in paragraph 2 for designating unsafe dams because of seriously inadequate spillways are considered reasonable and prudent. They provide a consistent bases for declaring unsafe dams and also serve as an effective compromise between the Recommended Guidelines and unduly low standards suggested by special interests and individuals unfamiliar with flood hazard potential.

7. The Hydrometeorological Branch (HMB) of the National Weather Service has reviewed some 500 experienced large storms in the United States. The purpose of the review was to ascertain the relative magnitude of experienced large storms to probable maximum precipitation (PMP) and their distribution throughout the country. Their review reveals that about 25 percent of the major storms have exceeded 50 percent of the probable maximum precipitation for one or more combinations of area and duration. In fact some storms have very closely approximated the PMP values. Exhibits C–1 thru C–5 indicate locations where experienced storms have exceeded 50 percent of the PMP.

8. There are several options to consider when selecting mitigation measures to avoid severe consequences of a dam failure from overtopping. The following measures may be required by a Governor when sufficient legal authority is available under State laws and a dam presents a serious threat to loss of life.

a. Remove the dam.

b. Increase the height of dam and/or spillway size to pass the probable maximum flood without overtopping the dam.

c. Purchase downstream land that would be adversely impacted by dam failure and restrict human occupancy.

d. Enhance the stability of the dam to permit overtopping by the probable maximum flood without failure.

e. Provide a highly reliable flood warning system (generally does not prevent damage but avoids loss of life).

TABLE 1—STORMS WITH RAINFALL ≥150% OF PMP, U.S. EAST OF THE 105TH MERIDIAN (FOR 10 MI², 6 HOURS; 200 MI², 24 HOURS AND/OR 1,000 MI², 48 HOURS)

Storm date	Index No.	Corps assignment No. (if available)	Storm center		Latitude	Longitude
			Town	State		
July 26, 1819	1		Catskill	NY	42°12′	73°53′
Aug. 5, 1843	2		Concordville	PA	39°53′	75°32′
Sept. 10–13, 1878	3	OR 9–19	Jefferson	OH	41°45′	80°46′
Sept. 20–24, 1882	4	NA 1–3	Paterson	NJ	40°55′	74°10′
June 13–17, 1886	5	LMV 4–27	Alexandria	LA	31°19′	92°33′
June 27–July 11, 1899	6	GM 3–4	Turnersville	TX	30°52′	96°32′
Aug. 24–28, 1903	7	MR 1–10	Woodburn	IA	40°57′	93°35′
Oct. 7–11, 1903	8	GL 4–9	Paterson	NJ	40°55′	74°10′
July 18–23, 1909	9	UMV 1–11B	Ironwood	MI	46°27′	90°11′
July 18–23, 1909	10	UMV 1–11A	Beaulieu	MN	47°21′	95°48′
July 22–23, 1911	11		Swede Home	NB	40°22′	96°54′
July 19–24, 1912	12	GL 2–29	Merrill	WI	45°11′	89°41′
July 13–17, 1916	13	SA 2–9	Altapass	NC	35°33′	82°01′
Sept. 8–10, 1921	14	GM 4–12	Taylor	TX	30°35′	97°18′
Oct. 4–11, 1924	15	SA 4–20	New Smyrna	FL	29°07′	80°55′
Sept. 17–19, 1926	16	MR 4–24	Boyden	IA	43°12′	96°00′
Mar. 11–16, 1929	17	UMV 2–20	Elba	AL	31°25′	86°04′
June 30–July 2, 1932	18	GM 5–1	State Fish Hatchery	TX	30°01′	99°07′
Sept. 16–17, 1932	19		Ripogenus Dam	ME	45°53′	69°09′
July 22–27, 193	20	LMV 2–26	Logansport	LA	31°58′	94°00′
Apr. 3–4 1934	21	SW 2–11	Cheyenne	OK	35°37′	99°40′
May 30–31, 1935	22	MR 3–28A	Cherry Creek	CO	39°13′	104°32′
May 31, 1935	23	GM 5–20	Woodward	TX	29°20′	99°28′
July 6–10, 1935	24	NA 1–27	Hector	NY	42°30′	76°53′
Sept. 2–6, 1935	25	SA 1–26	Easton	MD	38°46′	76°01′
Sept. 14–18, 1936	26	GM 5–7	Broome	TX	31°47′	100°50′
June 19–20, 1939	27		Snyder	TX	32°44′	100°55′
July 4–5, 1939	28		Simpson	KY	38°13′	83°22′
Aug. 19, 1939	29	NA 2–3	Manahawkin	NJ	39°42′	74°16′
June 3–4, 1940	30	MR 4–5	Grant Township	NB	42°01′	96°53′
Aug. 6–9, 1940	31	LMV 4–24	Miller Isl	LA	29°45′	92°10′
Aug. 10–17, 1940	32	SA 5–19A	Keysville	VA	37°03′	78°30′
Sept. 1, 1940	33	NA 2–4	Ewan	NJ	39°42′	75°12′
Sept. 2–6, 1940	34	SW 2–18	Hallet	OK	36°15′	96°36′
Aug. 28–31, 1941	35	UMV 1–22	Haywood	WI	46°00′	91°28′
Oct. 17–22, 1941	36	SA 5–6	Trenton	FL	29°48′	82°57′
July 17–18, 1942	37	OR 9–23	Smethport	PA	41°50′	78°25′
Oct. 11–17, 1942	38	SA 1–28A	Big Meadows	VA	38°31′	78°26′
May 6–12, 1943	39	SW 2–20	Warner	OK	35°29′	95°18′
May 12–20, 1943	40	SW 2–21	Nr. Mounds	OK	35°52′	96°04′
July 27–29, 1943	41	GM 5–21	Devers	TX	30°02′	94°35′
Aug. 4–5, 1943	42	OR 3–30	Nr. Glenville	WV	38°56′	80°50′
June 10–13, 1944	43	MR 6–15	Nr. Stanton	NB	41°52′	97°03′
Aug. 12–15, 1946	44	MR 7–2A	Cole Camp	MO	38°40′	93°13′
Aug. 12–16, 1946	45	MR 7–2B	Nr. Collinsville	IL	38°40′	89°59′
Sept. 26–27, 1946	46	GM 5–24	Nr. San Antonio	TX	29°20′	98°29′
June 23–24, 1948	47		Nr. Del Rio	TX	29°22′	100°37′
Sept. 3–7, 1950	48	SA 5–8	Yankeetown	FL	29°03′	82°42′
June 23–28, 1954	49	SW 3–22	Vic Pierce	TX	30°22′	101°23′
Aug. 17–20, 1955	50	NA 2–22A	Westfield	MA	42°07′	72°45′
May 15–16, 1957	51		Hennessey	OK	36°02′	97°56′
June 14–15, 1957	52		Nr. E. St. Louis	IL	38°37′	90°24′
June 23–24, 1963	53		David City	NB	41°14′	97°05′
June 13–20, 1965	54		Holly	CO	37°43′	102°23′
June 24, 1966	55		Glenullin	ND	47°21′	101°19′
Aug. 12–13, 1966	56		Nr. Greely	NB	41°33′	98°32′
Sept. 19–24, 1967	57	SW 3–24	Falfurrias	TX	27°16′	98°12′
July 16–17, 1968	58		Waterloo	IA	42°30′	92°19′
July 4–5, 1969	59		Nr. Wooster	OH	40°50′	82°00′
Aug. 19–20, 1969	60	NA 2–3	Nr. Tyro	VA	37°49′	79°00′
June 9, 1972	61		Rapid City	SD	44°12′	103°31′
June 19–23, 1972	62		Zerbe	PA	40°37′	76°31′
July 21–22, 1972	63		Nr. Cushing	MN	46°10′	94°30′
Sept. 10–12, 1972	64		Harlan	IA	41°43′	95°15′
Oct. 10–11, 1973	65		Enid	OK	36°25′	97°52′

TABLE 2—STORMS WITH RAINFALL ≥50% OF PMP, U.S. WEST OF CONTINENTAL DIVIDE (FOR 10 MI^2 6 HOURS OR 1,000 MI^2 FOR ONE DURATION BETWEEN 6 AND 72 HOURS)

Storm date	Index No.	Storm center		Latitude	Longitude	Duration for 1,000 mi^2
		Town	State			
Aug. 11, 1890	1	Palmetto	NV	37°27′	117°42′	.....
Aug. 12, 1891	2	Campo	CA	32°36′	116°28′	.....
Aug. 28, 1898	3	Ft. Mohave	AZ	35°03′	114°36′	.....
Oct. 4–6, 1911	4	Gladstone	CO	37°53′	107°39′	.....
Dec. 29, 1913–Jan. 3, 1914	5	.....	CA	39°55′	121°25′	.....
Feb. 17–22, 1914	6	Colby Ranch	CA	34°18′	118°07′	.....
Feb. 20–25, 1917	7	.....	CA	37°35′	119°36′	.....
Sept. 13, 1918	8	Red Bluff	CA	40°10′	122°14′	.....
Feb. 26–Mar 4, 1938	9	.....	CA	34°14′	117°11′	.....
Mar. 30–Apr. 2, 1931	10	.....	ID	46°30′	114°50′	24
Feb. 26, 1932	11	Big Four	WA	48°05′	121°30′	.....
Nov. 21, 1933	12	Tatoosh Is	WA	48°23′	124°44′	.....
Jan. 20–25, 1935	13	.....	WA	47°30′	123°30′	6
Jan. 20–25, 1935	14	.....	WA	47°00′	122°00′	72
Feb. 4–8, 1937	15	Cyamaca Dam	CA	33°00′	116°35′	.....
Dec. 9–12, 1937	16	.....	CA	38°51′	122°43′	.....
Feb. 27–Mar. 4, 1938	17	.....	AZ	34°57′	111°44′	12
Jan. 19–24, 1943	18	.....	CA	37°35′	119°25′	18
Jan. 19–24, 1943	19	Hoegee's Camp	CA	34°13′	118°02′	.....
Jan. 30–Feb. 3, 1945	20	.....	CA	37°35′	119°30′	.....
Dec. 27, 1945	21	Mt. Tamalpias	CA	37°54′	122°34′	.....
Nov. 13–21, 1950	22	.....	CA	36°30′	118°30′	24
Aug. 25–30, 1951	23	.....	AZ	34°07′	112°21′	72
July 19, 1955	24	Chiatovich Flat	CA	37°44′	118°15′	.....
Aug. 16, 1958	25	Morgan	UT	41°03′	111°38′	.....
Sept. 18, 1959	26	Newton	CA	40°22′	122°12′	.....
June 7–8, 1964	27	Nyack Ck	MT	48°30′	113°38′	12
Sept. 3–7, 1970	28	.....	UT	37°38′	109°04′	6
Sept. 3–7, 1970	29	.....	AZ	33°49′	110°56′	6
June 7, 1972	30	Bakersfield	CA	35°25′	119°03′	.....
Dec. 9–12, 1937	31	.....	CA	39°45′	121°30′	48

ER 1110-2-106
26 Sept 79

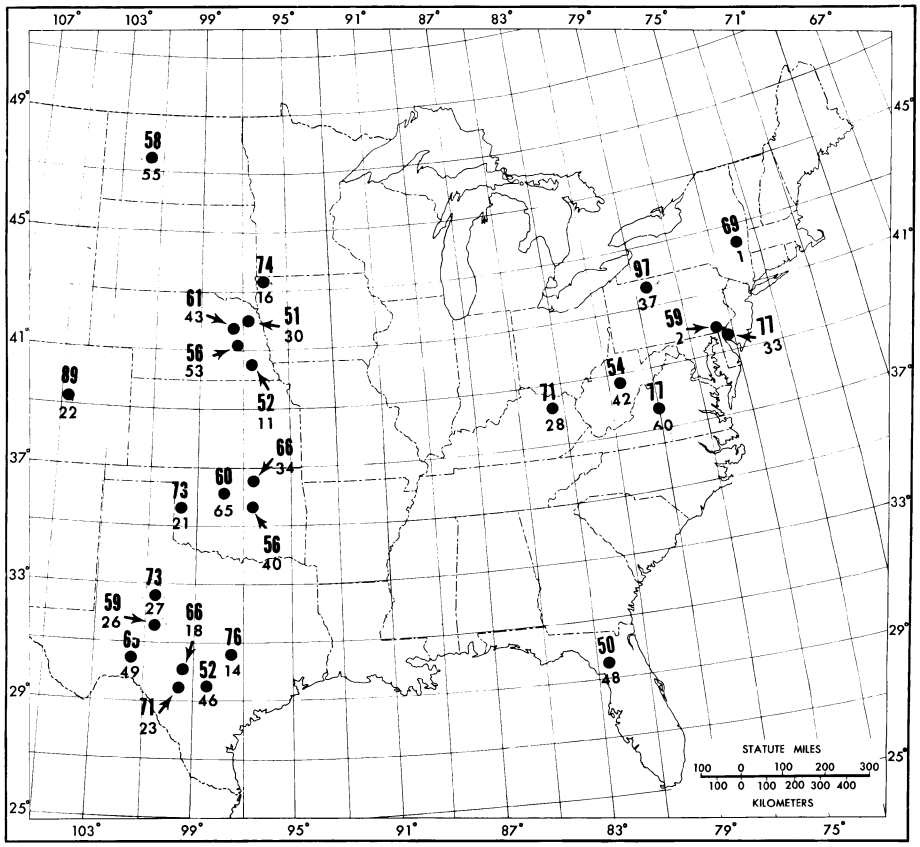

Plate 1: Observed point rainfalls ≥ 50% of all-season PMP, U.S. east of 105th meridian for 10 mi^2 6 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-1

ER 1110-2-106
26 Sept 79

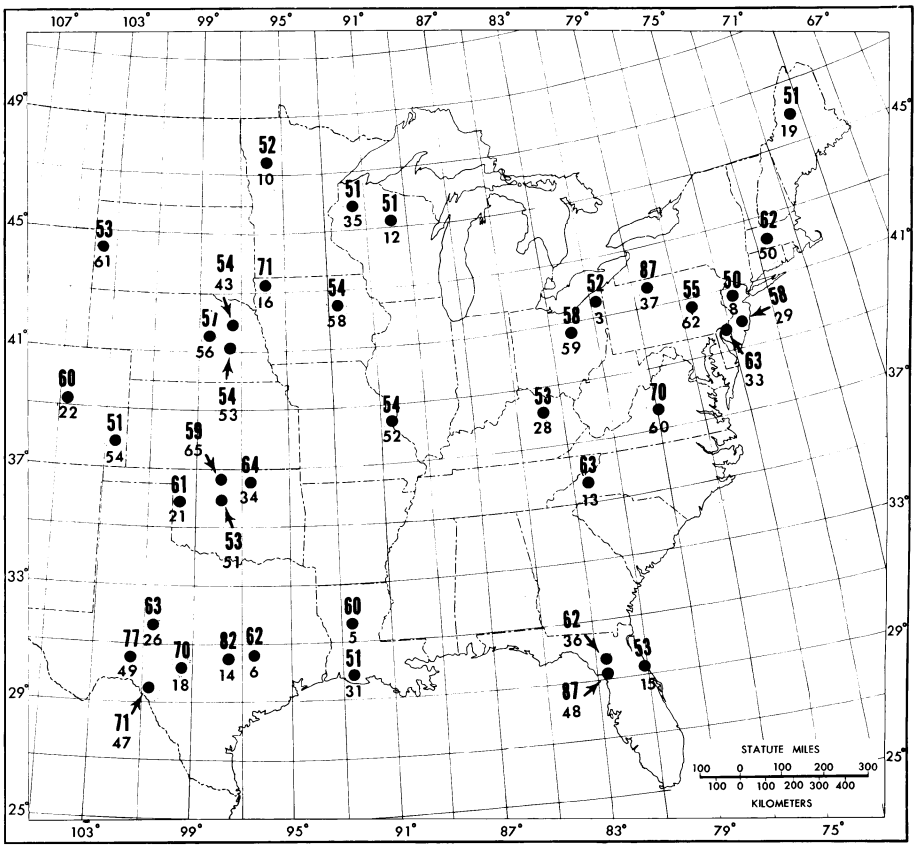

Plate 2: Observed rainfalls ≥ 50% of all-season PMP, U.S. east of 105th meridian for 200 mi^2 24 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-2

ER 1110-2-106
26 Sept 79

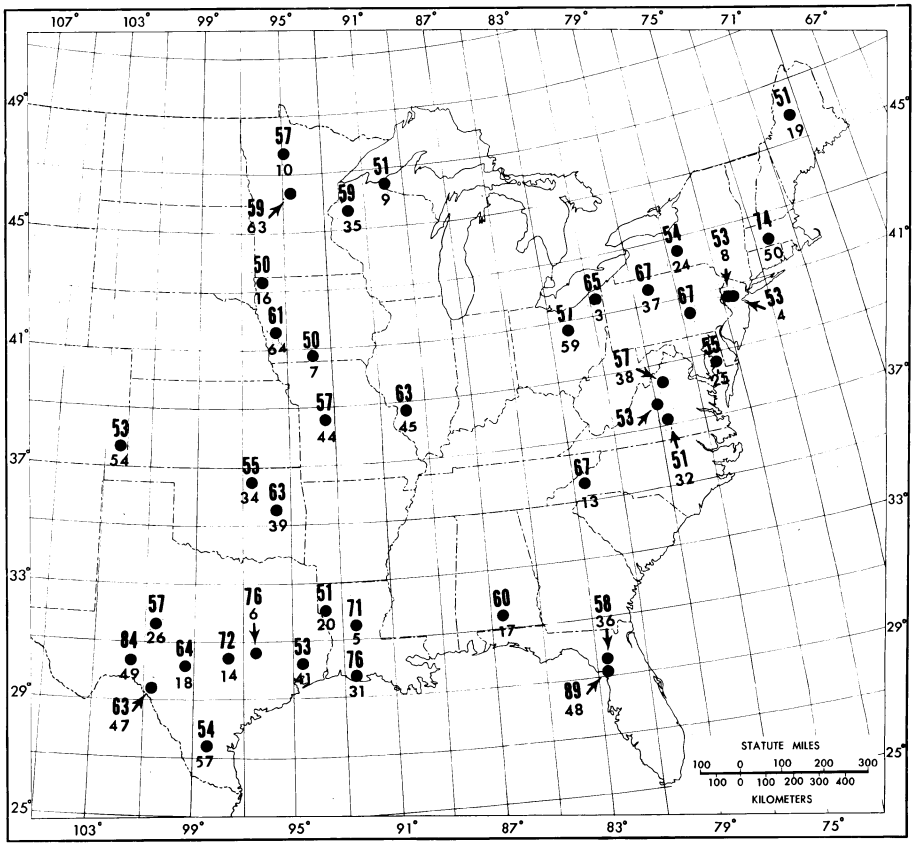

Plate 3: Observed rainfalls ≥ 50% of all-season PMP, U.S. east of the 105th meridian for 1000 mi^2 48 hours. (Large number is % of PMP, small number is storm index, see table 1.)

Exhibit C-3

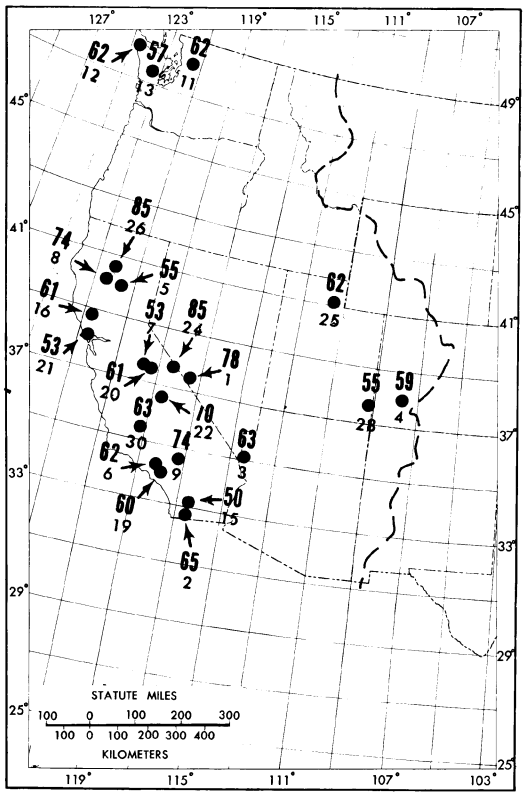

Plate 4: Observed point rainfalls ≥ 50% of all-season PMP, U.S. west of the Continental Divide for 10 mi^2 for 6 hours. (Large number is % of PMP. Small number is storm index, see table 2.)

Exhibit C-4

ER 1110-2-106
20 Sept 79

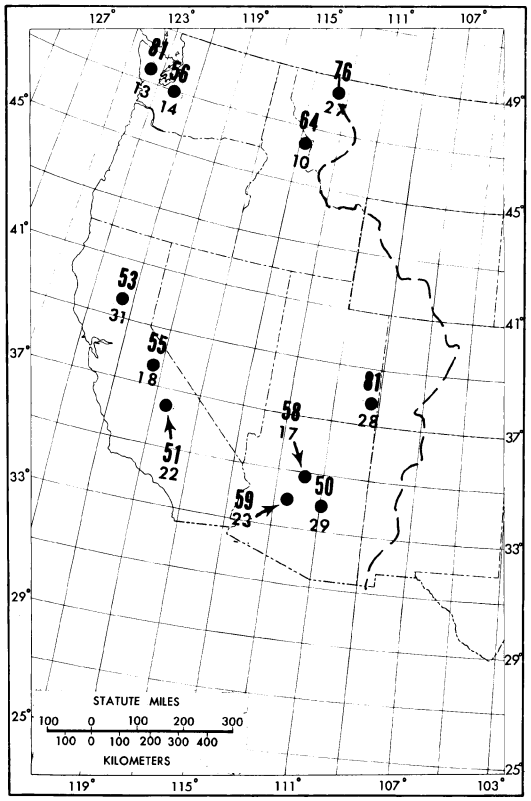

Plate 5: Observed rainfalls ≥ 50% of all-season PMP, U.S. west of the Continental Divide for 1000 mi^2 for one duration between 6 and 72 hours. (Large number is % of PMP. Small number is storm index, see table 2.)

Exhibit C-5

APPENDIX D TO § 222.6—RECOMMENDED GUIDELINES FOR SAFETY INSPECTION OF DAMS

Department of the Army—Office of the Chief of Engineers

Preface

The recommended guidelines for the safety inspection of dams were prepared to outline principal factors to be weighed in the determination of existing or potential hazards and to define the scope of activities to be undertaken in the safety inspection of dams. The establishment of rigid criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions at a particular dam and in recognition of the many factors involved, some of which may not be precisely known. This can only be done by competent, experienced engineering judgment, which the guidelines are intended to supplement and not supplant. The guidelines are intended to be flexible, and the proper flexibility must be achieved through the employment of experienced engineering personnel.

Conditions found during the investigation which do not meet guideline recommendations should be assessed by the investigator as to their import from the standpoint of the involved degree of risk. Many deviations will not compromise project safety and the investigator is expected to identify them in this manner if that is the case. Others will involve various degrees of risk, the proper evaluation of which will afford a basis for priority of subsequent attention and possible remedial action.

The guidelines present procedures for investigating and evaluating existing conditions for the purpose of identifying deficiencies and hazardous conditions. The two phases of investigation outlined in the guidelines are expected to accomplish only this and do not encompass in scope the engineering which will be required to perform the design studies for corrective modification work.

It is recognized that some States may have established or will adopt inspection criteria incongruous in some respects with these guidelines. In such instances assessments of project safety should recognize the State's requirements as well as guideline recommendations.

The guidelines were developed with the help of several Federal agencies and many State agencies, professional engineering organizations, and private engineers. In reviewing two drafts of the guidelines they have contributed many helpful suggestions. Their contributions are deeply appreciated and have made it possible to evolve a document representing a consensus of the engineering fraternity. As experience is gained with use of the guidelines, suggestions for future revisions will be generated. All such suggestions should be directed to the Chief of Engineers, U.S. Army, DAEN-CWE-D, Washington, D.C. 20314.

RECOMMENDED GUIDELINES FOR SAFETY INSPECTION OF DAMS

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CHAPTER 1—INTRODUCTION

1.1. *Purpose*. This document provides recommended guidelines for the inspection and evaluation of dams to determine if they constitute hazards to human life or property.

1.2. *Applicability*. The procedures and guidelines outlined in this document apply to the inspection and evaluation of all dams as defined in the National Dam Inspection Act, Public Law 92–367. Included in this program are all artificial barriers together with appurtenant works which impound or divert water and which (1) are twenty-five feet or more in height or (2) have an impounding capacity of fifty acre-feet or more. Not included are barriers which are six feet or less in height, regardless of storage capacity, or barriers which have a storage capacity at maximum water storage elevation of fifteen acre-feet or less regardless of height.

1.3. *Authority*. The Dam Inspection Act, Public Law 92–367 (Appendix III), authorized the Secretary of the Army, through the Corps of Engineers, to initiate a program of safety inspection of dams throughout the United States. The Chief of Engineers issues these guidelines pursuant to that authority.

CHAPTER 2—GENERAL REQUIREMENTS

2.1. *Classification of dams*. Dams should be classified in accordance with size and hazard potential in order to formulate a priority basis for selecting dams to be included in the inspection program and also to provide compatibility between guideline requirements and involved risks. When possible the initial classifications should be based upon information listed in the National Inventory of Dams with respect to size, impoundment capacity and hazard potential. It may be necessary to reclassify dams when additional information becomes available.

2.1.1. *Size*. The classification for size based on the height of the dam and storage capacity should be in accordance with Table 1. The height of the dam is established with respect to the maximum storage potential measured from the natural bed of the stream or watercourse at the downstream toe of the barrier, or if it is not across a stream or watercourse, the height from the lowest elevation of the outside limit of the barrier, to the maximum water storage elevation. For the purpose of determining project size, the maximum storage elevation may be considered equal to the top of dam elevation. Size classification may be determined by either storage or height, whichever gives the larger size category.

TABLE 1—SIZE CLASSIFICATION

Category	Impoundment	
	Storage (ac-ft)	Height (ft)
Small	<1,000 and ≥50	<40 and ≥25.
Intermediate	≥1,000 and <50,000	≥40 and <100.
Large	≥50,000	≥100.

2.1.2. *Hazard Potential*. The classification for potential hazards should be in accordance with Table 2. The hazards pertain to potential loss of human life or property damage in the area downstream of the dam in event of failure or misoperation of the dam or appurtenant facilities. Dams conforming to criteria for the low hazard potential category generally will be located in rural or agricultural areas where failure may damage farm buildings, limited agricultural land, or township and country roads. Significant hazard potential category structures will be those located in predominantly rural or agricultural areas where failure may damage isolated homes, secondary highways or minor railroads or cause interruption of use or service of relatively important public utilities. Dams in the high hazard potential category will be those located where failure may cause serious damage to homes, extensive agricultural, industrial and commercial facilities, important public utilities, main highways, or railroads.

TABLE 2—HAZARD POTENTIAL CLASSIFICATION

Category	Loss of life (extent of development)	Economic loss (extent of development)
Low	None expected (No permanent structures for human habitation).	Minimal (Undeveloped to occasional structures or agriculture).
Significant	Few (No urban developments and no more than a small number of inhabitable structures).	Appreciable (Notable agriculture, industry or structures).
High	More than few	Excessive (Extensive community, industry or agriculture).

2.2. *Selection of dams to be investigated*. The selection of dams to be investigated should be based upon an assessment of existing developments in flood hazard areas. Those dams possessing a hazard potential classified high or significant as indicated in Table 2 should be given first and second priorities, respectively, in the inspection program. Inspection priorities within each category may be developed from a consideration of factors such as size classification and age of the dam, the population size in the downstream flood area, and potential developments anticipated in flood hazard areas.

2.3. *Technical Investigations*. A detailed, systematic, technical inspection and evaluation should be made of each dam selected for investigation in which the hydraulic and hydrologic capabilities, structural stability and operational adequacy of project features are analyzed and evaluated to determine if the dam constitutes a danger to human life or property. The investigation should vary in scope and completeness depending upon the availability and suitability of engineering data, the validity of design assumptions and analyses and the condition of the dam. The minimum investigation will be designated Phase I, and an in-depth investigation designated Phase II should be made where deemed necessary. Phase I investigations should consist of a visual inspection of the dam, abutments and critical appurtenant structures, and a review of readily available engineering data. It is not intended to perform costly explorations or analyses during Phase I. Phase II investigations should consist of all additional engineering investigations and analyses found necessary by results of the Phase I investigation.

2.4. *Qualifications of investigators*. The technical investigations should be conducted under the direction of licensed professional engineers experienced in the investigation, design, construction and operation of dams, applying the disciplines of hydrologic, hydraulic, soils and structural engineering and engineering geology. All field inspections should be conducted by qualified engineers, engineering geologists and other specialists, including experts on mechanical and electrical operation of gates and controls, knowledgeable in the investigation, design, construction and operation of dams.

CHAPTER 3—PHASE I INVESTIGATION

3.1. *Purpose*. The primary purpose of the Phase I investigation program is to identify expeditiously those dams which may pose hazards to human life or property.

3.2. *Scope*. The Phase I investigation will develop an assessment of the general condition with respect to safety of the project based upon available data and a visual inspection, determine any need for emergency measures and conclude if additional studies, investigation and analyses are necessary and warranted. A review will be made of pertinent existing and available engineering data relative to the design, construction and operation of the dam and appurtenant structures, including electrical and mechanical operating equipment and measurements from inspection and performance instruments and devices; and a detailed systematic visual inspection will be performed of those features relating to the stability and operational adequacy of the project. Based upon findings of the review of engineering data and the visual inspection, an evaluation will be made of the general condition of the dam, including where possible the assessment of the hydraulic and hydrologic capabilities and the structural stability.

3.3. *Engineering data*. To the extent feasible the engineering data listed in Appendix I relating to the design, construction and operation of the dam and appurtenant structures, should be collected from existing records and reviewed to aid in evaluating the adequacy of hydraulic and hydrologic capabilities and stability of the dam. Where the necessary engineering data are unavailable, inadequate or invalid, a listing should be made of those specific additional data deemed necessary by the engineer in charge of the investigation and included in the Phase I report.

3.4. *Field inspections*. The field inspection of the dam, appurtenant stuctures, reservoir area, and downstream channel in the vicinity of the dam should be conducted in a systematic manner to minimize the possibility of any significant feature being overlooked. A detailed checklist should be developed and followed for each dam inspected to document

the examination of each significant structural and hydraulic feature including electrical and mechanical equipment for operation of the control facilities that affect the safety of the dam.

3.4.1. Particular attention should be given to detecting evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration, and improper functioning of drains and relief wells. The adequacy and quality of maintenance and operating procedures as they pertain to the safety of the dam and operation of the control facilities should also be assessed.

3.4.2. Photographs and drawings should be used freely to record conditions in order to minimize descriptions.

3.4.3. The field inspection should include appropriate features and items, including but not limited to those listed in Appendix II, which may influence the safety of the dam or indicate potential hazards to human life or property.

3.5. *Evaluation of hydraulic and hydrologic Features*.

3.5.1. *Design data*. Original hydraulic and hydrologic design assumptions obtained from the project records should be assessed to determine their acceptability in evaluating the safety of the dam. All constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, inadequate energy dissipators or restrictive channel conditions, significant reduction in reservoir capacity by sediment deposits and other factors should be considered in evaluating the validity of discharge ratings, storage capacity, hydrographs, routings and regulation plans. The discharge capacity and/or storage capacity should be capable of safely handling the recommended spillway design flood for the size and hazard potential classification of the dam as indicated in Table 3. The hydraulic and hydrologic determinations for design as obtained from project records will be acceptable if conventional techniques similar to the procedures outlined in paragraph 4.3. were used in obtaining the data. When the project design flood actually used exceeds the recommended spillway design flood, from Table 3, the project design flood will be acceptable in evaluating the safety of the dam.

TABLE 3—HYDROLOGIC EVALUATION GUIDELINES

[Recommended spillway design floods]

Hazard	Size	Spillway design flood (SDF) [1]
Low	Small	50 to 100-yr frequency.
	Intermediate	100-yr to ½ PMF.
	Large	½ PMF to PMF.
Significant	Small	100-yr to ½ PMF.
	Intermediate	½ PMF to PMF.
	Large	PMF.
High	Small	½ PMF to PMF.
	Intermediate	PMF.
	Large	PMF.

[1] The recommended design floods in this column represent the magnitude of the spillway design flood (SDF), which is intended to represent the largest flood that need be considered in the evaluation of a given project, regardless of whether a spillway is provided; *i.e.*, a given project should be capable of safely passing the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

1000-yr=100-Year Exceedence Interval. The flood magnitude expected to be exceeded, on the average, of once in 100 years. It may also be expressed as an exceedence frequency with a one-percent chance of being exceeded in any given year.

PMF=Probable Maximum Flood. The flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from probable maximum precipitation (PMP), which information is generally available from the National Weather Service, NOAA. Most Federal agencies apply reduction factors to the PMP when appropriate. Reductions may be applied because rainfall isohyetals are unlikely to conform to the exact shape of the drainage basin and/or the storm is not likely to center exactly over the drainage basin. In some cases local topography will cause changes from the generalized PMP values, therefore it may be advisable to contact Federal construction agencies to obtain the prevailing practice in specific areas.

3.5.2. *Experience data*. In some cases where design data are lacking, an evaluation of overtopping potential may be based on watershed characteristics and rainfall and reservoir records. An estimate of the probable maximum flood may also be developed from a conservative, generalized comparison of the drainage area size and the magnitude of recently adopted probable maximum floods for damsites in comparable hydrologic regions. Where the review of such experience data indicates that the recommended spillway design flood would not cause overtopping additional hydraulic and hydrologic determinations will be unnecessary.

3.6. *Evaluation of structural stability*. The Phase I evaluations of structural adequacy of project features are expected to be based principally on existing conditions as revealed by the visual inspection, together with available design and construction information and records of performance. The objectives are to determine the existence of conditions which are hazardous, or which with time might develop into safety hazards,

and to formulate recommendations pertaining to the need for any additional studies, investigations, or analyses. The results of this phase of the inspection must rely very substantially upon the experience and judgment of the inspecting engineer.

3.6.1. *Design and construction data.* The principal design assumptions and analyses obtained from the project records should be assessed. Original design and construction records should be used judiciously, recognizing the restricted applicability of such data as material strengths and permeabilities, geological factors and construction descriptions. Original stability studies and analyses should be acceptable if conventional techniques and procedures similar to those outlined in paragraph 4.4 were employed, provided that review of operational and performance data confirm that the original design assumptions were adequately conservative. The need for such analyses where either none exist or the originals are incomplete or unsatisfactory will be determined by the inspecting engineer based upon other factors such as condition of structures, prior maximum loadings and the hazard degree of the project. Design assumptions and analyses should include all applicable loads including earthquake and indicate the structure's capability to resist overturning, sliding and overstressing with adequate factors of safety. In general seepage and stability analyses comparable to the requirements of paragraph 4.4 should be on record for all dams in the high hazard category and large dams in the significant hazard category. This requirement for other dams will be subject to the opinion of the inspecting engineer.

3.6.2. *Operating records.* The performance of structures under prior maximum loading conditions should in some instances provide partial basis for stability evaluation. Satisfactory experience under loading conditions not expected to be exceeded in the future should generally be indicative of satisfactory stability, provided adverse changes in physical conditions have not occurred. Instrumentation observations of forces, pressures, loads, stresses, strains, displacements, deflections or other related conditions should also be utilized in the safety evaluation. Where such data indicate abnormal behavior, unsafe movement or deflections, or loadings which adversely affect the stability or functioning of the structure, prompt reporting of such circumstances is required without the delay for preparation of the official inspection report.

3.6.3. *Post construction changes.* Data should be collected on changes which have occurred since project construction that might influence the safety of the dam such as road cuts, quarries, mining and groundwater changes.

3.6.4. *Seismic stability.* An assessment should be made of the potential vulnerability of the dam to seismic events and a recommendation developed with regard to the need for additional seismic investigation. In general, projects located in Seismic Zones 0, 1 and 2 may be assumed to present no hazard from earthquake provided static stability conditions are satisfactory and conventional safety margins exist. Dams in Zones 3 and 4 should, as a minimum, have on record suitable analyses made by conventional equivalent static load methods. The seismic zones together with appropriate coefficients for use in such analyses are shown in Figures 1 through 4. Boundary lines are approximate and in the event of doubt about the proper zone, the higher zone should be used. All high hazard category dams in Zone 4 and high hazard dams of the hydraulic fill type in Zone 3 should have a stability assessment based upon knowledge of regional and local geology, engineering seismology, in situ properties of materials and appropriate dynamic analytical and testing procedures. The assessment should include the possibility of physical displacement of the structures due to movements along active faults. Departure from this general guidance should be made whenever in the judgment of the investigating engineer different seismic stability requirements are warranted because of local geological conditions or other reasons.

CHAPTER 4—PHASE II INVESTIGATION

4.1. *Purpose.* The Phase II investigation will be supplementary to Phase I and should be conducted when the results of the Phase I investigation indicate the need for additional in-depth studies, investigations or analyses.

4.2. *Scope.* The Phase II investigation should include all additional studies, investigations and analyses necessary to evaluate the safety of the dam. Included, as required, will be additional visual inspections, measurements, foundation exploration and testing, materials testing, hydraulic and hydrologic analysis and structural stability analyses.

4.3. *Hydraulic and hydrologic analysis.* Hydraulic and hydrologic capabilities should be determined using the following criteria and procedures. Depending on the project characteristics, either the spillway design flood peak inflow or the spillway design flood hydrograph should be the basis for determining the maximum water surface elevation and maximum outflow. If the operation or failure of upstream water control projects would have significant impact on peak flow or hydrograph analyses, the impact should be assessed.

4.3.1. *Maximum water surface based on SDF peak inflow.* When the total project discharge capability at maximum pool exceeds the peak inflow of the recommended SDF, and

operational constraints would not prevent such a release at controlled projects, a reservoir routing is not required. The maximum discharge should be assumed equal to the peak inflow of the spillway design flood. Flood volume is not controlling in this situation and surcharge storage is either absent or is significant only to the extent that it provides the head necessary to develop the release capability required.

4.3.1.1. *Peak for 100-year flood*. When the 100-year flood is applicable under the provisions of Table 3 and data are available, the spillway design flood peak inflow may be determined by use of ''A Uniform Technique for Determining Flood Frequencies,'' Water Resources Council (WRC), Hydrology Committee, Bulletin 15, December 1967. Flow frequency information from regional analysis is generally preferred over single station results when available and appropriate. Rainfall-runoff techniques may be necessary when there are inadequate runoff data available to make a reasonable estimate of flow frequency.

4.3.1.2. *Peak for PMF or fraction thereof*. When either the Probable Maximum Flood peak or a fraction thereof is applicable under the provisions of Table 3, the unit hydrograph—infiltration loss technique is generally the most expeditious method of computing the spillway design flood peak for most projects. This technique is discussed in the following paragraph.

4.3.2. *Maximum water surface based on SDF hydrograph*. Both peak and volume are required in this analysis. Where surcharge storage is significant, or where there is insufficient discharge capability at maximum pool to pass the peak inflow of the SDF, considering all possible operational constraints, a flood hydrograph is required. When there are upstream hazard areas that would be imperiled by fast rising reservoirs levels, SDF hydrographs should be routed to ascertain available time for warning and escape. Determination of probable maximum precipitation or 100-year precipitation, which ever is applicable, and unit hydrographs or runoff models will be required, followed by the determination of the PMF or 100-year flood. Conservative loss rates (significantly reduced by antecedent rainfall conditions where appropriate) should be estimated for computing the rainfall excess to be utilized with unit hydrographs. Rainfall values are usually arranged with gradually ascending and descending rates with the maximum rate late in the storm. When applicable, conservatively high snowmelt runoff rates and appropriate releases from upstream projects should be assumed. The PMP may be obtained from National Weather Service (NWS) publications such as Hydrometeorological Report (HMR) 33. Special NWS publications for particular areas should be used when available. Rainfall for the 100-year frequency flood can be obtained from the NWS publication ''Rainfall Frequency Atlas of the United States,'' Technical Paper No. 40; Atlas 2, ''Precipitation Frequency Atlas of Western United States;'' or other NWS publications. The maximum water surface elevation and spillway design flood outflow are then determined by routing the inflow hydrograph through the reservoir surcharge storage, assuming a starting water surface at the bottom of surcharge storage, or lower when appropriate. For projects where the bottom of surcharge space is not distinct, or the flood control storage space (exclusive of surcharge) is appreciable, it may be appropriate to select starting water surface elevations below the top of the flood control storage for routings. Conservatively high starting levels should be estimated on the basis of hydrometeorological conditions reasonably characteristic for the region and flood release capability of the project. Necessary adjustment of reservoir storage capacity due to existing or future sediment or other encroachment may be approximated when accurate determination of deposition is not practicable.

4.3.3. *Acceptable procedures*. Techniques for performing hydraulic and hydrologic analyses are generally available from publications prepared by Federal agencies involved in water resources development or textbooks written by the academic community. Some of these procedures are rather sophisticated and require expensive computational equipment and large data banks. While results of such procedures are generally more reliable than simplified methods, their use is generally not warranted in studies connected with this program unless they can be performed quickly and inexpensively. There may be situations where the more complex techniques have to be employed to obtain reliable results; however, these cases will be exceptions rather than the rule. Whenever the acceptability of procedures is in question, the advice of competent experts should be sought. Such expertise is generally available in the Corps of Engineers, Bureau of Reclamation and Soil Conservation Service. Many other agencies, educational facilities and private consultants can also provide expert advice. Regardless of where such expertise is based, the qualification of those individuals offering to provide it should be carefully examined and evaluated.

4.3.4. *Freeboard allowances*. Guidelines on specific minimum freeboard allowances are not considered appropriate because of the many factors involved in such determinations. The investigator will have to assess the critical parameters for each project and develop its minimum requirement. Many projects are reasonably safe without freeboard allowance because they are designed for overtopping, or other factors minimize possible overtopping. Conversely,

freeboard allowances of several feet may be necessary to provide a safe condition. Parameters that should be considered include the duration of high water levels in the reservoir during the design flood; the effective wind fetch and reservoir depth available to support wave generation; the probability of high wind speed occurring from a critical direction; the potential wave runup on the dam based on roughness and slope; and the ability of the dam to resist erosion from overtopping waves.

4.4 *Stability investigations*. The Phase II stability investigations should be compatible with the guidelines of this paragraph.

4.4.1 *Foundation and material investigations*. The scope of the foundation and materials investigation should be limited to obtaining the information required to analyze the structural stability and to investigate any suspected condition which would adversely affect the safety of the dam. Such investigations may include borings to obtain concrete, embankment, soil foundation, and bedrock samples; testing specimens from these samples to determine the strength and elastic parameters of the materials, including the soft seams, joints, fault gouge and expansive clays or other critical materials in the foundation; determining the character of the bedrock including joints, bedding planes, fractures, faults, voids and caverns, and other geological irregularities; and installing instruments for determining movements, strains, suspected excessive internal seepage pressures, seepage gradients and uplift forces. Special investigations may be necessary where suspect rock types such as limestone, gypsum, salt, basalt, claystone, shales or others are involved in foundations or abutments in order to determine the extent of cavities, piping or other deficiencies in the rock foundation. A concrete core drilling program should be undertaken only when the existence of significant structural cracks is suspected or the general qualitative condition of the concrete is in doubt. The tests of materials will be necessary only where such data are lacking or are outdated.

4.4.2. *Stability assessment*. Stability assessments should utilize in situ properties of the structure and its foundation and pertinent geologic information. Geologic information that should be considered includes groundwater and seepage conditions; lithology, stratigraphy, and geologic details disclosed by borings, ''as-built'' records, and geologic interpretation; maximum past overburden at site as deduced from geologic evidence; bedding, folding and faulting; joints and joint systems; weathering; slickensides, and field evidence relating to slides, faults, movements and earthquake activity. Foundations may present problems where they contain adversely oriented joints, slickensides or fissured material, faults, seams of soft materials, or weak layers. Such defects and excess pore water pressures may contribute to instability. Special tests may be necessary to determine physical properties of particular materials. The results of stability analyses afford a means of evaluating the structure's existing resistance to failure and also the effects of any proposed modifications. Results of stability analyses should be reviewed for compatibility with performance experience when possible.

4.4.2.1. *Seismic stability*. The inertial forces for use in the conventional equivalent static force method of analysis should be obtained by multiplying the weight by the seismic coefficient and should be applied as a horizontal force at the center of gravity of the section or element. The seismic coefficients suggested for use with such analyses are listed in Figures 1 through 4. Seismic stability investigations for all high hazard category dams located in Seismic Zone 4 and high hazard dams of the hydraulic fill type in Zone 3 should include suitable dynamic procedures and analyses. Dynamic analyses for other dams and higher seismic coefficients are appropriate if in the judgment of the investigating engineer they are warranted because of proximity to active faults or other reasons. Seismic stability investigations should utilize ''state-of-the-art'' procedures involving seismological and geological studies to establish earthquake parameters for use in dynamic stability analyses and, where appropriate, the dynamic testing of materials. Stability analyses may be based upon either time-history or response spectra techniques. The results of dynamic analyses should be assessed on the basis of whether or not the dam would have sufficient residual integrity to retain the reservoir during and after the greatest or most adverse earthquake which might occur near the project location.

4.4.2.2. *Clay shale foundation*. Clay shale is a highly overconsolidated sedimentary rock comprised predominantly of clay minerals, with little or no cementation. Foundations of clay shales require special measures in stability investigations. Clay shales, particularly those containing montmorillonite, may be highly susceptible to expansion and consequent loss of strength upon unloading. The shear strength and the resistance to deformation of clay shales may be quite low and high pore water pressures may develop under increase in load. The presence of slickensides in clay shales is usually an indication of low shear strength. Prediction of field behavior of clay shales should not be based solely on results of conventional laboratory tests since they may be misleading. The use of peak shear strengths for clay shales in stability analyses may be unconservative because of nonuniform stress distribution and possible progressive failures. Thus the available shear resistance may be less than if the peak shear strength

were mobilized simultaneously along the entire failure surface. In such cases, either greater safety factors or residual shear strength should be used.

4.4.3. *Embankment dams.*

4.4.3.1. *Liquefaction.* The phenomenon of liquefaction of loose, saturated sands and silts may occur when such materials are subjected to shear deformation or earthquake shocks. The possibility of liquefaction must presently be evaluated on the basis of empirical knowledge supplemented by special laboratory tests and engineering judgment. The possiblitity of liquefaction in sands diminishes as the relative density increases above approximately 70 percent. Hydraulic fill dams in Seismic Zones 3 and 4 should receive particular attention since such dams are susceptible to liquefaction under earthquake shocks.

4.4.3.2. *Shear failure.* Shear failure is one in which a portion of an embankment or of an embankment and foundation moves by sliding or rotating relative to the remainder of the mass. It is conventionally represented as occurring along a surface and is so assumed in stability analyses, although shearing may occur in a zone of substantial thickness. The circular arc or the sliding wedge method of analyzing stability, as pertinent, should be used. The circular arc method is generally applicable to essentially homogeneous embankments and to soil foundations consisting of thick deposits of fine-grained soil containing no layers significantly weaker than other strata in the foundation. The wedge method is generally applicable to rockfill dams and to earth dams on foundations containing weak layers. Other methods of analysis such as those employing complex shear surfaces may be appropriate depending on the soil and rock in the dam and foundation. Such methods should be in reputable usage in the engineering profession.

4.4.3.3. *Loading conditions.* The loading conditions for which the embankment structures should be investigated are (I) Sudden drawdown from spillway crest elevation or top of gates, (II) Partial pool, (III) Steady state seepage from spillway crest elevation or top of gate elevation, and (IV) Earthquake. Cases I and II apply to upstream slopes only; slopes; and Case IV applies to both upstream and downstream Case III applies to downstream slopes. A summary of suggested strengths and safety factors are shown in Table 4.

TABLE 4—FACTORS OF SAFETY[1]

Case and loading condition	Factor of safety	Shear[2] strength	Remarks
I Sudden drawdown from spillway crest or top of gates to minimum drawdown elevation.	[3] 1.2	Minimum composite of R and S shear strengths. See Figure 5.	Within the drawdown zone submerged unit weights of materials are used for computing forces resisting sliding and saturated unit weights are used for computing forces contributing to sliding.
II Partial pool with assumed horizontal steady seepage saturation.	1.5	R+S/2 for R<S ..... S for R>S	Composite intermediate envelope of R and S shear strengths. See Figure 6.
III Steady seepage from spillway crest or top of gates with K_h/K_v=9 assumed[4].	1.5	Same as Case II.	
IV Earthquake (Cases II and III with seismic loading).	1.0	([5])	See Figures 1 through 4 for Seismic Coefficients.

[1] Not applicable to embankments on clay shale foundation. Experience has indicated special problems in determination of design shear strengths for clay shale foundations and acceptable safety factors should be compatible with the confidence level in shear strength assumptions.

[2] Other strength assumptions may be used if in common usage in the engineering profession.

[3] The safety factor should not be less than 1.5 when drawdown rate and pore water pressure developed from flow nets are used in stability analyses.

[4] K_h/K_v is the ratio of horizontal to vertical permeability. A minimum of 9 is suggested for use in compacted embankments and alluvial sediments.

[5] Use shear strength for case analyzed without earthquake. It is not necessary to analyze sudden drawdown for earthquake loading. Shear strength tests are classified according to the controlled drainage conditions maintained during the test. R tests are those in which specimen drainage is allowed during consolidation (or swelling) under initial stress conditions, but specimen drainage is not allowed during application of shearing stresses. S tests allow full drainage during initial stress application and shearing is at a slow rate so that complete specimen drainage is permitted during the complete test.

4.4.3.4. *Safety factors.* Safety factors for embankment dam stability studies should be based on the ratio of available shear strength to developed shear strength, S_D:

$$S_D = \frac{C}{F.S.} + \frac{\sigma \tan \phi}{F.S.} \qquad (1)$$

Where:

C=Cohesion

φ=Angle of internal friction

σ=Normal stress

The factors of safety listed in Table 4 are recommended as minimum acceptable. Final accepted factors of safety should depend upon the degree of confidence the investigating engineer has in the engineering data

available to him. The consequences of a failure with respect to human life and property damage are important considerations in establishing factors of safety for specific investigations.

4.4.3.5. *Seepage failure.* A critical uncontrolled underseepage or through seepage condition that develops during a rising pool can quickly reduce a structure which was stable under previous conditions, to a total structural failure. The visually confirmed seepage conditions to be avoided are (1) the exit of the phreatic surface on the downstream slope of the dam and (2) development of hydrostatic heads sufficient to create in the area downstream of the dam sand boils that erode materials by the phenomenon known as ''piping'' and (3) localized concentrations of seepage along conduits or through pervious zones. The dams most susceptible to seepage problems are those built of or on pervious materials of uniform fine particle size, with no provisions for an internal drainage zone and/or no underseepage controls.

4.4.3.6. *Seepage analyses.* Review and modifications to original seepage design analyses should consider conditions observed in the field inspection and piezometer instrumentation. A seepage analysis should consider the permeability ratios resulting from natural deposition and from compaction placement of materials with appropriate variation between horizontal and vertical permeability. An underseepage analysis of the embankment should provide a critical gradient factor of safety for the maximum head condition of not less than 1.5 in the area downstream of the embankment.

$$F.S. = \frac{i_c}{i} = \frac{H_c/D_b}{H/D_b} = D_b \frac{(\gamma m - \gamma w)}{H\gamma w} \qquad (2)$$

Where:

i_c=Critical gradient
i=Design gradient
H=Uplift head at downstream toe of dam measured above tailwater
H_c=The critical uplift
D_b=The thickness of the top impervious blanket at the downstream toe of the dam
γ_m=The estimated saturated unit weight of the material in the top impervious blanket
γ_w=The unit weight of water

Where a factor of safety less than 1.5 is obtained the provision of an underseepage control system is indicated. The factor of safety of 1.5 is a recommended minimum and may be adjusted by the responsible engineer based on the competence of the engineering data.

4.4.4. *Concrete dams and appurtenant structures.*

4.4.4.1. *Requirements for stability.* Concrete dams and structures appurtenant to embankment dams should be capable of resisting overturning, sliding and overstressing with adequate factors of safety for normal and maximum loading conditions.

4.4.4.2. *Loads.* Loadings to be considered in stability analyses include the water load on the upstream face of the dam; the weight of the structure; internal hydrostatic pressures (uplift) within the body of the dam, at the base of the dam and within the foundation; earth and silt loads; ice pressure, seismic and thermal loads, and other loads as applicable. Where tailwater or backwater exists on the downstream side of the structure it should be considered, and assumed uplift pressures should be compatible with drainage provisions and uplift measurements if available. Where applicable, ice pressure should be applied to the contact surface of the structure of normal pool elevation. A unit pressure of not more than 5,000 pounds per square foot should be used. Normally, ice thickness should not be assumed greater than two feet. Earthquake forces should consist of the inertial forces due to the horizontal acceleration of the dam itself and hydrodynamic forces resulting from the reaction of the reservoir water against the structure. Dynamic water pressures for use in a conventional methods of analysis may be computed by means of the ''Westergaard Formula'' using the parabolic approximation (H.M. Westergaard, ''Water Pressures on Dams During Earthquakes,'' Trans., ASCE, Vol 98, 1933, pages 418–433), or similar method.

4.4.4.3. *Stresses.* The analysis of concrete stresses should be based on in situ properties of the concrete and foundation. Computed maximum compressive stresses for normal operating conditions in the order of ⅓ or less of in situ strengths should be satisfactory. Tensile stresses in unreinforced concrete should be acceptable only in locations where cracks will not adversely affect the overall performance and stability of the structure. Foundation stresses should be such as to provide adequate safety against failure of the foundation material under all loading conditions.

4.4.4.4. *Overturning.* A gravity structure should be capable of resisting all overturning forces. It can be considered safe against overturning if the resultant of all combinations of horizontal and vertical forces, excluding earthquake forces, acting above any horizontal plane through the structure or at its base is located within the middle third of the section. When earthquake is included the resultant should fall within the limits of the plane or base, and foundation pressures must be acceptable. When these requirements for location of the resultant are not satisfied the investigating engineer should assess the importance to stability of the deviations.

4.4.4.5. *Sliding.* Sliding of concrete gravity structures and of abutment and foundation rock masses for all types of concrete dams

should be evaluated by the shear-friction resistance concept. The available sliding resistance is compared with the driving force which tends to induce sliding to arrive at a sliding stability safety factor. The investigation should be made along all potential sliding paths. The critical path is that plane or combination of planes which offers the least resistance.

4.4.4.5.1. *Sliding resistance.* Sliding resistance is a function of the unit shearing strength at no normal load (cohesion) and the angle of friction on a potential failure surface. It is determined by computing the maximum horizontal driving force which could be resisted along the sliding path under investigation. The following general formula is obtained from the principles of statics and may be derived by resolving forces parallel and perpendicular to the sliding plane:

$$R_R = V \tan(\phi + \alpha) + \frac{cA}{\cos\alpha(1 - \tan\phi \tan\alpha)} \qquad (3)$$

Where:

R_R=Sliding Resistance (maximum horizontal driving force which can be resisted by the critical path)

φ=Angle of internal friction of foundation material or, where applicable, angle of sliding friction

V=Summation of vertical forces (including uplift)

c=Unit shearing strength at zero normal loading along potential failure plane

A=Area of potential failure plane developing unit shear strength ''c''

α=Angle between inclined plane and horizontal (positive for uphill sliding)

For sliding downhill the angle α is negative and Equation (1) becomes:

$$R_R = V \tan(\phi - \alpha) + \frac{cA}{\cos\alpha(1 + \tan\phi \tan\alpha)} \qquad (4)$$

When the plane of investigation is horizontal, and the angle α is zero and Equation (1) reduced to the following:

$$R_R = V \tan\phi + cA \qquad (5)$$

4.4.4.5.2. *Downstream esistance.* When the base of a concrete structure is embedded in rock or the potential failure plane lies below the base, the passive resistance of the downstream layer of rock may sometimes be utilized for sliding resistance. Rock that may be subjected to high velocity water scouring should not be used. The magnitude of the downstream resistance is the lesser of (a) the shearing resistance along the continuation of the potential sliding plane until it daylights or (b) the resistance available from the downstream rock wedge along an inclined plane. The theoretical resistance offered by the passive wedge can be computed by a formula equivalent to formula (3):

$$P_p = W \tan(\phi + \alpha) + \frac{cA}{\cos\alpha(I - \tan\phi \tan\alpha)} \qquad (6)$$

Where:

P_p=Passive resistance of rock wedge

W=Weight (buoyant weight if applicable) of downstream rock wedge above inclined plane of resistance, plus any superimposed loads

φ=Angle of internal friction or, if applicable, angle of sliding friction

α=Angle between inclined failure plane and horizontal

c=Unit shearing strength at zero normal load along failure plane

A=Area of inclined plane of resistance

When considering cross-bed shear through a relatively shallow, competent rock strut, without adverse jointing or faulting, W and α may be taken at zero and 45°, respectively, and an estimate of passive wedge resistance

per unit width obtained by the following equation:

$$P_p = 2\,cD \qquad (7)$$

Where:

D=Thickness of the rock strut

4.4.4.5.3. *Safety factor*. The shear-friction safety factor is obtained by dividing the resistance R_R by H, the summation of horizontal service loads to be applied to the structure:

$$S_{S-f} = \frac{R_R}{H} \qquad (8)$$

When the downstream passive wedge contributes to the sliding resistance, the shear friction safety factor formula becomes:

$$S_{S-f} = \frac{R_R + P_P}{H} \qquad (9)$$

The above direct superimposition of passive wedge resistance is valid only if shearing rigidities of the foundation components are similar. Also, the compressive strength and buckling resistance of the downstream rock layer must be sufficient to develop the wedge resistance. For example, a foundation with closely spaced, near horizontal, relatively weak seams might not contain sufficient buckling strength to develop the magnitude of wedge resistance computed from the cross-bed shear strength. In this case wedge resistance should not be assumed without resorting to special treatment (such as installing foundation anchors). Computed sliding safety factors approximating 3 or more for all loading conditions without earthquake, and 1.5 including earthquake, should indicate satisfactory stability, depending upon the reliability of the strength parameters used in the analyses. In some cases when the results of comprehensive foundation studies are available, smaller safety factors may be acceptable. The selection of shear strength parameters should be fully substantiated. The bases for any assumptions; the results of applicable testing, studies and investigations; and all pre-existing, pertinent data should be reported and evaluated.

CHAPTER 5—REPORTS

5.1. *General*. This chapter outlines the procedures for reporting the results of the technical investigations. Hazardous conditions should be reported immediately upon detection to the owner of the dam, the Governor of the State in which the dam is located and the appropriate regulatory agency without delay for preparation of the formal report.

5.2. *Preparation of report*. A formal report should be prepared for each dam investigated for submission to the regulatory agency and the owner of the dam. Each report should contain the information indicated in the following paragraphs. The signature and registration identification of the professional engineer who directed the investigation and who was responsible for evaluation of the dam should be included in the report.

5.2.1. *Phase I reports*. Phase I reports should contain the following information:

5.2.1.1. Description of dam including regional vicinity map showing location and plans, elevations and sections showing the essential project features and the size and hazard potential classifications.

5.2.1.2. Summary of existing engineering data, including geologic maps and information.

5.2.1.3. Results of the visual inspection of each project feature including photographs and drawings to minimize descriptions.

5.2.1.4. Evaluation of operational adequacy of the reservoir regulation plan and maintenance of the dam and operating facilities and features that pertain to the safety of the dam.

5.2.1.5. Description of any warning system in effect.

5.2.1.6. Evaluation of the hydraulic and hydrologic assumptions and structural stability.

5.2.1.7. An assessment of the general condition of the dam with respect to safety based upon the findings of the visual inspection and review of engineering data. Where data on the original design indicate significant departure from or non-conformance with guidelines contained herein, the engineer-in-charge of the investigation will give his opinion of the significance, with regard to safety, of such factors. Any additional studies, investigations and analyses considered essential to assessment of the safety of the dam should be listed, together with an opinion about the urgency of such additional work.

5.2.1.8. Indicate alternative possible remedial measures or revisions in operating and maintenance procedures which may (subject to further evaluation) correct deficiencies and hazardous conditions found during the investigation.

5.2.2. *Phase II reports*. Phase II reports should describe the detailed investigations and should supplement Phase I reports. They should contain the following information:

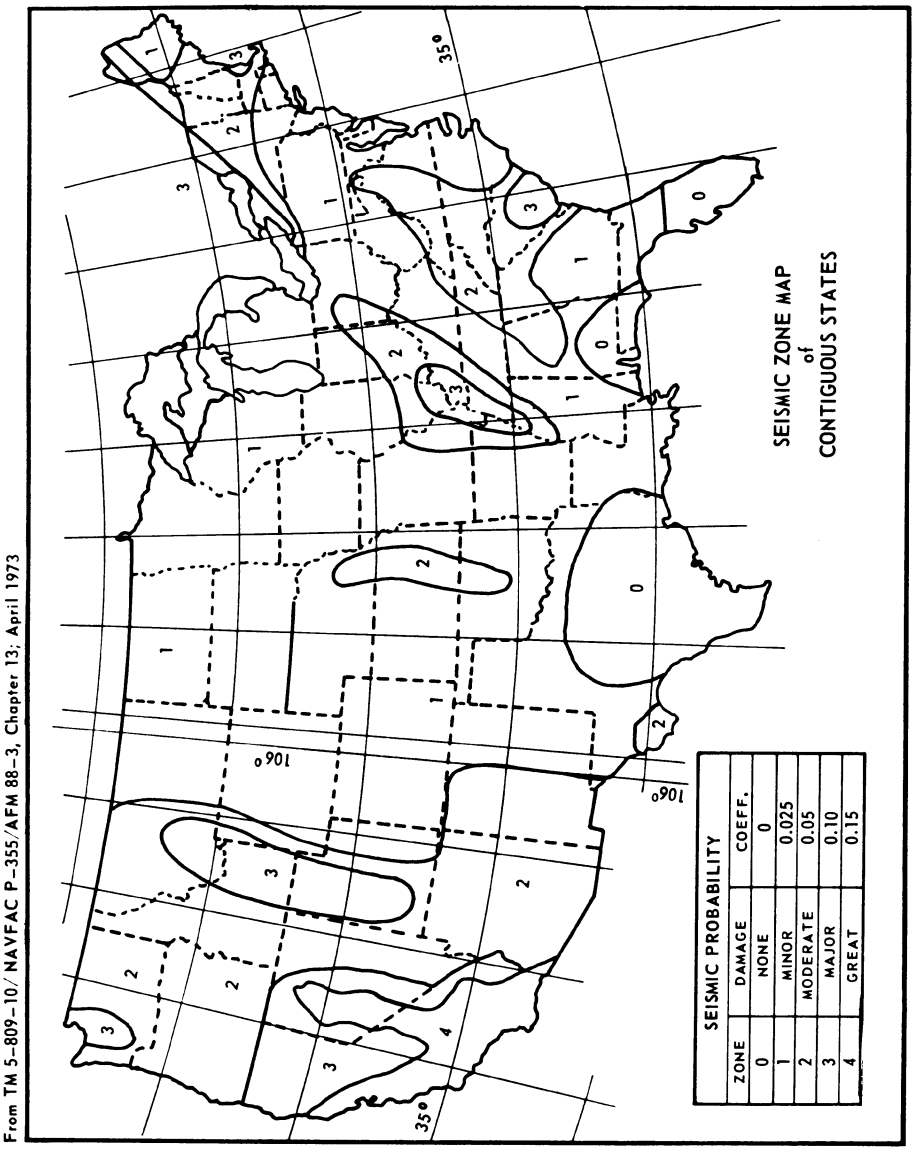
5.2.2.1. Summary of additional engineering data obtained to determine the hydraulic and hydrologic capabilities and/or structural stability.

5.2.2.2. Results of all additional studies, investigations, and analyses performed.

5.2.2.3. Technical assessment of dam safety including deficiences and hazardous conditions found to exist.

5.2.2.4. Indicate alternative possible remedial measures or revision in maintenance and operating procedures which may (subject

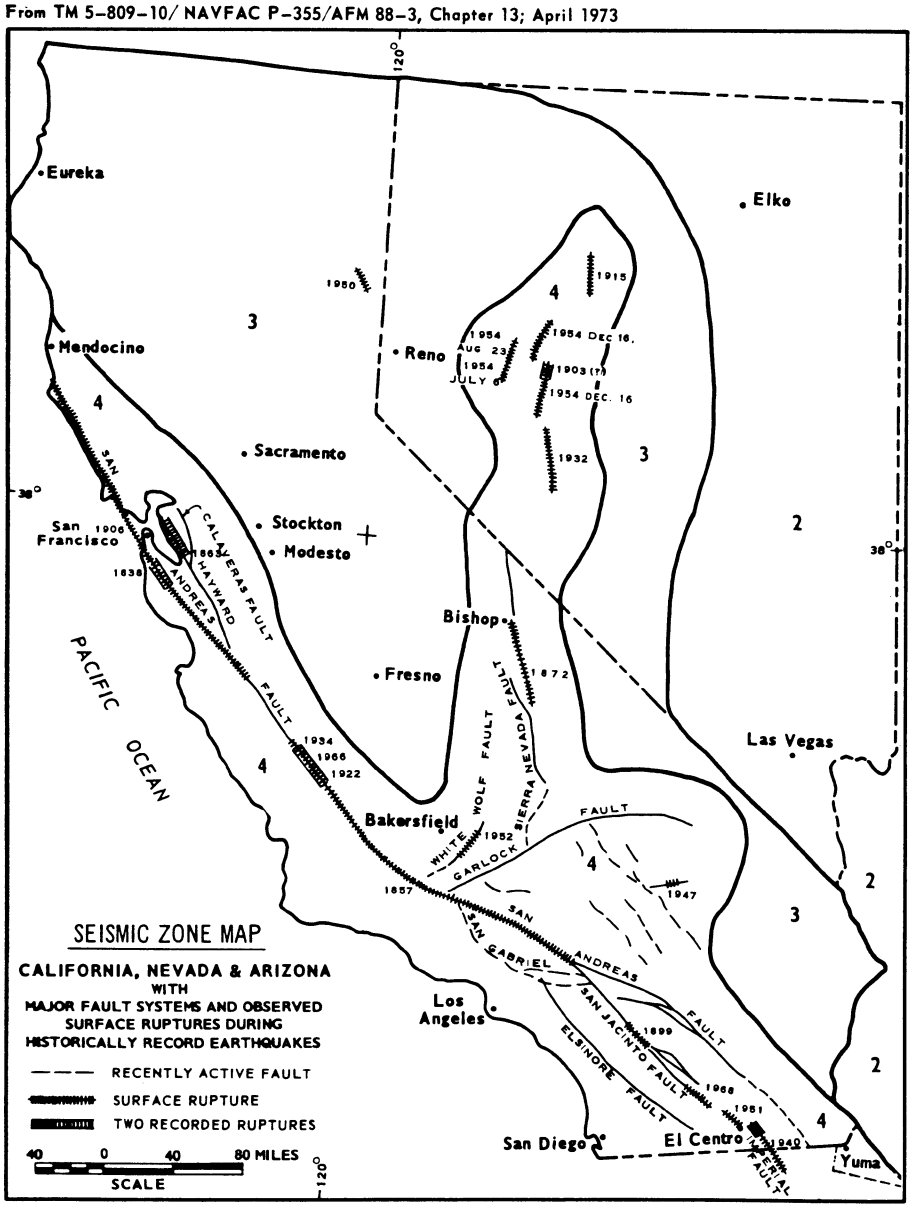
to further evaluation) correct deficiencies and hazardous conditions found during the investigation.



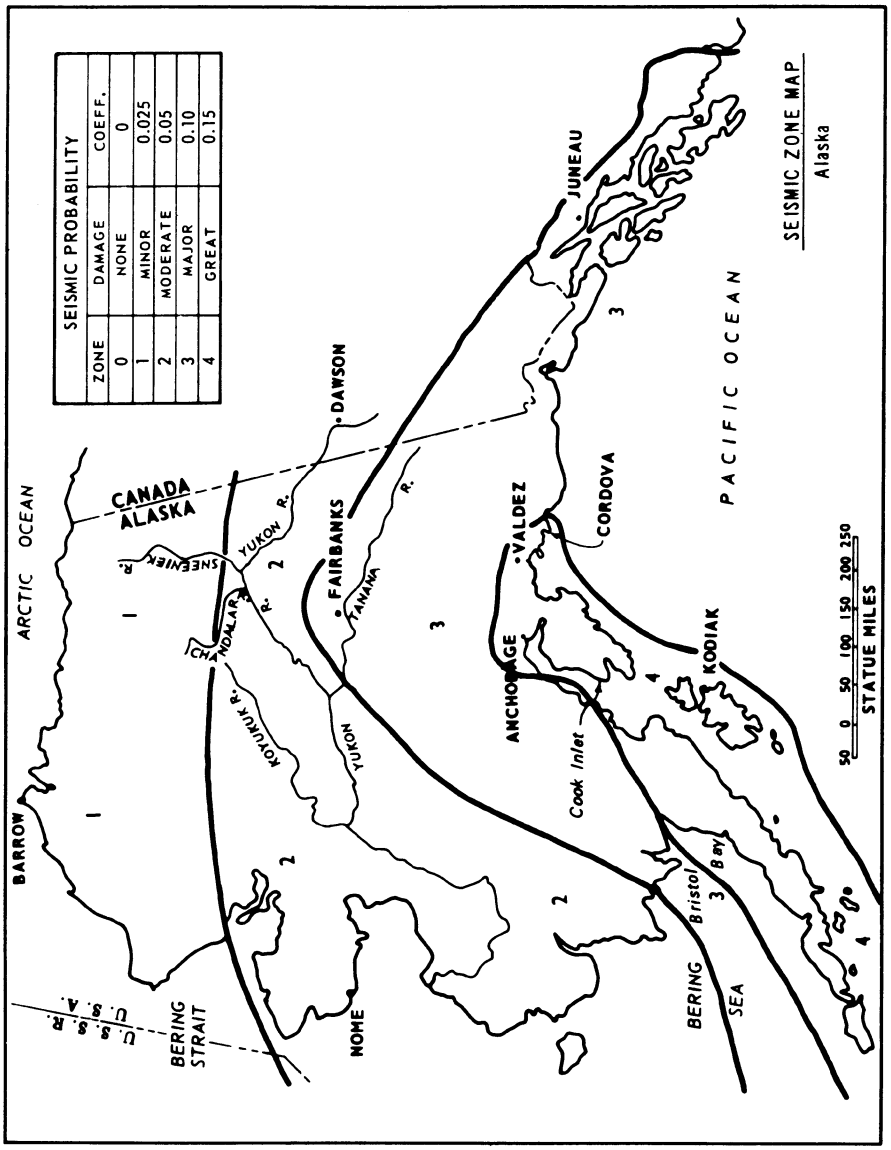
From TM 5-809-10/ NAVFAC P-355/AFM 88-3, Chapter 13; April 1973

Figure 1

From TM 5-809-10/ NAVFAC P-355/AFM 88-3, Chapter 13; April 1973

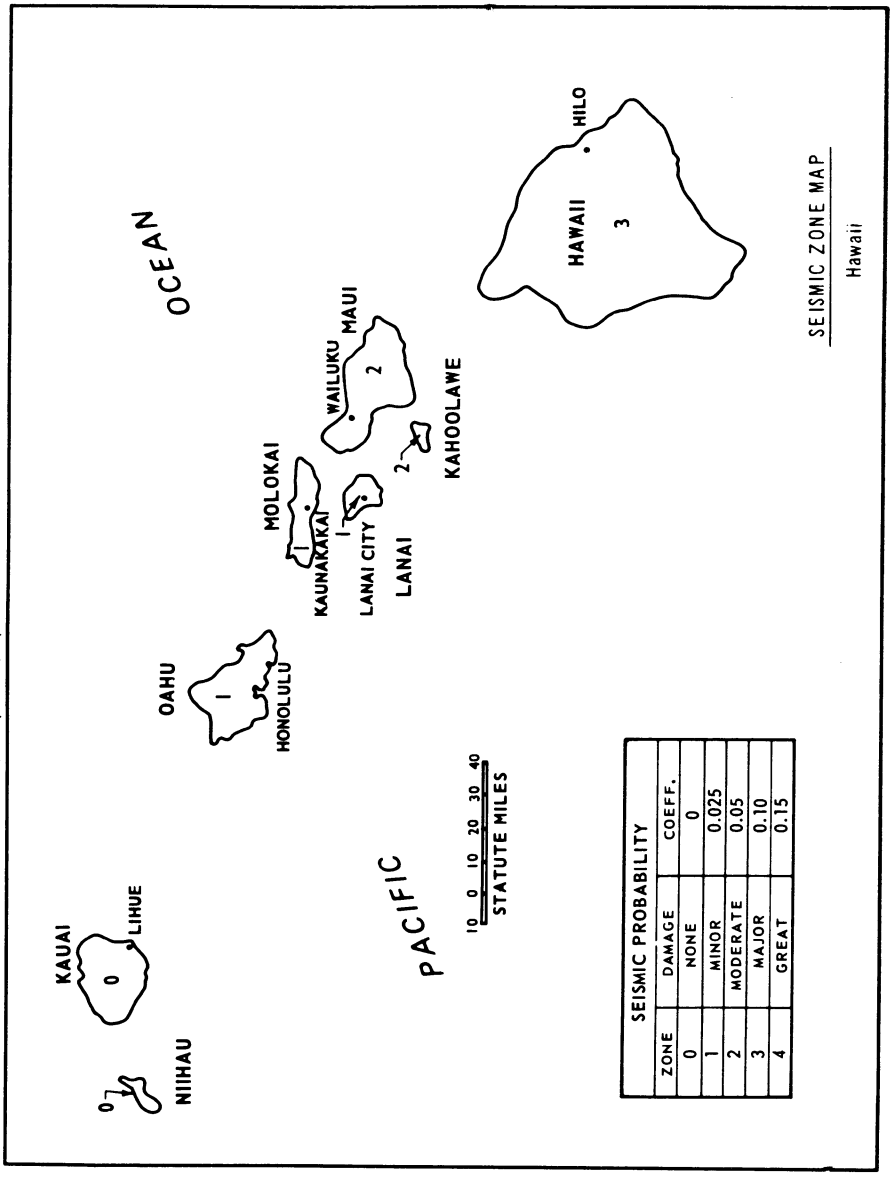


Appendix D, Figure 2



From TM 5–809–10/NAVFAC P–355/AFM 88–3, Chapter 13; April 1973

Figure 3



SEISMIC PROBABILITY

ZONE	DAMAGE	COEFF.
0	NONE	0
1	MINOR	0.025
2	MODERATE	0.05
3	MAJOR	0.10
4	GREAT	0.15

From TM 5-809-10/NAVFAC P-355/AFM 88-3, Chapter 13; April 1973

Figure 4

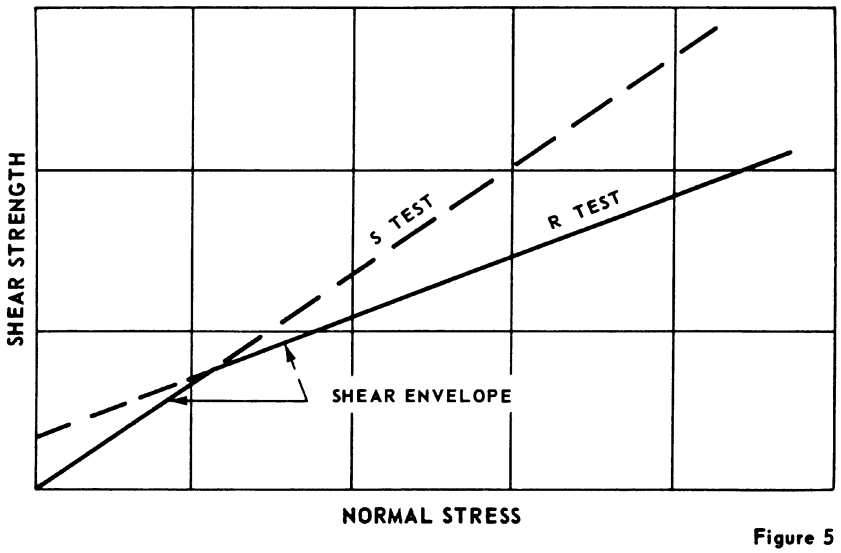


Figure 5

SHEAR ENVELOPE FOR CASE I

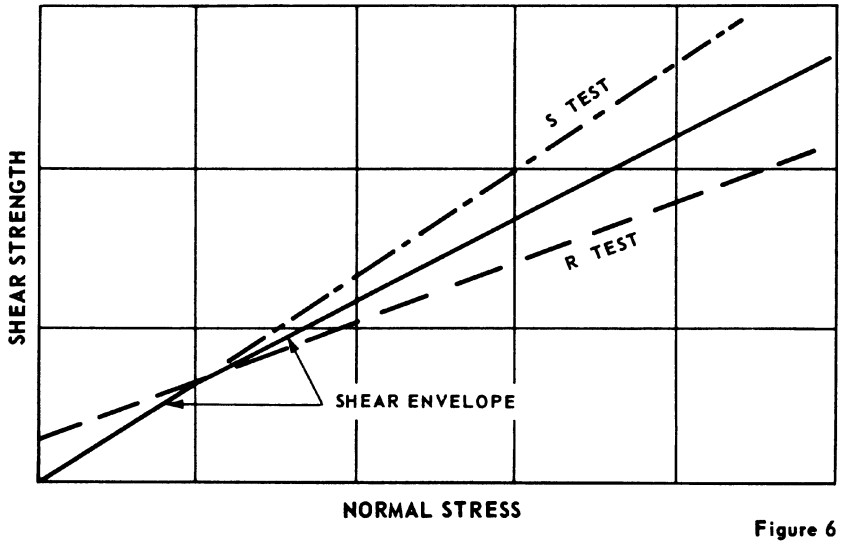


Figure 6

SHEAR ENVELOPE FOR CASES II AND III

APPENDIX I TO APP. D TO § 222.6—ENGINEERING DATA

This appendix lists engineering data which should be collected from project records and, to the extent available, included in the

Phase I investigation report. The list is intended to serve as a checklist and not to establish rigid data requirements. Such a compilation should also facilitate future inspections and investigations. Only data readily available will be included in Phase I reports, but data lacking and deemed necessary for an adequate safety evaluation should be identified.

1. *General Project Data.*

a. *Regional Vicinity Map* showing the location of the dam, the upstream drainage area and the downstream area subject to potential damage due to failure of the dam and misoperation or failure of the operating equipment.

b. *As-Built Drawings* indicating plans, elevations and sections of the dam and appurtenant structures including the details of the discharge facilities such as outlet works, limited service and emergency spillways, flashboards, fuse plugs and operating equipment.

2. *Hydrologic and Hydraulic Data* including the following:

a. Drainage area and basin runoff characteristics (indicating pending changes).

b. Elevation of top of conservation pool or normal upper retention water surface elevation, as applicable (base level of any flood impoundment).

c. Storage capacity including dead or inactive storage, corresponding to top of conservation or normal upper retention level (cumulative, excluding flood control and surcharge storage).

d. Elevation of the top of flood control pool.

e. Storage capacity of flood control zone (incremental).

f. Elevation of maximum design pool (corresponding to top of surcharge storage or spillway design flood).

g. Storage capacity of surcharge zone (incremental, above top of flood control pool or, above normal upper retention level if flood control space not provided).

h. Height of freeboard (distance between maximum design flood water surface and top of dam).

i. Elevation of top of dam (lowest point of embankment or non-overflow structure).

j. Elevation of crest, type, width, crest length and location of spillways (number, size and type of gates if controlled).

k. Type, location, entrance and exit inverts of outlet works and emergency drawdown facilities (number, size and shape of conduits and gates, including penstocks and sluices).

l. Location, crest elevation, description of invert and abutments (concrete, rock, grass, earth) and length of limited service and emergency spillways.

m. Location and dscription of flashboards and fuse plugs, including hydraulic head (pool elevation) and other conditions required for breaching, along with the assumed results of breaching.

n. Location and top elevation of dikes and floodwalls (overflow and non-overflow) affected by reservoir. Include information on low reaches of reservoir rim.

o. Type, location, observations and records of hydrometeorological gages appurtenant to the project.

p. Maximum non-damaging discharge, or negligible damage rate, at potential damage locations downstream.

3. *Foundation Data and Geological Features* including logs of borings, geological maps, profiles and cross sections, and reports of foundation treatment.

4. *Properties of Embankments and Foundation Materials* including results of laboratory tests, field permeability tests, construction control tests, and assumed design properties for materials.

5. *Concrete Properties* including the source and type of aggregate, cement used, mix design data and the results of testing during construction.

6. *Electrical and Mechanical Equipment* type and rating of normal and emergency power supplies, hoists, cranes, valves and valve operator, control and alarm systems and other electrical and mechanical equipment and systems that could affect the safe operation of the dam.

7. *Construction History* including diversion scheme, construction sequence, pertinent construction problems, alterations, modifications and maintenance repairs.

8. Water Control Plan including regulation plan under normal conditions and during flood events or other emergency conditions. The availability of dam tenders, means of communication between dam tenders and authority supervising water control, and method of gate operation (manual, automatic, or remote control) should be included. Flood warning systems should be described in sufficient detail to enable assessment of their reduction in the flood hazard potential.

9. *Operation Record.*

a. Summary of past major flood events including any experiences that presented a serious threat to the safety of the project or to human life or property. The critical project feature, date and duration of event, causative factor, peak inflow and outflow, maximum elevation of water surface, wind and wave factors if significant, issuance of alert or evacuation warnings and adequacy of project feature involved should be included in the summary of past experience of serious threat to the safety of the project.

b. Records of performance observations including instrumentation records.

c. List of any known deficiencies that pose a threat to the safety of the dam or to human life or property.

d. History of previous failures or deficiencies and pending remedial measures for correcting known deficiencies and the schedule for accomplishing remedial measures should be indicated.

10. *Earthquake History* including a summary of the seismic data of significant recorded earthquakes in the vicinity of the dam and information on major damage in the vicinity of the dam from both recorded and unrecorded earthquakes. Regional geologic maps and other documents showing fault locations should be collected.

11. *Inspection History* including the results of the last safety inspection, the organization that performed the inspection, the date inspection performed and the authority for conducting the inspection.

12. *Principal Design Assumptions and Analyses.*

a. *Hydrologic and Hydraulic Determinations.*

(1) Quantity, time and area distribution, and reference source of depth-area-duration data of spillway design storm precipitation (point precipitation if applicable).

(2) Maximum design flood inflow hydrograph including loss rates (initial and average for design flood conditions) and time of runoff concentration of reservior watershed (peak inflow only when applicable).

(3) Maximum design flood outflow hydrograph (maximum outflow only when applicable).

(4) Discharge-frequency relationship, preferably at damsite, including estimated frequency of spillway design flood for small dams, when appropriate.

(5) Reservior area and storage capacity versus water surface elevation (table or curves).

(6) Rating curves (free flow and partial gate openings) for all discharge facilities contributing to the maximum design flood outflow hydrograph. Also a composite-rating of all contributing facilities, if appropriate.

(7) Tailwater rating curve immediately below damsite including elevation corresponding to maximum design flood discharge and approximate nondamaging channel capacity.

(8) Hydrologic map of watershed above damsite including reservior area, watercourse, elevation contours, and principal stream-flow and precipitation gaging stations.

b. *Stability and Stress Analysis* of the dam, spillway and appurtenant structures and features including the assumed properties of materials and all pertinent applied loads.

c. *Seepage and Settlement Analyses.* The determination of distribution, direction and magnitude of seepage forces and the design and construction measures for their control. Settlement estimates and steps adopted to compensate for total settlement and to minimize differential settlements.

APPENDIX II TO APP. D TO § 222.6—INSPECTION ITEMS

This appendix provides guidance for performing field inspections and may serve as the basis for developing a detailed checklist for each dam.

1. *Concrete Structures in General.*

a. *Concrete Surfaces.* The condition of the concrete surfaces should be examined to evaluate the deterioration and continuing serviceability of the concrete. Descriptions of concrete conditions should conform with the appendix to ''Guide for Making a Condition Survey of Concrete in Service,'' American Concrete Institute (ACI) Journal, Proceedings Vol. 65, No. 11, November 1968, page 905–918.

b. *Structural Cracking.* Concrete structures should be examined for structural cracking resulting from overstress due to applied loads, shrinkage and temperature effects or differential movements.

c. *Movement—Horizontal and Vertical Alignment.* Concrete structures should be examined for evidence of any abnormal settlements, heaving, deflections, or lateral movements.

d. *Junctions.* The conditions at the junctions of the structure with abutments or embankments should be determined.

e. *Drains—Foundation, Joint, Face.* All drains should be examined to determine that they are capable of performing their design function.

f. *Water Passages.* All water passages and other concrete surfaces subject to running water should be examined for erosion, cavitation, obstructions, leakage or significant structural cracks.

g. *Seepage or Leakage.* The faces, abutments and toes of the concrete structures should be examined for evidence of seepage or abnormal leakage, and records of flow of downstream springs reviewed for variation with reservoir pool level. The sources of seepage should be determined if possible.

h. *Monolith Joints—Construction Joints.* All monolith and construction joints should be examined to determine the condition of the joint and filler material, any movement of joints, or any indication of distress or leakage.

i. *Foundation.* Foundation should be examined for damage or possible undermining of the downstream toe.

j. *Abutments.* The abutments should be examined for sign of instability or excessive weathering.

2. *Embankment Structures.*

a. *Settlement.* The embankments and downstream toe areas should be examined for any evidence of localized or overall settlement, depressions or sink holes.

b. *Slope Stability.* Embankment slopes should be examined for irregularities in

alignment and variances from smooth uniform slopes, unusual changes from original crest alignment and elevation, evidence of movement at or beyond the toe, and surface cracks which indicate movement.

c. *Seepage*. The downstream face of abutments, embankment slopes and toes, embankment—structure contacts, and the downstream valley areas should be examined for evidence of existing or past seepage. The sources of seepage should be investigated to determine cause and potential severity to dam safety under all operating conditions. The presence of animal burrows and tree growth on slopes which might cause detrimental seepage should be examined.

d. *Drainage Systems*. All drainage systems should be examined to determine whether the systems can freely pass discharge and that the discharge water is not carrying embankment or foundation material. Systems used to monitor drainage should be examined to assure they are operational and functioning properly.

e. *Slope Protection*. The slope protection should be examined for erosion-formed gullies and wave-formed notches and benches that have reduced the embankment cross-section or exposed less wave resistant materials. The adequacy of slope protection against waves, currents, and surface runoff that may occur at the site should be evaluated. The condition of vegetative cover should be evaluated where pertinent.

3. *Spillway Structures*. Examination should be made of the structures and features including bulkheads, flashboards, and fuse plugs of all service and auxiliary spillways which serve as principal or emergency spillways for any condition which may impose operational constraints on the functioning of the spillway.

a. *Control Gates and Operating Machinery*. The structural members, connections, hoists, cables and operating machinery and the adequacy of normal and emergency power supplies should be examined and tested to determine the structural integrity and verify the operational adequacy of the equipment. Where cranes are intended to be used for handling gates and bulkheads, the availability, capacity and condition of the cranes and lifting beams should be investigated. Operation of control systems and protective and alarm devices such as limit switches, sump high water alarms and drainage pumps should be investigated.

b. *Unlined Saddle Spillways*. Unlined saddle spillways should be examined for evidence of erosion and any conditions which may impose constraints on the functioning of the spillway. The ability of the spillway to resist erosion due to operation and the potential hazard to the safety of the dam from such operation should be determined.

c. *Approach and Outlet Channels*. The approach and outlet channels should be examined for any conditions which may impose constraints on the functioning of the spillway and present a potential hazard to the safety of the dam.

d. *Stilling Basin (Energy Dissipators)*. Stilling basins including baffles, flip buckets or other energy dissipators should be examined for any conditions which may pose constraints on the ability of the stilling basin to prevent downstream scour or erosion which may create or present a potential hazard to the safety of the dam. The existing condition of the channel downstream of the stilling basin should be determined.

4. *Outlet Works*. The outlet works examination should include all structures and features designed to release reservoir water below the spillway crest through or around the dam.

a. *Intake Structure*. The structure and all features should be examined for any conditions which may impose operational constraints on the outlet works. Entrances to intake structure should be examined for conditions such as silt or debris accumulation which may reduce the discharge capabilities of the outlet works.

b. *Operating and Emergency Control Gates*. The structural members, connections, guides, hoists, cables and operating machinery including the adequacy of normal and emergency power supplies should be examined and tested to determine the structural integrity and verify the operational adequacy of the operating and emergency gates, valves, bulkheads, and other equipment.

c. *Conduits, Sluices, Water Passages, Etc*. The interior surfaces of conduits should be examined for erosion, corrosion, cavitation, cracks, joint separation and leakage at cracks or joints.

d. *Stilling Basin (Energy Dissipator)*. The stilling basin or other energy dissipator should be examined for conditions which may impose any constraints on the ability of the stilling basin to prevent downstream scour or erosion which may create or present a potential hazard to the safety of the dam. The existing condition of the channel downstream of the stilling basin should be determined by soundings.

e. *Approach and Outlet Channels*. The approach and outlet channels should be examined for any conditions which may impose constraints on the functioning of the discharge facilities of the outlet works, or present a hazard to the safety of the dam.

f. *Drawdown Facilities*. Facilities provided for drawdown of the reservoir to avert impending failure of the dam or to facilitate repairs in the event of stability or foundation problems should be examined for any conditions which may impose constraints on their functioning as planned.

5. *Safety and Performance Instrumentation*. Instruments which have been installed to measure behavior of the structures should be

examined for proper functioning. The available records and readings of installed instruments should be reviewed to detect any unusual performance of the instruments or evidence of unusual performance or distress of the structure. The adequacy of the installed instrumentation to measure the performance and safety of the dam should be determined.

a. *Headwater and Tailwater Gages*. The existing records of the headwater and tailwater gages should be examined to determine the relationship between other instrumentation measurements such as stream flow, uplift pressures, alignment, and drainage system discharge with the upper and lower water surface elevations.

b. *Horizontal and Vertical Alignment Instrumentation (Concrete Structures)*. The existing records of alignment and elevation surveys and measurements from inclinometers, inverted plumb bobs, gage points across cracks and joints, or other devices should be examined to determine any change from the original position of the structures.

c. *Horizontal and Vertical Movement, Consolidation, and Pore-Water Pressure Instrumentation (Embankment Structures)*. The existing records of measurements from settlement plates or gages, surface reference marks, slope indicators and other devices should be examined to determine the movement history of the embankment. Existing piezometer measurements should be examined to determine if the pore-water pressures in the embankment and foundation would under given conditions impair the safety of the dam.

d. *Uplift Instrumentation*. The existing records of uplift measurements should be examined to determine if the uplift pressures for the maximum pool would impair the safety of the dam.

e. *Drainage System Instrumentation*. The existing records of measurements of the drainage system flow should be examined to establish the normal relationship between pool elevations and discharge quantities and any changes that have occurred in this relationship during the history of the project.

f. *Seismic Instrumentation*. The existing records of seismic instrumentation should be examined to determine the seismic activity in the area and the response of the structures of past earthquakes.

6. *Reservoir*. The following features of the reservoir should be examined to determine to what extent the water impounded by the dam would constitute a danger to the safety of the dam or a hazard to human life or property.

a. *Shore line*. The land forms around the reservoir should be examined for indications of major active or inactive landslide areas and to determine susceptibility of bedrock stratigraphy to massive landslides of sufficient magnitude to significantly reduce reservoir capacity or create waves that might overtop the dam.

b. *Sedimentation*. The reservoir and drainage area should be examined for excessive sedimentation or recent developments in the drainage basin which could cause a sudden increase in sediment load thereby reducing the reservoir capacity with attendant increase in maximum outflow and maximum pool elevation.

c. *Potential Upstream Hazard Areas*. The reservoir area should be examined for features subject to potential backwater flooding resulting in loss of human life or property at reservoir levels up to the maximum water storage capacity including any surcharge storage.

d. *Watershed Runoff Potential*. The drainage basin should be examined for any extensive alterations to the surface of the drainage basin such as changed agriculture practices, timber clearing, railroad or highway construction or real estate developments that might extensively affect the runoff characteristics. Upstream projects that could have impact on the safety of the dam should be identified.

7. *Downstream Channel*. The channel immediately downstream of the dam should be examined for conditions which might impose any constraints on the operation of the dam or present any hazards to the safety of the dam. Development of the potential flooded area downstream of the dam should be assessed for compatibility with the hazard classification.

8. *Operation and Maintenance Features*.

a. *Reservoir Regulation Plan*. The actual practices in regulating the reservoir and discharges under normal and emergency conditions should be examined to determine if they comply with the designed reservoir regulation plan and to assure that they do not constitute a danger to the safety of the dam or to human life or property.

b. *Maintenance*. The maintenance of the operating facilities and features that pertain to the safety of the dam should be examined to determine the adequacy and quality of the maintenance procedures followed in maintaining the dam and facilities in safe operating condition.

APPENDIX III TO APP. D TO § 222.6—PUB. L. 92–367

Public Law 92-367
92nd Congress, H. R. 15951
August 8, 1972

An Act

To authorize the Secretary of the Army to undertake a national program of inspection of dams.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "dam" as used in this Act means any artificial barrier, including appurtenant works, which impounds or diverts water, and which (1) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or (2) has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This Act does not apply to any such barrier which is not in excess of six feet in height, regardless of storage capacity or which has a storage capacity at maximum water storage elevation not in excess of fifteen acre-feet, regardless of height.

National dam inspection program.
"Dam."

SEC. 2. 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 which 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.

Army, authorization.
Exceptions.
41 Stat. 1063; 49 Stat. 863. 16 USC 791a.
86 STAT. 506
86 STAT. 507

SEC. 3. As soon as practicable after inspection of a dam, the Secretary shall notify the Governor of the State in which such dam is located the results of such investigation. The Secretary shall immediately notify the Governor of any hazardous conditions found during an inspection. The Secretary shall provide advice to the Governor, upon request, relating to timely remedial measures necessary to mitigate or obviate any hazardous conditions found during an inspection.

Notice to Governors.

SEC. 4. 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, flashboard, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam.

SEC. 5. The Secretary shall report to the Congress on or before July 1, 1974, on his activities under the Act, which report shall include, but not be limited to—

Report to Congress

(1) an inventory of all dams located in the United States;

(2) a review of each inspection made, the recommendations furnished to the Governor of the State in which such dam is located and information as to the implementation of such recommendation;

86 STAT. 507

(3) recommendations for a comprehensive national program for the inspection, and regulation for safety purpose of dams of the Nation, and the respective responsibilities which should be assumed by Federal, State, and local governments and by public and private interests.

Liability.

SEC. 6. Nothing contained in this Act and no action or failure to act under this Act shall be construed (1) to 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; or (2) to relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

Approved August 8, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 92-1232 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 118 (1972):
July 24, considered and passed House.
July 25, considered and passed Senate.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 8, No. 33:
Aug. 9, Presidential statement.

APPENDIX E TO § 222.6—SUGGESTED OUTLINE

Inspection Report—National Dam Inspection Program (RCS-DAEN-CWE-17 and OMB No. 49-R0421)

Title Sheet

Name of Dam
ID Number from Inventory
State, County and River or Stream where dam is located
Owner
Size and Hazard Classification
Names of Inspectors
Names of Review Board
Approval Signature of District Engineer

Table of Contents

General Assessment

Give brief assessment of general condition of dam with respect to safety, including a listing of deficiencies, and recommendations indicating degree of urgency.

1. Introduction

a. Authority
b. Purpose and Scope of Inspection

2. Project Information

a. Site Information
b. Description of Structures—Dam, Outlet, Spillway and other principal features.
c. Purpose of Dam
d. Design, Construction and Operating History

3. Field Inspection

Briefly describe physical condition of the dam and appurtenant structures as they were observed during the field inspection. (If field inspection form is appended, only present summary.) Describe operational procedures, including any warning system, condition of operating equipment, and provision for emergency procedures. Describe any pertinent observations of the reservoir area and downstream channel adjacent to dam.

4. Evaluation

a. Structural and Geotechnical

(1) General

(2) Embankment and/or Foundation Condition

(3) Stability—Briefly discuss pertinent information such as design, construction and operating records. Assess stability under maximum loading on basis of the record data, together with observations of field inspection and results of any additional, brief calculations performed by inspectors. If additional, detailed stability analyses are considered necessary, recommend that the owner engage a qualified engineer or firm to provide the analysis.

b. Hydrologic and Hydraulic

(1) Spillway Adequacy—Briefly describe pertinent record information such as hydrologic and hydraulic design data, flood of record, and previous analyses. Describe any hydraulic and hydrologic analyses made for this inspection. Present conclusion with respect to adequacy of spillway to pass the recommended spillway design flood without overtopping dam. If overtopping would occur, and if available from the type of analysis used, give maximum depth over top of dam and duration of overtopping, assuming the dam does not fail. Also indicate the largest flood, as a percentage of the probable maximum flood which can be passed without overtopping.

(2) Effects of overtopping—If dam is overtopped by the recommended spillway design flood, provide assessment as to whether or not dam would likely fail, and if, in case of failure, the hazard to loss of life downstream of the dam would be substantially increased over that which would exist without failure. If information upon which to base a reasonable assessment is insufficient, so state and describe the needed data, and recommend that the necessary studies be performed by engineers engaged by the owner.

c. Operation and Maintenance

Assess operating equipment and procedures, emergency power for gate operation, and Emergency Action Plan. Assess quality of maintenance as it pertains to dam safety.

5. Conclusions

Provide conclusions on condition of dam and list all deficiencies. If dam is considered unsafe, so state and give reason.

6. Recommendations

List all recommended actions, including additional studies, installation of new surveillance procedures and devices, development of Emergency Action Plans, and remedial work. Recommend that a qualified engineering firm be retained to accomplish any recommended additional investigations and studies and also to design and supervise remedial works.

Appendixes

a. Inspection Checklist (if available)

b. Other Illustrations as follows:

(1) Include a map showing location of the dam. Usually a portion of a USGS quadrangle sheet can be used which will show the topography of the area, location of the dam, exent of the lake and drainage basin, and perhaps indicate the downstream development.

(2) If available, include a plan and section of the dam.

(3) General photographs of the dam and downstream channel should be included.

(4) Color photographs of deficiencies should be included. These should be held to the minimum required to illustrate the deficiencies.

(5) Available engineering data including Hydrologic/Hydraulic calculation and physical test results that might be available.

APPENDIX F TO § 222.6

Instructions for Unsafe Dam Data Sheet
(RCS-DAEN-CWE-17 and OMB No. 49–R0421)

The indicated information shall be provided in the format shown on Pg F–3 for each dam assessed to be unsafe during the reporting period. A separate data sheet should be provided for each unsafe dam. The information supplied should conform to the following.

a. *Name*—Name of dam.

b. *Id. No.*—Dam inventory identity number.

c. *Location*—List state county, river or stream and nearest D/S city or town where the dam is located.

d. *Height*—Maximum hydraulic height of dam.

e. *Maximum Impoundment Capacity*—List the capacity of the reservior at maximum attainable water surface elevation including any surcharge loading.

f. *Type*—Type of dam, *i.e.*, earth, rockfill, gravity, combination earth-gravity, etc.

g. *Owner*—Owner of dam.

h. *Date Governor Notified of Unsafe Condition*—The date and method of notification, such as, by telegram, letter, report, etc.

i. *Condition of Dam Resulting in Unsafe Assessment*—Brief description of the deficiencies discovered which resulted in the unsafe assessment.

j. *Description of Danger Involved*—Downstream (D/S) hazard potential category and a brief description of the danger involved.

k. *Recommendations Given to Governor*—Brief description of the actions recommended to Governor at time of notification of unsafe condition to eliminate or reduce the danger.

l. *Urgency Category*—State whether the unsafe condition of the dam is an emergency or non-emergency situation. An emergency situation should be considered to exist if the failure of the dam is judged to be imminent

and requires immediate action to eliminate or reduce the danger.

m. *Emergency Actions Taken*—In case of an emergency situation, list the actions taken. For non-emergency situation, put NA for ''not applicable.''

n. *Remedial Action Taken*—For non-emergency situations list remedial actions taken.

o. *Remarks*—For other pertinent information.

Format for Unsafe Dam Data Sheet (RCS-DAEN-CWE-17 and OMB No. 49–R0421

National Program of Inspection of Non-Federal Dams—Unsafe Dam Data Sheet

a. *Name:*
b. *Type:*
c. *Height:*
d. *Id. No.*
e. *Location:*
State: *County:*
Nearest D/S City, Town or Village:
River or Stream:
f. *Owner:*
g. *Date Governor Notified of Unsafe Condition:*
h. *Condition of Dam Resulting in Unsafe Assessment:*
i. *Description of Danger Involved:*
j. *Recommendations Given to Governor:*
k. *Urgency Category:*
l. *Emergency Actions Taken:*
m. *Remarks:*

APPENDIX G TO § 222.6

National Program for Inspection of Non-Federal Dams—Monthly Progress Report (RCS-DAEN-CWE-19)

I. *Instructions for Monthly Progress Report.* The indicated information shall be provided in the format shown on page G–2.

1. Division Reporting:
2. Date:
3. Information Required for Each State Regarding Total Number of Inspections Performed (AE Inspections included) (Cumulative):
3.1. Number of Inspections Initiated by on-site inspection or the review of engineering data from project records.[1]
3.2. Number of Inspections Competed (The number of inspection reports which have been submitted to the District Engineer for review and approval).
3.3 Number of Dams Reported to the Governor as Unsafe.[2]
3.4. Number of Approved Inspection Reports Submitted to the Governor.
4. Information Required for Each State Regarding Inspections Performed Under AE Contracts (Cumulative):
4.1. Number of Dams Contracted for Inspection by AE's with State or Corps.
4.2. Number of Inspections Initiated by AE's by on-site inspection or the review of engineering data from project records.[1]
4.3. Number of Inspections Completed by AE's (The number of inspection reports which have been submitted to the District Engineer for review and approval).
4.4. Number of Approved Inspection Reports Prepared by AE's Submitted to the Governor.

II. *Formation for Monthly Progress Report.*

National Program for Inspection of Non-Federal Dams—Monthly Progress Report

1. Division Reporting:
2. Date:
3. Information Required for Each State Regarding Total Number of Inspections Performed (Cumulative):

State	Inspection Initiated (3.1)	Inspection Completed (3.2)	Unsafe Dams Reported (3.3)	Approved Reports (3.4)
Total.				

4. Information Required for Each State Regarding Inspections Performed Under A/E Contracts (Cumulative):

State	Dams Under A/E Contract (4.1)	A/E Inspections Initiated (4.2)	A/E Inspections Completed (4.3)	A/E Reports Approved (4.4)
Totals.				

APPENDIX H TO § 222.6

Suggested Scope of Work Contract for Architect-Engineer Services for Safety Inspection of Dams Within the State of _____

1. *General Description of Scope of Work.* The services to be rendered by the Architect-Engineer (AE) under the proposed contract

[1] Each of the initiated inspections reported should be planned for completion within a reasonable period of time (30 days.)

[2] An unsafe dam is defined as a dam with deficiencies of such a nature that if not corrected could result in the failure of the dam with subsequent loss of lives or substantial property damage.

[1] See footnote on previous page.

shall include all engineering functions, hereinafter described, as needed to inspect the dams listed in Appendix A of this contract for the purpose of evaluating their risk of failure. A report which (a) describes the assessed condition of the dam, (b) provides conclusions as to which particular conditions could cause failure, (c) makes recommendations on remedial measures believed necessary, and (d) makes recommendations on whether and what type of future investigation should be conducted shall be provided for each inspected dam. The work shall proceed in accordance with Phase I of the Recommended Guidelines for Safety Inspection of Dams established by the Office of the Chief of Engineers (OCE) and the supplemented requirements listed in paragraph 3 below. The OCE guidelines are listed in Appendix B of this contract.

2. *Information and Services To Be Furnished by the Government*. The Contracting Officer will furnish the following information and services to the AE:

a. All information pertaining to each dam to be inspected as contained in the National Inventory of Dams.

b. Copies of recommended format for preparation of inspection report, engineering data check list and visual inspection check list.

c. All available pertinent information pertaining to the Dam Inspection Program and previous investigations having a bearing on inspections to be performed under this contract.

d. Right-of-entry for access to each dam site.

3. *Services To Be Rendered by the Architect-Engineer*. The principal services, subject to the optional provisions of the contract, to be rendered by the AE are itemized below:

a. *Technical Investigations*.

(1) *Engineering Data Collection*. To the extent feasible, the engineering data listed in Appendix I of the OCE guidelines relating to the design, construction and operation of the dam and appurtenant structures, should be collected from existing records and reviewed to aid in evaluating the general condition of each dam, including an assessment of the hydraulic and hydrologic features and structural stability of the dam. Where the necessary engineering data are unavailable, inadequate or invalid, a listing shall be made of those specific additional data deemed necessary by the engineer in charge of the investigation and included in the inspection report. The engineering data checklist provided by the Contracting Officer shall be used as a guide to compile this data.

(2) *Field Inspections*. The field inspection of each dam shall include examination of the items listed in Appendix II of the OCE guidelines, electrical and mechanical equipment for operation of the control facilities, reservoir area, downstream channel in the vicinity of the dam and any other significant feature to determine how these features affect the risk of failure of the dam. The inspection shall be conducted in a systematic manner to minimize the possibility of any significant feature being overlooked. The visual inspection checklist provided by the Contracting Officer shall be used as a guide to document the examination of each significant feature.

Particular attention shall be given to detecting evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration, and improper functioning of drains and relief wells. The degree and quality of maintenance and regulating procedures for operation of the control facilities shall be assessed. The design and existing condition of such control facilities (*i.e.*, spillway, outlet works, etc.) shall be evaluated. An assessment of the degree of siltation that is evident and its effect on the dam's reservoir shall be performed. Photographs and drawings should be used to record conditions in order to minimize written descriptions.

(3) *Engineering Analyses*.

(a) *Evaluation of Hydraulic and Hydrologic (H&H) Features*. Evaluation of the hydraulic and hydrological features of each dam shall be based on criteria set forth in the OCE guidelines. If it is determined that the available H&H data are insufficient, the Contracting Officer must be so informed and may exercise an option of requiring the AE to perform an overtopping analysis at additional agreed-upon compensation. The methodology to be used by the AE for this analysis will be based on the OCE guidelines and subject to the approval of the Contracting Officer.

(b) *Evaluation of Structural Stability*. The evaluation of structural stability of each dam is to be based principally on existing conditions as revealed by the visual inspection, available design and construction information, and records of performance. The objectives are to determine the existence of conditions, identifiable by visual inspection or from records, which may pose a high risk of failure and to formulate recommendations pertaining to the need for any remedial improvements, additional studies, investigations, or analysis. The results of this phase of the inspection must rely substantially upon the experience and judgment of the inspecting engineer. Should it be determined that sufficient data are not available for a reasonable evaluation of the structural stability of a dam and appurtenances, the Contracting Officer should be informed which information is required prior to attempting to evaluate the risk of failure of the dam.

(c) *Evaluation of Operational Features*. Where critical mechanical/electrical operating equipment is used in controlling the

reservoir of a dam, an evaluation of the operational characteristics of this equipment from the standpoint of risk of failure must be performed.

(d) *Evaluation of Reservoir Regulation Plan and Warning System.* The operational characteristics of each dam's existing reservoir regulation plan and warning system in event of a threatened failure shall be investigated.

b. *Emergency Situations.* The Contracting Officer must be immediately notified of any observed condition which is deemed to require immediate remedial action. After being notified, the Contracting Officer will contact the appropriate State personnel and will meet the AE at the site to determine the appropriate course of action. This will not relieve the AE of his responsibility to prepare a comprehensive inspection report at the earliest practicable date.

c. *Qualifications of Investigators.* The technical investigations shall be conducted by licensed professional engineers with a minimum of five years experience after licensing in the investigation, design and contruction of earthfill, rockfill and concrete dams and/or in making risk of failure evaluations of completed dams. These engineers must be knowledgeable in the disciplines of hydrology, hydraulics, geotechnical, electrical, mechanical and structural engineering, as necessary. All field inspections should be conducted by engineers, engineering geologists and other specialists who are knowledgeable in the investigation, design, construction and operation of dams, including experts on mechanical and electrical operation of gates and controls, where needed.

d. *Preparation of Report.* A formal report shall be prepared for each dam inspected for submission to the Contracting Officer. Each report should contain the information specified in OCE guidelines and any other pertinent information. The recommended format provided by the Contracting Officer shall be used to document each report. The signature and registration identification of the professional engineer who directed the investigation and who was responsible for evaluation of the dam should be included in the report.

4. *Supervision and Approval of Work.* All work performed under this contract shall be subject to the review and approval of the Contracting Officer or his designee. Meetings will be held on a regular basis in the District office, during which the progress of inspections will be discussed and questions relating to inspection reports previously received by the Contracting Officer will be addressed. Reports will be revised as necessary when required by the Contracting Officer.

5. *Coordination.* During the progress of work, the AE shall maintain liaison with the *_____ and other local authorities through the Contracting Officer as required to assure the orderly progression of the inspection. Copies of all correspondence with such authorities shall be provided to the Contracting Officer.

6. *Submission of Report.*

a. Each inspection report will be submitted for review to the Contracting Officer. Reports will be revised as required by the Contracting Officer. After all revisions have been made, the original and ____ copies of each inspection report shall be submitted to the Contracting Officer.

b. Text of all reports shall be typewritten and printed on both sides of 8″×10½″ paper. All notes, inspection forms, sketches or similar matter shall be legible, distinct and suitable for reproduction.

7. *Period of Services.*

a. All inspections and reports included under this contract shall be completed within ____ days from date of Notice to Proceed.

b. If the option for performing an H&H analysis for any particular site is exercised, the AE shall complete such analysis within ____ days from date of Notice to Proceed. However, the overall completion time stated in paragraph 7a above shall not change.

APPENDIX I TO § 222.6

Procedure for Using NASA Land Satellite Multispectral Scanner Data for Verification and Updating the National Inventory of Dams

1. *Purpose.* This appendix states the objective, defines the scope, prescribes procedures, and assigns responsibilities for using NASA Land Satellite (LANDSAT) Multispectral Scanner data along with NASA's Surface Water Detection And Mapping (DAM) Computer program to assist in verification and updating the National Inventory of Dams.

2. *Applicability.* This appendix is applicable to all divisions and districts having Civil Works responsibilities except POD.

3. *Reference.* NASA, DETECTION AND MAPPING PACKAGE, Users Manuals, Volumes 1, 2a, 2b, and 3 dated June 1976, published by the Johnson Space Center, Houston, Texas.

4. *Objectives.* Provide a uniform method, nation-wide, to help insure that all dams subject to Public Law 92–367, 8 August 1972 are properly identified and located in the National Inventory of Dams.

5. *Scope.* The computer printer overlay maps produced by the procedure described in reference 3b will be used by district and/or state or contractor personnel as a tool to assist in verification and updating of the National Inventory of Dams.

*NOTE: Write in the designated State Authority.

6. *Exceptions*. a. If a Division/District attempts the use of the procedure for a given region within their area of responsibility and finds the overlay maps cannot be used to assist in verification and updating the National Inventory of Dams, they may request an exception for a selected region. A selected region may include areas where conditions can reasonably be assumed to be the same as the region where the procedure was tried.

b. Request for exceptions should be documented to include firm boundary definitions and appropriate justification to demonstrate why the procedure cannot be used. This request should be submitted to WRSC WASH DC 20314, through the normal engineering chain of command.

c. Map overlays will be produced for all areas of the Continental United States even if they are not used in a few selected regions. This processing is required for a future Computer Water Body Change Detection system.

7. *Procedures*. Acquisition of LANDSAT data, registration of satellite coordinates to earth latitude and longitude and computer processing to produce overlay maps will be accomplished by two Regional Centers. Nashville District and Seattle District have been designated as the Regional Centers, with each responsible for processing maps by state based on Divisional assignments in Appendix A. Regional Centers will support divisions as follows:

Regional Center	Division
Nashville District	New England North Atlantic South Atlantic Ohio River Lower Mississippi Valley North Central
Seattle District	Southwestern Missouri River North Pacific South Pacific

8. *Responsibilities*. a. The Water Resources Support Center at Fort Belvoir has overall responsibility for coordination and monitoring of this activity between NASA, Division Offices, and Regional Centers, and for providing Regional Center funding.

b. Regional Centers are responsible for:

(1) Acquiring proper LANDSAT data tape from EROS Data Center (Sioux Falls, South Dakota). Actual data scene selection will be coordinated with Division and/or District to insure proper consideration is given to local priorities and seasonal coverage.

(2) Arranging computer processing support using NASA's DAM package.

(3) Establishing proper control between satellite scanner-oriented coordinates and earth latitude/longitude.

(4) Producing total coverage of map overlays at a scale of 1:24,000 and/or smaller scales as required by Divisions and/or Districts.

(5) Instructing District, State, or contractor personnel in the assembly and use of map overlays.

c. Divisions/Districts are responsible for:

(1) Designating one person from each Division and District as the point of contact with the Regional Center and provide this person's name and phone number to the Regional Center.

(2) Providing the Regional Center with map coverage of their area of responsibility. This will include state indexes and 7½ minute quadrangle sheets (scale 1:24,000) where available.

(3) Coordinating with the Regional Center in selecting LANDSAT data tapes.

(4) Providing information to Regional Center on scale and priorities of desired computer produced map overlays.

(5) Assembling computer print-outs into overlay maps, and using as appropriate to assist in verification and updating the National Inventory of Dams.

9. *Points of Contact*. The points of contact in the Regional Centers for this program are as follows:

Name, Office Symbol, and Telephone

Jim Cook—DAEN-ORNED, (615) 251–7366; FTS 852–7366.

Jack Erlandson—DAEN-NPSEN, (206) 764–3535; FTS 399–3535.

[44 FR 55336, Sept. 26, 1979, as amended at 45 FR 18925, Mar. 24, 1980. Redesignated at 60 FR 19851, Apr. 21, 1995]

PART 223—BOARDS, COMMISSIONS, AND COMMITTEES

§ 223.1 Mississippi River Water Control Management Board.

(a) *Purpose*. This regulation establishes and prescribes the objectives, composition, responsibilities and authority of the Mississippi River Water Control Management Board.

(b) *Applicability*. This regulation is applicable to the Board members and to all field operating agencies concerned with water control management within the Mississippi River Basin.

(c) *Objectives*. The objectives of the Board are:

(1) To provide oversight and guidance during the development of basin-wide management plans for Mississippi River Basin projects for which the U.S. Army Corps of Engineers has operation/regulation responsibilities.

(2) To serve as a forum for resolution of water control problems among U.S. Army Corps of Engineers Divisions within the Mississippi River Basin when agreement is otherwise unobtainable.

(d) *Composition*. The Mississippi River Water Control Management Board is a continuing board consisting of the Director of Civil Works and Division Engineers serving in LMVD, MRD, ORD, NCD and SWD. The Director of Civil Works serves as permanent chairperson.

(e) *Responsibilities*. The Board functions under the general direction of the Chief of Engineers and is responsible for:

(1) Oversight of procedures for maintaining and improving inter-divisional coordination of water control management activities within the Mississippi River Basin.

(2) Oversight of the development and use of facilities (physical and computer models, Automatic Data Processing Equipment, and communications and information dissemination networks) needed to provide the best obtainable water control system for the entire Mississippi River Basin, utilizing the coordinated capabilities of projects now in operation and scheduled to be placed in operation in the reasonably near future.

(3) Oversight of basin-wide operating/regulation plans for U.S. Army Corps of Engineers projects in the Mississippi River Basin.

(4) Periodic reports to the Chief of Engineers regarding the Board's activities and its plans.

(f) *Procedures*. The procedures used by the board to carry out its responsibilities are as follows:

(1) The Board meets periodically to review past activities and project operations, and to discuss new or revised basin-wide operating/regulation plans.

(2) The Board acts on all proposals for (temporary or permanent) deviation from approved basin-wide operating plans.

(3) The Board provides instructions to committees under its jurisdiction and reviews their recommendations for improvements in basin-wide water control management.

(g) *Board authority*. The Mississippi River Water Control Management Board is delegated authority to establish continuing or ad hoc inter-divisional operating or study committees comprised of U.S. Army Corps of Engineers personnel to facilitate the work of the Board.

(h) *Funding*. Routine activities of the Mississippi River Water Control Management Board and its committees, such as travel and meeting expenses, will be funded by the separate members' offices using General Expense funds otherwise available. Major expenses connected with special studies or activities will be funded through the normal budgetary process. Budget requests will be supported by appropriate justification material.

(Act of Congress approved 1 March 1917, (33 U.S.C. 701) and sec. 2 of the Act of Congress approved 28 June 1938 as amended (33 U.S.C. 701c–1))

[43 FR 52236, Nov. 9, 1978]

PART 230—PROCEDURES FOR IMPLEMENTING NEPA

Sec.

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APPENDIX A TO PART 230—PROCESSING CORPS NEPA DOCUMENTS
APPENDIX B TO PART 230 [RESERVED]
APPENDIX C TO PART 230—NOTICE OF INTENT TO PREPARE A DRAFT EIS

AUTHORITY: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*); E.O. 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

SOURCE: 53 FR 3127, Feb. 3, 1988, unless otherwise noted.

§ 230.1 Purpose.

This regulation provides guidance for implementation of the procedural provisions of the National Environmental Policy Act (NEPA) for the Civil Works Program of the U.S. Army Corps of Engineers. It supplements Council on Environmental Quality (CEQ) regulations 40 CFR parts 1500 through 1508, November 29, 1978, in accordance with 40 CFR 1507.3, and is intended to be used only in conjunction with the CEQ regulations. Whenever the guidance in this regulation is unclear or not specific the reader is referred to the CEQ regulations. Appendix A provides guidance on processing NEPA documents except for those concerning regulatory actions. Appendix C (formally ER 200–2–1) has been added to provide guidance on preparing and processing a notice of intent to prepare an EIS for publication in the FEDERAL REGISTER for all types of Corps actions. 33 CFR part 325, Appendix B provides procedural guidance for preparing and processing NEPA documents for regulatory actions.

§ 230.2 Applicability.

This regulation is applicable to all HQUSACE elements and all Field Operating Activities (FOAs) having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 12291, Federal Regulation, February 17, 1981 (46 FR 13193, February 19, 1981).

(b) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979 (44 FR 1957, January 9, 1979).

(c) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C. 1344 (hereinafter referred to as section 404).

(d) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq*.

(e) Environmental Effects Abroad of Major Department of Defense Actions; Policies and Procedures 32 CFR part 197 (44 FR 21786–92, April 12, 1979).

(f) Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq*.

(g) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq*.

(h) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq*.

(i) ''Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969,'' (40 CFR parts 1500 through 1508, November 29, 1978), Council on Environmental Quality.

(j) Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies (48 CFR parts 10249 through 10258, March 10, 1983).

(k) Regulatory Programs of the Corps of Engineers 33 CFR parts 320 through 330, and 334.

(l) CEQ Information Memorandum to Agencies Containing Answers to 40 Most Asked Questions on NEPA Regulations (46 FR 34263–68, July 28, 1983).

(m) ER 310–1–5. Federal Register Act Requisitioning.

(n) ER 1105–2–10 thru 60. Planning Regulations.

§ 230.4 Definitions.

Refer to 40 CFR part 1508; other definitions may be found in the references given above.

§ 230.5 Responsible officials.

The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander also provides agency views on other agencies' environmental impact statements (EIS). The Office of Environmental Policy HQUSACE (CECW-

RE) WASH DC 20314–1000 (phone number 202–272–0166) is the point of contact for information on Corps NEPA documents, NEPA oversight activities, review of other agencies' EISs and NEPA documents about legislation, regulations, national program proposals or other major policy issues. The Assistant Chief Counsel for Environmental Law and Regulatory Programs, HQUSACE (CECC-E) WASH DC 20314–1000, is the point of contact for legal questions involving environmental matters. Requests for information on regulatory permit actions should be directed to HQUSACE (CECW-OR) WASH DC 20314–1000.

§ 230.6 Actions normally requiring an EIS.

Actions normally requiring an EIS are:

(a) Feasibility reports for authorization and construction of major projects;

(b) Proposed changes in projects which increase size substantially or add additional purposes; and

(c) Proposed major changes in the operation and/or maintenance of completed projects.

District commanders may consider the use of an environmental assessment (EA) on these types of actions if early studies and coordination show that a particular action is not likely to have a significant impact on the quality of the human environment.

§ 230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.

Actions normally requiring an EA, but not an EIS, are listed below:

(a) *Regulatory Actions*. Most permits will normally require only an EA.

(b) *Authorized Projects and Projects Under Construction*. Changes which may be approved under the discretionary authority of the Secretary of the Army.

(c) *Continuing Authorities Program*. Projects recommended for approval of the Chief of Engineers under the following authorities:

(1) Section 205, Small Flood Control Authority;

(2) Section 208, Snagging and Clearing for Flood Control Authority;

(3) Section 107, Small Navigation Project Authority;

(4) Section 103, Small Beach Erosion Control Project Authority; and

(5) Section 111, Mitigation of Shore Damages Attributable to Navigation Projects.

(d) *Construction and Operations and Maintenance*. Changes in environmental impacts which were not considered in the project EIS or EA. Examples are changes in pool level operations, use of new disposal areas, location of bank protection works, etc.

(e) *Real Estate Management and Disposal Actions*. (1) Disposal of a Civil Works project or portions of project properties not reported as excess to the General Services Administration.

(2) Disposal of real property for public port and industrial purposes.

(3) Grants of leases or easements for other than minor oil and gas transmission lines, electric power transmission lines, road and highway rights-of-way, and sewage or water treatment facilities and land fills.

§ 230.8 Emergency actions.

In responding to emergency situations to prevent or reduce imminent risk of life, health, property, or severe economic losses, district commanders may proceed without the specific documentation and procedural requirements of other sections of this regulation. District commanders shall consider the probable environmental consequences in determining appropriate emergency actions and when requesting approval to proceed on emergency actions, will describe proposed NEPA documentation or reasons for exclusion from documentation. NEPA documentation should be accomplished prior to initiation of emergency work if time constraints render this practicable. Such documentation may also be accomplished after the completion of emergency work, if appropriate. Emergency actions include Flood Control and Coastal Emergencies Activities pursuant to Pub. L. 84–99, as amended, and projects constructed under sections 3 of the River and Harbor Act of 1945 or 14 of the Flood Control Act of 1946 of the Continuing Authorities Program. When possible, emergency actions considered major in

scope with potentially significant environmental impacts shall be referred through the division commanders to HQUSACE (CECW-RE) for consultation with CEQ about NEPA arrangements.

§ 230.9 Categorical exclusions.

Actions listed below when considered individually and cumulatively do not have significant effects on the quality of the human environment and are categorically excluded from NEPA documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a ''categorical exclusion'', that fact does not exempt the action from compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

(a) For a period of one year from the effective date of these regulations, district commanders should maintain an information list on the type and number of categorical exclusion actions which due to extraordinary circumstances triggered the need for an EA and finding of no significant impact (FONSI) or an EIS. If a district commander determines that a categorical exclusion should be modified, the information will be furnished to the division commander, who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW-RE) will review recommended changes for Corps-wide consistency and revise the list accordingly. See 33 CFR part 325, Appendix B for categorical exclusions for regulatory actions.

(b) Activities at completed Corps projects which carry out the authorized project purposes. Examples include routine operation and maintenance actions, general administration, equipment purchases, custodial actions, erosion control, painting, repair, rehabilitation, replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities, and installation of new buildings utilities, or roadways in developed areas.

(c) Minor maintenance dredging using existing disposal sites.

(d) Planning and technical studies which do not contain recommendations for authorization or funding for construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

(e) All Operations and Maintenance grants, general plans, agreements, etc., necessary to carry out land use, development and other measures proposed in project authorization documents, project design memoranda, master plans, or reflected in the project NEPA documents.

(f) Real estate grants for use of excess or surplus real property.

(g) Real estate grants for Government-owned housing.

(h) Exchanges of excess real property and interests therein for property required for project purposes.

(i) Real estate grants for rights-of-way which involve only minor disturbances to earth, air, or water:

(1) Minor access roads, streets and boat ramps.

(2) Minor utility distribution and collection lines, including irrigation.

(3) Removal of sand, gravel, rock, and other material from existing borrow areas.

(4) Oil and gas seismic and gravity meter survey for exploration purposes.

(j) Real estate grants of consent to use Government-owned easement areas.

(k) Real estate grants for archeological and historical investigations compatible with the Corps Historic Preservation Act responsibilities.

(l) Renewal and minor amendments of existing real estate grants evidencing authority to use Government-owned real property.

(m) Reporting excess real property to the General Services Administration for disposal.

(n) Boundary line agreements and disposal of lands or release of deed restrictions to cure encroachments.

(o) Disposal of excess easement interest to the underlying fee owner.

(p) Disposal of existing buildings and improvements for off-site removal.

(q) Sale of existing cottage site areas.

(r) Return of public domain lands to the Department of the Interior.

(s) Transfer and grants of lands to other Federal agencies.

§ 230.10 Environmental Assessments (EA).

(a) *Purpose.* An EA is a brief document which provides sufficient information to the district commander on potential environmental effects of the proposed action and, if appropriate, its alternatives, for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). The district commander is responsible for making this determination and for keeping the public informed of the availability of the EA and FONSI.

(b) *Format.* While no special format is required, the EA should include a brief discussion of the need for the proposed action, or appropriate alternatives if there are unresolved conflicts concerning alternative uses of available resources, of the environmental impacts of the proposed action and alternatives and a list of the agencies, interested groups and the public consulted. The document is to be concise for meaningful review and decision.

(c) *Integration with Corps Reports.* In the case of planning and/or engineering reports not requiring an EIS, the EA may be combined with or integrated into the report. The same guidance on combining or integrating an EIS within the report shall apply equally to an EA. Where the EA is combined with a Corps report or prepared as a separate document in the case of construction, operating projects and real estate actions requiring an EA, the EA normally should not exceed 15 pages.

§ 230.11 Finding of No Significant Impact (FONSI).

A FONSI shall be prepared for a proposed action, not categorically excluded, for which an EIS will not be prepared. The FONSI will be a brief summary document as noted in 40 CFR 1508.13. In the case of feasibility, continuing authority, or special planning reports and certain planning/engineering reports, the draft FONSI and EA should be included within the draft report and circulated for a minimum 30-day review to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(2)). In the case of operation and maintenance activities involving the discharge of dredged or fill material requiring a public notice, the notice will indicate the availability of the EA/FONSI. For all other Corps project actions a notice of availability of the FONSI will be sent to concerned agencies, organizations and the interested public (40 CFR 1501.4(e)(1)).

§ 230.12 Notice of intent and scoping.

As soon as practicable after a decision is made to prepare an EIS or supplement, the scoping process for the draft EIS or supplement will be announced in a notice of intent. Guidance on preparing a notice of intent to prepare an EIS for publication in the Federal Register is discussed in Appendix C. Also, a public notice will be widely distributed inviting public participation in the scoping process. As described in 40 CFR 1501.7 and reference 3(m), this process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping.

§ 230.13 Environmental Impact Statement (EIS).

An EIS for feasibility or continuing authority reports and certain planning/engineering reports may be combined with or integrated into the report in accordance with 40 CFR 1500.4(o) and 1506.4. An EIS combined with the report shall follow the format in 40 CFR 1502.10, follow the main report, use colored paper and not be an attachment or appendix. An EIS integrated within the report may follow the instructions in the last paragraph of 40 CFR 1502.10. Additional guidance on combining and integrating EISs is located in ER 1105–2–60. Where the EIS is not combined with or integrated into the project document, the EIS shall be a separate document and follow the format in 40 CFR 1502.10. CEQ regulations suggest maximum lengths for the text of an EIS at

40 CFR 1502.07. An effort should be exerted to cover the substantive topics simply and concisely to the extent practicable, and consistent with producing a legally and technically adequate EIS. Normally, the CEQ page limits should be met.

(a) *Draft and Final EISs.* Guidance on EISs prepared for planning and certain planning/engineering studies is contained in ER 1105–2–10 thru 60. 33 CFR part 325, Appendix B contains guidance for regulatory actions. For final EISs which are not combined with or integrated into the report, the final EIS may take the form of an ''abbreviated'' document described in 40 CFR 1503.4(c). An abbreviated final EIS should consist of a new title page, summary, errata or correction sheet(s) and comments and responses. In filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. District commanders shall be responsible for determining the type of final EIS to prepare.

(b) *Supplements.* A supplement to the draft or final EIS should be prepared whenever required as discussed in 40 CFR 1502.09(c). A supplement to a draft EIS should be prepared and filed in the same manner as a draft EIS and should be titled ''Supplement I'', ''Supplement II'', etc. The final EIS should address the changes noted in the supplement and substantive comments received as a result of circulation of the document. A supplement to a final EIS should be prepared and filed first as a *draft* supplement and then as a final supplement. Supplements will be filed and circulated in the same manner as a draft and final EIS (including the abbreviated procedure discussed in 13a. above). Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS. Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet should clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision may be made on the proposed action by the appropriate Corps official no sooner than 30 days after the final supplement has been on file. A record of decision will be signed when the decision is made.

(c) *Tiering.* Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs or EAs as appropriate.

(d) *Other Reports.* District commanders may also publish periodic fact sheets and/or other supplemental information documents on long-term or complex EISs to keep the public informed on the status of the proposed action. These documents will not be filed officially with EPA.

§ 230.14 Record of decision and implementation.

A record of decision shall be prepared by the district commander, in accordance with 40 CFR 1505.2, for the signature of the final decisionmaker as prescribed by applicable Corps regulations. Procedures implementing the decision are discussed in 40 CFR 1505.3. Incoming letters of comment on the final EIS will be furnished for review by the decisionmaker who signs the record of decision. For example, the record of decision for feasibility reports will be signed by the ASA(CW) at the time the report is transmitted to Congress for authorization.

§ 230.15 Mitigation and monitoring.

See 40 CFR 1505.2(c) and 1505.3. District commanders shall, upon request from interested agencies or the public, provide reports on the progress and status of required mitigation and other provisions of their decisions on Corps

projects. The term monitoring will be interpreted as that oversight activity necessary to ensure that the decision, including required mitigation measures, is implemented.

§ 230.16 Lead and cooperating agencies.

Lead agency, joint lead agency, and cooperating agency designation and responsibilities are covered in 40 CFR 1501.5 and 1501.6. The district commander is authorized to enter into agreements with regional offices of other agencies as required by 40 CFR 1501.5(c). District or division commanders will consult with HQUSACE (CECW-RE), WASH DC 20314–1000 prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5 (e) and (f).

(a) *Lead Agency*. The Corps will normally be lead agency for Corps civil works projects and will normally avoid joint lead agency arrangements. Lead agency status for regulatory actions will be determined on the basis of 40 CFR 1501.5(c).

(b) *Corps as a Cooperating Agency*. For cooperating agency designation the Corps area of expertise or jurisdiction by law is generally flood control, navigation, hydropower and Corps regulatory responsibilities. See Appendix II of CEQ regulations (49 FR 49750, December 21, 1984).

§ 230.17 Filing requirements.

Five copies of draft, final and supplement EISs should be sent to: Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. District commanders should file draft EISs and draft supplements directly with EPA. Final EISs and final supplements should be filed by appropriate elements within HQUSACE for feasibility and reevaluation reports requiring Congressional authorization. Division commanders should file final EISs and final supplements for all other Corps actions except for final EISs or final supplements for permit actions which should be filed by the district commander after appropriate reviews by division and the incorporation of division's comments in the EIS. HQUSACE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will file the final document with EPA after notified that distribution of the document has been accomplished.

(a) *Timing requirements*. Specific timing requirements regarding the filing of EISs with EPA are discussed in 40 CFR 1506.10. District commanders will forward any expedited filing requests with appropriate supporting information through channels to CECW-RE. Once a decision is reached to prepare an EIS or supplement, district commanders will establish a time schedule for each step of the process based upon considerations listed in 40 CFR 1501.8 and upon other management considerations. The time required from the decision to prepare an EIS to filing the final EIS normally should not exceed one year (46 FR 18037, March 23, 1981). For feasibility, continuing authority, or reevaluation studies, where the project's study time is expected to exceed 12 months, the timing of the EIS should be commensurate with the study time. In appropriate circumstances where the costs of completing studies or acquiring information for an EIS (*i.e.*, cost in terms of money, time, or other resources) would be exorbitant, the district commander should consider using the mechanism described in 40 CFR 1502.22, as amended. In all cases, however, it is the district commander's responsibility to assure that the time-limit established for the preparation of an EIS or supplement is consistent with the purposes of NEPA.

(b) *Timing requirements on supplements*. Minimum review periods will be observed for draft and final supplements covering actions not having a bearing on the overall project for which a final EIS has been filed. Such supplements should not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA.

§ 230.18 Availability.

Draft and final EISs and supplements will be available to the public as provided in 40 CFR 1502.19 and 1506.6. A summary may be circulated in lieu of the EIS, as provided in 40 CFR 1502.19,

if the statement is unusually long. These documents will normally be made available without charge except that, in unusual circumstances, reproduction costs may be recovered in accordance with 40 CFR 1506.6(f) from recipients other than those required by CEQ to receive the complete EIS.

§ 230.19 Comments.

District commanders shall request comments as set forth in 40 CFR 1503 and 1506.6. A lack of response may be presumed to indicate that the party has no comment to make.

(a) *Time extensions.* District commanders will consider and act on requests for time extensions to review and comment on an EIS based on timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity.

(b) *Public Meetings and Hearings.* See 40 CFR 1506.6(c). Refer to paragraph 12, 33 CFR part 325, Appendix B for regulatory actions.

(c) *Comments received on the draft EIS.* See 40 CFR 1503.4. District commanders will pay particular attention to the display in the final EIS of comments received on the draft EIS. In the case of abbreviated final EISs, follow 40 CFR 1503.4(c). For all other final EISs, comments and agency responses thereto will be placed in an appendix in a format most efficient for users of the final EIS to understand the nature of public input and the district commander's consideration thereof. District commanders will avoid lengthy or repetitive verbatim reporting of comments and will keep responses clear and concise.

(d) *Comments received on the final EIS.* Responses to comments received on the final EIS are required only when substantive issues are raised which have not been addressed in the EIS. In the case of feasibility reports where the final report and EIS, Board of Engineers for Rivers and Harbors (CEBRH) or Mississippi River Commission (CEMRC) report, and the proposed Chief's report are circulated for review, incoming comment letters will normally be answered, if appropriate, by CECW-P. After the review period is over, CECW-P will provide copies of all incoming comments received in HQUSACE to the district commander for use in preparing the draft record of decision. For all other Corps actions except regulatory actions (See 33 CFR part 325, Appendix B), two copies of all incoming comment letters (even if the letters do not require an agency response) together with the district commander's responses (if appropriate) and the draft record of decision will be submitted through channels to the appropriate decision authority. In the case of a letter recommending a referral under 40 FR part 1504, reporting officers will notify CECW-RE and request further guidance. The record of decision will not be signed nor any action taken on the proposal until the referral case is resolved.

(e) *Commenting on other agencies' EISs.* See 40 CFR 1503.2 and 1503.3. District commanders will provide comments directly to the requesting agency. CECW-RE will provide comments about legislation, national program proposals, regulations or other major policy issues to the requesting agency. See Appendix III of CEQ regulations. When the Corps is a cooperating agency, the Corps will provide comments on another Federal agency's draft EIS even if the response is no comment. Comments should be specific and restricted to areas of Corps jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and 1508.26, generally including flood control, navigation, hydropower, and regulatory responsibilities. See Appendix II of CEQ regulations.

§ 230.20 Integration with State and local procedures.

See 40 CFR 1506.2.

§ 230.21 Adoption.

See 40 CFR 1506.3. A district commander will normally adopt another Federal agency's EIS and consider it to be adequate unless the district commander finds substantial doubt as to technical or procedural adequacy or omission of factors important to the Corps decision. In such cases, the district commander will prepare a draft and final supplement noting in the draft supplement why the EIS was considered inadequate. In all cases, except

where the document is not recirculated as provided in 40 CFR 1506.3 (b) or (c), the adopted EIS with the supplement, if any, will be processed in accordance with this regulation. A district commander may also adopt another agency's EA/FONSI.

§ 230.22 Limitations on actions during the NEPA process.

See 40 CFR 1506.1.

§ 230.23 Predecision referrals.

See 40 CFR part 1504. If the district commander determines that a predecision referral is appropriate, the case will be sent through division to reach CECW-RE not later than 15 days after the final EIS was filed with EPA. Corps actions referred to CEQ by another Federal agency shall be transmitted to CECW-RE for further guidance. See paragraph 19, 33 CFR part 325, Appendix B, for guidance on predecision referrals affecting regulatory permit actions.

§ 230.24 Agency decision points.

The timing and processing of NEPA documents in relation to major decision points are addressed in paragraphs 11 and 14 and Appendix A for studies and projects and 33 CFR part 320 through 330 for regulatory actions.

§ 230.25 Environmental review and consultation requirements.

See 40 CFR 1502.25.

(a) For Federal projects, NEPA documents shall be prepared concurrently with and utilize data from analyses required by other environmental laws and executive orders. A listing of environmental laws and orders is contained in table 3.4.3 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Reviews and consultation requirements, analyses, and status of coordination associated with applicable laws, executive orders and memoranda will be summarized in the draft document. The results of the coordination completed or underway pursuant to these authorities will be summarized in the final document. Where the results of the ongoing studies are not expected to materially affect the decision on the proposed action, the filing of the final EIS need not be delayed.

(b) *Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979.* For general policy guidance, see FEDERAL REGISTER of April 12, 1979, 32 CFR part 197. Procedural requirements for Civil Works studies and projects are discussed below.

(1) The district commander through the division commander will notify CECW-PE, PN, PS or PW as appropriate, of an impending action which may impact on another country and for which environmental studies may be necessary to determine the extent and significance of the impact. The district commander will inform CECW-P whether entry into the country is necessary to study the base condition.

(2) CECW-P will notify the State Department, Office of Environment and Health (OES/ENH) of the district commander's concern, and whether a need exists at this point to notify officially the foreign nation of our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(3) As soon as it becomes evident that the impacts of the proposed actions are considered significant, CECW-P will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate, requesting formal discussions on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper course of action for formal consultations.

(4) Prior to public dissemination, press releases or reports dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy.

§ 230.26 General considerations in preparing Corps EISs.

(a) *Interdisciplinary preparation.* See (40 CFR 1502.6).

(b) *Incorporation by reference.* To the maximum extent practicable, the EIS should incorporate material by reference in accordance with 40 CFR 1502.21. Footnotes should be used only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the reference list. The reference list should include the author's name, the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

APPENDIX A TO PART 230—PROCESSING CORPS NEPA DOCUMENTS

NEFA documents for Civil Works activities other than permits will be processed in accordance with the instructions contained in this appendix and applicable paragraphs in the regulation.

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1. Feasibility Studies
2. Continuing Authorities Program Studies
3. Projects in Preconstruction Engineering, and Design, Construction, and Completed Projects in an Operations and Maintenance Category
4. Other Corps Projects

1. Feasibility Studies

a. *Preparation and Draft Review.* During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental evaluation should be continued in the feasibility phase, and if the need for an EIS develops the district commander will issue a notice of intent as early in the feasibility phase as possible. Following the guidance in ER 1105–2–10 through 60, the district commander will prepare a draft feasibility report combining or integrating the draft EIS or EA and draft FONSI (as appropriate), or a separate NEPA document and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. *Division Review.* After review, the division commander will issue a public notice of report issuance and transmit the report to the CEBRH. On Mississippi River and Tributaries projects, the district commander will issue a public notice and submit the report to the CEMRC. For the purpose of this regulation, only the acronym CEBRH will be used since the review functions of CEMRC and CEBRH are similar. The notice will provide a 30-day period for comments to be submitted to CEBRH on the report and EIS. Although the EIS in the report is identified as ''final'' at this stage of processing, it should be made clear to all those requesting a copy that it is an ''Interim Document under Agency Review—Subject to Revision'' and will become the agency's final EIS when it is filed after CEBRH review.

c. *CEBRH Review.* CEBRH will review the EIS at the same time it reviews the final feasibility report. The report and EIS should be compatible. If the CEBRH review requires minor revisions (with insignificant impacts) to the plan as recommended by the division and district commanders, these changes and impacts shall be noted in the CEBRH report. If the CEBRH action results in major revisions to the recommended plan and revisions are variants of the plan or are within the range of alternatives considered and discussed in the draft EIS, an addendum to the final EIS will be prepared by CEBRH (with assistance from the district commander, as required). This addendum ''package'' will be identified as an ''Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name.'' The format shall include an abstract on the cover page; recommended changes to the division/district commander's proposed plan; rationale for the recommended changes; environmental consequences of the recommended changes; and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during CEBRH review which provide new pertinent information having a bearing on the modifications recommended by CEBRH will be attached to the addendum. If CEBRH proposes to recommend a major

revision or a new alternative to the plan recommended by the division and district commanders with significant impacts which were not discussed in the draft EIS, a supplement to the draft EIS will be required. After consultation with CEBRH and the division commander, the district commander will prepare and circulate the supplement to the draft EIS in accordance with paragraph 13(b). The supplement together with incoming letters of comment and Corps responses to substantive issues shall be incorporated into the existing final report and EIS with a minimum of page changes or revisions to reflect the modified or new proposed plan. CEBRH will review its proposed action in light of the comments received prior to taking final action on the report and EIS.

d. *Departmental Review*. The report and final EIS, together with the proposed report of the Chief of Engineers and the CEBRH report, will be filed with EPA at about the same time as it is circulated for the 90-day departmental review by Federal agencies at the Washington level and the concerned state(s). District commanders will circulate the proposed Chief's report, CEBRH report, and the report and final EIS to parties on the project mailing list not contacted by HQUSACE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. HQUSACE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to HQUSACE (CECW-P). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with HQUSACE responses and the draft record of decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's report is transmitted to ASA(CW) for further review and processing.

e. *Executive Reviews*. After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the record of decision (ROD) and transmit the report to Congress. In situations where Congress has acted to authorize construction of a project prior to receiving ASA(CW) recommendations, the Director of Civil Works is the designated official to sign the ROD. In this case the ROD should only address the project as authorized by the Congress and not attempt to provide any additional justification of the Congressional action.

2. Continuing Authorities Program Studies

a. *Preparation and Draft Review*. During the reconnaissance phase, the district commander should undertake environmental studies along with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the results of the reconnaissance phase warrant preparation of an EIS, the district commander will issue a notice of intent early in the ensuing feasibility study. Following the guidance in ER 1105–2–10 through 60 the district commander will prepare the draft DPR incorporating the EA and draft FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared, five copies of the draft EIS and report will be mailed to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 for filing after distribution has been accomplished.

b. *Agency Review*. After receipt and evaluation of comments the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review, the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been accomplished.

c. *Final Review*. Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the record of decision will be submitted through division to the appropriate element within CECW-P. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the record of decision if an EIS was prepared for the DPR.

3. Projects in Preconstruction Engineering and Design, Construction, and Completed Projects in an Operations and Maintenance Category

a. *General*. District commanders will review the existing NEPA document(s) to determine if there are new circumstances or significant impacts which warrant the preparation of a draft and final supplement to the EIS. If the proposed changes and new impacts are not significant an EA and FONSI may be used.

b. *Preparation and Draft Review*. As soon as practicable after the district commander makes a determination to prepare an EIS or

supplement for the proposed project, a notice of intent will be issued. The district commander will, in accordance with 40 CFR 1506.6, prepare and circulate the draft EIS or supplement for review and comment to agencies, groups and individuals known who may be interested or affected. Five (5) copies will be sent to Director, Office of Federal activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 for filing after distribution has been accomplished.

c. *Agency Review*. The district commander will prepare the final EIS or supplement after receipt and evaluation of comments. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within HQUSACE. The division commander will file the final EIS when the district commander has made distribution.

d. *Final Review*. Letters of comment on the final EIS or supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or supplement and a draft of the record of decision will be submitted to the appropriate Corps official having approval authority. After review of the NEPA documents and letters, the appropriate approving official will sign the record of decision.

4. *Other Corps Projects*. Draft and final EISs for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in a manner similar to that discussed in paragraph 3 of this appendix except that CERE-MC will be the coordinating office within HQUSACE for real estate actions.

APPENDIX B TO PART 230 [RESERVED]

APPENDIX C TO PART 230—NOTICE OF INTENT TO PREPARE A DRAFT EIS

1. *Purpose*. This appendix provides guidance on the preparation and processing of a notice of intent to prepare a draft EIS for publication in the FEDERAL REGISTER. A notice of intent to prepare a draft EIS or a draft supplement is discussed in 40 CFR 1508.22.

2. *Procedure*. District commanders shall publish a notice of intent in the FEDERAL REGISTER as soon as practicable after a decision is made to prepare a draft EIS or draft supplement. See 40 CFR 1507.3(e) for timing of notice of intent for Corps feasibility studies. Guidance on the format and content of the notice in the form of a sample notice of intent is contained in paragraph 4 of this appendix. District commanders shall also follow this guidance when publishing a notice of intent to withdraw a notice of intent when a decision has been made to terminate the EIS process.

3. *Publishing Documents in the T3Federal Register*. The following information is furnished for preparation and publication of notices of intent in the FEDERAL REGISTER:

a. A brief transmittal letter inclosing three (3) signed copies of the notice of intent should be processed through local Chief, Information Management channels to: HQDA, SFIS-APP, ATTN: Department of the Army Liaison Officer with the Office of the Federal Register, Alexandria, VA 22331–0302. This office will review and correct (if needed) all documents prior to publication in the FEDERAL REGISTER.

b. The notice must be signed by the official issuing the document along with the signer's typed name, rank and position title for military officials or name and position title for civilian officials. A signer cannot sign ''as acting'' or ''for'' if another name is shown in the signature block. All three copies sent forward must be signed in ink. A xerox copy of the signature is not allowed.

c. A six-digit billing code number must be typed or handwritten in ink at the top of the first page on all three copies of a notice. This billing code number can be found on GPO bills, GPO Form 400, in the upper left corner opposite the address. The billing code number will be indicated as 3710–XX. FOAs must submit an open-end printing and binding requisition, Standard Form 1, each fiscal year to cover FEDERAL REGISTER printing costs (reference 3(n)). Completed requisitions (SF–1) must be forwarded to reach HQUSACE (CEIM-SP) WASH DC 20314–1000 by 1 June of each year. Consult the local chief, Information Management for Assistance.

4. *Sample Notice of Intent*. The following is a sample notice of intent to be used by district commanders:

Department of Defense

Corps of Engineer, Department of the Army, 3710–XX (Use Local Billing Code Number)

Intent To Prepare A Draft Environment Impact Statement (DEIS) For a Proposed (*Name and location of project, permit or activity*).

Agency: U.S. Army Corps of Engineers, DoD.

Action: Notice of Intent.

Summary: The summary should briefly state in simple language what action is being taken, why the action is necessary, and the intended effect of the action. Extensive discussion belongs under the Supplementary Information caption.

For Further Information Contact: Questions about the proposed action and DEIS can be answered by: (Provide name, telephone number, and address of the person in the district or division who can answer questions about the proposed action and the DEIS).

Supplementary Information: The Supplementary Information should contain the remainder of the necessary information of the document. It should contain any authority citation, FEDERAL REGISTER citation to a previously published document, or CFR citation when appropriate and include a discussion of the following topics:

1. Briefly describe the proposed action.
2. Briefly describe reasonable alternatives.
3. Briefly describe the Corps' scoping process which is reasonably foreseeable for the DEIS under consideration. The description:

a. Shall discuss the proposed public involvement program and invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

b. Shall identify significant issues to be analyzed in depth in the DEIS.

c. May discuss possible assignments for input into the EIS under consideration among the lead and cooperating agencies.

d. Shall identify other environmental review and consultation requirements.

4. Indicate whether or not a scoping meeting will be held. Indicate time, date and location if a meeting is scheduled.
5. Provide an estimated date when the DEIS will be made available to the public.

(Provide date)

(Signature)

See par. 3.b. for instructions on signature

NOTE

• Text to be double-spaced. Use block format.
• Place local billing code number at the top of the first page on all three copies.
• Margins—one inch on top, bottom and right side; and one and one-half inches on the left side.
• Pages must be numbered consecutively.
• Text should be typed on one side only.
• Use 8½ by 11 inch bond paper or photocopy paper.

PART 236—WATER RESOURCE POLICIES AND AUTHORITIES: CORPS OF ENGINEERS PARTICIPATION IN IMPROVEMENTS FOR ENVIRONMENTAL QUALITY

Sec.

236.1 Purpose.
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236.6 Other agencies EQ measures.

AUTHORITY: Pub. L. 738, 74th Cong.; Pub. L. 89–72; Pub. L. 91–190.

SOURCE: 45 FR 28714, Apr. 30, 1980, unless otherwise noted.

§ 236.1 Purpose.

This regulation provides guidance for including Environmental Quality (EQ) measures in Corps of Engineers water resource development plans.

§ 236.2 Applicability.

This regulation is applicable to all OCE elements and field operating activities having Civil Works responsibilities.

§ 236.3 References.

(a) PL 89–72
(b) ER 1105–2–10
(c) ER 1105–2–200

§ 236.4 Background.

(a) The role of the Corps of Engineers in the development of water and related land resources has gradually broadened over the past century. Starting with the development of navigation on the Mississippi River in 1824, the Corps role has grown to encompass, among others, flood control, beach erosion control and hurricane protection, hydroelectric power, recreation, water supply, water quality, fish and wildlife and low-flow augmentation. Laws, executive orders, and national policies promulgated in the past decade require that the quality of the environment be protected and, where possible, enhanced as the nation grows. As a result, the Federal role in EQ, including the Corps, has continued to broaden. Balancing economic and environmental interests is a major requirement to be considered in the planning of all Corps projects.

(b) Enhancement of the environment is an objective of Federal water resource programs to be considered in the planning, design, construction, and operation and maintenance of projects. Opportunities for enhancement of the environment are sought through each

of the above phases of project development. Specific considerations may include, but are not limited to, actions to preserve or enhance critical habitat for fish and wildlife; maintain or enhance water quality; improve streamflow; preservation and restoration of certain cultural resources, and the preservation or creation of wetlands.

(c) The 1105–2–200 series of Engineer Regulations describe the procedures to be followed in developing water resource plans. These procedures require the establishment of planning objectives (generally encompassing a combination of National Economic Development (NED) and EQ outputs), and evaluation of alternative plans to meet those objectives to differing degrees. With respect to the recommendation of measures for Corps implementation, ER 1105–2–200 states that, ''If the selected plan or a portion thereof is not within existing Corps implementation authority, but is responsive to the planning objectives established for the study, the reporting officer may recommend Federal (Corps) participation.'' The ER further states that the basis for and extent of such participation is to be specified, including the precedent setting aspects of the recommendation, and further, that such recommendations are to be coordinated through DAEN-CWP before commitments are made to states or local interests. This regulation expands upon that policy and provides operational policies and criteria which will allow the field to recommend authorization for implementation of certain EQ measures.

§ 236.5 Policy and procedure.

The following policies and procedures set forth criteria to be applied in determining when EQ measures may be recommended for implementation by the Corps.

(a) *Policy*—(1) *Achievement of specified, study authority planning objectives.* Recommended plans must include measures for accomplishment of the primary purposes authorized by Congress.

(2) *Relationship of EQ measures to a Corps water resource development.* Measures proposed for EQ must enhance, preserve or restore the environment of the study area. EQ opportunities created as a result of meeting study authority purposes should be pursued and, as appropriate, included in plans for Corps implementation. In addition, the recommended plan may also include separable EQ measures to meet established planning objectives. Such separable EQ measures for Corps implementation must be related to, or take advantage of, opportunities created by a water resource development to be recommended for implementation by the Corps of Engineers.

(3) *Justification.* Recommended plans must be justified on the basis that combined beneficial NED and EQ effects outweigh combined adverse NED and EQ effects.

(4) *Cost sharing.* Some features of plans required to foster EQ objectives in the Corps of Engineers program have well-defined laws or policies which establish cost sharing requirements. For instance, Pub. L. 89–72, as amended, defines cost sharing requirements for fish and wildlife enhancement. However, there are other features which may not be defined by law or policy. In those instances, cost sharing will be based on an analogy with established cost sharing policies or other similar Federal programs as described in the Catalog of Federal Domestic Assistance. Cost sharing for EQ measures for which the Corps has no standard policy will be approved by HQDA (DAEN-CWP-E, C or W), WASH DC 20314, prior to proposing cost sharing to local interests.

(b) *Procedures for approval*—(1) *Without advance OCE approval.* The reporting officer may recommend separable EQ measures that satisfy any one of the following criteria:

(i) Implemented on lands required for the water resource development;

(ii) Required to complete or more fully develop proposed EQ measures partly on lands, including mitigation lands, required for the water resource development;

(iii) More cost effective to implement or manage when directly integrated with the implementation or management of the water resource development.

(2) *With advance approval.* Other separable EQ measures may be recommended with advance approval of the Director of Civil Works through

the intensive management program (ER 1105–2–10). The appropriateness for including such measures will be based upon a consideration of factors which may include, but are not limited to:

(i) Level of significance of the EQ resource.

(ii) Proximity to the proposed water resource development.

(iii) Acceptability and support for Corps implementation.

(iv) Certainty of the pending loss or significant degradation of the EQ resource in the absence of implementing the proposed EQ measure.

(v) Relationship of the EQ measures to implementing the proposed water resources development.

(vi) Relationship of the EQ measures to assigned missions of other agencies and the capability for timely implementation by these agencies.

(vii) Cost effectiveness.

§ 236.6 Other agencies EQ measures.

The selected plan may include EQ measures not proposed for Corps implementation, but to be accomplished through other Federal programs or by local interests. Planning reports including such measures will discuss how they would impact on the recommended plan, and how they may be implemented by the appropriate Federal agency or the local interests. However, implementation of such measures will not be required as local cooperation for the works proposed for Corps implementation.

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

Sec.

238.1 Purpose.
238.2 Applicability.
238.3 References.
238.4 Definitions.
238.5 Comprehensive planning.
238.6 General policy.
238.7 Decision criteria for participation.
238.8 Other participation.
238.9 Local cooperation.
238.10 Coordination with other Federal agencies.

AUTHORITY: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

SOURCE: 45 FR 71801, Oct. 30, 1980, unless otherwise noted.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating acitivities having Civil Works responsibilities.

§ 238.3 References.

(a) Executive Order 11988—Floodplain Management, dated 24 May 1977.

(b) U.S. Water Resources Council, Floodplain Management Guidelines, (43 FR 6030), to February 1978.

(c) ER 1105–2–811.

(d) ER 1140–2–302.

(e) ER 1140–2–303.

(f) EP 1165–2–2.

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) *Urban areas* are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) *Flood damage reduction works in urban areas* are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the

overflow of rivers and streams or from abnormally high coastal waters due to sever storms.

(c) *Storm sewer systems* are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

§ 238.5 Comprehensive planning.

Coordinated comprehensive planning at the regional or river basin level, or for an urban or metropolitan area, can help to achieve solutions to flood problems that adequately reflect future changes in watershed conditions, and help to avoid short-sighted plans serving only localized situations. This planning is particularly important in areas where significant portions of a watershed are expected to be urbanized in the future. Changes in land use may result in major alterations of the runoff characteristics of the watershed. Hydrologic changes must be projected for the period of analysis. In this effort, responsible local planning organizations should provide information and assist the Corps in development of projected land uses and expected practices for collection and conveyance of runoff over the period of analysis. Conversely, the Corps may be able to provide non-Federal interests with valuable information about water related consequences of alternative land uses and drainage practices.

§ 238.6 General policy.

(a) Satisfactory resolution of water damage problems in urban areas often involves cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as a storm drainage system. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authorities small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference § 238.3(a)) and the general guidelines therefor by the U.S. Water Resources Council (reference § 238.3(b)).

§ 238.7 Decision criteria for participation.

(a) *Urban flood control.* (1) Urban water damage problems associated with a natural stream or modified natural waterway may be addressed under the flood control authorities downstream from the point where the flood discharge of such a stream or waterway within an urban area is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Those drainage areas which lie entirely within the urban area (as established on the basis of future projections, in accordance with § 238.5 of this part), and which are less than 1.5 square miles in

area, shall be assumed to lack adequate discharge to meet the above hydrologic criteria. Those urban streams and waterways which receive runoff from land outside the urban area shall not be evaluated using this 1.5 square mile drainage area criterion.

(2) A number of conditions within a drainage area may limit discharges for the 10-percent flood, without proportionately reducing discharges for larger floods, such as the one-percent flood. Examples include the presence of extremely pervious soils, natural storage (wetlands) or detention basins or diversions with limited capacity. Other conditions could result in a hydrological disparity between the 10- and one-percent flood events.

(3) Division Engineers, except for NED and POD, are authorized to grant exceptions to the 800 cfs, 10-percent flood discharge criterion specified in this § 238.7(a)(1) whenever both of the following criteria are met:

(i) The discharge for the one-percent flood exceeds 1800 cfs; and

(ii) The reason that the 10-percent flood discharge is less than 800 cfs is attributable to a hydrologic disparity similar to those described in § 238.7(a)(2).

Requests for exceptions to the hydrologic criterion contained in § 238.7(a)(1) from NED and POD should be submitted to HQDA (DAEN-CWP) WASH DC 20314.

(4) Flood damage reduction works must conform to the definition in § 238.4(b) and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made. Flood reduction measures, such as dams or diversions, may be located upstream of the particular point where the hydrologic criteria (and area criterion, if appropriate) are met, if economically justified by benefits derived within the stream reach which does qualify for flood control improvement. Similarly, the need to terminate flood control improvements in a safe and economical manner may justify the extension of some portions of the improvements, such as levee tiebacks, into areas upstream of the precise point where Federal flood control authorities become applicable.

(b) *Storm sewer system.* Water damage problems in urban areas not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-made conveyance structures.* (1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damage associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of Section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140–2–302). Such efforts should be undertaken only when requirements cannot be handled better by one agency

acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) WASH DC 20314 for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140–2–303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 U.S.C. 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165–2–2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A–95 clearinghouses will help to achieve this objective (see ER 1105–2–811).

PART 239—WATER RESOURCES POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN COVERED FLOOD CONTROL CHANNELS

Sec.
239.1 Purpose.
239.2 Applicability.
239.3 References.
239.4 Policy.
239.5 Engineering considerations.
239.6 Level of protection.
239.7 Separation of flood control works from urban drainage.
239.8 Cost sharing.
239.9 Effective date.

AUTHORITY: Pub. L. 738, 74th Congress 33 U.S.C. 701a.

SOURCE: 43 FR 47470, Oct. 13, 1978; 44 FR 36175, June 21, 1979, unless otherwise noted.

§ 239.1 Purpose.

This regulation establishes policy for determining the extent of Federal participation in covered flood control channels.

§ 239.2 Applicability.

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

§ 239.3 References.

(a) Executive Order 11988, Floodplain Management, 24 May 1977.

(b) ER 1105–2–200.

(c) ER 1165–2–21.

§ 239.4 Policy.

Projects will be formulated and evaluated in accordance with the policies and procedures described in ER 1105–2–200. If, during the planning process, it appears that covered flood control channels are desirable, reporting officers may evaluate them and include them when they best serve the public interest. Selection of the plan which

best serves the public interest is based upon the ability of the plan to meet planning objectives, the contributions which the plan makes to the National Economic Development (NED), Environmental Quality (EQ), Regional Development (RD) and Social Well Being (SWB) accounts, and the public response to alternative plans. Thus, covered flood control channels may be proposed if they are desired by the public and (a) increase net EQ and/or NED benefits; or, (b) reduce adverse effects on RD or SWB without incurring an unjustified loss in net NED or EQ benefits.

§ 239.5 Engineering considerations.

Reports on proposals to provide covered channels shall include a discussion of the following matters.

(a) Impacts of sudden reduction in discharge and increased upstream channel stages when the channel entrance is submerged. This discussion shall include the effects resulting from the SPF.

(b) Dangers of rupture resulting from pressurization.

(c) Features provided to prevent human ingress and their impact on project functions.

(d) Effect of the cover on inspection and maintenance costs.

(e) Features provided for pressure release and air venting.

(f) Need for a storm warning system.

(g) Facilities provided to divert flows exceeding the design flow.

§ 239.6 Level of protection.

Evaluation of the above items may indicate that submergence of entrances to covered channels may have significant impacts on the level of flooding. The requirements of EO 11988 and the significance of the resulting flood damage may require that the covered portion of the channel be enlarged to provide capacity to pass the SPF. If inclusion of SPF capacity on the covered portions of the project cannot be justified, the added capacity may be reduced to the extent that the project will not increase upstream stages resulting from the SPF when compared to the without-project condition. If this capacity is still not feasible, covered channels shall not be recommended.

§ 239.7 Separation of flood control works from urban drainage.

Covered channels are likely to be considered in boundary areas demarking urban drainage and flood control. Reporting officers shall apply the policies given in ER 1165–2–21 to separate flood control facilities from urban drainage facilities.

§ 239.8 Cost sharing.

At local protection projects local interests are required to provide all lands, easements, rights-of-way and all alterations and relocations of utilities, streets, bridges, buildings, storm drains and other structures and improvements; hold and save the United States free from damages due to the construction works except damages due to the fault or negligence of the United States or its contractor; and assume operation and maintenance of the works after completion. In addition, local interests are required to provide additional cost sharing to reflect special local benefits or betterments. Such additional special cost sharing will not be required for covered channels when the addition of the cover increases net NED flood control benefits when compared to the open channel or when they are provided for safety in schoolyards, playgrounds, or other known play areas for juveniles. However, the separable cost of providing covers for mitigating SWB or RD impacts or to provide areas for public or private uses such as parking, or the provision of areas for recreation development, etc., will be assigned to local interests. The separable cost of recreational facilities to be constructed on or adjacent to the cover, *i.e.*, picnic facilities, etc., are eligible for Federal participation in accordance with cost-sharing policies for recreation facilities at local protection projects. Cost-sharing policies for project features which are included to make positive contributions to the EQ account are being developed. Until such policies are developed, proposals to cover channels on this basis will be coordinated with HQDA (DAEN-CWP), Washington, D.C. 20314.

§ 239.9 Effective date.

These regulations are applicable to all projects not approved by OCE prior to the date of this regulation.

PART 240—GENERAL CREDIT FOR FLOOD CONTROL

Sec.
240.1 Purpose.
240.2 Applicability.
240.3 Reference.
240.4 Legislative provisions.
240.5 Discussion.
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240.7 Credit criteria for projects authorized on or before 17 November 1986.
240.8 Credit criteria for projects authorized after 17 November 1986.
240.9 Procedures.
APPENDIX A TO PART 240 [RESERVED]
APPENDIX B TO PART 240—FORMULAS FOR DETERMINING AMOUNT OF ALLOWABLE CREDIT

AUTHORITY: Section 104, Water Resources Development Act of 1986 (Pub. L. 99–662); 33 U.S.C. 2214.

SOURCE: 52 FR 44113, Nov. 18, 1987, unless otherwise noted.

§ 240.1 Purpose.

This establishes guidelines and procedures for Department of the Army application of the provisions of section 104 of Pub. L. 99–662.

§ 240.2 Applicability.

Policies and procedures contained herein apply to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 240.3 Reference.

Section 104 of Pub. L. 99–662.

§ 240.4 Legislative provisions.

Section 104 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a project for flood control. Compatible work which was carried out prior to project authorization, before 17 November 1986 but after 17 November 1981, may be considered part of the project and credited against the non-Federal share of the cost of project, if the local sponsor applied for consideration of such work not later than 31 March 1987. Local work to be carried out after 17 November 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project. (Such approval can only be given on the basis of the guidelines required to be issued pursuant to section 104(a); hence, the law is silent with respect to work performed between 17 November 1986 and the effective date of the guidelines.) The credit will not relieve the non-Federal sponsor of the requirement to pay 5 percent of the project costs in cash during construction of the remainder of the project. This legislative authority also provides that benefits and costs of compatible work will be considered in the economic evaluation of the Federal project. This includes the costs and benefits of compatible local work which was carried out after 17 November 1981 or within the 5 years prior to the initial obligation of reconnaissance study funds if that should establish a later date.

§ 240.5 Discussion.

Discussion of this legislation is contained in the Conference Report, H.R. Rpt. No. 99–1013, which accompanies H.R. 6. The House passed version of the bill contained a number of project-specific provisions that authorized credit against the non-Federal share for compatible work completed by local interests. The Senate passed version authorized crediting of compatible flood control works for projects under study. Both general provisions would enable local interests to proceed with compatible work on the understanding that the local improvements would be considered a part of the Federal project for the purpose of benefit-to-cost analysis, as well as subsequent cost sharing. The Conference Committee deleted virtually all of the crediting provisions applicable to individual projects and expanded the general provision allowing the Secretary to credit the cost of certain work undertaken by local interests prior to project authorization against the non-Federal share of project costs and to consider the benefits and costs in the economic evaluation of a more comprehensive project.

This authority provides a basis for non-Federal interests to undertake local work to alleviate flood damages in the period preceding authorization of a Federal project with assurance that they will not adversely affect the project's economic feasibility. It provides local sponsors more flexibility in meeting their flood problems.

§ 240.6 General policy.

(a) Section 104 is applicable only to projects specificially authorized by the Congress (not to projects authorized by the Chief of Engineers under continuing authorities), and only to ''flood control'' projects except in instances where the Congress may provide, by specific language in the authorization, that a project of other characterization is eligible for section 104 credit consideration.

(1) Section 104 provisions will be applied only at locations where Federal construction of a congressionally authorized project, or separable element thereof, is initiated after April 30, 1986; a congressionally authorized study is underway; or where the feasibility report has been forwarded for Executive Branch review or for consideration by Congress.

(2) The crediting provisions of section 104 are applicable only to non-Federal work started after the reconnaissance phase of Corps preauthorization studies but prior to project authorization. No credit is available under section 104 for non-Federal work started after project authorization.

(3) A credit recommendation will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan.

(b) Work eligible for crediting shall be limited to that part of the local improvement directly related to a flood control purpose. (These guidelines, although they generally make reference to flood control ''projects,'' should be understood to have equivalent application to allocated flood control costs in a multiple purpose project.) Measures (structural or nonstructural) undertaken for channel alignment, navigation, recreation, fish and wildlife, land reclamation, drainage, or to protect against land erosion, and which, in conjunction with the project, do not produce appreciable and dependable effects in preventing damage by irregular and unusual rises in water levels, are not classed as flood control works and are ineligible for credit.

(c) Future work proposed for crediting should be separately useful for flood control or other purposes even if the Federal Government does not construct the contemplated project, and must not create a potential hazard.

(d) For local work initiated before 17 November 1986, but after 17 November 1981, the local sponsoring agency must have requested consideration by letter dated on or before 31 March 1987. For new local work commenced after 17 November 1986, only work for which the sponsor receives notification of compatibility and extent of potential credit pursuant to § 240.9(c) of this regulation shall be eligible for credit.

(e) The maximum amount creditable shall equal the actual expenditures made by non-Federal entities (not limited solely to the project sponsor's specific efforts and expenditures) for work that meets the criteria set forth above and in § 240.7 or 240.8. Expenditures eligible for inclusion in the amount creditable include the costs of all efforts actually required for the non-Federal implementation of the compatible flood control works including, but not necessarily limited to, costs for permits, environmental, cultural or archeological investigations, engineering and design, land acquisition expense, other LERRD, and construction of the flood control works including any required mitigation measure. For construction efforts accomplished by non-Federal interests using their own forces and other resources, for which ''costs'' may not be recorded, consideration will be given to inclusion of a reasonable estimate of the value thereof (as if accomplished by contract). Regardless of the total amount creditable on this basis, however, the amount actually credited will not exceed the amount that is a reasonable estimate of the reduction in Federal project expenditures resulting from substitution of the local work for authorized project elements or, in the case of compatible work outside the scope of the project

as originally authorized, a reasonable estimate of what Federal expenditures would have been if that work had been Federally constructed. Costs of subsequent maintenance of the creditable non-Federal flood control work will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or other Federal funds, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount, unless the law governing the grant permits grant funds to be used to meet the non-Federal share of Corps of Engineers cost sharing requirements. However, there will be no corresponding reduction in the costs or benefits considered in the project's economic evaluation.

(f) Regardless of the total amount creditable for compatible work at the time of construction, the local sponsor will be required to contribute 5 percent of the total project cost in cash during construction of the project by the Corps. The credit can only be applied toward the value of needed lands, easements, rights-of-way, relocations, and disposal areas (LERRD) the sponsor would otherwise have to provide plus any additional required cash contribution needed to make the total sponsor contribution equal at least 25 percent of total project costs. As a consequence of crediting non-Federal construction costs against LERRD requirements some costs for LERRD may become a Federal responsibility.

(g) Reimbursement to non-Federal interests will not be made for any excess of costs for compatible works beyond that which can be credited in accordance with § 240.6(f). In this regard, reimbursements pursuant to section 103(a)(3) of Pub. L. 99–662 will not be made should the non-Federal share of project-related costs exceed 50 percent of total project-related costs by virtue of such excess of costs for compatible work.

(h) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those costs, including engineering and overhead, directly attributable to the creditable part of local work may be included in the amount credited.

(i) Non-Federal costs in connection with LERRD required for the Federal project, regardless of when incurred, will be recognized in computation of the LERRD component of project costs (the credit provisions of section 104, Pub. L. 99–662, have no direct bearing on this).

(j) Non-Federal construction and LERRD costs in connection with compatible work for which credit can be given will, when those costs are incorporated in project costs, be included in their related categories, and total project cost sharing responsibilities will be adjusted accordingly.

§ 240.7 Credit criteria for projects authorized on or before 17 November 1986.

(a) For work accomplished prior to project authorization, the following local improvements can be construed as compatible and considered for credit:

(1) Work that would constitute an integral part of the Federal project as authorized (integral work);

(2) Work that would have been included in the Federal project if it had not been assumed to be part of the without project condition (external work); and

(3) Work that reduces the construction cost of the Federal plan (substitute work).

(b) For local work accomplished subsequent to project authorization, only work started prior to authorization, and for which credit consideration was requested by letter dated on or before 31 March 1987, is eligible for credit under the provisions of section 104. New non-Federal work initiated after project authorization, provided it is on an element of the authorized project, is subject to limited credit under a separate authority. Such work, if the sponsor desires related credit, should be undertaken under formal agreement pursuant to section 215 of the Flood Control Act of 1968 Pub. L. 90–483, approved August 13, 1968, as amended.

(c) All creditable non-Federal costs for compatible work, and related benefits, may be considered in the project economic evaluation and, to the extent the related benefits are required for economic justification, creditable costs

shall be included in total project first costs. In any event, costs for compatible work shall be included in total project first costs to at least the extent that credit is actually given, including LERRD.

(d) Flood control projects authorized in Pub. L. 99–662 subject to sections 903 (a) and (b) or similar provisions 401(b) and 601(b)) of that act fall, with respect to crediting non-Federal costs, under this paragraph. (However, pending completion of the relevant procedural requirements for such projects, as set forth in those provisions of the act, section 215 agreements covering proposed non-Federal accomplishment of compatible work on the project will not be executed.) Works eligible for credit will be explicitly addressed in new project reports submitted to the Secretary of the Army pursuant to sections 903 (a) and (b) or similar provisions.

(e) Formulas for determining the amount of allowable credit in accordance with these guidelines are provided in Appendix B.

§ 240.8 Credit criteria for projects authorized after 17 November 1986.

(a) In general, for projects authorized after 17 November 1986, work eligible for credit will be explicitly addressed in recommendations to Congress. If a report has been submitted to Congress, work on an element of the recommended Federal project or work that reduces its construction cost can be considered for credit.

(b) Local work initiated after 17 November 1981 or within 5 years before the first obligation of funds for the reconnaissance study began, whichever is later, can be incorporated into the recommended plan for the purpose of economic evaluation. However, credit can be considered only for local work undertaken after the end of the reconnaissance study and for which a credit application has been acted upon prior to construction pursuant to § 240.9 procedures. (For any portion of such work undertaken prior to 17 November 1986, credit may be granted only if a letter application was received prior to 31 March 1987.) If such work was undertaken between 17 November 1986 and the effective date of this regulation, an after-the-fact application pursuant to the § 240.9 procedures will be accepted.

(c) Reports recommending Federal participation in a plan should include the following, ''Future non-Federal expenditures for improvements that, prior to their construction, are found to be compatible with the plan recommended herein, as it may be subsequently modified, will entitle the (*sponsor's name*) to consideration for credit in accordance with the guidelines established under section 104, Pub. L. 99–662.''

(d) All costs for non-Federal work incorporated in the recommended plan in accordance with this paragraph shall be included in total project first costs and will therefore be subject to cost sharing. Related benefits will be included in the project's economic evaluation.

§ 240.9 Procedures.

(a) For non-Federal works undertaken prior to 17 November 1986, credit determinations (deferred until these guidelines became effective) will be made by the Secretary in response to the applications received prior to 31 March 1987. Future non-Federal works for which credit may be allowed under the provisions of section 104 of Pub. L. 99–662 are limited, basically, to local works undertaken while Federal preauthorizations studies of a Federal project for the locality are in progress. Credit consideration for such works will be governed by the procedures set forth here. Non-Federal entities desiring credit should confer with the District Engineer and submit a written application to him. The application will include a full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the Federal Plan and determine what part of the proposed local improvement would be eligible for credit. The District Engineer will forward his recommendations through the Division Engineer and the Chief of Engineers to the Assistant Secretary of the Army

(Civil Works) and provide information on:

(1) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(2) Total estimated cost and benefits of creditable work.

(3) Environmental effects of the local work, including a brief statement of both beneficial and detrimental effects to significant resources.

(4) The urgency for proceeding with the local plan.

(c) Upon being informed of the Secretary's decision, the District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be recommended for credit under the provisions of section 104 (assuming that the final plan for a Federal project, when it is ultimately recommended, remains such as to preserve the local work as a relevant element). If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for credit shall be fully defined. This letter shall include the following conditions:

(1) This shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) This does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) Upon authorization of the Federal project, approval shall be subject to rescission if the non-Federal work has not commenced and, as a consequence, Corps planning for orderly implementation of the project is being adversely affected.

(d) The non-Federal entity will notify the District engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to ascertain and confirm those costs properly creditable and shall inform the non-Federal entity of the audit results.

(e) During further Corps studies, the local work actually accomplished that would constitute a legitimate part of the overall recommended Federal project may be incorporated within any plan later recommended for implementation.

(f) The District Engineer shall submit a copy of his letter and notification of creditable costs of completed work to the Secretary through the Division Engineer and the Chief of Engineers.

(g) All justification sheets supporting new start recommendations for Preconstruction Engineering and Design or Construction of projects will include information on credits in the paragraph on local cooperation. The information should include but not be limited to date of the District Engineer's letter to the sponsor pursuant to §240.9(c) of this regulation, status of the creditable work, estimated or actual cost of the work and the estimated amount of credit.

APPENDIX A TO PART 240 [RESERVED]

APPENDIX B TO PART 240—FORMULAS FOR DETERMINING AMOUNT OF ALLOWABLE CREDIT

1. *General.* The amount of credit that non-Federal interests may receive under the provisions of section 104 of the Water Resources Development Act of 1986 depends first on the value of the compatible work they have accomplished and then on the value of the local cooperation against which they may receive credit. If the compatible work is for construction which was outside the scope of the project as authorized, the costs for the compatible work for which credit is desired are additive to the original estimate of total project cost. This increases the estimated cost of basic local cooperation requirements, thus enlarging the target against which credit may be given.

2. The ''formulas'' for determining the amount of credit that may be allowed in the various cases are provided in the following paragraphs. TPC means the total estimate of project costs for the project as it was authorized. LERRD means the costs for lands, easements, rights-of-way, relocations and disposal areas as included in that estimate.

3. Calculations for several hypothetical examples are provided to illustrate how crediting determinations would impact on

project costs and on cost sharing. For each of these examples it is assumed that the estimated total project cost (TPC) of the project as authorized is $100.0 million. All of the elements of cost are given in millions of dollars.

4. *Integral Work*. For compatible work that is integral with the project as authorized (240.7(a)(1)) or compatible work that constitutes an advantageous substitution for work integral with the authorized project (*i.e.,* substitute work, 240.7(a)(3)):

a. LERRD ≤20% TPC
Credit = Value of compatible work up to 20% TPC

b. LERRD ≥20% TPC
Credit = Value of compatible work up to LERRD

Crediting non-Federal interests for constructing an integral part of the project or substitute work will not result in any increase in project costs. Ordinarily, the result will simply be a transfer of equivalent responsibilities between the Corps and non-Federal interests. If non-Federal interests should accomplish compatible integral or substitute work exceeding the possible credit, the Corps will be relieved of the expense of constructing an increment of the project. An example is provided below. In this example, non-Federal interests have accomplished integral project work amounting to 30.0 million. LERRD are less than 20% of TPC so that the maximum value of local cooperation against which they may receive credit is $20.0 million. Since the $10.0 for which credit cannot be given nonetheless represents useful project work, in this example the Corps would be relieved of the costs for accomplishing that much construction.

Case: LERRD ≤ 20% TPC	Basic project	Credit Example 1: Compatible work, 30.0
Non-Federal:		
5% Cash	5.0	5.0
LERRD	14.0	0.0
Extra cash (toward constr.)	6.0	0.0
Construction (actual)	.....	30.0
Subtotal	25.0	35.0
Federal:		
Construction	75.0	51.0
LERRD	.....	14.0
Subtotal	75.0	65.0
TPC	100.0	100.0
Reduction in Federal costs	.....	[1] 10.0

[1] The amount by which the integral or substitute work actually accomplished by non-Federal interests exceeds the requirements of local cooperation against which credit may be given.

5. *External Work*. For compatible work outside the scope of the project as authorized (*i.e.*, external work, 240.7(a)(2)):

a. LERRD ≤25% TPC
Credit = Value of compatible work up to 25% TPC

b. LERRD ≥25% TPC
Credit = Value of compatible work up to LERRD

Crediting non-Federal interests for compatible work which was not part of the project as authorized (external work) will result in an increase in project costs and an increase in the net Federal costs. The costs for compatible external work for which non-Federal interests desire credit must be incorporated into the estimate of total project costs (but only to the extent that credit can actually be given). Assigned Federal and non-Federal project costs then making up the adjusted total project costs will both be greater than for the basic project. However, the net effect will be a savings to non-Federal interests in the further costs they will have for fulfilling local cooperation requirements. The maximum amount that can be credited for compatible external work (and thus added to project costs), where LERRD ≤25% TPC, follows from Credit, C = 20% (TPC + C) which reduces to C = 0.2TPC + 0.2C, then to 0.8C = 0.2TPC, and finally C = (0.2/0.8)TPC or 0.25TPC as indicated in a, above. An example of crediting in a case involving external work is provided below. In this example, as in example 1, non-Federal interests have accomplished work amounting to $30.0 million. This work, however, was not intergral with the project as authorized (it has been determined to be compatible external work), so that any part of it for which credit is given must be added to TPC. Since, in this case LERRD are less than 25% of TPC, the maximum amount that can be credited is 25% of TPC, or $25.0 million. Adjusting TPC by this amount results in an added Federal cost of $18.75 million (75% of the $25.0 million increase).

Case: LERRD ≤25% TPC	Basic project	Credit Example 2, Compatible work, 30.0
Non-Federal:		
5% Cash	5.0	6.25
LERRD	14.0	0.0
Extra cash (toward constr.)	6.0	0.0
Construction (actual)	.....	25.0
Subtotal	25.0	31.25
Federal:		
Construction	75.0	79.75
LERRD	.....	14.0
Subtotal	75.0	93.75
TPC	100.0	.....
Adjusted TPC	.....	125.0
Excess of Compatible Work	.....	[1] 5.0

Case: LERRD ≤25% TPC	Basic project	Credit Example 2, Compatible work, 30.0
Increase in Federal Costs	.....	[2] 18.75

[1] This portion of the compatible external work is not incorporated in the project costs because it would be a disadvantage to the project sponsor to do so (if included, the sponsor would become obligated for an additional 5% up-front cash contribution but without any savings in other local cooperation because there would be nothing left to give credit against).

[2] This is also the measure of the net savings to non-Federal interests by virtue of crediting.

6. *Combined integral and external works.* For cases where non-Federal interests have accomplished compatible work, some of which is integral with the project as authorized and some of which is outside the original scope (external), determination of the allowable credit is a two step process. Work that is integral to the project is credited first. This, C1, is accomplished in accordance with paragraph 4 above. If, after this step, there remain local cooperation requirements against which credit may be given, credit for compatible external work, C2, is determinable on the following basis.

a. LERRD ≤20% (TPC+C2)

C2=Value of compatible work up to 25% TPC–1.25C1

b. LERRD ≥20% (TPC+C2)

C2=Value of compatible work up to remaining LERRD

Note that total credit, C=C1+C2. Formula 6.a. is derived from C=C1+C2=20% (TPC+C2). An example of crediting in a case involving both kinds of compatible works is provided below. In this example non-Federal interests have accomplished $25.0 million in compatible work, $5.0 of which was integral with the project as authorized and $20.0 of which was external. The integral work is credited in the first step against the extra cash component of the original local cooperation requirements. TPC is unaffected; however, the target against which credit for the external work might be credited has been partially used up. The second step shows only the incremental effects of crediting external work. Using 6.a. the maximum credit that can be given for this work is $18.75 million. Although other non-Federal requirements are extinguished as a result of the credit for the external work, the non-Federal 5% cash contribution increases by $0.9375 million, say $0.94 (5% of $18.75). In the final step, the incremental effects of crediting the external work are added in with the values obtained in step 1.

Case: LERRD ≤20% (TPC+C2)	Basic project	Credit Example 3: Compatible work, [1] 25.0		
		Step 1	Step 2	Final
Non-Federal:				
5% Cash	5.0	5.0	0.94	5.94
LERRD	14.0	14.0	0.0	0.0
Extra cash (toward constr.)	6.0	1.0	0.0	0.0
Construction (actual)	.....	5.0	18.75	23.75
Subtotal	25.0	25.0	.....	29.69
Federal:				
Construction	75.0	75.0	0.06	75.06
LERRD	.....	.....	14.0	14.0
Subtotal	75.0	75.0	.....	89.06
TPC	100.0	100.0	.....	.....
Adjusted TPC	.....	.....	.....	118.75
Excess of Compatible Worth	.....	.....	1.25	1.25
Increase in Federal Costs	.....	.....	.....	14.06

[1] Compatible work consisting of 5.0 integral work credited in first step of calculations plus 20.0 external work credited, to the extent possible, in second step.

PART 241—FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISION

Sec.

241.1 Purpose.
241.2 Applicability.
241.3 References.
241.4 General policy.
241.5 Procedures for estimating the alternative cost-share.
241.6 Deferred payments for certain qualifying projects.
241.7 Application of test.

AUTHORITY: Sec. 103(m), Pub. L. 99–662, 100 Stat. 4082 (33 U.S.C. 2201 *et seq.*), as amended by Sec. 201, Pub. L. 102–580, 106 Stat. 4797 (33 U.S.C. 2201 *et seq.*)

SOURCE: 54 FR 40581, Oct. 2, 1989, unless otherwise noted.

§ 241.1 Purpose.

This rule gives general instructions on the implementation of section 103(m) of the Water Resources Development Act of 1986, Public Law 99–662, as amended by section 201 of the Water Resources Development Act of 1992, Public Law 102–588, for application to flood control projects.

[60 FR 5133, Jan. 26, 1995]

§ 241.2 Applicability.

This rule applies to all U.S. Army Corps of Engineers Headquarters (HQUSACE), elements and Major Subordinate Commands and District Commands of the Corps of Engineers having Civil Works Responsibilities.

[60 FR 5133, Jan. 26, 1995]

§ 241.3 References.

References cited in paragraphs (f) thru (i) may be obtained from USACE Pub. Depot, CEIM-SP-D, 2803, 52d Avenue, Hyattsville, MD 20781–1102. References cited in paragraphs (d) and (e) may be obtained from the National Information Services, 5285 Port Royal Road, Springfield, VA 22161. References (a), (b) and (c) may be reviewed in your local library or by writing your local Congressperson.

(a) Water Resources Development Act, 1986, Public Law 99–662, 100 Stat. 4082, 33 U.S.C. 2201 *et seq*.

(b) Water Resources Development Act 1992, Public Law 102–580, 106 Stat. 4797, 33 U.S.C. 2201 *et seq*.

(c) U.S. Water Resources Council, Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

(d) Office of Personnel Management, FPM Bulletin 591–30.

(e) Office of Personnel Management, FPM 591–32.

(f) U.S. Army Corps of Engineers, Engineer Regulation 1165–2–29.

(g) U.S. Army Corps of Engineers, Engineer Regulation 1165–2–121.

(h) U.S. Army Corps of Engineers, Engineer Regulation 1165–2–131.

(i) U.S. Army Corps of Engineers, Engineer Regulation 405–1–12.

[60 FR 5133, Jan. 26, 1995]

§ 241.4 General policy.

(a) Procedures described herein establish an ''ability to pay'' test which will be applied to all flood control projects. As a result of the application of the test, some projects will be cost-shared by the non-Federal interest at a lower level than the standard non-Federal share that would be required under the provisions of section 103 of Pub. L. 99–662, 33 U.S.C. 2213. The ''standard share'', as used herein, refers to the non-Federal share that would apply to the project before any ability to pay consideration.

(b) Section 103(m) requires that all cost-sharing agreements for flood control covered by the terms of section 103(a) or 103(b) be subject to the ability to pay test. The test must therefore be applied not only to projects specifically authorized by Congress, but to the continuing authority projects constructed under section 14 of the 1946 Flood Control Act (33 U.S.C. 701r), section 205 of the 1948 Flood Control Act (33 U.S.C. 701s), and section 208 of the 1954 Flood Control Act (33 U.S.C. 701g), all as amended.

(c) The ability to pay test shall be conducted independently of any analysis of a project sponsor's ability to finance its ultimate share of proposed project costs. The ability to finance is addressed in a statement of financial capability which considers current borrowing constraints, alternative sources of liquidity, etc. It is therefore much more narrowly defined than the ability to pay test, which considers the underlying resource base of the community as a whole. The ability to pay test shall not be used to affect project scope, or to change budgetary priorities among projects competing for scarce Federal funds.

(d) Any reductions in the level of non-Federal cost-sharing as a result of the application of this test will be applied to construction costs only. Operations, maintenance and rehabilitation responsibilities are unaffected by the ability to pay test.

(e) When projects are eligible for credits as outlined in ER 1165–2–29, reference § 241.3(e), the ability to pay test will be applied before any adjustments are made for credits. If the ability to pay test results in a lower non-Federal

share, the allowable amount of credits will be limited by the lower share.

(f) The test is based on the following principles:

(1) Since the standard non-Federal cost-share is substantilly less than full costs in every case, the ability to pay test should be structured so that reductions in the level of cost-sharing will be granted in only a limited number of cases of severe economic hardship.

(2) The test should depend not only on the economic circumstances within a project area, but also on the conditions of the state(s) in which the project area is located. Although states' policies with respect to supporting local interests on flood control projects are not uniform, the state represents a potential source of financial assistance which should be considered in the analysis.

(3) The alternative level of cost-sharing determined under the ability to pay principle should be governed in part by project benefits. If, as a result of the project, local beneficiaries receive more income, or are required to use fewer resources on flood damage repair or replacement, or on flood insurance, a portion of these resources should be available to pay for the non-Federal share, even in those cases where an analysis of current economic conditions indicates that there are relatively limited resources in the project area and its state.

(4) Since project benefits represent availability of resources in the future, but not the present, project sponsors should be permitted to defer a certain percentage of the non-Federal share whenever current economic circumstances suggest that non-Federal resources may be limited.

(g) The Non-Federal interest may, at its discretion, waive the application of the ability to pay test. In this case, the Non-Federal interest shall be considered to have the ability to pay the standard cost-share and no further economic inquiry will be required.

§241.5 Procedures for estimating the alternative cost-share.

(a) *Step one, the benefits test.* Determine the maximum possible reduction in the level of non-Federal cost-sharing for any project.

(1) Calculate the ratio of flood control benefits (developed using the Water Resources Council's *Principles and Guidelines*—ref. §241.3(b)) to flood control costs for the project based on the discount rate which the Corps is currently using to evaluate projects. Costs include operations and maintenance as well as first costs. Divide the result by four. For example, if the project's (or separable element's) benefit-cost ratio is 1.2:1, the factor for this project equals 0.3. If a project has been authorized for construction without a benefit-cost ratio calculated in accordance with the Principles and Guidelines, determination of the ratio is a prerequisite for consideration under the ability to pay provision.

(2) If the factor determined in §241.5(a)(1), when expressed as a percentage, is greater than the standard level of cost-sharing, the standard level will apply.

(3) If the factor determined in §241.5(a)(1), when expressed as a percentage, is less than the standard level of cost-sharing, projects may be eligible for either a reduction in the non-Federal share to this ''benefits based floor'' (BBF), or for a partial reduction to a share between the standard level and the BBF, as determined by the procedures in step two, §243.5. In no case however, will the non-Federal cost-share be less than five percent.

(b) *Step two, the income test.* Projects may qualify for the full amount of the reduction in cost-sharing calculated in Step one, or for some fraction of the reduction in cost-sharing, depending on a measure of the current economic resources of the project area and of the state or states in which the project is located.

(1) To assure consistency, the calculations in §241.5(b) (2) and (3) will be performed by HQUSACE and distributed to all FOA's via Engineering Circulars. The information will be updated and distributed to HQUSACE and to the field as soon as new data are available. The procedures may be verified for any single county or state using the sources cited.

(2) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the state in

which the project beneficiaries are located, and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business*. (If the project beneficiaries are located in Alaska or Hawaii, divide the per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI as contained in References § 241.3(c) and (d).) Determine the state's per capita personal income as an index number in comparision to the national average (U.S.=100), and calculate the three year average of the state's index number.

(3) For each of the three latest calendar years for which information is available, determine the level of per capita personal income in the county where the project beneficiaries are located (the ''project area''), and compare this to the national average of per capita personal income. Source: Dept. of Commerce, Bureau of Economic Analysis, as published yearly in the April *Survey of Current Business*. (If the project beneficiaries are located in Alaska or Hawaii, divide the county's per capita personal income figure by one plus the percentage used in the Federal Government's cost of living pay differential for Federal workers who purchase local retail and who use private housing, employed in Anchorage, AK or Oahu, HI.) Calculate the index for the county's per capita personal income to the national average (U.S.=100), and calculate the three year average of the county's index number.

(4) When the project area, as determined by the location of the project's beneficiaries, includes more than one county, calculate a composite project area index by taking a weighted average of the county index numbers, the weights being equal to the relative levels of benefits received in each county. When the project area includes more than one state, the state index for the project should be calculated using the same weighting technique.

(5) Calculate an ''Eligibility Factor'' for the project according to the following formula:

$$EF = a - b_1 \times (\text{state factor}) - b_2 \times (\text{area factor}).$$

If EF is one or more, the project is eligible for the full reduction in cost-share to the benefits based floor. If EF is zero or less, the project is not eligible for a reduction. If EF is between zero and one, the non-Federal cost-share will be reduced proportionately to an amount which is greater than the BBF but less than the standard non-Federal cost-share in accordance with the procedures described in paragraph § 241.5(c) of this part. The values of a, b_1 and b_2 will be determined by HQUSACE. The parameter values will be based on the latest available data and set so that 20 percent of counties have an EF of 1.0 or more, while 66.7 percent have an EF of 0 or less. These values will be adjusted periodically as new information becomes available. Changes will be published in Engineering Circulars. The values will be set so that $b_2=2\times b_1$, giving local income twice the weight of state income.

(6) Since estimates (available from the Bureau of Economic Analysis) of per capita personal income for Puerto Rico, Guam and other U.S. territories are well below the national average, the eligibility factor for projects in these areas is administratively established to be equal to 1.

(7) For flood control projects sponsored by Native American tribes or villages, the EF shall be calculated using information on tribe or village income as a replacement factor for both the area and state factor (that is multiply the replacement income factor by both b_1 and b_2 and subtract each from a in the equation in § 241.5(b)(5)). The replacement factor will be tribe or village income as a percentage of the national average for the equivalent definition of income (for example a Tribe's median family income as a percentage of the median family income for all U.S. families). The data should be the latest available information. It is acceptable, but not required that the data be obtained from the Bureau of the Census, *American Indians, Eskimos and Aleuts on Identified Reservations and*

in Historic Areas of Oklahoma (Excluding Urbanized Areas), part 1, Table 10, or *General Social and Economic Characteristics—United States Summary (1980)*, Table 252. Since both sources contain information for Native Americans living on reservations, rather than all Tribe or Village members, the sources should be used only when appropriate, or when no better information is available.

(c) *Application of the Ability to Pay Formula to the Basic Cost-sharing Provisions of Section 103.* If a flood control project has a BBF which is less than the standard cost-share and an EF which is greater than zero, the non-Federal cost-share will be reduced. The alternative non-Federal share will be calculated and reported to the nearest one tenth of one percent. The actual reduction is determined by applying the ability to pay formula to the basic flood control cost-sharing provisions of section 103 of Pub. L. 99–662, 33 U.S.C. 2213, as follows:

(1) When EF ≥ 1, non-Federal cost-share = BBF

(2) For structural projects covered by section 103(a), when 0 < EF < 1:

(i) If LERRD equals or exceeds 45 percent:

non-Federal cost-share = 50 − EF × (50 − BBF)

(ii) If LERRD exceeds 20 percent but is less than 45 percent:

non-Federal cost-share = (LERRD + 5) − ER × [(LERRD + 5) − BBF]

(iii) If LERRD is less than 20 percent:

non-Federal cost-share = 25 − EF × (25 − BBF)

(3) For non-structural projects covered by section 103(b), when 0 < EF < 1:

non-Federal cost-share = 25 − EF × (25 − BBF)

(4) In no case however, can the non-Federal share be less than five percent, even if the calculation made in §241.5(c) (1), (2), or (3) results in a smaller number.

(5) NOTE: LERRD equals the costs of lands, easements, rights-of-way, relocations, and dredged material disposal areas expressed as a percentage of total project costs. The BBF and numerical terms in the equations above are also expressed as percentages.

(d) Additional consideration for high cost projects. For any project where the normal non-Federal share exceeds 35 percent, and the per capita non-Federal cost (*i.e.*, normal non-Federal share of total construction costs divided by the population in the sponsor's geographic jurisdiction) exceeds $300, the non-Federal share under the ability to pay provision will be either LERRD's (*i.e.*, no cash requirement) or 35 percent, whichever is greater. If LERRD's exceed 50 percent, the non-Federal share remains at 50 percent. Projects which qualify under the benefits and income tests will receive the reduction under the high cost criteria only if the high cost criteria results in a greater reduction in the non-Federal cost share.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

§241.6 Deferred payments for certain qualifying projects.

(a) Whenever a project's Eligibility Factor exceeds zero, the project sponsor will be permitted to defer a portion of its share of flood control costs. The maximum allowable amount deferred equals the total non-Federal share less (for structural projects) five percent of total project costs and less (for all projects) any amounts for LERRD paid for or acquired by the sponsor prior to the time the PCA is signed. If for example, the non-Federal share of a structural project = 35.0 percent (after the ability to pay adjustment, if any) of which 10 percent is LERRD already paid for by the local sponsor, the maximum allowable amount to be deferred = 20 percent of project flood control costs (35 less the 5 percent cash requirements, less the 10 percent LERRD already acquired). Deferred payments at the option of the sponsor will be allowed regardless of the outcome of the benefits test described in §241.5(a) whenever the Eligibility Factor exceeds zero.

(b) When EF ≥ 1, the project sponsor may defer as much as the maximum allowable amount as described in §241.6(a).

(c) When 0 < EF < 1, the sponsor may defer a fraction of the maximum allowable amount described in § 241.6(a), where the fraction equals the Eligibility Factor expressed to three decimal places. Continuing the example described in § 241.6(a), if EF = .712, total allowed deferral equals .712 × 20 percent = 14.2 percent of total project costs.

(d) The deferred payment can be made in equal installments over any period of time selected by the non-Federal sponsor, provided that all repayments are made between the end of construction and thirty years thereafter. The amount repaid shall include interest during the repayment period as well as interest for the appropriate portion of the construction period for any amounts deferred prior to the end of construction. The rate of interest shall be determined in accordance with the provisions of section 106 of Pub. L. 99–662, 33 U.S.C. 2216.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

§ 241.7 Application of test.

(a) A preliminary ability to pay test will be applied during the study phase of any proposed project. If the ability to pay cost-share is lower than the standard share, the revised estimated cost-share will be used for budgetary and other planning purposes.

(b) The official application of the ability to pay test will be made at the time the Project Cooperation Agreement (PCA) between the Corps of Engineers and the Non-Federal sponsor is signed. For structural flood control projects, the standard level of cost-sharing will not be known until the end of the project (since the standard level as specified in section 103(a), 33 U.S.C. 2213, includes LERRD). In this case, if the Eligibility Factor is greater than zero but less than one, the ability to pay non-Federal share will be determined using estimated costs.

(c) The PCA for all projects subject to the ability to pay test will include a ''whereas'' clause indicating the results of the test. If the project is eligible for a lower non-Federal share:

(1) The revised share will be specified in the PCA (there will be no recalculation of this share once the PCA is signed).

(2) An exhibit attached to the Project Cooperation Agreement (PCA) will include the Benefits Based Floor (BBF) determined in § 241.5(a): the Eligibility Factor (EF) determined in § 241.5(b): If the Eligibility Factor is greater than zero but less than one, the estimated standard non-Federal share; the formula used in determining the ability to pay share as described in § 241.5(c)(1) through (c)(4); and a display of the non-Federal cost share under the high cost criteria described in § 241.5(d).

(d) If at the time of project completion, the standard non-Federal share based on actual costs is less than the ability to pay share specified in the PCA, the standard share will apply.

(e) *For structural projects.* (1) If the standard LERRD plus cash requirement exceeds the ability to pay cost-share, the Federal Government will make any necessary adjustments in expenditures in the following order: First, paying any cash requirement in excess of five percent of total project costs (if any) that would, under standard cost-sharing, have been the responsibility of the non-Federal sponsor; second, making payments for LERRD; and third, providing for reimbursement at the end of construction. Federal payments for LERRD will be made only after the non-Federal payment for LERRD reaches a percentage of total project costs equal to the ability to pay non-Federal cost-share less the five percent cash requirement. If such arrangements are necessary, the PCA should be prepared to reflect agreement on the best manner available for acquisition of those LERRD over the limiting percentage, or for reimbursing the sponsor upon completion of construction.

(2) The non-Federal sponsor will be required to provide a cash payment equal to the minimum of five percent of estimated project costs, regardless of the outcome of the ability to pay test, unless any or all of the five percent cash requirement is waived by application of the high cost criteria described in § 241.5(d). The project sponsor shall make cash payments during construction at a rate such that the amount of non-Federal payments in each year, as a percentage of total non-Federal cash payments, equals the

amount of Federal expenditures (including sunk pre-construction engineering and design costs as a first year Federal construction expenditure) as a percentage of total Federal expenditures. Total Federal expenditures include cash payments for construction and if necessary (due to ability to pay considerations), for LERRD, and for reimbursement to the non-Federal sponsor. Total Federal expenditures for the purpose of this calculation, do not include expenditures which allow the non-Federal sponsor to defer payment of the non-Federal share under the provisions of this rule.

(f) For non-structural projects, reductions in the non-Federal cost-share as a result of the ability to pay test will not affect the procedures for determining the non-Federal and Federal payment schedules. For non-structural projects, no specific cash payments during construction are required by law.

[54 FR 40581, Oct. 2, 1989, as amended at 60 FR 5134, Jan. 26, 1995]

PART 242—FLOOD PLAIN MANAGEMENT SERVICES PROGRAM ESTABLISHMENT OF FEES FOR COST RECOVERY

Sec.
242.1 Purpose.
242.2 Applicability.
242.3 References.
242.4 Definitions.
242.5 General.
242.6 Fee schedule.

AUTHORITY: Section 321 of Pub. L. 101–640, 74 Stat. 500 (33 U.S.C. 709a).

SOURCE: 56 FR 54712, Oct. 22, 1991, unless otherwise noted.

§ 242.1 Purpose.

This part gives general instructions on the implementation of section 321 of Public Law 101–640, 74 Stat. 500 (33 U.S.C. 709a) as it applies to the use of a Fee Schedule for recovering the cost of providing Flood Plain Management Services to Federal agencies and private persons.

§ 242.2 Applicability.

This part applies to all HQUSACE elements, Major Subordinate Commands, and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 242.3 References.

The references in paragraphs (b) and (c) of this section may be obtained from USACE Pub. Depot, CEIM-SP-D, 2803 52d Avenue, Hyattsville, MD 20781–1102.

(a) Section 321, Public Law 101–640, 74 Stat. 500 (33 U.S.C. 709a).

(b) Corps of Engineers Engineering Regulation 1105–2–100, Planning Guidance Notebook.

(c) Corps of Engineers Engineering Pamphlet 37–1–4, Cost of Doing Business.

§ 242.4 Definitions.

As used in this part:

Private persons means all entities in the private sector, including but not limited to individuals, private institutions, sole proprietorships, partnerships, and corporations.

Total cost means total labor charges which include adjustments for benefits, administrative overhead, and technical indirect costs. These terms are described in the reference in § 242.3 (c).

§ 242.5 General.

(a) The Corps of Engineers Flood Plain Management Services Program provides a wide range of flood plain and related assistance upon request. Depending on the complexity of the request, either a nonnegotiated Fee Schedule or a negotiated agreement will be used to recover the cost of services provided to Federal agencies and private persons. This part involves only the nonnegotiated Fee Schedule.

(b) State, regional, or local governments or other non-Federal public agencies will be provided Flood Plain Management Services without charge.

§ 242.6 Fee schedule.

(a) *General.* The Fee Schedule described in this section will be used to recover the cost for Flood Plain Management Services requiring more than ten minutes and up to one work day to provide. The Fee Schedule has been designed to minimize administrative costs and to allow the flexibility needed to recover the approximate total

costs for services provided to Federal agencies and private persons.

(b) *Level of effort*. For establishing charges, services covered by the Fee Schedule have been divided into five levels as follows:

(1) Level 1 includes the provision of basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter to the customer.

(2) Level 2 includes the provision of information from readily available data that requires minimal technical evaluation and is transmitted by form letter to the customer.

(3) Level 3 includes the provision of information that requires some file search, a brief technical evaluation, and documentation of results by a form letter or brief composed letter to the customer.

(4) Level 4 includes the provision of information and assistance that requires moderate file search, a brief technical evaluation, and documentation of results in a composed letter to the customer.

(5) Level 5 includes the provision of information and assistance that requires significant file search or retrieval of archived data, a moderate technical evaluation, and documentation of results in a brief letter report to the customer.

(c) *Charge determination*. The Fee Schedule will be used Corps-wide. As requests are received, the responding office will select the appropriate level on the Fee Schedule to determine the charge for providing the service.

(d) *Provision of services*. The services will be provided on a first-come, first-served basis after payment has been received.

(e) *Fees*. The Fee Schedule, including a brief description of the services in each of the five levels and the related charges, is shown in Table 1 to this section. The fee for each level is based on a Corps-wide average of estimated current costs for providing that level of service.

(f) *Review and revision of fees*. The fees shown in the Fee Schedule will be reviewed each fiscal year using the most current cost data available. If necessary, the Fee Schedule will be revised after public notice and comment.

TABLE 1 TO § 242.6—FEE SCHEDULE; STANDARD CORPS-WIDE CHARGES FOR FPMS TASKS REQUIRING MORE THAN TEN MINUTES AND UP TO ONE DAY

Level	Description of work	Fee
1	Basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter.	$25
2	Information from readily available data that requires minimal technical evaluation which is transmitted by form letter.	55
3	Information that requires some file search, brief technical evaluation, and documentation of re-sults by a form letter or by a brief composed letter.	105
4	Information and assistance that re- quires moderate file search, brief technical evaluation, and documentation of results in a composed letter.	165
5	Information and assistance that re- quires significant file search or retrieval of archived data, moderate technical evaluation, and documentation of results in a brief letter report.	325

PART 245—REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

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AUTHORITY: 5 U.S.C. 301; 33 U.S.C. 1, 409, 411–415; 10 U.S.C. 3012.

SOURCE: 53 FR 27513, July 21, 1988, unless otherwise noted.

§ 245.1 Purpose.

This part describes administrative procedures and policy used by the Corps of Engineers in exercising its authority for wreck removal. Procedures are intended to insure that the impacts of obstructions are minimized, while recognizing certain rights of owners, operators and lessees.

§ 245.3 Applicability.

(a) These procedures apply to the removal of wrecks or other obstructions within the navigable waters of the United States, as defined in part 329 of this chapter.

(b) This part does not apply to the summary removal or destruction of a vessel by the Coast Guard under authority of the Clean Water Act (33 U.S.C. 1321), or to any removal actions involving obstructive bridges which are subject to separate regulation under part 114 of this title.

(c) For vessels which were sunk or wrecked prior to November 17, 1986, the statutory obligation to remove belongs solely to the owner (not the operator or lessee), and the owner's obligation to reimburse the U.S. Treasury for federal removal is limited to cases of voluntary or careless sinking.

§ 245.5 Definitions.

Abandonment means the surrendering of all rights to a vessel (or other obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned.

Hazard to navigation is an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

Obstruction is anything that restricts, endangers or interferes with navigation.

Responsible party means the owner of a vessel and/or cargo, or an operator or lessee where the operator or lessee has substantial control of the vessel's operation.

Vessel as used in this part includes any ship, boat, barge, raft, or other water craft.

§ 245.10 General policy.

(a) *Coordination with Coast Guard*. The Corps of Engineers coordinates its wreck removal program with the Coast Guard through interagency agreement, to insure a coordinated approach to the protection of federal interests in navigation and safety. Disagreements at the field level are resolved by referral to higher authority within each agency, ultimately (within the Corps of Engineers) to the Director of Civil Works, who retains the final authority to make independent determinations where Corps responsibilities and activities are affected.

(b) *Owner responsibility*. Primary responsibility for removal of wrecks or other obstructions lies with the owner, lessee, or operator. Where an obstruction presents a hazard to navigation which warrants removal, the District Engineer will attempt to identify the owner or other responsible party and vigorously pursue removal by that party before undertaking Corps removal.

(c) *Emergency authority*. Obstructions which impede or stop navigation; or pose an immediate and significant threat to life, property, or a structure that facilitates navigation; may be removed by the Corps of Engineers under the emergency authority of section 20 of the Rivers and Harbors Act of 1899, as amended.

(d) *Non-emergency situations*. In other than emergency situations, all reported obstructions will be evaluated jointly by the District Engineer and the Coast Guard district for impact on safe navigation and for determination of a course of action, which may include the need for removal. Obstructions which are not a hazard to general navigation will not be removed by the Corps of Engineers.

(e) *Corps removal*. Where removal is warranted and the responsible party cannot be identified or does not pursue removal diligently, the District Engineer may pursue removal by the Corps of Engineers under section 19 of the Rivers and Harbors Act of 1899, as amended, following procedures outlined in this CFR part.

§ 245.15 Delegation.

District Engineers may undertake removal without prior approval of the Chief of Engineers provided the cost does not exceed $100,000. Removals estimated to cost above $100,000 require advance approval of the Director of Civil Works.

§ 245.20 Determination of hazard to navigation.

(a) Upon receiving a report of a wreck or other obstruction, District

Engineers will consult with the Coast Guard district to jointly determine whether the obstruction poses a hazard to navigation.

(b) Factors to be considered, as a minimum, include:

(1) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns.

(2) Navigational difficulty in the vicinity of the obstruction.

(3) Clearance or depth of water over the obstruction, fluctuation of water level, and other hydraulic characteristics in the vicinity.

(4) Type and density of commercial and recreational vessel traffic, or other marine activity, in the vicinity of the obstruction.

(5) Physical characteristics of the obstruction, including cargo, if any.

(6) Possible movement of the obstruction.

(7) Location of the obstruction in relation to existing aids to navigation.

(8) Prevailing and historical weather conditions.

(9) Length of time the obstruction has been in existence.

(10) History of vessel accidents involving the obstruction.

§ 245.25 Determination of remedial action.

(a) *Consultation with Coast Guard.* After a determination has been made that an obstruction presents a hazard to navigation, District Engineers will consult with the Coast Guard district to determine appropriate remedial action for the specific situation.

(b) *Options.* The following options, or some combination of these options, may be considered:

(1) No action.

(2) Charting.

(3) Broadcast notice to mariners and publication of navigational safety information.

(4) Marking.

(5) Redefinition of navigational area (e.g., channel, fairway, anchorage, etc.).

(6) Removal.

§ 245.30 Identification of responsible parties.

(a) *Investigation.* When marking or removal are determined to be appropriate remedial action and no emergency situation exists, the District Engineer will investigate to determine the owner or, if the owner cannot be determined, the lessee or operator. If cargo is involved, ownership will be separately determined.

(b) *Notification.* If the owner or other responsible party can be determined, the District Engineer and/or the Coast Guard will send a notice, via certified mail, advising them of their legal obligation to mark (referencing Coast Guard requirements) and to remove the obstruction, and of the legal consequences for failure to do so, with a request for prompt reply of intent.

(c) *Public notice.* If the owner or responsible party cannot be determined from investigation, the District Engineer will publish a legal advertisement in a newspaper nearest the location of the obstruction and in a newspaper of at least 25,000 circulation, addressed ''To Whom It May Concern,'' requiring removal by the owner, lessee or operator. The advertisement will be published at least once a week for 30 days.

§ 245.35 Judgments to require removal.

When the owner or responsible party has been identified, and refuses or fails to take prompt action toward removal, the District Engineer may seek a judgment by the district court requiring removal.

§ 245.40 Removal by responsible party.

(a) *Corps monitoring.* If the owner, lessee or operator agrees to remove a hazard to navigation, the District Engineer should ascertain that:

(1) Marking is accomplished promptly and is maintained,

(2) The plan for removal and disposal is reasonable and acceptable to the District Engineer,

(3) Removal operations do not unreasonably interfere with navigation,

(4) All conditions of the Corps of Engineers permit are met, and

(5) Removal operations are pursued diligently.

(b) *Deficiencies.* If the removal actions are not proceeding satisfactorily, the District Engineer will notify the responsible party of the deficiencies and

provide a reasonable time for correction. If not corrected promptly, the District Engineer may declare the wreck ''abandoned'' and proceed with actions toward Corps removal.

§ 245.45 Abandonment.

(a) *Establishing abandonment.* Abandonment is the surrendering of all rights to a vessel (or similar obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned. In all cases other than emergency, abandonment will be established as a precondition to Corps removal, to avoid a ''taking'' of private property for public purposes. Abandonment is established by either:

(1) Affirmative action on the part of the owner declaring intention to abandon, or

(2) Failure to commence immediate removal of the obstruction and prosecute such removal diligently.

(b) *Owner declaration.* The Corps of Engineers will not ''accept'' a notice of abandonment. Any notice of abandonment received by the Corps of Engineers will be acknowledged only, and will stand by itself as a declaration. Abandonment by the operator or lessee alone does not constitute abandonment.

(c) *Non-diligence.* The determination of whether removal is commenced immediately and prosecuted diligently will be made by the District Engineer based on the degree of hazard to navigation, the difficulty and complexity of the removal operation, and the appropriateness of the removal effort. When no removal actions are being undertaken and the District Engineer is unable to identify the owner through investigation or 30 days of public notice, abandonment is presumed.

(d) *Cargo.* If vessel and cargo are separately owned, or ownership of cargo is uncertain, abandonment of vessel and cargo will be established separately.

(e) *Later claims.* After abandonment is established, the owner may no longer undertake removal or make any claim upon the vessel (or other obstruction) or its cargo, unless expressly permitted by the District Engineer.

(f) *Continuing owner liability.* The abandonment of a wreck or other obstruction does not remove the owner's liability for the cost of removal and disposal if removal is undertaken by the Corps of Engineers, except in cases of nonnegligent sinking which occurred prior to November 17, 1986.

§ 245.50 Removal by Corps of Engineers.

(a) *Non-emergency situations.* In non-emergency situations, the District Engineer may undertake removal action (within the limits of delegation) after all of the following conditions have been met:

(1) A determination has been made, in consultation with the Coast Guard, that the obstruction is a hazard to navigation,

(2) The District Engineer and the Coast Guard agree on a course of action which includes the need for removal (or, if a conflict exists, the need for removal has been resolved at higher level),

(3) The District Engineer has made a reasonable attempt to identify the owner, operator, or lessee, and

(4) Abandonment of the wreck or obstruction has been established.

(b) *Emergency actions.* In emergency situations, the District Engineer may bypass (within the limits of delegation) any or all of the four conditions in the preceding paragraph if, in his judgment, circumstances require more immediate action, and if either one of the following conditions are met:

(1) The obstruction impedes or stops navigation, or

(2) The obstruction poses an immediate threat to life, property, or a structure that facilitates navigation.

§ 245.55 Permit requirements.

(a) *Permits for removal.* Marking and removal operations by the owner, operator or lessee are normally permitted under nationwide permits for such activities as outlined in part 330 of this chapter. The activities must meet certain conditions as stated in those regulations, and additional permits may still be required from state or local agencies.

(b) *Special conditions.* The Corps of Engineers may add individual or regional conditions to the nationwide permit, or require an individual permit on a case-by-case basis.

§ 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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263.26 Small beach erosion control project authority (Section 103).
263.27 Authority for mitigation of shore damage attributable to navigation works (Section 111).
APPENDIX A TO PART 263—HISTORY OF PROGRAM AND PROJECT LIMITATIONS CONTINUING AUTHORITIES PROGRAM
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 authorization, 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 requirements 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 specifically 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 specifications 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

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.

(l) *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 Program. 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

[1] The 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)).

[2] Not 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 appendixes 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 arrises 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

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 assurance 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 [3] 2,000,000	30,000,000
Sec. 133(6) WRDA of 1976	Oct. 22, 1976	94–587	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

Sec.

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APPENDIX A TO PART 273—AQUATIC PLANT CONTROL PROGRAM LEGISLATIVE AUTHORITY

APPENDIX B TO PART 273—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM REPORTS

APPENDIX C TO PART 273—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM ENVIRONMENTAL IMPACT STATEMENTS

APPENDIX D TO PART 273—WORK PROGRESS REPORT

APPENDIX E TO PART 273—PREVENTIVE SAFETY MEASURES IN HANDLING OF HERBICIDES

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

[1] 33 CFR 209.410 was removed at 45 FR 56761, Aug. 25, 1980.

that the infestation must have countrywide distribution. However, the infestation should constitute a known problem of economic importance in the area involved. Initial planning should constitute investigation of a specific problem weed or weed complex, not generalized surveys of aquatic vegetation. The common submersed aquatics and floating or emergent, wetland, marsh, and swamp vegetation do not generally meet those criteria for special problems merely because they may qualify as ''obnoxious aquatic plants'' under the language of the legislation authorizing the program except as indicated in § 273.13(b).

(b) *Work not eligible under this program.* Weed control for operation and maintenance of reservoirs, channels, harbors, or other water areas of authorized projects under jurisdiction of the Corps of Engineers or other Federal agencies will not be undertaken as a part of the Aquatic Plant Control Program, except as such areas may be used for experimental purposes in research performed for the program. Aquatic plant control work for the operation and maintenance of Federal projects are eligible to be included under this authority for the purpose of cost-sharing with participating State or local agencies, but are not eligible for budgeting or funding under the Aquatic Plant Control Program.

(c) *Applied research.* Applied research developed by OCE with the assistance of the Interagency Aquatic Plant Control Research Advisory Committee and the appropriate Division Engineer will be an all Federal cost. This research will be accomplished through contracts with Federal, State and private research institutions. A research planning meeting will be held the last quarter of each calendar year to provide professional presentation of current research projects, review of current operation activities, and review new research proposals. Requested programs, estimated cost, and other information will be developed in the field and submitted to HQDA (DAEN-CWD-R) Washington, DC 20314, for approval and financing as prescribed by ER 70–2–3. Attendance of the Technical Advisory Committee meetings by Corps personnel has been authorized.

(d) *Planning.* Planning will be an all Federal cost item, will be developed by reporting officers in accordance with their needs and will be fully justified for funds requested. Normally, the program will be initiated with a reconnaissance report (§ 273.14(a)) and will be accomplished under a State design memorandum (§ 273.14(b)). Supplement design memorandums will be used to implement changes in the program. These memorandums will establish a continuing program and will be used to enable the Chief of Engineers to allot available funds on a priority basis in accordance with the urgency of the needs of each area.

(e) *Criteria for recommending a Federal project.* (1) A recommendation favorable to adoption of the project under the authority provided by section 302, as amended, will be warranted when the following conditions exist:

(i) The problem and practical measures of improvement are of such nature that there is a clear and definite Federal interest warranting Federal participation under the purview of this special authority.

(ii) The proposed work will result in an independent and complete-within-itself project.

(iii) Analysis based on sound economic principles clearly demonstrates that the project will provide information and/or control of aquatic plants.

(iv) Each separable element of the project, as well as the entire project, is economically justified.

(v) Local interests are legally and financially able and willing to meet fully all requirements of local cooperation.

(2) Recommendations for preparation of a detailed planning report for new work on a new problem in a District or Division where control of other aquatic plant problems is currently underway should consider whether such new work represents an equal or higher priority of need for allocation of funds in the same State. Projects will not be recommended which produce undesirable short-term or long-term damage to the human or natural environment.

§ 273.14 Planning procedures.

Investigation of new problems and/or additional control operations not covered by previously approved plans will begin with preparation of a preliminary report based on reconnaissance-type investigations. If it is determined that further planning of a more detailed nature is warranted, approval of a reconnaissance report by HQDA (DAEN-CWO-R) Washington, D.C. 20314 will be followed by further investigations. Normally, a detailed State design memorandum encompassing all aspects of the problem and a proposed plan of action for dealing with it will be prepared.

(a) *Reconnaissance reports.* Investigations for reconnaissance reports will be limited to readily available data and information. Field surveys and office studies should be limited to minimum essentials for further detailed planning. The reconnaissance report will be used for the overall program planning and should contain adequate information for these purposes.

(1) *Authorization.* Preparation of a reconnaissance report will be authorized by OCE granting of work allocations and allotment of funds based on requests submitted by reporting officers. Funds for such reports may be requested in annual submissions of budget requests and subsequently to DAEN-CWO-R as required to meet unanticipated needs. Since the program is proceeding under a limited budget, costs should be limited to minimum requirements. Only in exceptional cases will more than $3,000 be made available for a reconnaissance report on a problem in any one district.

(2) *Content of reports.* Where findings and conclusions are unfavorable to undertaking further detailed planning, a brief letter report summarizing the problem and findings should be submitted to OCE to provide a basis for answering outstanding inquiries. Where findings and conclusions are favorable, a more detailed report should include, but not be limited to, the information contained in Appendix B.

(b) *State design memorandum.* When authorized to prepare a detailed planning report, the reporting officer will proceed with necessary investigations and develop plans and data in sufficient detail to assure a complete and fully operable aquatic plant control operation. The report will be in the form of a State design memorandum (SDM). The SDM will be prepared by the District, reviewed by the Division, then forwarded to DAEN-CWO-R for review and approval. The data presented will be used to set priorities and request funds to finance activities on various projects. Fund requirements are divided into four categories: applied research; planning; control operations; and development.

(c) *Review of the proposed design Memoranda.* Review of State design memoranda should insure that:

(1) The work involved is not the type normally provided by local entities or private interests as a local responsibility.

(2) The cost of control operation will be shared between the Federal Government (70 percent) and the State receiving the benefit (30 percent).

(3) The actual control operation can be done by Federal, State, and/or private company facilities, under agreements specifying the details and standards of work to be performed.

(4) Consideration will be given in the planning procedure to include physical, chemical and biological methods of control. Priority will be given to biological systems where feasible.

(d) *Environmental impact statement requirements.* Prior to funding of a plant control project programs which involve pest control operations, such as aquatic plant control, and affect either man's health or his environment (soil, flora, fauna, aesthetics, water resources), are candidates for review and possible preparation of an environmental impact statement (EIS) under the National Environmental Policy Act. (The information outlined in Appendix C should be included in the analysis section of an EIS in addition to the treatment prescribed by 33 CFR 209.410.)[2]

§ 273.15 Work Progress Report.

Reporting officers will prepare and submit to DAEN-CWO-R a detailed description of anticipated Aquatic Plant

[2] 33 CFR 209.410 was removed at 45 FR 56761, Aug. 25, 1980.

Control projects for the next calendar year. Submissions must reach OCE by 15 December of the preceding calendar year, in the format prescribed by Appendix D.

§ 273.16 Operations.

Operational activities will be conducted by reporting officers in accordance with approved annual work plans and State design memoranda. Questions should be referred to HQDA (DAEN-CWO-R) WASH DC 20314.

(a) *Certification of pesticide applicators.* Activities will be subject to the provisions of the Federal Insecticide, Fungicide and Rodenticide Act of 1972, (reference § 273.12(b) and (c)), regarding the training and certification of pesticide supervisors and/or applicators.

(b) *Safety in use of herbicides.* Use of herbicides will be in accordance with the Occupational Safety and Health Act of 1970, reference § 273.12 (d) and (e). Some herbicides are toxic chemicals and must be used with utmost care. Operators and applicators are required to use respiratory protective devices to prevent inhalation of toxic dusts, vapors, or gases; protective clothing to protect the skin; and eye protection. Some of the primary precautions which must be observed in handling herbicides are listed in Appendix E. Questions concerning safety should be referred to HQDA (DAEN-SO) Washington, D.C. 20314.

§ 273.17 Annual budget request.

The Aquatic Plant Control Program is a continuing activity funded under Construction, General, subject to monetary limitations of $5,000,000 on annual appropriations authorized for the program. Recommendations and supporting data will be submitted in accordance with ER 11–2–240. The amounts requested should be the minimum requirements for the purpose of the authorized program to meet essential needs and should be within the Division's capability to utilize within the budget year taking into account the foreseeable availability of local funds to meet cost-sharing requirements for control operations.

§ 273.18 Clearinghouse coordination.

Procedures prescribed under § 384.15 of Chapter II will be observed.

Appendix A to Part 273—Aquatic Plant Control Program Legislative Authority

Section 104 of the Rivers and Harbors Act, approved 3 July 1958 (72 Stat. 297, 300), as amended by section 104 of the Rivers and Harbors Act of 1962 (76 Stat. 1173, 1180), and as amended by section 302 of the Rivers and Harbors Act, approved 27 October 1965 (79 Stat. 1092) states as follows:

SEC. 302(a) There is hereby authorized a comprehensive program to provide for control and progressive eradication of waterhyacinth, alligatorweed, Eurasian watermilfoil, and other obnoxious aquatic plant growths, from the navigable waters, tributary streams, connecting channels, and other allied waters of the United States, in the combined interest of navigation, flood control, drainage, agriculture, fish and wildlife conservation, public health, and related purposes, including continued research for development of the most effective and economic control measures, to be administered by the Chief of Engineers, under the direction of the Secretary of the Army, in cooperation with other Federal and State agencies. Local interests shall agree to hold and save the United States free from claims that may occur from control operations and to participate to the extent of 30 per centum of the cost of such operations. Costs for research and planning undertaken pursuant to the authorities of this section shall be borne fully by the Federal Government.

(b) There are authorized to be appropriated such amounts not in excess of $5,000,000 annually, as may be necessary to carry out the provisions of this section. Any such funds employed for control operations shall be allocated by the Chief of Engineers on a priority basis, based upon the urgency and need of each area, and the availability of local funds.

Appendix B to Part 273—Information Requirements for Aquatic Plant Control Program Reports

1. Location and brief description of problem area if necessary for understanding environmental factors, including a suitable map (appendix).

2. Statement of problem with brief description of physical factors pertaining thereto, including identification by common and scientific name of the plant or plants concerned, origin of infestation and likely source of reinfestation; extent of infestation including estimated surface area, depth or density; nature of physical and economic

damages occasioned by presence of the infestation; and other information clarifying the nature and magnitude of the problem. Explanation should be given of how and why the infestation meets the principal criteria governing the program.

3. Preliminary plan of procedure, if any, for control operations or engineering works, including control methods, materials, equipment and procedures that may be employed. If sufficient information is not available to outline a preliminary plan for operation control, the report should include a brief statement of the special problems in control methods that need to be resolved before detailed planning can be undertaken.

4. Preliminary project cost estimates broken down into planning and operation costs for Federal and non-Federal budgeting. The report should present sufficient data concerning cost estimates for review by item and unit price.

5. Preliminary economic evaluation with approximation of benefits and brief summary of supporting data classified as general or local.

6. Discussion of availability of authority for State participation in the program, the interest of State agencies in such participation, and the likelihood of State funds being available for cost-sharing required for any control operations.

7. Cost estimate for subsequent preparation of a detailed planning report, and estimated length of time to complete after receipt of funds, and schedule of funding by fiscal years.

APPENDIX C TO PART 273—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM ENVIRONMENTAL IMPACT STATEMENTS

1. Description of the problem.

a. *Pests*. Identify the pest to be controlled by common name. Be as specific as possible.

b. *Location and size of infestation*. Describe the target area as specifically as possible.

c. *Severity of infestation*. Discuss the degree and importance of the pest problem.

d. *History of infestation*. Discuss obvious development as established.

e. *Criteria for identification of the treatment areas*. Include technical details as established.

f. Possible cumulative effects of the proposed action in relation to other Federal or non-Federal pesticides application in the treatment area.

g. *Relationship to environmental situation*. Non-target organisms and integrated pest management programs.

2. Program accomplishments:

a. *Goals*. Discuss practical control levels.

b. Monitoring accomplishment level.

3. Identification of each chemical:

a. *Name*. Use common or coined names, and/or chemical name.

b. *Active ingredient*. Give name and percentage.

c. *Status of Federal registration*. Give registration number.

4. Application:

a. *Form applied*. Dust, granule, emulsion, bait solution, gas, etc.

b. *Choice of equipment and techniques*. Discuss general details of method of application.

c. *Use strength*. Give concentration of the active ingredient as applied.

d. *Rate*. Give rate of application in pounds per acre or other rate.

e. *Frequency*. Discuss probable frequency of application.

f. *Acreage or other descriptive unit*. Discuss area of proposed control.

g. *Site description*. Lake, river, drainage canal, irrigation canal, etc.

h. *Sensitive areas*. Discuss areas of potential contamination.

i. *Container disposal*. Discuss disposal requirements.

j. *Safety precautions*. Discuss hazards of exposure.

5. Alternative measures: Discuss details of alternative methods of control.

APPENDIX D TO PART 273—WORK PROGRESS REPORT

Aquatic Plant Control Program

(Example)

District: Vicksburg. Year Ending: 1 December 1974.

Division: Lower Mississippi Valley. Date Submitted: 15 December 1974.

1. *Status of contracts scheduled for award in current fiscal year*.

Contract	Scheduled award date	Actual award date
Plant control operations ...	July 1973	July 31, 1973.

2. *Comparison of scheduled and actual current FY obligations and expenditures to date*.

	Approved Mar. 28, 1974	Actual	Difference
Obligations	$4.7	$3.2	−$1.5
Expenditures	4.1	2.9	−1.2

3. *Explanation of difference*. Not applicable.

4. *Outlook for meeting programmed objectives*.

a. *Programmed objectives*. Full utilization of work allowance.

b. *Outlook*. We expect to meet our programmed objectives.

5. *Problems and corrective action taken or proposed action*. Not applicable.

6. *Status of over-all program progress.* Contract for plant control operations was awarded in July 1973 to take advantage of last part of plant growing season. Plant control operations began in October 1973 and have been completed for this fiscal year. Surplus funds in the amount of $21,700 will be revoked.

APPENDIX E TO PART 273—PREVENTIVE SAFETY MEASURES IN HANDLING OF HERBICIDES

1. Follow the label on each container before using the contents. The manufacturers are required by law to list recommendations and precautions.

2. Weather conditions are important. Winds could carry toxic sprays and dusts to areas not under your control, causing accidental poisoning to the public or domestic animals.

3. Smoking is not permitted while herbicides are being handled.

4. All herbicides must be handled in well ventilated areas to minimize inhalation of toxic vapors.

5. Shower and washing facilities must be near herbicides mixing areas.

6. Any contamination of the skin, particularly with liquid concentrations or solutions, must be immediately washed off with detergent and water.

7. Protective clothing is used in conjunction with respiratory protective devices to prevent skin contact and inhalation of herbicides. Recommended articles of protective clothing are rubber aprons, coveralls, chemical splash goggles, safety shoes and hard hats. A lightweight water and chemical resistant throw away type protective clothing that is impervious to herbicides is now available. In warm geographical areas this type of lightweight protective clothing would be beneficial in reducing physical stress to applicators. Additional protection is afforded by protective skin cream.

8. Clothing contaminated by spillage must be removed immediately and thoroughly laundered before wearing. Special care is required to prevent contamination of the inside of gloves.

9. Approved respirators must be worn while herbicides are being mixed, and when dusts or liquids are being handled or sprayed. Care should be exercised when selecting the respirator type to insure that it is designated specifically for the substance to be used. Each canister must be labeled and approved by the Bureau of Mines or HEW (NIOSH). Filters or canisters must be changed after 8 hours use and more often if odor of the herbicide is detected. (Always have extra cartridges available when needed.)

10. Herbicide storage, mixing and formulation facilities.

a. All herbicides must be stored in a dry, well ventilated, separate room, building or covered area not accessible to authorized personnel or the public and placed under lock and key.

b. Identification signs should be placed on rooms, buildings, and fences to advise of the contents and warn of their hazardous nature.

c. Where applicable, label the outside of each storage with the ''Danger,'' ''Poison,'' and ''Pesticide Storage'' signs.

d. Fire extinguishers must be installed near door of material storage room. Diluted oil based herbicides are flammable and must be stored separate from other materials.

e. All herbicide storage, mixing and formulation areas must have adequate ventilation in order to reduce inhalation of toxic vapors. Sparkproof lighting fixtures should be installed in closed storage areas to eliminate ignition hazards.

11. Empty herbicide containers must be disposed of properly. Do not burn them. When herbicides or defoliants volatize, the resulting vapors may be poisonous to humans, and they may damage nearby plants, crops or shrubbery; also, herbicides or defoliants containing chlorates may be a serious fire hazard when heated.

12. Glass herbicide containers should be disposed of by breaking. Chop holes in top, bottom, and sides of metal containers or crush them so they cannot collect water or be reused. After breaking or puncturing them, bury the containers at least 18 inches deep in an isolated area provided for this purpose, away from water supplies or high water tables. Records to locate such buried herbicides within the landfill site should be maintained. Post warning signs.

13. Safety programs developed for the safe handling and mixing of toxic chemicals should be coordinated with the Safety Office prior to implementation.

PART 274—PEST CONTROL PROGRAM FOR CIVIL WORKS PROJECTS

PROJECT OPERATION

Sec.
274.1 Purpose.
274.2 Applicability.
274.3 References.
274.4 Pesticide management.
274.5 Certification.
274.6 Division/district pest control programs.
274.7 Authorization of pesticide use.
APPENDIX A TO PART 274—PREVENTIVE SAFETY MEASURES IN HANDLING OF PESTICIDES

AUTHORITY: Pub. L. 92–516, Federal Insecticide, Fungicide and Rodenticide Act of 1972 (86 Stat. 973, 21 Oct 72, 40 CFR part 171, Federal Certification of Pesticide Applicators.

SOURCE: 42 FR 41118, Aug. 15, 1977, unless otherwise noted.

PROJECT OPERATION

§ 274.1 Purpose.

The purpose of this regulation is to assign responsibilities and prescribe procedures concerning the use of chemicals in the Corps pest control program at all civil works projects. It also presents guidance for the preparation and submission of an annual pest control summary report.

§ 274.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 274.3 References.

(a) Pub. L. 92–516, Federal Insecticide, Fungicide and Rodenticide Act of 1972 (86 Stat. 973), 21 October 1972.

(b) Pub. L. 91–596, Occupational Safety and Health Act of 1970 (84 Stat. 1609, 29 U.S.C. 668) 29 December 1970.

(c) Medical Surveillance Guide, U.S. Army Environmental Hygiene Agency, January 1975.

(d) Guide for the Medical Surveillance of Pest Controllers, U.S. Army Environmental Hygiene Agency, March 1976, as amended.

(e) Pesticide Applicator Training Manual, Cornell University, Ithaca, New York, September 1974.

(f) Plan for Certification of Pesticide Applicators, DOD, June 1976.

§ 274.4 Pesticide management.

(a) *Administration*. The Division Engineer is responsible for implementation of the program, and providing for the training of pest control personnel, safe use of highly toxic materials and the proper application of restricted-use pesticides. District programs will be reviewed by the Division Engineer for the selection of suitable pest control agents, up-to-date and economical methods of control, and the proper use and maintenance of pest control equipment. Field Operating Agencies (FOA) will designate a single point of contact for pesticide matters.

(b) *Personnel actions*. Pesticide duties will be identified in applicable job descriptions whether they constitute a major duty or not. Such job descriptions will also note the employees responsibility for using personal protective equipment and clothing provided and for following established health and safety practices and procedures. Standard Form 78 medical examination will be augmented by the specific diagnostic tests for the occupations identified in § 274.4(c). Prescribed preplacement medical examinations will be provided as part of the personnel action process before anyone is permitted to perform pesticide duties.

(c) *Medical surveillance*. Preplacement, periodic and pretermination medical examinations of the type and extent set forth in Section III, U.S. Army Environmental Hygiene Agency (USAEHA) ''Guide for the Medical Surveillance of Pest Controllers'' will be provided for personnel involved in pesticide operations. Additional information is contained in USAEHA ''Medical Surveillance Guide (Guide for Job-Related Examinations).'' Appropriate medical records will be maintained in official personal folders.

(d) *Personnel training*. All personnel directly involved in pest control must be properly trained in the safe application of herbicides, insecticides, rodenticides, fumigants and fungicides. The current plan for training and certification of pest control personnel requires that all pest control applicators and/or supervisors satisfactorily complete (1) the correspondence course, ''Basic Pest Control Technology'' NTTC 150, available from NAVFAC Technical Training Command, Norfolk, Virginia 23511 and a three day (20 hr) conference training course conducted by the Army Health Services Command (AHSC) at Fort Sam Houston, Texas 78234, for Civil Works personnel, or a three day (20 hr) special training course conducted by the Division Engineer, to include information presented in the ''Pesticide Applicator Training Manual'', § 274.3(e) or (2) a B.S. degree in agronomy, entomology, forestry or horticulture from an accredited college or university.

(e) *Restricted-use pesticide training*. For agency certification § 274.3(f) Civil Works supervisors and applicators

using the higher toxicity Restricted-Use pesticides are required to complete Resticted-Use Pesticide training as given at Navy facilities at Jacksonville, Florida, or Alameda, California, Wichita Falls Air Base, or the Army Health Services Command, Fort Sam Houston, Texas. College and university programs which are acceptable for State certification of restricted-use pesticide applicators may be used in lieu of the above.

(f) *Coordination with EPA.* The Environmental Protection Agency is expected to publish regulations listing pesticides classified for restricted-use by October 1977. The Division Engineer will be responsible for close coordination with EPA Regional Offices in order to comply with the regulatory requirements for restricted-use pesticides.

(g) *Exposure to and protection from pesticide hazards.* Basic health and safety practices and procedures including personal protective equipment and clothing, work area layouts, storage and application considerations are identified in Appendix A of this regulation. Additional guidance is contained in Section II and Appendix A of the USAEHA ''Guide for Medical Surveillance of Pest Controllers.''

(h) *Contracting for pest control services.* All contracts for pest control services must receive Technical review and approval from professional pest control management personnel prior to advertisement of the contract and procurement of services. The contractor will be required to submit proof that his supervisory personnel to be employed on the contract are certified in the specific categories for operations being conducted in accordance with an approved state plan in effect in the area concerned.

§ 274.5 Certification.

Under the provisions of Section 4, Pub. L. 92–516, the Environmental Protection Agency is responsible for Federal certification of pesticide applicators through its development of a single Government Agency Plan (GAP). By letter dated December 30, 1976, the Administrator of the Environmental Protection Agency has stated that Federal certification will no longer be undertaken pursuant to a single GAP. The Department of Defense has developed an Agency Plan for certification of its pesticide applicators which has been approved in principle and concept. It has been determined that the DOD Agency Plan satisfies the training requirements for certification of Civil Works personnel. Pending final approval of the DOD Agency Plan, all Corps of Engineers pesticide applicators will be certified in accordance with the criteria described in this regulation by issue of a certificate of training and competency (DA Form 87, 1 Sep 54), signed by the Training Officer and the Division Engineer.

§ 274.6 Division/district pest control programs.

(a) *Guides.* Referenced technical manuals, and Engineer Circulars issued from time to time, will be used as guides in selecting the type of chemicals and the method of application in the control of vegetation and pests at civil works projects.

(b) *Responsibilities and reports (RCS DAEN-CWO–48).* Districts will prepare and submit to the Divisions detailed descriptions or their anticipated use of pesticides for review and approval by the appropriate Division.

§ 274.7 Authorization of pesticide use.

(a) Programs approved in § 274.6(b) must be those as described on the pesticide label. Pesticide uses which are different from the registered use, require amendment of the label, approved by the Environmental Protection Agency. Data requirements for this use must be supplied before an amendment will be made by the Agency. Substantial time and effort are required for such action.

(b) If an unexpected outbreak of a pest requires control measures which are not according to the registered use, such control effort is viewed as an emergency measure and may be undertaken at the discretion of the Division Engineer. An emergency will be deemed to exist when:

(1) A pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest.

(2) Significant economic or health problems will occur without the use of the pesticide.

(3) The time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. In determining whether an emergency condition exists, the Administrator will also give consideration to such additional facts requiring the use of Section 18 §274.3(a) as are presented by the applicant.

(c) Emergency operations should be documented by a request for a specific exemption, prepared by the District and forwarded through channels to HQDA (DAEN-CWO-R) WASH DC 20314 for transmittal to EPA.

(1) Each specific exemption must be requested in writing, by the head of the Federal agency or the Governor of the State involved, or other official designee, addressed to the Administator, setting forth the following information:

(i) The nature, scope and frequency of the emergency.

(ii) A description of the pest known to occur, the places or times it may be likely to occur and the estimated time when treatment must be commenced to be effective.

(iii) Whether a pesticide registered for the particular use, or other method of eradicating or controlling the pest, is available to meet the emergency, and the basis for such determination.

(iv) A listing of the pesticide or pesticides the agency proposes to use in the event of an outbreak.

(v) Description of the nature of the program for eradication or control. Such description should include:

(A) Quantity of the pesticide expected to be applied;

(B) Specific Area or place of application;

(C) Method of application;

(D) Duration of application;

(E) Qualifications of personnel involved in such application.

(vi) Statement of economic benefits and losses anticipated with and without the exemption and under reasonable alternatives.

(vii) Analysis of possible adverse effects on man and the environment. If an Environmental Impact Statement has been prepared by an agency, in accordance with that agency's regulations implementing the National Environmental Policy Act of 1969, and is relevant to the above, it shall be submitted with the application.

(viii) Such exemptions, if granted, are valid only for the specific situation involved and are subject to such restrictions as the Administrator may prescribe in granting the exemption. Such restrictions may include, among others, limitations on the quantity of the pesticide to be used, the conditions under which the pesticide may be applied, restrictions as to the person who may apply the pesticide and the type of monitoring activities which should be conducted. Within one year of the granting of the exemption, a summary report on what action was taken to meet the emergency and on the outcome of such action, must be forwarded to HQDA (DAEN-CWO-R) WASH DC 20314, for forwarding to EPA.

APPENDIX A TO PART 274—PREVENTIVE SAFETY MEASURES IN HANDLING OF PESTICIDES

1. Follow the label on each container before using the contents. The manufacturers are required by law to list recommendations and precautions.

2. Weather conditions are important. Winds could carry toxic sprays and dusts to areas not under your control, causing accidental poisoning to the public or domestic animals.

3. Smoking is not permitted while pesticides are being handled.

4. All pesticides must be handled in well-vetilated areas to minimize inhalation of toxic vapors.

5. Shower and washing facilities must be near pesticide mixing areas.

6. Any contamination of skin, particularly with liquid concentrations or solutions, must be immediately washed off with detergent and water.

7. Protective clothing is used in conjunction with respiratory protective devised to prevent skin contact and inhalation of pesticides. Recommended articles of protective clothing are rubber aprons, coveralls, chemical splash goggles, safety shoes, and hard hats. A lightweight water and chemical resistant throw away type protective clothing that is impervious to herbicides is now available. In warm geographical areas this type of lightweight protective clothing would be beneficial in reducing physical stress to applicators. Additional protection is afforded by protective skin cream.

8. Clothing contaminated by spillage must be removed immediately and thoroughly laundered before wearing. Special care is required to prevent contamination of the inside of gloves.

9. Approved respirators must be worn while pesticides are being mixed, and when dusts or liquids are being handled or sprayed. Care should be exercised when selecting the respirator type to insure that it is designated specifically for the substance to be used. Each respirator must be labeled and approved by the U.S. Department of Agriculture or NIOSH. Filters or canisters must be changed after 8 hours use and more often if odor of the pesticide is detected. (Always have extra cartridges available when needed).

10. Pesticide storage, mixing, and formulation facilities:

(a) All pesticides must be stored in a dry, well ventilated, separate room, building, or covered area not accessible to unauthorized personnel or the public and placed under lock and key.

(b) Identification signs should be placed on rooms, buildings, and fences to advise of the contents and warn of their hazardous nature.

(c) Where applicable, the outside of each storage area should be labeled with ''Danger,'' ''Poison,'' and ''Pesticide Storage'' signs.

(d) Fire extinguishers must be installed near the door of materiel storage rooms. Diluted oil based pesticides are flammable and must be stored separate from other materials.

(e) All pesticide storage, mixing, and formulation areas must have adequate ventilation in order to reduce inhalation of toxic vapors. Sparkproof lighting fixtures should be installed in closed storage areas to eliminate ignition hazards.

11. Empty pesticide containers must be disposed of properly. Do not burn them. When herbicides or defoliants volatilize the resulting vapors may be poisonous to humans, and they may damage nearby plants, crops, or shrubbery; also, pesticides or defoliants containing chlorates may be a serious fire hazard when heated.

12. Glass pesticide containers should be disposed of by breaking. Chop holes in top, bottom, and sides of metal containers or crush them so they cannot collect water or be reused. After breaking or puncturing them, bury the containers at least 18 inches deep in an isolated area provided for this purpose, away from water supplies or high water tables. Records to locate such buried pesticides within the landfill site should be maintained. Post warning signs.

13. Safety programs developed for the safe handling and mixing of toxic chemicals should be coordinated with the Safety Office prior to implementation.

PART 276—WATER RESOURCES POLICIES AND AUTHORITIES: APPLICATION OF SECTION 134a OF PUBLIC LAW 94–587

Sec.
276.1 Purpose.
276.2 Applicability.
276.3 [Reserved]
276.4 Legislative provisions.
276.5 Legislative history.
276.6 General policy.
276.7 Procedures.
276.8 Cessation.

AUTHORITY: Sec. 134a, Pub. L. 94–587, 90 Stat. 2928.

SOURCE: 42 FR 9175, Feb. 15, 1977, unless otherwise noted.

§ 276.1 Purpose.

This establishes policy guidelines and procedures for Corps of Engineers application of the provisions of section 134a of Pub. L. 94–587.

§ 276.2 Applicability.

Policies and procedures contained herein apply to all elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 276.3 [Reserved]

§ 276.4 Legislative provisions.

Section 134a authorizes and directs institution of a procedure for certification, at the request of local interests, that particular improvements for flood control to be locally constructed can reasonably be expected to be compatible with a specific, potential Federal project under study. Local interests may proceed to construct such certified compatible improvements at local expense with the understanding that such improvements can be expected to be included in the scope of the Federal project, if later authorized, both for the purposes of analyzing the costs and benefits of the project and assessing the local participation in the costs of such project. This legislative authority ceases to be in effect after December 31, 1977.

§ 276.5 Legislative history.

Discussion of this legislation is contained in the reports by the Senate

Committee on Public Works and the House Committee on Public Works and Transportation which accompanied S. 3823, the Water Resources Development Act of 1976 (Pub. L. 94–587). These reports make clear that Congress intended to encourage local communities to assume responsibility and accelerate local cooperation in reducing urban flooding dangers without committing the United States to any future Federal expenditure. The Senate Committee report noted that some communities might be reluctant to undertake compatible local flood control measures for fear that the local work would jeopardize the potentially favorable cost-benefit ratio of a prospective Federal project. The Act authorizes establishing a procedure for certification of certain local improvements undertaken for the purpose of flood control. Cost assignable to that part of the local improvement that would constitute an integral part of a prospective Federal plan would be eligible to be recommended for credit toward required local cooperation. The Senate Committee report specifically stated that:

> * * * This flexibility should in no way be interpreted as a Federal assurance of late approval of any project. While it is in no way a Federal commitment, this provision assures the city that the work it undertakes, once certified, will not be removed from the cost-benefit analysis. and it assures the city that such local work will be credited toward the local costs of cooperation, should the project be later authorized. This will not, however, qualify the community for any cash refunds. If the local costs on such certified work exceed the local share, when later computed, the local government must assume that extra cost. * * *

§ 276.6 General policy.

(a) This provision will be applied only at locations where a congressionally authorized study is underway or where the study report has been forwarded for Executive Branch review or for consideration by Congress. If a study is underway, the District Engineer must have held the final public meeting and filed a draft EIS with CEQ prior to certification. Certification will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan under study.

(b) Work eligible for certification shall be limited to that part of the local improvement directly related to a flood control purpose.

(c) Only local work commenced after certification shall be eligible for certification except for local engineering work noted below in § 276.6(e). The work proposed for certification must meet the following requirements: The work will be separately useful even if the Federal Government does not authorize and construct the contemplated project; the work to be accomplished by the non-Federal entity will not create a potential hazard; certification of the proposal will be in the general public interest.

(d) Costs assigned to that part of the local improvement that would constitute an integral part of the prospective recommended Federal plan can be included for credit toward required local cooperation. The amount creditable shall equal the expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers. However, credit will not exceed the amount the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from the local work. Costs of subsequent maintenance will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or Federal funds from other Federal sources, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount. However, there will be no corresponding reduction in the benefits credited for the local improvement.

(e) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those non-Federal engineering costs and overhead costs directly attributable to the creditable part of local work may be included in the amount credited.

§ 276.7 Procedures.

(a) Non-Federal entities desiring certification credit under the provisions of section 134a of Pub. L. 94–587 should confer with the District Engineer and submit a written application to him. The application will include full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the possible selected Federal Plan and determine what part of the proposed local improvement would be eligible for certification. Prior to certification, the District Engineer will obtain the concurrence—through the Division Engineer and the Chief of Engineers—of the Assistant Secretary of the Army (Civil Works) by forwarding a copy of the draft survey report and providing information on:

(1) Coordination with local interests including results of public meetings and circulation of the draft EIS.

(2) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(3) Total estimated cost of creditable work.

(4) The urgency for proceeding with the local plan.

(c) The District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be creditable under the provisions of section 134a. This letter shall be the certification contemplated under section 134a. The certification shall include the following conditions:

(1) Issuance of certification shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) Issuance of the certification does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(4) Certification shall expire 3 years after the date of certification if the non-Federal entity has not commenced the work contemplated by the certification.

(d) The non-Federal entity will notify the District Engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to a certain and confirm those costs properly creditable and shall inform the non-Federal entity of the audit results.

(e) During further Corps studies, the local work actually accomplished that would constitute a legitimate part of the overall recommended Federal project may be incorporated within any plan later recommended for authorization. It shall be permissible to include the accepted costs of such certified local improvement and the flood control benefits properly attributable thereto in the benefit-cost computations for the recommended plan.

(f) If the Corps report recommends Federal authorization of a plan that incorporates credit for local work certified under section 134a, the report shall include a specific recommendation to cover this credit and shall provide full identification and description of the local work for which such credit is recommended.

(g) The District Engineer shall submit a copy of his certification letter and notification of creditable costs of completed work to the Assistant Secretary of the Army (Civil Works) through the Division Engineer and the Chief of Engineers.

(h) All justification sheets supporting new start recommendations for Advance Engineering and Design or Construction projects will include information on certification activities in the paragraph on local cooperation. The information should include but not be limited to date of certification, work completion, description and cost of credit work.

§ 276.8 Cessation.

The legislation specifies that this authority shall cease to be in effect after December 31, 1977. No requests for certification will be processed after that date. To be eligible for credit, proposals for local work must have been certified by the District Engineer no later than December 31, 1977. There is no requirement that the local improvement be initiated or accomplished by that date.

PART 277—WATER RESOURCES POLICIES AND AUTHORITIES: NAVIGATION POLICY: COST APPORTIONMENT OF BRIDGE ALTERATIONS

Sec.
277.1 Purpose.
277.2 Applicability.
277.3 References.
277.4 Definitions.
277.5 General.
277.6 Basic policies.
277.7 Coordination with the U.S. Coast Guard.
277.8 Procedures for apportionment of costs.
APPENDIX A TO PART 277—SEC. 6, PUB. L. 647, AS AMENDED (33 U.S.C. 516)
APPENDIX B TO PART 277—HYPOTHETICAL EXAMPLE OF COST APPORTIONMENT

AUTHORITY: Sec. 2, River and Harbor Act of 1920, 41 Stat. 1009, June 5, 1920; 33 U.S.C. 547.

SOURCE: 44 FR 31129, May 30, 1979, unless otherwise noted.

§ 277.1 Purpose.

This regulation provides policies and guidelines for the apportionment of bridge alteration costs required in connection with navigation improvements recommended in reports transmitted to the Chief of Engineers for approval or submitted to Congress for authorization.

§ 277.2 Applicability.

This regulation applies to all HQUSACE elements and all USACE Commands having Civil Works responsibilities. For bridges altered under U.S. Coast Guard authority pursuant to the Truman-Hobbs Act (33 U.S.C. 511–524), the U.S. Coast Guard regulations codified at 33 CFR part 116 apply.

[69 FR 54216, Sept. 8, 2004]

§ 277.3 References.

(a) Section 6, Pub. L. 647, 67th Congress, 21 June 1940, as amended (33 U.S.C. 516). (Appendix A).

(b) Section 6, Pub. L. 89–670, Department of Transportation Act, 15 October 1966 (49 U.S.C. 1655).

(c) Coast Guard reference: COMDT (G-OPT-3), Exemplification-Principles of Apportionment of Cost for Alteration of Obstructive Bridges under the Provisions of Act of Congress June 21, 1940 (as amended); File No. 16592.

(d) ER 1105–2–100.

(e) EP 1165–2–2 Appendix C.

[44 FR 31129, May 30, 1979, as amended at 69 FR 54216, Sept. 8, 2004]

§ 277.4 Definitions.

The following definitions are applicable to this regulation:

(a) *Bridge*. The term bridge means a lawful bridge over navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

(b) *Bridge owner*. Bridge owner means any State, county, municipality, or other political subdivision, or any corporation, association, partnership, or individual owning, or jointly owning, any bridge, and, when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, such term shall include both the owner of the legal title and the person or the entity in possession or control of such bridge.

(c) *Navigable waters*. Navigable waters of the United States means those waterbodies, except the territorial seas, which are subject to the ebb and flow of the tide, or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce.

(d) *Alteration*. The term alteration includes changes of any kind, reconstruction, or removal in whole or in part.

§ 277.5 General.

Pub. L. 647 as amended, (33 U.S.C. 511–523) commonly referred to as the ''Truman-Hobbs Act'' provides for the alteration of railroad and highway bridges when found unreasonably obstructive to navigation. Section 6 of that Act establishes policies for the apportionment of such bridge alteration costs. Public Law 89–670, transferred to the Secretary of Transportation from the Secretary of the Army the responsibility for administration of the Act. Pursuant to this responsibility, the Secretary of Transportation has established implementing procedures based on those previously adopted and utilized by the Chief of Engineers prior to 15 October 1966. This regulation adapts these cost apportionment procedures, found in reference § 277.3(c), to Corps of Engineers planning.

§ 277.6 Basic policies.

(a) The cost apportionment principles of 33 U.S.C. 516 are applicable to the costs of bridge alterations recommended by reporting officers in the interest of navigation during preauthorization planning, including studies conducted under the Continuing Authorities Program.

(b) The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs. That part of the cost attributable to the requirements of railroad or highway traffic shall also be borne by the bridge owner, to include any expenditure for increased carrying capacity of the bridge, and such proportion of the actual capital cost of the old bridge as the used service life bears to the total estimated service life.

(c) In general, the Federal government's participation in the cost of a bridge alteration shall be limited to providing a functional facility equal in every respect, as near as possible, to the existing facility, while also providing navigational clearances required to meet the anticipated and reasonable needs of navigation.

(d) If the bridge owner or other local interests desire improvements or modifications in the new bridge design for reasons other than that required by the navigation improvement project, the reporting officer may recommend such improvements if such local interests provide necessary assurances to pay the costs apportioned to them.

(e) In the case of small boat harbors and channels, the costs of bridge alterations, strictly for recreation navigation shall be apportioned in accordance with the procedures provided in this regulation. Bridge alteration costs associated with small boat harbors and channels and not apportioned to the bridge owner by the procedures in this regulation, shall be cost shared on the basis of 50 percent Federal and 50 percent non-Federal, the same as the costs of other general navigation facilities.

(f) Reporting officers shall obtain letters of intent from local interests for non-Federal costs apportioned under the provisions of this regulation, in accordance with established procedures for preauthorization feasibility studies. If such letters cannot be obtained from the bridge owner, the reporting officers shall then include in their report a statement that the cost of such alterations shall be borne by the bridge owner or, in the alternative, be apportioned between the bridge owner and the Government as provided under the principles of Section 6 of the Truman-Hobbs Act (33 USC 516).

[44 FR 31129, May 30, 1979, as amended at 69 FR 54216, Sept. 8, 2004]

§ 277.7 Coordination with the U.S. Coast Guard.

In accordance with an agreement signed by the Chief of Engineers on 18 April 1973 (EP 1165–2–2), reporting officers shall consult with the Coast Guard on contemplated and recommended navigation improvements which involve the consideration of bridge alterations. Determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters is a responsibility of the Coast Guard. The Chief of Engineers shall coordinate preauthorization feasibility reports, which include recommended bridge alterations, with the Commandant, U.S. Coast Guard.

[69 FR 54216, Sept. 8, 2004]

§ 277.8 Procedures for apportionment of costs.

This paragraph provides the procedures for apportionment of costs of bridge alterations, as established by the U.S. Coast Guard (reference § 277.3(c)) and adapted for use in Corps planning and construction programs. A sample apportionment of the cost of a hypothetical bridge alteration is provided in Appendix B.

(a) *Calculate the total estimated cost of bridge alteration.* The total estimated cost, to be apportioned by these procedures, includes the cost of all necessary appurtenances required to complete the alteration for use by both highway and railway traffic, including engineering, design and inspection.

(b) *Determine the salvage value of bridge to be altered.* The salvage value represents the worth of the materials in the old bridge which may be used for scrap or for other purposes. The value will vary depending on the intended use of the materials.

(c) *Determine direct and special benefits*—(1) *Removing old bridge.* The bridge owner shall pay a share of the removal cost computed as that part of the removal cost that the used service life bears to the total estimated service life. The share of the bridge owner, thus computed, represents an obligation incurred by the owner now by reason of the needs of navigation which otherwise would not have to be met until the bridge had reached the end of its useful life. Accordingly, the present worth of the amount is computed deferred over the unexpired life. The discount rate to be used in the present worth computation is that established by the Water Resources Council, current at the time of the study.

(2) *Fixed charges.* A fixed charge such as engineering, design, and inspection costs, realtor and counsel fees, and the bridge owner's administrative expenses is an undistributed cost, shared in the ratio that each party shares in the cost of construction less fixed charges. In computing the bridge owner's share of the fixed charges, all other financial liabilities assigned to the bridge owner shall be included in the computation.

(3) *Contribution.* If a third party should be involved in a bridge alteration project, such as a party which might benefit from some reasonable modification beyond the needs of navigation and the needs and desires of the bridge owner, that party would be responsible for the incremental costs of such further modification, and such costs would not enter into the apportionment between the bridge owner and the Federal Government.

(4) *Betterments.* Items desired by the bridge owner, but which have no counterpart in the old bridge or are of higher quality than similar items in the old bridge, will be included under this heading. Items considered to fall within this category are listed below. It is intended this list serve as a guide to indicate the types of items that may be considered betterments. The cost of such items will be borne by the bridge owner.

(i) Access roads.

(ii) Concrete or stone finish of embankment slopes instead of seeding.

(iii) Water proofing and skid-resistant epoxy finish of masonry surfaces.

(iv) Steel or concrete spans instead of timber trestle.

(v) Ballasted deck instead of open deck.

(vi) Trainman's walkways and sidewalks.

(vii) Elevators costing more than stairways.

(viii) Materials of greater thickness or heavier weight than supported by design requirements.

(ix) Exotic materials for machinery and operator's house, including tinted and insulated windows.

(x) Heaters and insulation in the machinery house.

(xi) Operator's house furnishings, air-conditioners, water coolers, and medicine cabinets.

(xii) Hydraulic jacks for counterweight support.

(xiii) Fourth coat of paint, and exotic paint systems.

(xiv) Brass pipe and high alloy steel conduits.

(xv) Floodlights and metallic vapor arc lights.

(xvi) Spare parts.

(xvii) Lubricants and lubrication equipment, and tools in excess of minimum requirements.

(d) *Determine expectable savings in repair or maintenance costs.* (1) The provisions of any features that would reduce annual maintenance costs of the altered bridge, such as a wider navigation span eliminating the requirement for protection works, reducing the overall length of the bridge by fill in lieu of a trestle, or replacing two bridges with one bridge, will be included under this heading. The bridge owner should bear the increased annual maintenance cost that will accrue as a result of providing any increased loading and width desired by the bridge owner or attributable to the requirements of railway or highway traffic. Since 33 U.S.C. 516 does not mention bridge operating costs, any increase or decrease in such costs shall not be included in the cost of alteration to be apportioned. The bridge owner's obligation is computed by capitalizing the estimated annual savings at the same rate of interest used in § 277.8(e)(1).

(2) Expectable savings in repair costs is that amount which the bridge owner will not have to pay to restore his bridge, which may be in a damaged condition or may be dilapidated, since the bridge is being altered or removed as a part of the contemplated navigation improvement.

(e) *Estimate costs attributable to requirements of railway and highway traffic.* Items desired by the bridge owner to meet the requirements of railway and highway traffic, but which have no counterpart in the old bridge, will be included under this heading. Items considered to fall within this category are listed below. This list does not contain all such items, but it is intended to serve as a guide in determining which items might fall within this category.

(1) Increased navigational clearances for the benefit of land traffic.

(2) Wider roadbed.

(3) Additional traffic lanes or track.

(4) Medians and wider traffic lanes.

(5) Increased train clearances and spacing of tracks.

(6) Larger cross and bridge ties.

(7) New and heavier rail and expansion joint devices.

(8) Additional signaling and communications systems.

(9) Additional right-of-way.

(f) *Estimate expenditure for increased carrying capacity.* The bridge owner is required to pay the difference in cost between a bridge meeting the navigation clearance requirements with the same live loading capacity as the old bridge and new or altered bridge having any increased live loading capacity desired. The cost of increased live loading capacity will be based on the estimated cost of the new or altered bridge with unit prices applied to the quantity of materials estimated for a hypothetical bridge with the same live loading as the old bridge, but with the increased clearances required by the navigation improvement. The live loading of the new or altered bridge should be compared with the live loading of the old bridge, based on normal working stresses without overstress, overload, or reduction of safety factor.

(g) *Determine value of expired service life of old bridge.* (1) Section 6 of the Act provides, among other things, that the bridge owner shall bear such proportion of the actual capital cost of the old bridge or such part of the old bridge as may be altered or rebuilt, as the used service life of the whole or a part bears to the total estimated service life of the whole or such part. Guide service life figures have been obtained from retirement curves based on mortality statistics, which represent an attempt to consider economic causes of retirement in addition to physical causes.

(2) For railroad bridges service life, figures of 100 years for substructure, 70 years for superstructure, 37 years for treated timber, 35 years for automatic signals, 20 years for main rail, 30 years for siding rail, and 20 years for crossties and bridge ties are considered to be reasonable and will be used in computing the bridge owner's liability. The service life of the operator's house and machinery house, including machinery, is considered to expire with the removal of the superstructure. For timber structures which have been in existence for more than 50 percent of their estimated service life, the expired service life is held usually at 50 percent providing the structure has been adequately maintained and is in a good state of repair.

(3) The service life of highway bridges, except for certain long span

bridges, is usually limited by obsolescence as well as structural deficiency and deterioration. Obsolescence may be due to insufficent capacity for heavier loads and greater volume of traffic than the bridge was originally designed for, safety requirements, and location. Superstructures and pile bents are considered to have a service life of 50 years. Masonry substructure which could be reused in the renovation of a bridge is considered to have a service life of 100 years.

(4) The foregoing service life figures are not to be used arbitrarily, but as a basis for a fair judgment of the service life considering all other factors that pertain in any particular case.

APPENDIX A TO PART 277—SEC. 6, PUB. L. 647, AS AMENDED (33 U.S.C. 516)

At the time the Secretary* shall authorize the bridge owner to proceed with the project, as provided in Section 515 of this title, and after an opportunity to the bridge owner to be heard thereon, the Secretary shall determine and issue an order specifying the proportionate shares of the total cost of the project to be borne by the United States and by the bridge owner. Such apportionment shall be made on the following basis: The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expectable savings in repair or maintenance costs; and that part of the cost attributable to the requirements of traffic by railroad or highway, or both, including any expenditure for increased carrying capacity of the bridge, and including such proportion of the actual capital cost of the old bridge or of such part of the old bridge as may be altered or changed or rebuilt, as the used service life of the whole or a part, as the case may be, bears to the total estimated service life of the whole or such part. Provided, that in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. The United States shall bear the balance of the costs, including that part attributable to the necessities of navigation: and provided further, that where the bridge owner proceeds with the alteration on a successive partial bid basis the Secretary is authorized to issue an order of apportionment of cost for the entire alteration based on the accepted bid for the first part of the alteration and an estimate of cost for the remainder of the work. The Secretary is authorized to revise the order of apportionment of cost, to the extent he deems reasonable and proper to meet any changed conditions.

(June 21, 1940, ch. 409, Section 6, 54 Stat. 499; July 16, 1952, ch. 889, Section 2, 66 Stat. 733; Aug. 14, 1958, Public Law 85–640, Section 1(c), 72 Stat. 595.)

*Secretary of Transportation.

APPENDIX B TO PART 277—HYPOTHETICAL EXAMPLE OF COST APPORTIONMENT

Following is the interpretation of the principles as applied to the alteration of a hypothetical highway—railroad bridge across Blank River between City A and City B.

		Reference table
1. Total estimated cost of alteration project.	$10,917,300	A

The existing double deck swing span will be replaced with a new double deck lift span affording a horizontal navigation opening of 250 feet clear width between piers normal to the navigation channel and a vertical clearance of 125 feet above mean high water in the raised position.

2. Salvage	$77,300	

This value is deducted from the original cost to determine the actual capital cost (Table VII). It is also deducted from the Total Estimated Cost of Alteration Project to determine the cost to be apportioned.

3. Direct and special benefits:		
a. Removing old bridge (owner's share).	$165,489	I
b. Fixed charges (owner's share).	284,460	II

A fixed charge such as engineering, design and inspection costs, realtor's and counsel's fees, and bridge owner's administrative expenses is an undistributed cost shared in the ratio that each party shares the cost of construction less fixed charges. In computing the bridge owner's share of the fixed charges, all other financial liabilities assigned to the bridge owner shall be included in the computation. (Table II).

c. Contribution by third party	$432,000

Section 6 of the Act provides that in the event the alteration or relocation of any bridge may be desirable for the reason that the bridge unreasonably obstructs navigation, but also for some other reason, the Secretary may require equitable contribution

from any interested person, firm, association, corporation, municipality, county, or State desiring such alteration or relocation for such other reason, as a condition precedent to the making of an order for such alteration or relocation. In the instant case, testimony at the hearing developed that the bridge would require alteration because of the navigation project but also City A desires to relieve traffic on a nearby secondary road by providing access to the new bridge. It is considered that as an equitable contribution, City A should contribute an amount equal to one half of the expectable road user benefit accruing over the next 10 years. Other methods for determining the third party's contribution are acceptable depending on the circumstances.

d. Betterments	$18,360	III
4. Expectable savings in repair or maintenance costs.		IV
Repair	$100,000	
Maintenance	16,288	

The new bridge is designed for increased loading and width greater than that of the old bridge. Therefore, the estimated annual maintenance cost was based on a hypothetical bridge designed, but not constructed, for the same loading and width as the old bridge but with increased clearances as required to meet the needs of waterborne navigation, and not on the estimated annual maintenance cost of the new bridge. The savings in repair costs represents a savings to the bridge owner who will not have to restore the bridge that was recently damaged since it is being altered as a part of a proposed navigation improvement.

5. Costs attributable to requirements of railway and highway traffic.	$1,534,000	V

The old bridge carries a highway deck on the upper level consisting of a roadway 18 feet wide (no sidewalks) and a railway deck on the lower level with 110-lb. rails. The new bridge will carry a highway deck on the upper level consisting of one 28-foot roadway and two 5-foot sidewalks, and the railway deck will have new 130-lb. rails. In addition, the railway deck will be paved to carry highway traffic. Thus, the bridge may be kept in an intermediate raised position when not being used by railway traffic to pass small-boat traffic without delaying highway traffic. City A also desires to provide additional highway approaches and right-of-way to connect a nearby secondary road with the new bridge.

6. Expenditure for increased carrying capacity.	$2,330,000	VI

The highway deck of the old bridge was designed for a live loading equivalent to AASHO H15–44 and the railway deck for live loading of Cooper E 45. The highway deck of the new bridge will be designed for live loading AASHO HS20–44, and the railway deck will be designed for live loading of Cooper E 60. Accordingly, the bridge owner will pay the additional cost for the increased carrying capacity of the new bridge.

7. Expired service life of old bridge	$511,300	VII

The structure of the old bridge was completed in 1908 and the superstructure completed in 1909. For this hypothetical example it was assumed the bridge would be replaced in 1970.

8. The following is an explanation of the procedure for determining the tabulation of proportionate shares of costs to be borne by the United States and the bridge owner presented in Table B.

(1) Cost of alteration to be apportioned is the total estimated cost of the project (excluding contingencies) less salvage value (§277.8(b)), less contribution by third party, if applicable (§277.8c(3)).

(2) Share to be borne by the bridge owner is the sum of the direct and special benefits (§277.8(c)) expectable savings in repair or maintenane costs (paragraph 8d), costs attributable to requirements of railway and highway traffic (§277.8(e)), expenditure for increased carrying capacity (§277.8(f)) and expired service life of old bridge (§277.8(g))

(3) Share to be borne by the United States is the difference between the cost of alteration to be apportioned and the share to be borne by the bridge owner.

(4) The exact amount of costs to be borne by the bridge owner will be determined upon completion of the project.

(5) Contingencies may be included in the total shares to be borne by both the United States and the bridge owner.

TABLES

A. Summary of Estimated Project Costs.
B. Tabulation of Proportionate Shares of Cost To Be Borne by the United States and the Bridge Owner.
I. Bridge Owner's Share of Removing Old Bridge.
II. Fixed Charges To Be Paid by Bridge Owner.
III. Betterments.
IV. Expectable Savings in Repair or Maintenance Costs.
V. Costs Attributable to Requirements of Railway and Highway Traffic.
VI. Expenditure for Increased Carrying Capacity.
VII. Value of Expired Service Life of Old Bridge.

TABLE A—SUMMARY OF ESTIMATED PROJECT COSTS

No. and item	Cost	Fixed charges	Total
1 New bridge	$8,104,052	$570,000	$8,674,052
2 Removal of old bridge	521,908	500	522,408
3 Approaches	50,000	5,000	55,000
4 Additional highway approaches	1,530,000	15,000	1,545,000
5 Railroad force account work	41,800	3,500	45,300
6 Additional signaling	27,000	2,400	29,400
7 Right-of-way	13,240	900	14,140
8 Additional right-of-way	30,900	1,100	32,000
Total	10,318,900	598,400	10,917,300
Total estimated cost of project			10,917,300
Less salvage			−77,300
Less contribution by third party			−432,000
Total cost of alteration to be apportioned			10,408,000
Less right-of-way (Items 7 and 8)			−46.140
Total Cost of construction			10,361,860

TABLE B—TABULATION OF PROPORTIONATE SHARES OF COSTS TO BE BORNE BY THE UNITED STATES AND THE BRIDGE OWNER

Total estimated cost of project (excluding contingencies) (table A)		$10,917,300
Less salvage		77,300
Less contribution by third party		432,000
Total cost of alteration to be apportioned		10,408,000
Share to be borne by the bridge owner:		
Direct and special benefits:		
Removing old bridge	$165,489	
Fixed charges	284,460	
Betterments	18,360	
Expectable savings in repair or maintenance costs:		
a. Repair	100,000	
b. Maintenance	16,288	
Costs attributable to requirements of railway and highway traffic	1,534,000	
Expenditure for increased carrying capacity	2,330,000	
Expired service life of old bridge	511,300	
Total		4,959,897
Share to be borne by the United States		5,449,103
Contingencies 15 pct		817,365
Total		6,266,468
Share to be borne by the bridge owner		4,959,897
Contingencies 15 pct		743,985
Total		5,703,882

NOTE: The exact amount to be borne by the bridge owner will be determined after completion of the project.

TABLE I—BRIDGE OWNER'S SHARE OF REMOVING OLD BRIDGE

Item to be removed	Age at time of removal (years)—(1)	Owner's share percent—(2)	Removal cost—(3)	Owner's share of removal—(4)	Years remaining—(5)	Present worth factor—(6)	Owner's present liability—(7)
Substructure	62	62	$241,935	$150,000	38	.1639	$24,585
Protection Works	37	67	60,000	40,200	18	.4245	17,065
Superstructure	61	87	206,896	180,000	9	.6516	117,288
Signaling	61	100	440	440	0	1.0	440
Ties and Timber	20	67	6,000	4,000	10	.6213	2,485
Rail and Accessories:							
Rail, 110 lb	33	100	1,000	1,000	0	1.0	1,000
Rail, 110 lb	13	65	5,637	3,664	.....	.....	2,626

TABLE I—BRIDGE OWNER'S SHARE OF REMOVING OLD BRIDGE—Continued

Item to be removed	Age at time of removal (years)—(1)	Owner's share percent—(2)	Removal cost—(3)	Owner's share of removal—(4)	Years remaining—(5)	Present worth factor—(6)	Owner's present liability—(7)
Total	.....	.....	521,908	368,104	.....	.....	165,489

Present Worth Factor based on 4⅞%, FY 1970, as established by Water Resources Council. The actual factor to be used shall be that current at the time of alteration.

TABLE II—FIXED CHARGES TO BE PAID BY BRIDGE OWNER

Cost of construction	$10,361,860
Less fixed charges	598,400
Total	9,763,460
Owner's share less fixed charges:	
Removing old bridge	165,489
Betterments	18,360
Expectable savings in repair or maintenance costs:	
a. Repair	100,000
b. Maintenance	16,288
Costs attributable to requirements of railway and highway traffic (less right-of-way)	1,503,100
Expenditure for increased carrying capacity	2,330,000
Expired service life of old bridge	511,300
Total	4,644,537
Fixed charges by owner	284,460

$$\frac{4{,}644{,}537 \times 598{,}400 = 284{,}460}{9{,}763{,}460}$$

TABLE III—BETTERMENTS

New furniture and water cooler in control house	$1,050
Increased cost of elevators over stairways	13,360
Increased cost of galvanized steel grating walkways over timber walkways	3,950
Total	18,360

TABLE IV—EXPECTABLE SAVINGS IN REPAIR OR MAINTENANCE COSTS

Repair Cost	
Cost in 1970 to repair damaged bridge	$100,000
Savings in repair costs	100,000
Maintenance Cost	
Average annual maintenance cost for old bridge	16,875
Estimated annual maintenance cost for new bridge	16,000
Total decrease in annual maintenance costs	875
Annual savings capitalized (50 years) @ 4⅞%:875÷0.05372	16,288

Present worth factor based on 4⅞ pct., F.Y. 1970, as established by Water Resources Council. The actual factor to be used shall be that current at the time of the study.

TABLE V—COSTS ATTRIBUTABLE TO REQUIREMENTS OF RAILWAY AND HIGHWAY TRAFFIC

Heavier running rail (130 lb in lieu of 110 lb)	$11,200
Paving, lower deck	34,900
Additional signaling	27,000
Additional highway approaches	1,430,000
Subtotal	1,503,100
Additional right-of-way	30,900
Total	1,534,000

TABLE VI—EXPENDITURE FOR INCREASED CARRYING CAPACITY

Cost of new bridge designed for Cooper E 60 and AASHO HS20–44 loading [1]	$8,609,592
Cost of replacement-in-kind (hypothetical) bridge designed for Cooper E 45 and AASHO H15–44 loading [1]	6,279,592

TABLE VI—EXPENDITURE FOR INCREASED CARRYING CAPACITY—Continued

Total	2,330,000

[1] Excludes all items in Table III and first two items in Table V.

TABLE VII—VALUE OF EXPIRED SERVICE LIFE OF OLD BRIDGE

[Replacement year—1970]

Item to be removed	Year built—(1)	Original cost—(2)	Salvage value—(3)	Actual capital cost (2)–(3)—(4)	Estimated service life—(5)	Expired service life		Value of expired service life (4)×(7)—(8)
						Years 1970–(1)—(6)	Percent of total (6)(5)—(7)	
Substructure:								
Pivot Pier	1908	$34,500	$0	$34,500	100	62	62	$21,390
Right End Pier	1908	18,580	0	18,580	100	62	62	11,520
Left End Pier	1908	21,410	0	21,410	100	62	62	13,274
Right Abutment	1908	8,600	0	8,600	100	62	62	5,332
Left Abutment	1908	11,410	0	11,410	100	62	62	7,074
Protection Works:								
Pivot Pier	1909	5,800	0	5,800	37	61	[1] 50	2,900
Right End Pier	1942	3,200	0	3,200	37	28	[1] 50	1,600
Superstructure:								
Swing Span	1909	168,920	19,400	149,520	70	61	87	130,082
Electrification	1957	5,000	500	4,500	22	13	59	2,655
Left Approach Spans	1909	142,017	16,300	125,717	70	61	87	109,374
Right Approach Spans	1909	156,692	19,300	137,392	70	61	87	119,531
Signaling	1909	15,000	1,000	14,000	35	61	100	14,000
Ties and Timber	1909	8,120	0	8,120	20	61	[1] 50	4,060
Rail and Accessories:								
Rail, 110 lb	1937	6,600	2,200	4,400	20	33	100	4,400
Rail, 110 lb	1957	43,679	18,600	25,079	20	13	65	16,301
Roadway Approaches: [2]								
Pavement	1908	17,841	0	17,841	20	62	[1] 50	8,921
New Lane	1961	43,609	0	43,609	20	9	45	19,624
Subtotal	.....	.....	77,300	633,678	.....	.....	.....	492,038
Engineering	.....	24,695	0	24,695	.....	.....	[3] 78	19,262
Total	.....	.....	77,300	.....	.....	.....	.....	511.300

[1] Held at 50% if maintained in good condition.
[2] Roadway approaches to be abandoned.
[3] Weighted average 100 ×492, 038/633, 678=78%.

Explanation of Columns for Table VII:

Column (1): Year Built is the original date that an item to be removed became a part of the bridge or the last known date that it was replaced. The items to be removed should be broken down to show as much detail as possible, particularly where there is a variation in the year built and/or the estimated service life.

Column (2): Original cost shall be supported by records furnished by bridge owner. Engineering cost should be estimated if unknown.

Column (3): Salvage—refer to § 277.8(b).

Column (4): Actual capital cost is the original cost of the item to be removed minus the salvage value.

Column (5): Estimated Service Life—refer to § 277.8(g).

Column (6) & (7): Expired Service Life—refer to § 277.8(g).

Column (8): Value of expired service life is the actual capital cost of the item to be removed multiplied by the percent of expired service life.

PART 279—RESOURCE USE: ESTABLISHMENT OF OBJECTIVES

Sec.
279.1 Purpose.
279.2 Applicability.
279.3 References.
279.4 Definitions.
279.5 Policy.
279.6 Overview of objective setting process.
279.7 Information collection and preliminary analysis.
279.8 Synthesis and analysis.
279.9 Objective rationale.
279.10 Implementation.
279.11 Responsibilities.
APPENDIX A TO PART 279—SAMPLE RESOURCE USE OBJECTIVES

AUTHORITY: Pub. L. 89–72, Federal Water Project Recreation Act, 79 Stat. 213 *et seq.*

SOURCE: 43 FR 14014, April 4, 1978, unless otherwise noted.

§ 279.1 Purpose.

This regulation provides policy and guidance for establishing resource use objectives for all Civil Works water resource projects during Phase I/Phase II

post-authorization studies and reevaluation of completed projects.

§ 279.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 279.3 References.

(a) Pub. L. 89–72, ''Federal Water Project Recreation Act,'' July 9, 1965 (79 Stat. 213 *et seq.*).

(b) ER 1105–2–200, Multiobjective Planning Framework (33 CFR part 290).

§ 279.4 Definitions.

For the purposes of this regulation:

(a) *Resource use objectives* are clearly written statements, specific to a given project, which specify the attainable options for resource use as determined from study and analysis of resource capabilities and public needs (opportunities and problems).

(b) *Natural resources* are those elements, features, conditions, etc., of land and water that can be characterized as physiographic, biological and/or aesthetic.

(c) *Public benefits* are the tangible and intangible gains to society directly attributable to a water resource project that satisfy the expressed or observed needs of the public (*i.e.*, individuals, groups, organizations and local, county, state and federal governmental agencies).

(d) *Boundary plans* are Division/District wide maps clearly delineating the limits of each regional recreation market area for one or more Civil Works water resource projects.

§ 279.5 Policy.

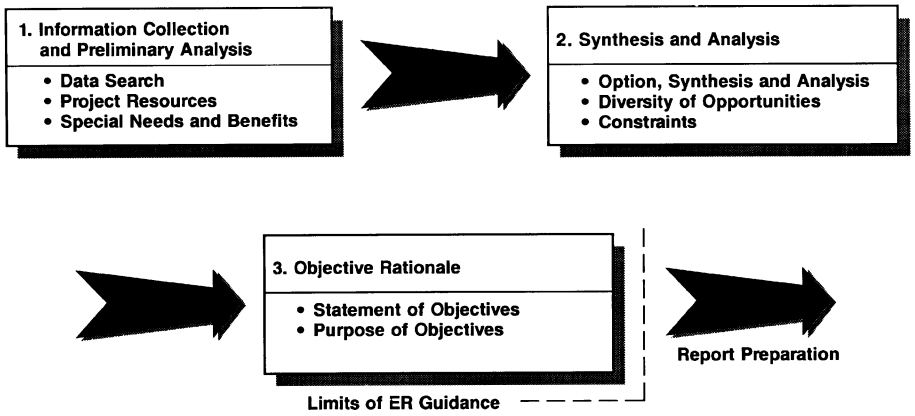
(a) It is the policy of the Chief of Engineers that all water resource projects administered by the Corps will have established a set of resource use objectives. These objectives will be based upon the expressed preferences of the residents of the region served (social option) and will be in keeping with the capabilities of the natural and man-made resources of the specific project (resource option). A regional analysis is required to tailor each project to serve expressed preferences within its resource capabilities and consistent with Federal laws and administrative cost-sharing policy. Preparation of regional studies and establishment of these objectives will utilize an interdisciplinary team with leadership by planning, and participation from engineering, design, real estate, and operations elements. Each project will emphasize those specific resource use objectives determined, through public participation, to achieve the greatest overall public benefit. Subsequent aspects of planning, development, and management for the specific project will be directed to achieving the approved resource use objectives.

(b) The implementation of this policy requires that the public be fully involved in the regional studies and development of resource use objectives and management plans for each specific water resource project, including at least one public meeting. The establishment of resource use objective may be addressed at a general public meeting held for the project if adequate discussion can be achieved. If not, the district engineer should conduct a separate meeting for this purpose.

§ 279.6 Overview of objective setting process.

The process of determining resource use objectives flows through three overlapping steps and considers three main sets of data. Figure 1 presents an overview of this process.

Figure 1. Overview of Resource Use Objective Process



§ 279.7 Information collection and preliminary analysis.

(a) *Data search.* This effort consists of collecting existing data and accomplishing the minimum additional studies necessary to obtain the information required to generate and analyze the likely options. State and local agency input should be sought during this phase. The initial work will be to determine separately the options for resource use and public needs. A preliminary analysis comparing the two parts and their relationship to authorized project purposes and administrative constraints should be conducted prior to further public and agency input.

(b) *Project resources.* The natural and man-made resources of the project area are to be identified and the inter-relationships analyzed to generate the options that are most viable to the overall region. The environmental information and analysis, among other things, should define and describe the physical limitations of the project, aquatic and terrestrial vegetation, game and non-game wildlife species and distribution, fisheries, terrain, soils, minerals, climate, capacity and sensitivity of these resources to public use, archaeological and historical resources, management techniques, and ecosystem interactions.

(c) *Social needs and benefits.* The problems, opportunities, and desires of the people of the region to be served by the project must be identified in order to determine options that are in the best overall public interest. The basic approach for determining public needs and benefits is through a market analysis and a public involvement program. In considering options, the analysis as a minimum should include the indentification of the various publics served, views of other agencies and organizations, existing and planned recreational facilities in the market area of the consumer, the population base and distribution, institutional analysis of potential cost-sharing partners, constraints, the transportation network, the needs identified by local, State and Federal agencies, and the State Comprehensive Outdoor Recreation Plan (SCORP).

§ 279.8 Synthesis and analysis.

(a) *Option, synthesis and analysis.* The project resources and market area information should be aggregated and analyzed to determine what trade-offs can be made among the possible options to establish objectives that can

meet the highest and best use of the natural and man-made resources, efficiently meet the needs of the public to be served, and be of lasting value to the region and the nation as a whole. The options determined in the first step should be synthesized to combine the separate elements. Compatible options in the two parts would result in rational resource use objectives. Conflicting options require trade-off analysis to determine to what extent compromise can be made, or if any compromise is possible to achieve acceptable objectives. In both cases the impacts, beneficial and adverse, of implementing the compatible or compromise objective(s) should be stated. For example, the preservation of wildlife habitat could limit the development of high intensity recreational facilities in a physically suitable area, resulting in a lower attainment of tangible recreation benefits. However, preservation of the existing habitat would produce intangible benefits to society by enhancing a species otherwise likely to be lost to the area.

(b) *Diversity of opportunities.* In regions where there are a number of Corps projects, this analysis must consider the larger regional context of interrelationships which will result in a diversity of opportunities available and emphasize the particular qualities of each project. For example, one project may emphasize swimming, another project weekend camping and power boating, while still another project may provide fishing and passive recreation use such as hiking trails, nature, and ecological study areas.

(c) *Constraints.* In addition to constraints imposed by the authorizing legislation, other project purposes and resource capabilities, the resource use objectives must be consistent and compatible with State and Regional planning activities and programs. As an example, Corps management actions to achieve resource use objectives must be compatible with the State approved Best Management Practices (BMP) for waste treatment (and non-point sources of pollution) as prescribed by section 208, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500), as amended.

§ 279.9 Objective rationale.

(a) *Statement of objectives.* The last step in this process is the summarization of the preceding work by clearly stating the objective(s) and providing the rationale, impact, and basic management measures for their accomplishment. The logic, trade-offs, and judgments made in the process should be presented in a concise and readable manner. The impacts, both beneficial and adverse, that will result from attaining objectives selected must be presented. General implementation measures (e.g., campground development, use of fish attractors, limiting use in environmentally sensitive areas, lake fluctuation control, etc.) should be stated as a guide for the preparation of detailed development plans and management actions to achieve the objectives.

(b) *Purpose of objectives.* The resource use objectives for each project will guide the design, development and management of the resource base to obtain the greatest possible benefit through meeting the needs of the public and to protect and enhance environmental quality. The resource use objectives should be reflected in reports and plans relating to a study or restudy of water resource projects. Management actions on existing projects, including leasing and licensing, will also be directed towards the attainment of the approved resource use objectives.

§ 279.10 Implementation.

(a) Resource use objectives through development and management programs will be incorporated into Phase I, and Phase II General Design Memoranda and Master Plans for authorized and completed water resource projects (report requirements depend on AE&D status of project). The establishment of resource use objectives for projects formulated under the part 290 of this chapter planning process should not require a great deal of additional effort to bring them in compliance with this regulation. However, more effort may be required for completed projects with existing use patterns and constructed facilities.

(b) Regional studies are prerequisite to effective project planning for establishment of resource use objectives. Division engineers are responsible for issuing criteria and instructions, for use by district engineers, on establishing regional boundaries, conduct of regional studies and content and format of report requirements. As a minimum, one criteria to consider is that a regional boundary could be formed by double the estimated distance from the centroids of population located within the market area of any operating project. Regional boundaries need not be restricted either to States or to District hydrologic boundaries. In those cases where a region may cross District boundaries, division engineers will establish administrative responsibility. District engineers are responsible for preparation of districtwide regional boundary plans, scheduling of study efforts, and report preparation. Boundary plans, study schedules and reports shall be submitted for approval in accordance with instructions issued by the division engineer. Four copies of the approved regional boundary plan and regional study report will be furnished to HQDA (DAEN-CWP-P), WASH DC 20314 for comment, in accordance with procedures given in ER 1110–2–1150. Investigations and report preparation for regional studies may be accomplished with funds from Operation and Maintenance General appropriations programmed for preparation of individual project Master Plans. Through implementation of the regional analysis approach, it is expected that an overall savings in individual Master Plan preparation can be realized. In any event, it is not expected that the overall program cost will increase.

(c) District engineers will incorporate the establishment of resource use objectives into the on-going Master Plan preparation process. Those Master Plans currently being prepared or updated and not substantially completed should be modified to reflect this policy. Those projects with high quality resources and/or conflicts between use and current resource management should be given a high priority so that redirection of facility development and management programs can be implemented as soon as possible.

§ 279.11 Responsibilities.

Division engineers will review the Districts Master Plan priority schedule and monitor regional studies and Master Plan preparation to insure timely compliance on development of resource use objectives. Future budget submissions and expenditures of construction and operation and maintenance funds will be reviewed by division engineers as to their relationship to the approved resource use objectives and management implementation. Questions and requests for technical assistance concerning implementation of the concept and guidance set forth in this regulation may be directed to HQDA (DAEN-CWP-P) WASH DC 20314 or DAEN-CWO-R.

APPENDIX A TO PART 279—SAMPLE RESOURCE USE OBJECTIVES

This appendix presents some example resource use objectives that might be derived for a water resource project. They are presented for illustrative purposes only and are not intended to represent any specific project or the full range of objectives that could be developed.

The following sample resource use objectives reflect what could result from a detailed analysis and evaluation of the resources on the project, the resources and opportunity in the general region, and the needs of the public. Each objective has a brief discussion on why that particular objective would be selected.

Resource use objective: To provide high quality swimming opportunity with a variety of high density day-use which include picnicking, beaches, play fields, tot lots, open space, walks, and non-power boating.

(Discussion) The analysis of regional and site specific factors indicates that this project with its small water surface and excellent water quality is not suitable for power boating; is in a suburban area with housing developments already adjacent to the project boundaries or presently planned; the natural resources have already been extensively disturbed; the soil conditions would be susceptive to extensive landscaping and could withstand high levels of public use; the water quality and waterland form characteristics are ideal for swimming and wading; there is currently a deficiency in available lake swimming, open space and day use activity facilities in the going market

area; and there exists a non-Federal government agency to assist in carrying out this objective.

Resource use objective: To establish and maintain a high quality warm water fishery which would support an initial use of 70,000 fishermen recreation days.

(Discussion) The analysis of pertinent factors indicates that there exists a high demand for warm water fishing; that the water quality and other necessary environmental factors are present which would support a warm water fishery; that modified reservoir clearing, water level management and provision for fish shelters would provide necessary inputs for improved fish production; that some zoning on boat usage in certain embayments will decrease the conflicts between fishing and boating; and that current state fishery programs will provide assistance and the necessary technical advice.

Resource use objective: To establish an ecological study area at Wakulla Wash for the protection and study of its unique vegetative associations.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project; the soil in the wash would be highly susceptible to erosion if the vegetation were removed; soil compaction would cause loss of ground cover; trails can be designed to avoid drainage and erosion problems; unique associations of vegetation exist in the wash; the nearest vehicle access point is one mile from the site; during public meetings local environmental groups have expressed an interest to preserve the area for educational purposes; there is a large population base within two hours drive of the project; two local universities have volunteered to administer the area in conjunction with their environmental course work and related work; and the County is zoning the adjacent land to protect the watershed of the Wash.

Resource use objective: To provide overnight use to accommodate transient cross-county travelers.

(Discussion) The analysis of regional and site factors indicate that this project with its small water surface and lack of scenic qualities does not experience much local use. A heavily traveled Interstate Highway with an interchange is within a quarter mile of the project boundary. The location of this project is such that it is within a days travel from major recreation areas; the soil conditions are suitable for high density public use and there is a deficiency of transient camping along this portion of the Interstate.

Resource use objective: To provide a high quality diversified recreation opportunity that would satisfy requirements for destination or vacation type activities.

(Discussion) The analysis of regional and site factors indicate that this project with its outstanding scenic qualities and its location, is suitable for destination or vacation type recreation activities. Private interest have expressed desires to provide sophisticated lodging and camping facilities together with other recreation development to provide for a diversity of recreation activities.

Resource use objective: To establish a cultural interpretive area for the protection, study and viewing of its unique archeological (historical) resource.

(Discussion) The analysis of pertinent factors indicates that high intensity recreation use demand can be satisfied at other areas on the project. The archeological (historical) site is one of the few sites that has not been destroyed over the years. The local archeological (historical) society has expressed an interest during public meeting in preserving and interpreting the site as part of their society program.

PART 320—GENERAL REGULATORY POLICIES

Sec.
320.1 Purpose and scope.
320.2 Authorities to issue permits.
320.3 Related laws.
320.4 General policies for evaluating permit applications.

AUTHORITY: 33 U.S.C. 401 *et seq.;* 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 51 FR 41220, Nov. 13, 1986, unless otherwise noted.

§ 320.1 Purpose and scope.

(a) *Regulatory approach of the Corps of Engineers.* (1) The U.S. Army Corps of Engineers has been involved in regulating certain activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program has evolved to one involving the consideration of the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the ''public interest review.'' The program is one which reflects the national concerns for both the protection and utilization of important resources.

(2) The Corps is a highly decentralized organization. Most of the authority for administering the regulatory program has been delegated to the thirty-six district engineers and eleven division engineers. A district engineer's

decision on an approved jurisdictional determination, a permit denial, or a declined individual permit is subject to an administrative appeal by the affected party in accordance with the procedures and authorities contained in 33 CFR Part 331. Such administrative appeal must meet the criteria in 33 CFR 331.5; otherwise, no administrative appeal of that decision is allowed. The terms ''approved jurisdictional determination,'' ''permit denial,'' and ''declined permit'' are defined at 33 CFR 331.2. There shall be no administrative appeal of any issued individual permit that an applicant has accepted, unless the authorized work has not started in waters of the United States, and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7 (see 33 CFR 331.5(b)(1)). An affected party must exhaust any administrative appeal available pursuant to 33 CFR Part 331 and receive a final Corps decision on the appealed action prior to filing a lawsuit in the Federal courts (see 33 CFR 331.12).

(3) The Corps seeks to avoid unnecessary regulatory controls. The general permit program described in 33 CFR parts 325 and 330 is the primary method of liminating unnecessary federal control over activities which do not justify individual control or which are adequately regulated by another agency.

(4) The Corps is neither a proponent nor opponent of any permit proposal. However, the Corps believes that applicants are due a timely decision. Reducing unnecessary paperwork and delays is a continuing Corps goal.

(5) The Corps believes that state and federal regulatory programs should complement rather than duplicate one another. The Corps uses general permits, joint processing procedures, interagency review, coordination, and authority transfers (where authorized by law) to reduce duplication.

(6) The Corps has authorized its district engineers to issue formal determinations concerning the applicability of the Clean Water Act or the Rivers and Harbors Act of 1899 to activities or tracts of land and the applicability of general permits or statutory exemptions to proposed activities. A determination pursuant to this authorization shall constitute a Corps final agency action. Nothing contained in this section is intended to affect any authority EPA has under the Clean Water Act.

(b) *Types of activities regulated*. This part and the parts that follow (33 CFR parts 321 through 330) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army (DA) permits for controlling certain activities in waters of the United States or the oceans. This part identifies the various federal statutes which require that DA permits be issued before these activities can be lawfully undertaken; and related Federal laws and the general policies applicable to the review of those activities. Parts 321 through 324 and 330 address special policies and procedures applicable to the following specific classes of activities:

(1) Dams or dikes in navigable waters of the United States (part 321);

(2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (part 322);

(3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (part 322);

(4) Construction of artificial islands, installations, and other devices on the outer continental shelf (part 322);

(5) Discharges of dredged or fill material into waters of the United States (part 323);

(6) Activities involving the transportation of dredged material for the purpose of disposal in ocean waters (part 324); and

(7) Nationwide general permits for certain categories of activities (part 330).

(c) *Forms of authorization*. DA permits for the above described activities are issued under various forms of authorization. These include individual permits that are issued following a review of individual applications and general permits that authorize a category or categories of activities in specific geographical regions or nationwide. The term ''general permit'' as used in these regulations (33 CFR parts 320 through

330) refers to both those regional permits issued by district or division engineers on a regional basis and to nationwide permits which are issued by the Chief of Engineers through publication in the FEDERAL REGISTER and are applicable throughout the nation. The nationwide permits are found in 33 CFR part 330. If an activity is covered by a general permit, an application for a DA permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general permit to satisfy requirements of law for a DA permit. In certain cases pre-notification may be required before initiating construction. (See 33 CFR 330.7)

(d) *General instructions*. General policies for evaluating permit applications are found in this part. Special policies that relate to particular activities are found in parts 321 through 324. The procedures for processing individual permits and general permits are contained in 33 CFR part 325. The terms ''navigable waters of the United States'' and ''waters of the United States'' are used frequently throughout these regulations, and it is important from the outset that the reader understand the difference between the two. ''Navigable waters of the United States'' are defined in 33 CFR part 329. These are waters that are navigable in the traditional sense where permits are required for certain work or structures pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899. ''Waters of the United States'' are defined in 33 CFR part 328. These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to section 404 of the Clean Water Act.

[51 FR 41220, Nov. 13, 1986, as amended at 64 FR 11714, Mar. 9, 1999; 65 FR 16492, Mar. 28, 2000]

§ 320.2 Authorities to issue permits.

(a) Section 9 of the Rivers and Harbors Act, approved March 3, 1899 (33 U.S.C. 401) (hereinafter referred to as section 9), prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that state if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit (See 33 CFR part 321.) Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (49 U.S.C. 1155g(6)(A)). A DA permit pursuant to section 404 of the Clean Water Act is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways. (See 33 CFR part 323.)

(b) Section 10 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 403) (hereinafter referred to as section 10), prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf, by section 4(f) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)). (See 33 CFR part 322.)

(c) Section 11 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 404), authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads, or other works

may be extended or deposits made without approval of the Secretary of the Army. Effective May 27, 1970, permits for work shoreward of those lines must be obtained in accordance with section 10 and, if applicable, section 404 of the Clean Water Act (see § 320.4(o) of this part).

(d) Section 13 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 407), provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency (EPA), and the states under sections 402 and 405 of the Clean Water Act, (33 U.S.C. 1342 and 1345). (See 40 CFR parts 124 and 125.)

(e) Section 14 of the Rivers and Harbors Act approved March 3, 1899, (33 U.S.C. 408), provides that the Secretary of the Army, on the recommendation of the Chief of Engineers, may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter referred to as section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. (See 33 CFR part 323.) The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of EPA in conjunction with the Secretary of the Army and published in 40 CFR part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation and anchorage of such a prohibition in reaching his decision. Furthermore, the Administrator can deny, prohibit, restrict or withdraw the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. (See 40 CFR part 230).

(g) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as section 103), authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearing, for the transportation of dredged material for the purpose of disposal in the ocean where it is determined that the disposal will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The selection of disposal sites will be in accordance with criteria developed by the Administrator of the EPA in consultation with the Secretary of the Army and published in 40 CFR parts 220 through 229. However, similar to the EPA Administrator's limiting authority cited in paragraph (f) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the disposal of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas. (See 33 CFR part 324).

§ 320.3 Related laws.

(a) Section 401 of the Clean Water Act (33 U.S.C. 1341) requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected

waters at the point where the discharge originates or would originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires federal agencies conducting activities, including development projects, directly affecting a state's coastal zone, to comply to the maximum extent practicable with an approved state coastal zone management program. Indian tribes doing work on federal lands will be treated as a federal agency for the purpose of the Coastal Zone Management Act. The Act also requires any non-federal applicant for a federal license or permit to conduct an activity affecting land or water uses in the state's coastal zone to furnish a certification that the proposed activity will comply with the state's coastal zone management program. Generally, no permit will be issued until the state has concurred with the non-federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the state's coastal zone management program. (See 15 CFR part 930.)

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1432), authorizes the Secretary of Commerce, after consultation with other interested federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters, of the Great Lakes and their connecting waters, or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that ''to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) All agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations * * *''. (See Appendix B of 33 CFR part 325.)

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, *et seq.*), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g), the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and other acts express the will of Congress to protect the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, and with the head of the appropriate state agency exercising administration over the wildlife resources of the affected state.

(f) The Federal Power Act of 1920 (16 U.S.C. 791a *et seq.*), as amended, authorizes the Federal Energy Regulatory Agency (FERC) to issue licenses for the construction and the operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project. However, where such structures will affect the navigable capacity of any navigable water of the United States (as defined in 16

U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a DA recommendation to FERC for the inclusion of appropriate provisions in the FERC license rather than the issuance of a separate DA permit under 33 U.S.C. 401 *et seq*. As to any other activities in navigable waters not constituting construction and the operation and maintenance of physical structures licensed by FERC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 *et seq*. remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of disposal in ocean waters, section 404 or section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for such listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 *et seq*.), which amends the Act of June 27, 1960. By this Act, whenever a federal construction project or federally licensed project, activity, or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project.

(h) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq*.) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 U.S.C. 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires DA authorization, the property report is required by Housing and Urban Development regulation to state whether or not a permit for the development has been applied for, issued, or denied by the Corps of Engineers under section 10 or section 404. The property report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act (16 U.S.C. 1531 *et seq*.) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, use their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized, funded, or carried out by the Agency is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of the Interior or Commerce, as appropriate, to be critical. (See 50 CFR part 17 and 50 CFR part 402.)

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq*.) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all federal authorizations required for the ownership, construction,

and operation of a deepwater port, including applications for section 10, section 404 and section 103 permits which may also be required pursuant to the authorities listed in § 320.2 and the policies specified in § 320.4 of this part.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.

(m) The Ocean Thermal Energy Conversion Act of 1980, (42 U.S.C. section 9101 *et seq.*) establishes a licensing regime administered by the Administrator of NOAA for the ownership, construction, location, and operation of ocean thermal energy conversion (OTEC) facilities and plantships. An application for an OTEC license filed with the Administrator constitutes an application for all federal authorizations required for ownership, construction, location, and operation of an OTEC facility or plantship, except for certain activities within the jurisdiction of the Coast Guard. This includes applications for section 10, section 404, section 103 and other DA authorizations which may be required.

(n) Section 402 of the Clean Water Act authorizes EPA to issue permits under procedures established to implement the National Pollutant Discharge Elimination System (NPDES) program. The administration of this program can be, and in most cases has been, delegated to individual states. Section 402(b)(6) states that no NPDES permit will be issued if the Chief of Engineers, acting for the Secretary of the Army and after consulting with the U.S. Coast Guard, determines that navigation and anchorage in any navigable water will be substantially impaired as a result of a proposed activity.

(o) The National Fishing Enhancement Act of 1984 (Pub. L. 98–623) provides for the development of a National Artificial Reef Plan to promote and facilitate responsible and effective efforts to establish artificial reefs. The Act establishes procedures to be followed by the Corps in issuing DA permits for artificial reefs. The Act also establishes the liability of the permittee and the United States. The Act further creates a civil penalty for violation of any provision of a permit issued for an artificial reef.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for DA permits. Additional policies specifically applicable to certain types of activities are identified in 33 CFR parts 321 through 324.

(a) *Public Interest Review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of this general balancing process. That

decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines and criteria (see §§320.2 and 320.3), a permit will be granted unless the district engineer determines that it would be contrary to the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work:

(ii) Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work; and

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited.

(3) The specific weight of each factor is determined by its importance and relevance to the particular proposal. Accordingly, how important a factor is and how much consideration it deserves will vary with each proposal. A specific factor may be given great weight on one proposal, while it may not be present or as important on another. However, full consideration and appropriate weight will be given to all comments, including those of federal, state, and local agencies, and other experts on matters within their expertise.

(b) *Effect on wetlands.* (1) Most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. For projects to be undertaken or partially or entirely funded by a federal, state, or local agency, additional requirements on wetlands considerations are stated in Executive Order 11990, dated 24 May 1977.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are ground water discharge areas that maintain minimum baseflows important to aquatic resources and those which are prime natural recharge areas;

(vii) Wetlands which serve significant water purification functions; and

(viii) Wetlands which are unique in nature or scarce in quantity to the region or local area.

(3) Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made

will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. In addition, the district engineer may undertake, where appropriate, reviews of particular wetland areas in consultation with the Regional Director of the U. S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3), of this section unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the section 404(b)(1) guidelines (40 CFR part 230.10(a) (1), (2), (3)).

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90–454, and state regulatory laws or programs for classification and protection of wetlands will be considered.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (paragraph 320.3(e) of this section) district engineers will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. The Army will give full consideration to the views of those agencies on fish and wildlife matters in deciding on the issuance, denial, or conditioning of individual or general permits.

(d) *Water quality.* Applications for permits for activities which may adversely affect the quality of waters of the United States will be evaluated for compliance with applicable effluent limitations and water quality standards, during the construction and subsequent operation of the proposed activity. The evaluation should include the consideration of both point and non-point sources of pollution. It should be noted, however, that the Clean Water Act assigns responsibility for control of non-point sources of pollution to the states. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration.

(e) *Historic, cultural, scenic, and recreational values.* Applications for DA permits may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on values such as those associated with wild and scenic rivers, historic properties and National Landmarks, National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, estuarine and marine sanctuaries, archeological resources, including Indian religious or cultural sites, and such other areas as may be established under federal or state law for similar and related purposes. Recognition of those values is often reflected by state, regional, or local land use classifications, or by similar federal controls or policies. Action on permit applications should, insofar as possible, be consistent with, and avoid significant adverse effects on the values or purposes for which those classifications, controls, or policies were established.

(f) *Effects on limits of the territorial sea.* Structures or work affecting coastal

waters may modify the coast line or base line from which the territorial sea is measured for purposes of the Submerged Lands Act and international law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore (the Submerged Lands Act, 43 U.S.C. 1301(a) and *United States* v. *California*, 381 U.S.C. 139 (1965), 382 U.S. 448 (1966)). Applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The district engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, DC 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the administrative record of the application. After completion of standard processing procedures, the record will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Consideration of property ownership*. Authorization of work or structures by DA does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) An inherent aspect of property ownership is a right to reasonable private use. However, this right is subject to the rights and interests of the public in the navigable and other waters of the United States, including the federal navigation servitude and federal regulation for environmental protection.

(2) Because a landowner has the general right to protect property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appears contrary to the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

(3) A riparian landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby riparian landowners and to the general public's right of navigation on the water surface. In the case of proposals which create undue interference with access to, or use of, navigable waters, the authorization will generally be denied.

(4) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR part 329) and may interfere with an authorized federal project, the applicant should be apprised in writing of the fact and of the possibility that a federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the Rivers and Harbors Act of 1899 or by section 404 of the Clean Water Act which may be caused by, or result from, future operations undertaken by the Government for the conservation or improvement of navigation or for other purposes, and no claims or right to compensation will accrue from any such damage.

(5) Proposed activities in the area of a federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(6) A DA permit does not convey any property rights, either in real estate or material, or any exclusive privileges. Furthermore, a DA permit does not authorize any injury to property or invasion of rights or any infringement of Federal, state or local laws or regulations. The applicant's signature on an application is an affirmation that the

applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application. The district engineer will not enter into disputes but will remind the applicant of the above. The dispute over property ownership will not be a factor in the Corps public interest decision.

(h) *Activities affecting coastal zones.* Applications for DA permits for activities affecting the coastal zones of those states having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate state agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency and Indian tribe applicants for DA permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved state coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for DA authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(j) *Other Federal, state, or local requirements.* (1) Processing of an application for a DA permit normally will proceed concurrently with the processing of other required Federal, state, and/or local authorizations or certifications. Final action on the DA permit will normally not be delayed pending action by another Federal, state or local agency (See 33 CFR 325.2 (d)(4)). However, where the required Federal, state and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application, the district engineer will, after considering the likelihood of subsequent approval of the other authorization and/or certification and the time and effort remaining to complete processing the Army permit application, either immediately deny the Army permit without prejudice or continue processing the application to a conclusion. If the district engineer continues processing the application, he will conclude by either denying the permit as contrary to the public interest, or denying it without prejudice indicating that except for the other Federal, state or local denial the Army permit could, under appropriate conditions, be issued. Denial without prejudice means that there is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state and/or local agency on a previously denied authorization and/or certification. Even if official certification and/or authorization is not required by state or federal law, but a state, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such

issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

(3) A proposed activity may result in conflicting comments from several agencies within the same state. Where a state has not designated a single responsible coordinating agency, district engineers will ask the Governor to express his views or to designate one state agency to represent the official state position in the particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the evaluation of the permit application, a permit will generally be issued following receipt of a favorable state determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR parts 320–324, and the applicable statutes have been considered and followed: e.g., the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the Clean Water Act, the Archeological Resources Act, and the American Indian Religious Freedom Act. Similarly, a permit will generally be issued for Federal and Federally-authorized activities; another federal agency's determination to proceed is entitled to substantial consideration in the Corps' public interest review.

(5) Where general permits to avoid duplication are not practical, district engineers shall develop joint procedures with those local, state, and other Federal agencies having ongoing permit programs for activities also regulated by the Department of the Army. In such cases, applications for DA permits may be processed jointly with the state or other federal applications to an independent conclusion and decision by the district engineer and the appropriate Federal or state agency. (See 33 CFR 325.2(e).)

(6) The district engineer shall develop operating procedures for establishing official communications with Indian Tribes within the district. The procedures shall provide for appointment of a tribal representative who will receive all pertinent public notices, and respond to such notices with the official tribal position on the proposed activity. This procedure shall apply only to those tribes which accept this option. Any adopted operating procedures shall be distributed by public notice to inform the tribes of this option.

(k) *Safety of impoundment structures.* To insure that all impoundment structures are designed for safety, non-Federal applicants may be required to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons and, in appropriate cases, that the design has been independently reviewed (and modified as the review would indicate) by similarly qualified persons.

(l) Floodplain management. (1) Floodplains possess significant natural values and carry out numerous functions important to the public interest. These include:

(i) Water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge);

(ii) Living resource values (fish, wildlife, and plant resources);

(iii) Cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation); and

(iv) Cultivated resource values (agriculture, aquaculture, and forestry).

(2) Although a particular alteration to a floodplain may constitute a minor change, the cumulative impact of such changes may result in a significant degradation of floodplain values and functions and in increased potential for harm to upstream and downstream activities. In accordance with the requirements of Executive Order 11988, district engineers, as part of their public interest review, should avoid to the extent practicable, long and short term significant adverse impacts associated with the occupancy and modification of

floodplains, as well as the direct and indirect support of floodplain development whenever there is a practicable alternative. For those activities which in the public interest must occur in or impact upon floodplains, the district engineer shall ensure, to the maximum extent practicable, that the impacts of potential flooding on human health, safety, and welfare are minimized, the risks of flood losses are minimized, and, whenever practicable the natural and beneficial values served by floodplains are restored and preserved.

(3) In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no such practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain.

(m) *Water supply and conservation.* Water is an essential resource, basic to human survival, economic growth, and the natural environment. Water conservation requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements. Actions affecting water quantities are subject to Congressional policy as stated in section 101(g) of the Clean Water Act which provides that the authority of states to allocate water quantities shall not be superseded, abrogated, or otherwise impaired.

(n) *Energy conservation and development.* Energy conservation and development are major national objectives. District engineers will give high priority to the processing of permit actions involving energy projects.

(o) *Navigation.* (1) Section 11 of the Rivers and Harbors Act of 1899 authorized establishment of harbor lines shoreward of which no individual permits were required. Because harbor lines were established on the basis of navigation impacts only, the Corps of Engineers published a regulation on 27 May 1970 (33 CFR 209.150) which declared that permits would thereafter be required for activities shoreward of the harbor lines. Review of applications would be based on a full public interest evaluation and harbor lines would serve as guidance for assessing navigation impacts. Accordingly, activities constructed shoreward of harbor lines prior to 27 May 1970 do not require specific authorization.

(2) The policy of considering harbor lines as guidance for assessing impacts on navigation continues.

(3) Protection of navigation in all navigable waters of the United States continues to be a primary concern of the federal government.

(4) District engineers should protect navigational and anchorage interests in connection with the NPDES program by recommending to EPA or to the state, if the program has been delegated, that a permit be denied unless appropriate conditions can be included to avoid any substantial impairment of navigation and anchorage.

(p) *Environmental benefits.* Some activities that require Department of the Army permits result in beneficial effects to the quality of the environment. The district engineer will weigh these benefits as well as environmental detriments along with other factors of the public interest.

(q) *Economics.* When private enterprise makes application for a permit, it will generally be assumed that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place. However, the district engineer in appropriate cases, may make an independent review of the need for the project from the perspective of the overall public interest. The economic benefits of many projects are important to the local community and contribute to needed improvements in the local economic base, affecting such factors as employment, tax revenues, community cohesion, community services, and property values. Many projects also contribute to the National Economic Development (NED), (*i.e.*, the increase in the net value of the national output of goods and services).

(r) *Mitigation.*[1] (1) Mitigation is an important aspect of the review and balancing process on many Department of the Army permit applications. Consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses. Losses will be avoided to the extent practicable. Compensation may occur on-site or at an off-site location. Mitigation requirements generally fall into three categories.

(i) Project modifications to minimize adverse project impacts should be discussed with the applicant at pre-application meetings and during application processing. As a result of these discussions and as the district engineer's evaluation proceeds, the district engineer may require minor project modifications. Minor project modifications are those that are considered feasible (cost, constructability, etc.) to the applicant and that, if adopted, will result in a project that generally meets the applicant's purpose and need. Such modifications can include reductions in scope and size; changes in construction methods, materials or timing; and operation and maintenance practices or other similar modifications that reflect a sensitivity to environmental quality within the context of the work proposed. For example, erosion control features could be required on a fill project to reduce sedimentation impacts or a pier could be reoriented to minimize navigational problems even though those projects may satisfy all legal requirements (paragraph (r)(1)(ii) of this section) and the public interest review test (paragraph (r)(1)(iii) of this section) without such modifications.

(ii) Further mitigation measures may be required to satisfy legal requirements. For Section 404 applications, mitigation shall be required to ensure that the project complies with the 404(b)(1) Guidelines. Some mitigation measures are enumerated at 40 CFR 230.70 through 40 CFR 230.77 (Subpart H of the 404(b)(1) Guidelines).

(iii) Mitigation measures in addition to those under paragraphs (r)(1) (i) and (ii) of this section may be required as a result of the public interest review process. (See 33 CFR 325.4(a).) Mitigation should be developed and incorporated within the public interest review process to the extent that the mitigation is found by the district engineer to be reasonable and justified. Only those measures required to ensure that the project is not contrary to the public interest may be required under this subparagraph.

(2) All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable. District engineers will require all forms of mitigation, including compensatory mitigation, only as provided in paragraphs (r)(1) (i) through (iii) of this section. Additional mitigation may be added at the applicants' request.

[1] This is a general statement of mitigation policy which applies to all Corps of Engineers regulatory authorities covered by these regulations (33 CFR parts 320–330). It is not a substitute for the mitigation requirements necessary to ensure that a permit action under section 404 of the Clean Water Act complies with the section 404(b)(1) Guidelines. There is currently an interagency Working Group formed to develop guidance on implementing mitigation requirements of the Guidelines.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.

321.1 General.
321.2 Definitions.
321.3 Special policies and procedures.

AUTHORITY: 33 U.S.C. 401.

SOURCE: 51 FR 41227, Nov. 13, 1986, unless otherwise noted.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR part 320 and procedures of 33 CFR part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with

the review of applications for Department of the Army (DA) permits to authorize the construction of a dike or dam in a navigable water of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require DA permits under section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). Applicants for DA permits under this part should also refer to 33 CFR part 323 to satisfy the requirements of section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term *navigable waters of the United States* means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR part 329 for a more complete definition of this term.

(b) The term *dike or dam* means, for the purposes of section 9, any impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce. The term does not include a weir. Weirs are regulated pursuant to section 10 of the Rivers and Harbors Act of 1899. (See 33 CFR part 322.)

§ 321.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of permit applications under this regulation:

(a) The Assistant Secretary of the Army (Civil Works) will decide whether DA authorization for a dam or dike in an interstate navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the district engineer when forwarding the report to the Assistant Secretary of the Army (Civil Works), through the Chief of Engineers.

(b) District engineers are authorized to decide whether DA authorization for a dam or dike in an intrastate navigable water of the United States will be issued (see 33 CFR 325.8).

(c) Processing a DA application under section 9 will not be completed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate state legislature has been obtained if the navigable water of the United States is an intrastate waterbody (*i.e.*, the navigable portion of the navigable water of the United States is solely within the boundaries of one state). The district engineer, upon receipt of such an application, will notify the applicant that the consent of Congress or the state legislature must be obtained before a permit can be issued.

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.
322.1 General.
322.2 Definitions.
322.3 Activities requiring permits.
322.4 Activities not requiring permits.
322.5 Special policies.

AUTHORITY: 33 U.S.C. 403.

SOURCE: 51 FR 41228, Nov. 13, 1986, unless otherwise noted.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR part 320 and procedures of 33 CFR part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize certain structures or work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) (hereinafter referred to as section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the DA. These include discharges of dredged or fill material into waters of

the United States, including the territorial seas, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; see 33 CFR part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR part 324). A DA permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for DA permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term *navigable waters of the United States* and all other terms relating to the geographic scope of jurisdiction are defined at 33 CFR part 329. Generally, they are those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

(b) The term *structure* shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

(c) The term *work* shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term *letter of permission* means a type of individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.2(e).

(e) The term *individual permit* means a DA authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR part 325, and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR part 320.

(f) The term *general permit* means a DA authorization that is issued on a nationwide or regional basis for a category or categories of activities when:

(1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) The general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR part 330.)

(g) The term *artificial reef* means a structure which is constructed or placed in the navigable waters of the United States or in the waters overlying the outer continental shelf for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities. The term does not include activities or structures such as wing deflectors, bank stabilization, grade stabilization structures, or low flow key ways, all of which may be useful to enhance fisheries resources.

§ 322.3 Activities requiring permits.

(a) *General*. DA permits are required under section 10 for structures and/or work in or affecting navigable waters of the United States except as otherwise provided in § 322.4 below. Certain activities specified in 33 CFR part 330 are permitted by that regulation (''nationwide general permits''). Other activities may be authorized by district or division engineers on a regional basis (''regional general permits''). If an activity is not exempted by section 322.4 of this part or authorized by a general permit, an individual section 10 permit will be required for the proposed activity. Structures or work are in navigable waters of the United States if they are within limits defined in 33 CFR part 329. Structures or work outside these limits are subject to the

provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on its navigable capacity. For purposes of a section 10 permit, a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(b) *Outer continental shelf.* DA permits are required for the construction of artificial islands, installations, and other devices on the seabed, to the seaward limit of the outer continental shelf, pursuant to section 4(f) of the Outer Continental Shelf Lands Act as amended. (See 33 CFR 320.2(b).)

(c) *Activities of Federal agencies.* (1) Except as specifically provided in this paragraph, activities of the type described in paragraphs (a) and (b) of this section, done by or on behalf of any Federal agency are subject to the authorization procedures of these regulations. Work or structures in or affecting navigable waters of the United States that are part of the civil works activities of the Corps of Engineers, unless covered by a nationwide or regional general permit issued pursuant to these regulations, are subject to the procedures of separate regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and district engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(2) Congress has delegated to the Secretary of the Army in section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States, upon recommendation of the Chief of Engineers. The general legislation by which Federal agencies are enpowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of section 10. If an agency asserts that it has Congressional authorization meeting the test of section 10 or would otherwise be exempt from the provisions of section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(3) The policy provisions set out in 33 CFR 320.4(j) relating to state or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy, e.g., section 313 and section 401 of the Clean Water Act.

§ 322.4 Activities not requiring permits.

(a) Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR 320.4(o)) do not require section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a section 404 permit is required. (See 33 CFR part 323.)

(b) Pursuant to section 154 of the Water Resource Development Act of 1976 (Pub. L. 94–587), Department of the Army permits are not required under section 10 to construct wharves and piers in any waterbody, located entirely within one state, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce.

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 10 permits. The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* DA permits are required for structures or work in or affecting navigable waters of the United States. However, certain structures or work

specified in 33 CFR part 330 are permitted by that regulation. If a structure or work is not permitted by that regulation, an individual or regional section 10 permit will be required.

(b) *Artificial Reefs.* (1) When considering an application for an artificial reef, as defined in 33 CFR 322.2(g), the district engineer will review the applicant's provisions for siting, constructing, monitoring, operating, maintaining, and managing the proposed artificial reef and shall determine if those provisions are consistent with the following standards:

(i) The enhancement of fishery resources to the maximum extent practicable;

(ii) The facilitation of access and utilization by United States recreational and commercial fishermen;

(iii) The minimization of conflicts among competing uses of the navigable waters or waters overlying the outer continental shelf and of the resources in such waters;

(iv) The minimization of environmental risks and risks to personal health and property;

(v) Generally accepted principles of international law; and

(vi) the prevention of any unreasonable obstructions to navigation. If the district engineer decides that the applicant's provisions are not consistent with these standards, he shall deny the permit. If the district engineer decides that the provisions are consistent with these standards, and if he decides to issue the permit after the public interest review, he shall make the provisions part of the permit.

(2) In addition, the district engineer will consider the National Artificial Reef Plan developed pursuant to section 204 of the National Fishing Enhancement Act of 1984, and if he decides to issue the permit, will notify the Secretary of Commerce of any need to deviate from that plan.

(3) The district engineer will comply with all coordination provisions required by a written agreement between the DOD and the Federal agencies relative to artificial reefs. In addition, if the district engineer decides that further consultation beyond the normal public commenting process is required to evaluate fully the proposed artificial reef, he may initiate such consultation with any Federal agency, state or local government, or other interested party.

(4) The district engineer will issue a permit for the proposed artificial reef only if the applicant demonstrates, to the district engineer's satisfaction, that the title to the artificial reef construction material is unambiguous, that responsibility for maintenance of the reef is clearly established, and that he has the financial ability to assume liability for all damages that may arise with respect to the proposed artificial reef. A demonstration of financial responsibility might include evidence of insurance, sponsorship, or available assets.

(i) A person to whom a permit is issued in accordance with these regulations and any insurer of that person shall not be liable for damages caused by activities required to be undertaken under any terms and conditions of the permit, if the permittee is in compliance with such terms and conditions.

(ii) A person to whom a permit is issued in accordance with these regulations and any insurer of that person shall be liable, to the extent determined under applicable law, for damages to which paragraph (i) does not apply.

(iii) Any person who has transferred title to artificial reef construction materials to a person to whom a permit is issued in accordance with these regulations shall not be liable for damages arising from the use of such materials in an artificial reef, if such materials meet applicable requirements of the plan published under section 204 of the National Artificial Reef Plan, and are not otherwise defective at the time title is transferred.

(c) *Non-Federal dredging for navigation.* (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging access channels to docks and berthing facilities or deepening such channels to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation

projects and, to the maximum practical extent, will be coordinated with interested Federal, state, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with these regulations. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will be accorded to the fullest extent possible to both Federal and non-Federal operations. Permits for non-Federal dredging operations will normally contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation may also authorize the periodic maintenance dredging of the project. Authorization procedures and limitations for maintenance dredging shall be as prescribed in 33 CFR 325.6(e). The permit will require the permittee to give advance notice to the district engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the procedures in 33 CFR parts 323 and 324 respectively shall also be followed.

(d) *Structures for small boats.* (1) In the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District engineers will inform applicants of the hazards involved and encourage safety in location, design, and operation. District engineers will encourage cooperative or group use facilities in lieu of individual proprietary use facilities.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a resource manager are normally subject to permit authorities cited in § 322.3, of this section, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake resource manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the Rivers and Harbors Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of its control of marking, lighting and standardization of such navigation aids. A Section 10 nationwide permit has been issued for such aids provided they are approved by, and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR 330.5(a)(1)). Electrical service cables to such aids are not included in the nationwide permit (an individual or regional Section 10 permit will be required).

(f) *Outer continental shelf.* Artificial islands, installations, and other devices

located on the seabed, to the seaward limit of the outer continental shelf, are subject to the standard permit procedures of this regulation. Where the islands, installations and other devices are to be constructed on lands which are under mineral lease from the Mineral Management Service, Department of the Interior, that agency, in cooperation with other federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) *Canals and other artificial waterways connected to navigable waters of the United States.* A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, of this part, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, location, condition, or capacity, or if at some point in its construction or operation it results in an effect on the course, location, condition, or capacity of navigable waters of the United States. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of these regulations. For all other canals, the exercise of regulatory authority is restricted to those activities which affect the course, location, condition, or capacity of the navigable waters of the United States. The district engineer will consider, for applications for canal work, a proposed plan of the entire development and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural gas to or from a foreign country, must be made to the Secretary of Energy. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), as amended by Executive Order 12038, February 3, 1978, and 18 CFR parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways, and similar facilities for the transportation of persons and/or things, to or from a foreign country. (Executive Order 11423, August 16, 1968).

(5) A DA permit under section 10 of the Rivers and Harbors Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the district engineer, in evaluating the general public interest, may consider the basic existence and operation of the facility to have been primarily examined and permitted as provided by the Executive Orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States

or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate DA authorizations under section 404 of the Clean Water Act or under section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required. (See 33 CFR parts 323 and 324.)

(i) *Power transmission lines.* (1) Permits under section 10 of the Rivers and Harbors Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Department of Energy under the Federal Power Act of 1920. If an application is received for a permit for lines which are part of such a water power project, the applicant will be instructed to submit the application to the Department of Energy. If the lines are not part of such a water power project, the application will be processed in accordance with the procedures of these regulations.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

Nominal system voltage, kV	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750–765	45

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

(4) Corps of Engineer regulation ER 1110–2–4401 prescribes minimum vertical clearances for power and communication lines over Corps lake projects. In instances where both this regulation and ER 1110–2–4401 apply, the greater minimum clearance is required.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require DA permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, district engineer, and other interested parties as to the effects of the proposal on the use of airspace. The district engineer will, therefore, refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to its recommendations when evaluating the general public interest.

(3) If the seaplane base would serve air carriers licensed by the Department of Transportation, the applicant must receive an airport operating certificate from the FAA. That certificate reflects a determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the district engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(4) For regulations pertaining to seaplane landings at Corps of Engineers projects, see 36 CFR 327.4.

(k) *Foreign trade zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. 81a to 81u, as anended) authorizes the establishnent of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant

and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published at Title 15 of the Code of Federal Regulations, part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the district engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of these regulations. Evaluation by a district engineer of a permit application may give recognition to the consideration by the Board of the general econonic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

(l) *Shipping safety fairways and anchorage areas.* DA permits are required for structures located within shipping safety fairways and anchorage areas established by the U.S. Coast Guard.

(1) The Department of the Army will grant no permits for the erection of structures in areas designated as fairways, except that district engineers may permit anchors and attendant cables or chains for floating or semisubmersible drilling rigs to be placed within a fairway provided the following conditions are met:

(i) The purpose of such anchors and attendant cables or chains as used in this section is to stabilize floating production facilities or semisubmersible drilling rigs which are located outside the boundaries of the fairway.

(ii) In water depths of 600 feet or less, the installation of anchors and attendant cables or chains within fairways must be temporary and shall be allowed to remain only 120 days. This period may be extended by the district engineer provided reasonable cause for such extension can be shown and the extension is otherwise justified. In water depths greater than 600 feet, time restrictions on anchors and attendant cables or chains located within a fairway, whether temporary or permanent, shall not apply.

(iii) Drilling rigs must be at least 500 feet from any fairway boundary or whatever distance necessary to insure that minimnum clearance over an anchor line within a fairway will be 125 feet.

(iv) No anchor buoys or floats or related rigging will be allowed on the surface of the water or to a depth of 125 feet from the surface, within the fairway.

(v) Drilling rigs may not be placed closer than 2 nautical miles of any other drilling rig situated along a fairway boundary, and not closer than 3 nautical miles to any drilling rig located on the opposite side of the fairway.

(vi) The permittee must notify the district engineer, Bureau of Land Management, Mineral Management Service, U.S. Coast Guard, National Oceanic and Atmospheric Administration and the U.S. Navy Hydrographic Office of the approximate dates (commencenent and completion) the anchors will be in place to insure maximum notification to mariners.

(vii) Navigation aids or danger markings must be installed as required by the U.S. Coast Guard.

(2) District engineers may grant permits for the erection of structures within an area designated as an anchorage area, but the number of structures will be limited by spacing, as follows: The center of a structure to be erected shall be not less than two (2) nautical miles from the center of any existing structure. In a drilling or production complex, associated structures shall be as close together as practicable having due consideration for the safety factors involved. A complex of associated structures, when connected by walkways, shall be considered one structure for the purpose of spacing. A vessel fixed in place by moorings and used in conjunction with the associated structures of a drilling or production complex, shall be considered an attendant vessel and its extent shall include its moorings. When a drilling or production complex includes an attendant vessel and the complex extends more than five hundred (500) yards from the center or the complex, a structure to be erected shall be not closer than two (2) nautical miles from the near outer limit of the complex. An underwater completion installation in and anchorage area shall be considered a structure and shall be marked with a

lighted buoy as approved by the United States Coast Guard.

[51 FR 41228, Nov. 13, 1986, as amended at 60 FR 44761, Aug. 29, 1995]

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.
323.1 General.
323.2 Definitions.
323.3 Discharges requiring permits.
323.4 Discharges not requiring permits.
323.5 Program transfer to States.
323.6 Special policies and procedures.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 51 FR 41232, Nov. 13, 1986, unless otherwise noted.

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR part 320 and procedures of 33 CFR part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for DA permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) (hereinafter referred to as section 404). (See 33 CFR 320.2(g).) Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401; see 33 CFR part 321) and certain structures or work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; see 33 CFR part 322). A DA permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for DA permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this part, the following terms are defined:

(a) The term *waters of the United States* and all other terms relating to the geographic scope of jurisdiction are defined at 33 CFR part 328.

(b) The term *lake* means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(c) The term *dredged material* means material that is excavated or dredged from waters of the United States.

(d)(1) Except as provided below in paragraph (d)(3), the term *discharge of dredged material* means any addition of dredged material into, including redeposit of dredged material other than incidential fallback within, the waters of the United States. The term includes, but is not limited to, the following:

(i) The addition of dredged material to a specified discharge site located in waters of the United States;

(ii) The runoff or overflow from a contained land or water disposal area; and

(iii) Any addition, including redeposit other than incidential fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

(2)(i) The Corps and EPA regard the use of mechanized earth-moving equipment to conduct landclearing, ditching, channelization, in-stream mining

or other earth-moving activity in waters of the United States as resulting in a discharge of dredged material unless project-specific evidence shows that the activity results in only incidental fallback. This paragraph (i) does not and is not intended to shift any burden in any administrative or judicial proceeding under the CWA.

(ii) *Incidental fallback* is the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal. Examples of incidental fallback include soil that is disturbed when dirt is shoveled and the back-spill that comes off a bucket when such small volume of soil or dirt falls into substantially the same place from which it was initially removed.

(3) The term *discharge of dredged material* does not include the following:

(i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State section 404 program.

(ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chainsawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material.

(iii) Incidental fallback.

(4) Section 404 authorization is not required for the following:

(i) Any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the United States as defined in paragraphs (d)(5) and (d)(6) of this section; however, this exception does not apply to any person preparing to undertake mechanized landclearing, ditching, channelization and other excavation activity in a water of the United States, which would result in a redeposit of dredged material, unless the person demonstrates to the satisfaction of the Corps, or EPA as appropriate, prior to commencing the activity involving the discharge, that the activity would not have the effect of destroying or degrading any area of waters of the United States, as defined in paragraphs (d)(5) and (d)(6) of this section. The person proposing to undertake mechanized landclearing, ditching, channelization or other excavation activity bears the burden of demonstrating that such activity would not destroy or degrade any area of waters of the United States.

(ii) Incidental movement of dredged material occurring during normal dredging operations, defined as dredging for navigation in *navigable waters of the United States,* as that term is defined in part 329 of this chapter, with proper authorization from the Congress and/or the Corps pursuant to part 322 of this Chapter; however, this exception is not applicable to dredging activities in wetlands, as that term is defined at section 328.3 of this Chapter.

(iii) Certain discharges, such as those associated with normal farming, silviculture, and ranching activities, are not prohibited by or otherwise subject to regulation under section 404. See 33 CFR 323.4 for discharges that do not required permits.

(5) For purposes of this section, an activity associated with a discharge of dredged material destroys an area of waters of the United States if it alters the area in such a way that it would no longer be a water of the United States.

NOTE: Unauthorized discharges into waters of the United States do not eliminate Clean Water Act jurisdiction, even where such unauthorized discharges have the effect of destroying waters of the United States.

(6) For purposes of this section, an activity associated with a discharge of dredged material degrades an area of waters of the United States if it has more than a *de minimis* (*i.e.*, inconsequential) effect on the area by causing an identifiable individual or cumulative adverse effect on any aquatic function.

(e)(1) Except as specified in paragraph (e)(3) of this section, the term fill material means material placed in

waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

(f) The term *discharge of fill material* means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (See § 323.4 for the definition of these terms). See § 323.3(c) concerning the regulation of the placement of pilings in waters of the United States.

(g) The term *individual permit* means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this part and 33 CFR part 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR part 320.

(h) The term *general permit* means a Department of the Army authorization that is issued on a nationwide or regional basis for a category or categories of activities when:

(1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) The general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR part 330.)

[51 FR 41232, Nov. 13, 1986, as amended at 58 FR 45035, Aug. 25, 1993; 58 FR 48424, Sept. 15, 1993; 63 FR 25123, May 10, 1999; 66 FR 4574, Jan. 17, 2001; 66 FR 10367, Feb. 15, 2001; 67 FR 31142, May 9, 2002]

§ 323.3 Discharges requiring permits.

(a) *General*. Except as provided in § 323.4 of this part, DA permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in 33 CFR part 330 are permitted by that regulation (''nationwide permits''). Other discharges may be authorized by district or division engineers on a regional basis (''regional permits''). If a discharge of dredged or fill material is not exempted by § 323.4 of this part or permitted by 33 CFR part 330, an individual or regional section 404 permit will be required for the discharge of dredged or fill material into waters of the United States.

(b) *Activities of Federal agencies*. Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, other than the Corps of Engineers (see 33 CFR 209.145), are subject to the authorization procedures of these regulations. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the

regulations. Division and district engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in expediting the processing of their applications.

(c) *Pilings.* (1) Placement of pilings in waters of the United States constitutes a discharge of fill material and requires a section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: Projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions.

(2) Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material. All pilings, however, placed in the *navigable waters of the United States,* as that term is defined in part 329 of this chapter, require authorization under section 10 of the Rivers and Harbors Act of 1899 (see part 322 of this chapter).

[51 FR 41232, Nov. 13, 1986, as amended at 58 FR 45036, Aug. 25, 1993]

§ 323.4 Discharges not requiring permits.

(a) *General.* Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (*i.e.*, on-going) farming, silviculture, or ranching operation and must be in accordance with definitions in § 323.4(a)(1)(iii). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been coverted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) *Cultivating* means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) *Harvesting* means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(*1*) *Minor drainage* means:

(*i*) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling,

incidential to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.);

(*ii*) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species. (The provisions of paragraphs (a)(1)(iii)(C)(*1*) (*ii*) and (*iii*) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.)

(*iv*) The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

(*2*) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) *Plowing* means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(E) *Seeding* means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways,

bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term ''construction site'' refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of the CWA which meets the requirements of sections 208(b)(4) (B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the State's approved program description pursuant to the requirements of 40 CFR 233.22(i), and shall also include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species;

(x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1) through (6) of this section contains any toxic pollutant listed under section 307 of the CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a section 404 permit.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a) (1) through (6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States nay be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

(d) Federal projects which qualify under the criteria contained in section 404(r) of the CWA are exempt from section 404 permit requirements, but may be subject to other State or Federal requirements.

§ 323.5 Program transfer to States.

Section 404(h) of the CWA allows the Administrator of the Environmental Protection Agency (EPA) to transfer administration of the section 404 permit program for discharges into certain waters of the United States to qualified States. (The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto). See 40 CFR parts 233 and 124 for procedural regulations for transferring section 404 programs to States. Once a State's 404 program is approved and in effect, the Corps of Engineers will suspend processing of section 404 applications in the applicable waters and will transfer pending applications to the State agency responsible for administering the program. District engineers will assist EPA and the States in any way practicable to effect transfer and will develop appropriate procedures to ensure orderly and expeditious transfer.

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 404 permits. The district engineer will review applications for permits for the discharge of dredged or fill material into waters of the United States in accordance with guidelines promulgated by the Administrator, EPA, under authority of section 404(b)(1) of the CWA. (see 40 CFR part 230.) Subject to consideration of any economic impact on navigation and anchorage pursuant to

section 404(b)(2), a permit will be denied if the discharge that would be authorized by such a permit would not comply with the 404(b)(1) guidelines. If the district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

(b) The Corps will not issue a permit where the regional administrator of EPA has notified the district engineer and applicant in writing pursuant to 40 CFR 231.3(a)(1) that he intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, of any defined area as a disposal site in accordance with section 404(c) of the Clean Water Act. However the Corps will continue to complete the administrative processing of the application while the section 404(c) procedures are underway including completion of final coordination with EPA under 33 CFR part 325.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.
324.1 General.
324.2 Definitions.
324.3 Activities requiring permits.
324.4 Special procedures.

AUTHORITY: 33 U.S.C. 1413.

SOURCE: 51 FR 41235, Nov. 13, 1986, unless otherwise noted.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR part 320 and procedures of 33 CFR part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army (DA) permits to authorize the transportation of dredged material by vessel or other vehicle for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR part 228 pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require DA permits under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) for the dredging in navigable waters of the United States. Applicants for DA permits under this part should also refer to 33 CFR part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term *ocean waters* means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606: TIAS 5639).

(b) The term *dredged material* means any material excavated or dredged from navigable waters of the United States.

(c) The term *transport* or *transportation* refers to the conveyance and related handling of dredged material by a vessel or other vehicle.

§ 324.3 Activities requiring permits.

(a) *General.* DA permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of disposal in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers is subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under these regulations. Division and district engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for disposal in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to state or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance

with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are responsible for conformance with such laws and policies. (See EO 12088, October 18, 1978.) Federal agencies are not required to obtain and provide certification of compliance with effluent limitations and water quality standards from state or interstate water pollution control agencies in connection with activities involving the transport of dredged material for dumping into ocean waters beyond the territorial sea.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny section 103 permits. The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for section 103 permits, the district engineer will issue a public notice which shall contain the information specified in 33 CFR 325.3.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities. District engineers will apply the criteria established by the Administrator of EPA pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 in making this evaluation. (See 40 CFR parts 220–229) Where ocean dumping is determined to be necessary, the district engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to section 102(c) of the Act.

(c) *EPA review.* When the Regional Administrator, EPA, in accordance with 40 CFR 225.2(b), advises the district engineer, in writing, that the proposed dumping will comply with the criteria, the district engineer will complete his evaluation of the application under this part and 33 CFR parts 320 and 325. If, however, the Regional Administrator advises the district engineer, in writing, that the proposed dumping does not comply with the criteria, the district engineer will proceed as follows:

(1) The district engineer will determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate them in accordance with 33 CFR parts 320, 322, 323, and 325 and this part, as appropriate.

(2) If the district engineer determines that there is no economically feasible alternative method or site available, and the proposed project is otherwise found to be not contrary to the public interest, he will so advise the Regional Administrator setting forth his reasons for such determination. If the Regional Administrator has not removed his objection within 15 days, the district engineer will submit a report of his determination to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain the analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(d) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.

325.1 Applications for permits.
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AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 51 FR 41236, Nov. 13, 1986, unless otherwise noted.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this part apply to any Department of the Army (DA) permit. Special procedures and additional information are contained in 33 CFR parts 320 through 324, 327 and part 330. This part is arranged in the basic timing sequence used by the Corps of Engineers in processing applications for DA permits.

(b) *Pre-application consultation for major applications.* The district staff element having responsibility for administering, processing, and enforcing federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential applicants to contact the district engineer or the regulatory staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, state, or local) and the public. This early process should be brief but thorough so that the potential applicant may begin to assess the viability of some of the more obvious potential alternatives in the application. The district engineer will endeavor, at this stage, to provide the potential applicant with all helpful information necessary in pursuing the application, including factors which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a DA permit and which may involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential applicant indicates the intent to submit an application for work which may require the preparation of an environmental document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other actions, including the scoping process if appropriate, leading to a decision by the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each potential applicant or his consultants so as to assure that the potential applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for use in preparing an environmental assessment or an environmental impact statement (EIS) in accordance with 33 CFR part 230, Appendix B.

(c) *Application form.* Applicants for all individual DA permits must use the standard application form (ENG Form 4345, OMB Approval No. OMB 49–R0420). Local variations of the application form for purposes of facilitating coordination with federal, state and local agencies may be used. The appropriate form may be obtained from the district office having jurisdiction over the waters in which the activity is proposed to be located. Certain activities have been authorized by general permits and do not require submission of an application form but may require a separate notification.

(d) *Content of application.* (1) The application must include a complete description of the proposed activity including necessary drawings, sketches,

or plans sufficient for public notice (detailed engineering plans and specifications are not required); the location, purpose and need for the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made. See § 325.3 for information required to be in public notices. District and division engineers are not authorized to develop additional information forms but may request specific information on a case-by-case basis. (See § 325.1(e)).

(2) All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters the application must include the source of the material; the purpose of the discharge, a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. Certification under section 401 of the Clean Water Act is required for such discharges into waters of the United States.

(5) If the activity would include the construction of a filled area or pile or float-supported platform the project description must include the use of, and specific structures to be erected on, the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to demonstrate that the structure complies with established state dam safety criteria or that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similiarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(7) For activities involving discharges of dredged or fill material into waters of the United States, the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. (See § 332.4(b)(1) of this chapter.)

(8) *Signature on application*. The application must be signed by the person who desires to undertake the proposed activity (*i.e.*, the applicant) or by a duly authorized agent. When the applicant is represented by an agent, that information will be included in the space provided on the application or by a separate written statement. The signature of the applicant or the agent will be an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity proposed in the application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. An application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area and each owner submits a statement designating the same agent.

(9) If the activity would involve the construction or placement of an artificial reef, as defined in 33 CFR 322.2(g), in the navigable waters of the United

States or in the waters overlying the outer continental shelf, the application must include provisions for siting, constructing, monitoring, and managing the artificial reef.

(10) *Complete application.* An application will be determined to be complete when sufficient information is received to issue a public notice (See 33 CFR 325.1(d) and 325.3(a).) The issuance of a public notice will not be delayed to obtain information necessary to evaluate an application.

(e) *Additional information.* In addition to the information indicated in paragraph (d) of this section, the applicant will be required to furnish only such additional information as the district engineer deems essential to make a public interest determination including, where applicable, a determination of compliance with the section 404(b)(1) guidelines or ocean dumping criteria. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Fees.* Fees are required for permits under section 404 of the Clean Water Act, section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and sections 9 and 10 of the Rivers and Harbors Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to the basis for a fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws the application at any time prior to issuance of the permit or if the permit is denied. Collection of the fee will be deferred until the proposed activity has been determined to be not contrary to the public interest. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of federal, state or local governments will not be required to pay any fee in connection with permits.

[51 FR 41236, Nov. 13, 1986, as amended at 73 FR 19670, Apr. 10, 2008]

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and if the application is incomplete, request from the applicant within 15 days of receipt of the application any additional information necessary for further processing.

(2) Within 15 days of receipt of an application the district engineer will either determine that the application is complete (see 33 CFR 325.1(d)(9) and issue a public notice as described in § 325.3 of this part, unless specifically exempted by other provisions of this regulation or that it is incomplete and notify the applicant of the information necessary for a complete application. The district engineer will issue a supplemental, revised, or corrected public notice if in his view there is a change in the application data that would affect the public's review of the proposal.

(3) The district engineer will consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged, if appropriate, and they will be made a part of the administrative record of the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another federal agency, the district engineer may seek the advice of that agency. If the district

engineer determines, based on comments received, that he must have the views of the applicant on a particular issue to make a public interest determination, the applicant will be given the opportunity to furnish his views on such issue to the district engineer (see § 325.2(d)(5)). At the earliest practicable time other substantive comments will be furnished to the applicant for his information and any views he may wish to offer. A summary of the comments, the actual letters or portions thereof, or representative comment letters may be furnished to the applicant. The applicant may voluntarily elect to contact objectors in an attempt to resolve objections but will not be required to do so. District engineers will ensure that all parties are informed that the Corps alone is responsible for reaching a decision on the merits of any application. The district engineer may also offer Corps regulatory staff to be present at meetings between applicants and objectors, where appropriate, to provide information on the process, to mediate differences, or to gather information to aid in the decision process. The district engineer should not delay processing of the application unless the applicant requests a reasonable delay, normally not to exceed 30 days, to provide additional information or comments.

(4) The district engineer will follow Appendix B of 33 CFR part 230 for environmental procedures and documentation required by the National Environmental Policy Act of 1969. A decision on a permit application will require either an environmental assessment or an environmental impact statement unless it is included within a categorical exclusion.

(5) The district engineer will also evaluate the application to determine the need for a public hearing pursuant to 33 CFR part 327.

(6) After all above actions have been completed, the district engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a statement of findings (SOF) or, where an EIS has been prepared, a record of decision (ROD), on all permit decisions. The SOF or ROD shall include the district engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material into waters of the United States (40 CFR part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR parts 220 to 229), if applicable, and the conclusions of the district engineer. The SOF or ROD shall be dated, signed, and included in the record prior to final action on the application. Where the district engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the SOF or ROD. If a district engineer makes a decision on a permit application which is contrary to state or local decisions (33 CFR 320.4(j) (2) & (4)), the district engineer will include in the decision document the significant national issues and explain how they are overriding in importance. If a permit is warranted, the district engineer will determine the special conditions, if any, and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8 of this part, the district engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final EIS or environmental assessment, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in a format prescribed by the Chief of Engineers. District and division engineers will notify the applicant and interested federal and state agencies that the application has been forwarded to higher headquarters. The district or division engineer may, at his option, disclose his recommendation to the news media and other interested parties, with the caution that it is only a recommendation and not a final decision. Such disclosure is encouraged in permit cases which have become controversial and have been the subject of stories in the media or have generated strong public interest. In those cases where the application is forwarded for decision in the format prescribed by the Chief of Engineers, the report will serve as the SOF or ROD. District engineers will

generally combine the SOF, environmental assessment, and findings of no significant impact (FONSI), 404(b)(1) guideline analysis, and/or the criteria for dumping of dredged material in ocean waters into a single document.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason(s) for denial. If the final decision is to issue the permit and a standard individual permit form will be used, the issuing official will forward the permit to the applicant for signature accepting the conditions of the permit. The permit is not valid until signed by the issuing official. Letters of permission require only the signature of the issuing official. Final action on the permit application is the signature on the letter notifying the applicant of the denial of the permit or signature of the issuing official on the authorizing document.

(8) The district engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. It will also note that relevant environmental documents and the SOF's or ROD's are available upon written request and, where applicable, upon the payment of administrative fees. This list will be distributed to all persons who may have an interest in any of the public notices listed.

(9) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of artificial islands, installations or other devices on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390 Attention, Code NS12, and to the National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910–3282.

(ii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Defense Mapping Agency, Hydrographic Center and National Ocean Service as in paragraph (a)(9)(i) of this section and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iii) If the activity involves the erection of an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States, to the National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910–3282.

(iv) If the activity is listed in paragraphs (a)(9) (i), (ii), or (iii) of this section, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(b) *Procedures for particular types of permit situations*—(1) *Section 401 Water Quality Certification*. If the district engineer determines that water quality certification for the proposed activity is necessary under the provisions of section 401 of the Clean Water Act, he shall so notify the applicant and obtain from him or the certifying agency a copy of such certification.

(i) The public notice for such activity, which will contain a statement on certification requirements (see § 325.3(a)(8)), will serve as the notification to the Administrator of the Environmental Protection Agency (EPA) pursuant to section 401(a)(2) of the Clean Water Act. If EPA determines that the proposed discharge may affect the quality of the waters of any state other than the state in which the discharge will originate, it will so notify such other state, the district engineer, and the applicant. If such notice or a request for supplemental information is not received within 30 days of issuance of the public notice, the district engineer will assume EPA has made a negative determination with respect to section 401(a)(2). If EPA determines another state's waters may be affected, such state has 60 days from receipt of EPA's notice to determine if the proposed discharge will affect the quality of its waters so as to violate any water quality requirement in such state, to notify EPA and the district engineer in writing of its objection to permit issuance, and to request a public hearing. If such occurs, the district engineer will hold a public hearing in the objecting state. Except as stated

below, the hearing will be conducted in accordance with 33 CFR part 327. The issues to be considered at the public hearing will be limited to water quality impacts. EPA will submit its evaluation and recommendations at the hearing with respect to the state's objection to permit issuance. Based upon the recommendations of the objecting state, EPA, and any additional evidence presented at the hearing, the district engineer will condition the permit, if issued, in such a manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot, in the district engineer's opinion, insure such compliance, he will deny the permit.

(ii) No permit will be granted until required certification has been obtained or has been waived. A waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within sixty days after receipt of such a request unless the district engineer determines a shorter or longer period is reasonable for the state to act. In determining whether or not a waiver period has commenced or waiver has occurred, the district engineer will verify that the certifying agency has received a valid request for certification. If, however, special circumstances identified by the district engineer require that action on an application be taken within a more limited period of time, the district engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date, and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than sixty days, the district engineer, based on information provided by the certifying agency, will determine a longer reasonable period of time, not to exceed one year, at which time a waiver will be deemed to occur.

(2) *Coastal Zone Management consistency*. If the proposed activity is to be undertaken in a state operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management (CZM) Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows:

(i) If the applicant is a federal agency, and the application involves a federal activity in or affecting the coastal zone, the district engineer shall forward a copy of the public notice to the agency of the state responsible for reviewing the consistency of federal activities. The federal agency applicant shall be responsible for complying with the CZM Act's directive for ensuring that federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved CZM Programs. (See 15 CFR part 930.) If the state coastal zone agency objects to the proposed federal activity on the basis of its inconsistency with the state's approved CZM Program, the district engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the CZM Act for resolving such disagreements.

(ii) If the applicant is not a federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved state CZM Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the state coastal zone agency and request its concurrence or objection. If the state agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit until the state concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the CZM Act or is necessary in the interest of national security. If the state agency fails to concur or object to a certification statement within six months of the

state agency's receipt of the certification statement, state agency concurrence with the certification statement shall be conclusively presumed. District engineers will seek agreements with state CZM agencies that the agency's failure to provide comments during the public notice comment period will be considered as a concurrence with the certification or waiver of the right to concur or non-concur.

(iii) If the applicant is requesting a permit for work on Indian reservation lands which are in the coastal zone, the district engineer shall treat the application in the same manner as prescribed for a Federal applicant in paragraph (b)(2)(i) of this section. However, if the applicant is requesting a permit on non-trust Indian lands, and the state CZM agency has decided to assert jurisdiction over such lands, the district engineer shall treat the application in the same manner as prescribed for a non-Federal applicant in paragraph (b)(2)(ii) of this section.

(3) *Historic properties*. If the proposed activity would involve any property listed or eligible for listing in the National Register of Historic Places, the district engineer will proceed in accordance with Corps National Historic Preservation Act implementing regulations.

(4) *Activities associated with Federal projects*. If the proposed activity would consist of the dredging of an access channel and/or berthing facility associated with an authorized federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the federal project to the maximum extent feasible. Separate notice, hearing, and environmental documentation will not be required for activities so included and coordinated, and the public notice issued by the district engineer for these federal and associated non-federal activities will be the notice of intent to issue permits for those included non-federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(c).)

(5) *Endangered Species*. Applications will be reviewed for the potential impact on threatened or endangered species pursuant to section 7 of the Endangered Species Act as amended. The district engineer will include a statement in the public notice of his current knowledge of endangered species based on his initial review of the application (see 33 CFR 325.2(a)(2)). If the district engineer determines that the proposed activity would not affect listed species or their critical habitat, he will include a statement to this effect in the public notice. If he finds the proposed activity may affect an endangered or threatened species or their critical habitat, he will initiate formal consultation procedures with the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Public notices forwarded to the U.S. Fish and Wildlife Service or National Marine Fisheries Service will serve as the request for information on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to section 7(c) of the Act. References, definitions, and consultation procedures are found in 50 CFR part 402.

(c) [Reserved]

(d) *Timing of processing of applications*. The district engineer will be guided by the following time limits for the indicated steps in the evaluation process:

(1) The public notice will be issued within 15 days of receipt of all information required to be submitted by the applicant in accordance with paragraph 325.1.(d) of this part.

(2) The comment period on the public notice should be for a reasonable period of time within which interested parties may express their views concerning the permit. The comment period should not be more than 30 days nor less than 15 days from the date of the notice. Before designating comment periods less than 30 days, the district engineer will consider: (i) Whether the proposal is routine or noncontroversial,

(ii) Mail time and need for comments from remote areas,

(iii) Comments from similar proposals, and

(iv) The need for a site visit. After considering the length of the original

comment period, paragraphs (a)(2) (i) through (iv) of this section, and other pertinent factors, the district engineer may extend the comment period up to an additional 30 days if warranted.

(3) District engineers will decide on all applications not later than 60 days after receipt of a complete application, unless (i) precluded as a matter of law or procedures required by law (see below),

(ii) The case must be referred to higher authority (see § 325.8 of this part),

(iii) The comment period is extended,

(iv) A timely submittal of information or comments is not received from the applicant,

(v) The processing is suspended at the request of the applicant, or

(vi) Information needed by the district engineer for a decision on the application cannot reasonably be obtained within the 60-day period. Once the cause for preventing the decision from being made within the normal 60-day period has been satisfied or eliminated, the 60-day clock will start running again from where it was suspended. For example, if the comment period is extended by 30 days, the district engineer will, absent other restraints, decide on the application within 90 days of receipt of a complete application. Certain laws (e.g., the Clean Water Act, the CZM Act, the National Environmental Policy Act, the National Historic Preservation Act, the Preservation of Historical and Archeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the Marine Protection, Research and Sanctuaries Act) require procedures such as state or other federal agency certifications, public hearings, environmental impact statements, consultation, special studies, and testing which may prevent district engineers from being able to decide certain applications within 60 days.

(4) Once the district engineer has sufficient information to make his public interest determination, he should decide the permit application even though other agencies which may have regulatory jurisdiction have not yet granted their authorizations, except where such authorizations are, by federal law, a prerequisite to making a decision on the DA permit application. Permits granted prior to other (nonprerequisite) authorizations by other agencies should, where appropriate, be conditioned in such manner as to give those other authorities an opportunity to undertake their review without the applicant biasing such review by making substantial resource commitments on the basis of the DA permit. In unusual cases the district engineer may decide that due to the nature or scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the DA permit while deferring his final decision.

(5) The applicant will be given a reasonable time, not to exceed 30 days, to respond to requests of the district engineer. The district engineer may make such requests by certified letter and clearly inform the applicant that if he does not respond with the requested information or a justification why additional time is necessary, then his application will be considered withdrawn or a final decision will be made, whichever is appropriate. If additional time is requested, the district engineer will either grant the time, make a final decision, or consider the application as withdrawn.

(6) The time requirements in these regulations are in terms of calendar days rather than in terms of working days.

(e) *Alternative procedures.* Division and district engineers are authorized to use alternative procedures as follows:

(1) *Letters of permission.* Letters of permission are a type of permit issued through an abbreviated processing procedure which includes coordination with Federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. The letter of permission will not be used to authorize the transportation of dredged material for the purpose of dumping it in ocean waters. Letters of permission may be used:

(i) In those cases subject to section 10 of the Rivers and Harbors Act of 1899

when, in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition.

(ii) In those cases subject to section 404 of the Clean Water Act after:

(A) The district engineer, through consultation with Federal and state fish and wildlife agencies, the Regional Administrator, Environmental Protection Agency, the state water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures;

(B) The district engineer issues a public notice advertising the proposed list and the LOP procedures, requesting comments and offering an opportunity for public hearing; and

(C) A 401 certification has been issued or waived and, if appropriate, CZM consistency concurrence obtained or presumed either on a generic or individual basis.

(2) *Regional permits*. Regional permits are a type of general permit as defined in 33 CFR 322.2(f) and 33 CFR 323.2(n). They may be issued by a division or district engineer after compliance with the other procedures of this regulation. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation. The issuing authority will determine and add appropriate conditions to protect the public interest. When the issuing authority determines on a case-by-case basis that the concerns for the aquatic environment so indicate, he may exercise discretionary authority to override the regional permit and require an individual application and review. A regional permit may be revoked by the issuing authority if it is determined that it is contrary to the public interest provided the procedures of § 325.7 of this part are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years.

(3) *Joint procedures*. Division and district engineers are authorized and encouraged to develop joint procedures with states and other Federal agencies with ongoing permit programs for activities also regulated by the Department of the Army. Such procedures may be substituted for the procedures in paragraphs (a)(1) through (a)(5) of this section provided that the substantive requirements of those sections are maintained. Division and district engineers are also encouraged to develop management techniques such as joint agency review meetings to expedite the decision-making process. However, in doing so, the applicant's rights to a full public interest review and independent decision by the district or division engineer must be strictly observed.

(4) *Emergency procedures*. Division engineers are authorized to approve special processing procedures in emergency situations. An ''emergency'' is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. In emergency situations, the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, state, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published as soon as practicable.

[51 FR 41236, Nov. 13, 1986, as amended at 62 FR 26230, May 13, 1997]

§ 325.3 Public notice.

(a) *General*. The public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information

necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The name or title, address and telephone number of the Corps employee from whom additional information concerning the application may be obtained;

(4) The location of the proposed activity;

(5) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills or pile or float-supported platforms, and a description of the type, composition, and quantity of materials to be discharged or disposed of in the ocean;

(6) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(7) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(8) A list of other government authorizations obtained or requested by the applicant, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(9) If appropriate, a statement that the activity is a categorical exclusion for purposes of NEPA (see paragraph 7 of Appendix B to 33 CFR part 230);

(10) A statement of the district engineer's current knowledge on historic properties;

(11) A statement of the district engineer's current knowledge on endangered species (see § 325.2(b)(5));

(12) A statement(s) on evaluation factors (see § 325.3(c));

(13) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest;

(14) The comment period based on § 325.2(d)(2);

(15) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing;

(16) For non-federal applications in states with an approved CZM Plan, a statement on compliance with the approved Plan; and

(17) In addition, for section 103 (ocean dumping) activities:

(i) The specific location of the proposed disposal site and its physical boundaries;

(ii) A statement as to whether the proposed disposal site has been designated for use by the Administrator, EPA, pursuant to section 102(c) of the Act;

(iii) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(iv) A brief description of known dredged material discharges at the proposed disposal site;

(v) Existence and documented effects of other authorized disposals that have been made in the disposal area (e.g., heavy metal background reading and organic carbon content);

(vi) An estimate of the length of time during which disposal would continue at the proposed site; and

(vii) Information on the characteristics and composition of the dredged material.

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional general permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide

regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* A paragraph describing the various evaluation factors on which decisions are based shall be included in every public notice.

(1) Except as provided in paragraph (c)(3) of this section, the following will be included:

''The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.''

(2) If the activity would involve the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of disposing of it in ocean waters, the public notice shall also indicate that the evaluation of the inpact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, (40 CFR part 230) or of the criteria established under authority of section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR parts 220 to 229), as appropriate. (See 33 CFR parts 323 and 324).

(3) In cases involving construction of artificial islands, installations and other devices on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: ''The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security.''

(d) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate state agencies, to appropriate Indian Tribes or tribal representatives, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, to appropriate state and areawide clearing houses as prescribed by OMB Circular A–95, to local news media and to any other interested party. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the field representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the state agency responsible for fish and wildlife resources, the State Historic Preservation Officer, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addressees in appropriate cases as follows:

(i) If the activity would involve structures or dredging along the shores of the seas or Great Lakes, to the Coastal Engineering Research Center, Washington, DC 20016.

(ii) If the activity would involve construction of fixed structures or artificial islands on the outer continental shelf or in the territorial seas, to the Assistant Secretary of Defense (Manpower, Installations, and Logistics (ASD(MI&L)), Washington, DC 20310; the Director, Defense Mapping Agency (Hydrographic Center) Washington, DC 20390, Attention, Code NS12; and the National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910–3282, and to affected military installations and activities.

(iii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, DC 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity would be in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, DC 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the district engineer may request its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constitutent or himself, the district engineer will inform the member of Congress of the final decision.

(4) District engineers will update public notice mailing lists at least once every two years.

§ 325.4 Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be accomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds*. If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.5 Forms of permits.

(a) *General discussion*. (1) DA permits under this regulation will be in the form of individual permits or general permits. The basic format shall be ENG Form 1721, DA Permit (Appendix A).

(2) The general conditions included in ENG Form 1721 are normally applicable to all permits; however, some conditions may not apply to certain permits and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest in accordance with § 325.4 of this part.

(b) *Individual permits*—(1) *Standard permits*. A standard permit is one which has been processed through the public interest review procedures, including public notice and receipt of comments, described throughout this part. The standard individual permit shall be issued using ENG Form 1721.

(2) *Letters of permission*. A letter of permission will be issued where procedures of § 325.2(e)(1) have been followed. It will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority, any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the relevant general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits*—(1) *Regional permits*. Regional permits are a type of general permit. They may be issued by a division or district engineer after compliance with the other procedures of this regulation. If the public interest so requires, the issuing authority may condition the regional permit to require a case-by-case reporting and acknowledgment system. However, no separate applications or other authorization documents will be required.

(2) *Nationwide permits*. Nationwide permits are a type of general permit and represent DA authorizations that have been issued by the regulation (33 CFR part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit.

(3) *Programmatic permits*. Programmatic permits are a type of general permit founded on an existing state, local or other Federal agency program and designed to avoid duplication with that program.

(d) *Section 9 permits*. Permits for structures in interstate navigable waters of the United States under section 9 of the Rivers and Harbors Act of 1899 will be drafted at DA level.

§ 325.6 Duration of permits.

(a) *General*. DA permits may authorize both the work and the resulting use. Permits continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures*. Permits for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the permit will be of limited duration with a definite expiration date.

(c) *Works*. Permits for construction work, discharge of dredged or fill material, or other activity and any construction period for a structure with a permit of indefinite duration under paragraph (b) of this section will specify time limits for completing the work or activity. The permit may also specify a date by which the work must be started, normally within one year from the date of issuance. The date will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. Permits issued for the transport of dredged material for the purpose of disposing of it in ocean waters will specify a completion date for the disposal not to exceed three years from the date of permit issuance.

(d) *Extensions of time.* An authorization or construction period will automatically expire if the permittee fails to request and receive an extension of time. Extensions of time may be granted by the district engineer. The permittee must request the extension and explain the basis of the request, which will be granted unless the district engineer determines that an extension would be contrary to the public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2 of this part, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued.

(e) *Maintenance dredging.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR parts 320 to 325. In such cases, the district engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of this regulation and 33 CFR parts 320 to 324. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a new permit. The permittee should be advised to apply for the new permit six months prior to the time he wishes to do the maintenance work.

§ 325.7 Modification, suspension, or revocation of permits.

(a) *General.* The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits, either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2 of this part, and not as modifications under this section.

(b) *Modification.* Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that the public interest requires a modification of the terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c) of this section if immediate suspension is warranted. In cases where immediate suspension is not warranted but the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a meeting

with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice by the permittee unless a hearing or meeting is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR part 326. The district engineer shall consult with resource agencies before modifying any permit terms or conditions, that would result in greater impacts, for a project about which that agency expressed a significant interest in the term, condition, or feature being modified prior to permit issuance.

(c) *Suspension*. The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR part 327 will be followed. After the completion of the meeting or hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing or meeting is requested), the district engineer will take action to reinstate, modify, or revoke the permit.

(d) *Revocation*. Following completion of the suspension procedures in paragraph (c) of this section, if revocation of the permit is found to be in the public interest, the authority who made the decision on the original permit may revoke it. The permittee will be advised in writing of the final decision.

(e) *Regional permits*. The issuing official may, by following the procedures of this section, revoke regional permits for individual activities, categories of activities, or geographic areas. Where groups of permittees are involved, such as for categories of activities or geographic areas, the informal discussions provided in paragraph (b) of this section may be waived and any written notification nay be made through the general public notice procedures of this regulation. If a regional permit is revoked, any permittee may then apply for an individual permit which shall be processed in accordance with these regulations.

§ 325.8 Authority to issue or deny permits.

(a) *General*. Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for dams or dikes in intrastate waters of the United States pursuant to section 9 of the Rivers and Harbors Act of 1899; for construction or other work in or affecting navigable waters of the United States pursuant to section 10 of the Rivers and Harbors Act of 1899; for the discharge of dredged or fill material into waters of the United States pursuant to section 404 of the Clean Water Act; or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits in interstate navigable waters of the United States pursuant to section 9 of the Rivers and Harbors Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District engineer's authority*. District engineers are authorized to issue or deny permits in accordance with these regulations pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act

of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, state, or other federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision. District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state, or other federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with § 325.4 of this part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of § 325.7 of this part. District engineers will refer the following applications to the division engineer for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When the recommended decision is contrary to the written position of the Governor of the state in which the work would be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When higher authority requests the application be forwarded for decision; or

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g. section 9 of the Rivers and Harbors Act of 1899, or territorial sea baseline changes).

(c) *Division engineer's authority*. Division engineers will review and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to section 10 of the Rivers and Harbors Act of 1899; section 404 of the Clean Water Act; and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with § 325.4 of this part in all cases not required to be referred to the Chief of Engineers. Division engineers will refer the following applications to the Chief of Engineers for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When higher authority requests the application be forwarded for decision; or

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

§ 325.9 Authority to determine jurisdiction.

District engineers are authorized to determine the area defined by the terms ''navigable waters of the United States'' and ''waters of the United States'' except:

(a) When a determination of navigability is made pursuant to 33 CFR 329.14 (division engineers have this authority); or

(b) When EPA makes a section 404 jurisdiction determination under its authority.

§ 325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities

which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the district engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

APPENDIX A TO PART 325—PERMIT FORM AND SPECIAL CONDITIONS

A. Permit Form

DEPARTMENT OF THE ARMY PERMIT

Permittee _____
Permit No. _____
Issuing Office _____

NOTE: The term ''you'' and its derivatives, as used in this permit, means the permittee or any future transferee. The term ''this office'' refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: (Describe the permitted activity and its intended use with references to any attached plans or drawings that are considered to be a part of the project description. Include a description of the types and quantities of dredged or fill materials to be discharged in jurisdictional waters.)

Project Location: (Where appropriate, provide the names of and the locations on the waters where the permitted activity and any off-site disposals will take place. Also, using name, distance, and direction, locate the permitted activity in reference to a nearby landmark such as a town or city.)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions: (Add special conditions as required in this space with reference to a continuation sheet if necessary.)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(Permittee)

(Date)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(District Engineer)

(Date)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(Transferee)

(Date)

B. Special Conditions. No special conditions will be preprinted on the permit form. The following and other special conditions should be added, as appropriate, in the space provided after the general conditions or on a referenced continuation sheet:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. You must have a copy of this permit available on the vessel used for the authorized transportation and disposal of dredged material.

3. You must advise this office in writing, at least two weeks before you start maintenance dredging activities under the authority of this permit.

4. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number:

5. The condition below will be used when a Corps permit authorizes an artificial reef, an aerial transmission line, a submerged cable or pipeline, or a structure on the outer continental shelf.

National Ocean Service (NOS) has been notified of this authorization. You must notify NOS and this office in writing, at least two weeks before you begin work and upon completion of the activity authorized by this permit. Your notification of completion must include a drawing which certifies the location and configuration of the completed

activity (a certified permit drawing may be used). Notifications to NOS will be sent to the following address: National Ocean Service, Office of Coast Survey, N/CS261, 1315 East West Highway, Silver Spring, Maryland 20910–3282.

6. The following condition should be used for every permit where legal recordation of the permit would be reasonably practicable and recordation could put a subsequent purchaser or owner of property on notice of permit conditions.

You must take the actions required to record this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property.

[51 FR 41236, Nov. 13, 1986, as amended at 62 FR 26230, May 13, 1997]

APPENDIX B TO PART 325—NEPA IMPLEMENTATION PROCEDURES FOR THE REGULATORY PROGRAM

1. Introduction
2. General
3. Development of Information and Data
4. Elimination of Duplication with State and Local Procedures
5. Public Involvement
6. Categorical Exclusions
7. EA/FONSI Document
8. Environmental Impact Statement—General
9. Organization and Content of Draft EISs
10. Notice of Intent
11. Public Hearing
12. Organization and Content of Final EIS
13. Comments Received on the Final EIS
14. EIS Supplement
15. Filing Requirements
16. Timing
17. Expedited Filing
18. Record of Decision
19. Predecision Referrals by Other Agencies
20. Review of Other Agencies' EISs
21. Monitoring

1. *Introduction*. In keeping with Executive Order 12291 and 40 CFR 1500.2, where interpretive problems arise in implementing this regulation, and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used. Specific examples of ways to reduce paperwork in the NEPA process are found at 40 CFR 1500.4. Maximum advantage of these recommendations should be taken.

2. *General*. This Appendix sets forth implementing procedures for the Corps regulatory program. For additional guidance, see the Corps NEPA regulation 33 CFR part 230 and for general policy guidance, see the CEQ regulations 40 CFR 1500–1508.

3. *Development of Information and Data*. See 40 CFR 1506.5. The district engineer may require the applicant to furnish appropriate information that the district engineer considers necessary for the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). See also 40 CFR 1502.22 regarding incomplete or unavailable information.

4. *Elimination of Duplication with State and Local Procedures*. See 40 CFR 1506.2.

5. *Public Involvement*. Several paragraphs of this appendix (paragraphs 7, 8, 11, 13, and 19) provide information on the requirements for district engineers to make available to the public certain environmental documents in accordance with 40 CFR 1506.6.

6. *Categorical Exclusions*—a. *General*. Even though an EA or EIS is not legally mandated for any Federal action falling within one of the ''categorical exclusions,'' that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS. The following activities are not considered to be major Federal actions significantly affecting the quality of the human environment and are therefore categorically excluded from NEPA documentation:

(1) Fixed or floating small private piers, small docks, boat hoists and boathouses.

(2) Minor utility distribution and collection lines including irrigation;

(3) Minor maintenance dredging using existing disposal sites;

(4) Boat launching ramps;

(5) All applications which qualify as letters of permission (as described at 33 CFR 325.5(b)(2)).

b. *Extraordinary Circumstances*. District engineers should be alert for extraordinary circumstances where normally excluded actions could have substantial environmental effects and thus require an EA or EIS. For a period of one year from the effective data of these regulations, district engineers should maintain an information list on the type and number of categorical exclusion actions which, due to extraordinary circumstances, triggered the need for an EA/FONSI or EIS. If a district engineer determines that a categorical exclusion should be modified, the information will be furnished to the division engineer who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECW-OR) will review recommended changes for Corps-wide consistency and revise the list accordingly.

7. *EA/FONSI Document*. (See 40 CFR 1508.9 and 1508.13 for definitions)—a. *Environmental*

Assessment (EA) and Findings of No Significant Impact (FONSI). The EA should normally be combined with other required documents (EA/404(b)(1)/SOF/FONSI). ''EA'' as used throughout this Appendix normally refers to this combined document. The district engineer should complete an EA as soon as practicable after all relevant information is available (*i.e.*, after the comment period for the public notice of the permit application has expired) and when the EA is a separate document it must be completed prior to completion of the statement of finding (SOF). When the EA confirms that the impact of the applicant's proposal is not significant and there are no ''unresolved conflicts concerning alternative uses of available resources * * *'' (section 102(2)(E) of NEPA), and the proposed activity is a ''water dependent'' activity as defined in 40 CFR 230.10(a)(3), the EA need not include a discussion on alternatives. In all other cases where the district engineer determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the Corps, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or deny the permit. Modifications are limited to those project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the ''no action'' alternative (*i.e.*, no activity requiring a Corps permit). The combined document normally should not exceed 15 pages and shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district engineer may delegate the signing of the NEPA document. Should the EA demonstrate that an EIS is necessary, the district engineer shall follow the procedures outlined in paragraph 8 of this Appendix. In those cases where it is obvious an EIS is required, an EA is not required. However, the district engineer should document his reasons for requiring an EIS.

b. *Scope of Analysis*. (1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.

(2) The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

Typical factors to be considered in determining whether sufficient ''control and responsibility'' exists include:

(i) Whether or not the regulated activity comprises ''merely a link'' in a corridor type project (e.g., a transportation or utility transmission project).

(ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.

(iii) The extent to which the entire project will be within Corps jurisdiction.

(iv) The extent of cumulative Federal control and responsibility.

A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).

B. In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action the district engineer should consider whether other Federal agencies are required to take Federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands, (42 U.S.C. 4321 91977), and other environmental review laws and executive orders.

C. The district engineer should also refer to paragraphs 8(b) and 8(c) of this appendix for guidance on determining whether it should be the lead or a cooperating agency in these situations.

These factors will be added to or modified through guidance as additional field experience develops.

(3) *Examples:* If a non-Federal oil refinery, electric generating plant, or industrial facility is proposed to be built on an upland site and the only DA permit requirement relates to a connecting pipeline, supply loading terminal or fill road, that pipeline, terminal or fill road permit, in and of itself, normally

would not constitute sufficient overall Federal involvement with the project to justify expanding the scope of a Corps NEPA document to cover upland portions of the facility beyond the structures in the immediate vicinity of the regulated activity that would effect the location and configuration of the regulated activity.

Similarly, if an applicant seeks a DA permit to fill waters or wetlands on which other construction or work is proposed, the control and responsibility of the Corps, as well as its overall Federal involvement would extend to the portions of the project to be located on the permitted fill. However, the NEPA review would be extended to the entire project, including portions outside waters of the United States, only if sufficient Federal control and responsibility over the entire project is determined to exist; that is, if the regulated activities, and those activities involving regulation, funding, etc. by other Federal agencies, comprise a substantial portion of the overall project. In any case, once the scope of analysis has been defined, the NEPA analysis for that action should include direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute. The district engineer should, whenever practicable, incorporate by reference and rely upon the reviews of other Federal and State agencies.

For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the Federal action, *i.e.,* the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps of Engineers (or other Federal agencies).

For example, a 50-mile electrical transmission cable crossing a 1 1/4 mile wide river that is a navigable water of the United States requires a DA permit. Neither the origin and destination of the cable nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Corps of Engineers. Those matters would not be included in the scope of analysis which, in this case, would address the impacts of the specific cable crossing.

Conversely, for those activities that require a DA permit for a major portion of a transportation or utility transmission project, so that the Corps permit bears upon the origin and destination as well as the route of the project outside the Corps regulatory boundaries, the scope of analysis should include those portions of the project outside the boundaries of the Corps section 10/404 regulatory jurisdiction. To use the same example, if 30 miles of the 50-mile transmission line crossed wetlands or other ''waters of the United States,'' the scope of analysis should reflect impacts of the whole 50-mile transmission line.

For those activities that require a DA permit for a major portion of a shoreside facility, the scope of analysis should extend to upland portions of the facility. For example, a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.

In all cases, the scope of analysis used for analyzing both impacts and alternatives should be the same scope of analysis used for analyzing the benefits of a proposal.

8. *Environmental Impact Statement—General*—a. *Determination of Lead and Cooperating Agencies.* When the district engineer determines that an EIS is required, he will contact all appropriate Federal agencies to determine their respective role(s), *i.e.,* that of lead agency or cooperating agency.

b. *Corps as Lead Agency*. When the Corps is lead agency, it will be responsible for managing the EIS process, including those portions which come under the jurisdiction of other Federal agencies. The district engineer is authorized to require the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix. It is permissable for the Corps to reimburse, under agreement, staff support from other Federal agencies beyond the immediate jurisdiction of those agencies.

c. *Corps as Cooperating Agency*. If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1508.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its regulatory authority. As a cooperating agency the Corps will be responsible to the lead agency for providing environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS. This in no way shall be construed as lessening the district engineer's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the Corps is a cooperating agency because of a regulatory responsibility, the district engineer should, in accordance with 40 CFR 1501.6(b)(4), ''make available staff support at the lead agency's request'' to enhance the latter's interdisciplinary capability provided the request pertains to the Corps regulatory action covered by the EIS, to the extent this is practicable. Beyond this, Corps staff support will generally be

made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will normally be by written agreement with the lead agency providing for the Corps expenses on a cost reimbursable basis. If the district engineer believes a public hearing should be held and another agency is lead agency, the district engineer should request such a hearing and provide his reasoning for the request. The district engineer should suggest a joint hearing and offer to take an active part in the hearing and ensure coverage of the Corps concerns.

d. *Scope of Analysis*. See paragraph 7b.

e. *Scoping Process*. Refer to 40 CFR 1501.7 and 33 CFR 230.12.

f. *Contracting*. See 40 CFR 1506.5.

(1) The district engineer may prepare an EIS, or may obtain information needed to prepare an EIS, either with his own staff or by contract. In choosing a contractor who reports directly to the district engineer, the procedures of 40 CFR 1506.5(c) will be followed.

(2) Information required for an EIS also may be furnished by the applicant or a consultant employed by the applicant. Where this approach is followed, the district engineer will (i) advise the applicant and/or his consultant of the Corps information requirements, and (ii) meet with the applicant and/or his consultant from time to time and provide him with the district engineer's views regarding adequacy of the data that are being developed (including how the district engineer will view such data in light of any possible conflicts of interest).

The applicant and/or his consultant may accept or reject the district engineer's guidance. The district engineer, however, may after specifying the information in contention, require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. In all cases, the district engineer should document in the record the Corps independent evaluation of the information and its accuracy, as required by 40 CFR 1506.5(a).

g. *Change in EIS Determination*. If it is determined that an EIS is not required after a notice of intent has been published, the district engineer shall terminate the EIS preparation and withdraw the notice of intent. The district engineer shall notify in writing the appropriate division engineer; HQUSACE (CECW-OR); the appropriate EPA regional administrator, the Director, Office of Federal Activities (A–104), EPA, 401 M Street SW., Washington, DC 20460 and the public of the determination.

h. *Time Limits*. For regulatory actions, the district engineer will follow 33 CFR 230.17(a) unless unusual delays caused by applicant inaction or compliance with other statutes require longer time frames for EIS preparation. At the outset of the EIS effort, schedule milestones will be developed and made available to the applicant and the public. If the milestone dates are not met the district engineer will notify the applicant and explain the reason for delay.

9. *Organization and Content of Draft EISs*—a. *General*. This section gives detailed information for preparing draft EISs. When the Corps is the lead agency, this draft EIS format and these procedures will be followed. When the Corps is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed.

b. *Format*—(1) *Cover Sheet*. (a) Ref. 40 CFR 1502.11.

(b) The ''person at the agency who can supply further information'' (40 CFR 1502.11(c) is the project manager handling that permit application.

(c) The cover sheet should identify the EIS as a Corps permit action and state the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary*. In addition to the requirements of 40 CFR 1502.12, this section should identify the proposed action as a Corps permit action stating the authorities (sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction. It shall also summarize the purpose and need for the proposed action and shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents*.

(4) *Purpose and Need*. See 40 CFR 1502.13. If the scope of analysis for the NEPA document (see paragraph 7b) covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, ''The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant.'') If the scope of analysis covers a more extensive project, only part of which may require a DA permit, then the underlying purpose and need for the entire project should be stated. (For example, ''The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.'') Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, ''to construct an electric generating plant''). However, whenever the NEPA document's scope of analysis renders it appropriate, the Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, ''to meet the public's need for electric energy''). Also, while generally focusing on the applicant's statement, the Corps, will in all cases, exercise independent judgment in defining the

purpose and need for the project from both the applicant's and the public's perspective.

(5) *Alternatives*. See 40 CFR 1502.14. The Corps is neither an opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the ''applicant's preferred alternative'' in the final EIS. Decision options available to the district engineer, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or conditions or deny the permit.

(a) Only reasonable alternatives need be considered in detail, as specified in 40 CFR 1502.14(a). Reasonable alternatives must be those that are feasible and such feasibility must focus on the accomplishment of the underlying purpose and need (of the applicant or the public) that would be satisfied by the proposed Federal action (permit issuance). The alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines (40 CFR part 230) where applicable. Those alternatives that are unavailable to the applicant, whether or not they require Federal action (permits), should normally be included in the analysis of the no-Federal-action (denial) alternative. Such alternatives should be evaluated only to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application.

(b) The ''no-action'' alternative is one which results in no construction requiring a Corps permit. It may be brought by (1) the applicant electing to modify his proposal to eliminate work under the jurisdiction of the Corps or (2) by the denial of the permit. District engineers, when evaluating this alternative, should discuss, when appropriate, the consequences of other likely uses of a project site, should the permit be denied.

(c) The EIS should discuss geographic alternatives, e.g., changes in location and other site specific variables, and functional alternatives, e.g., project substitutes and design modifications.

(d) The Corps shall not prepare a cost-benefit analysis for projects requiring a Corps permit. 40 CFR 1502.23 states that the weighing of the various alternatives need not be displayed in a cost-benefit analysis and ''* * * should not be when there are important qualitative considerations.'' The EIS should, however, indicate any cost considerations that are likely to be relevant to a decision.

(e) Mitigation is defined in 40 CFR 1508.20, and Federal action agencies are directed in 40 CFR 1502.14 to include appropriate mitigation measures. Guidance on the conditioning of permits to require mitigation is in 33 CFR 320.4(r) and 325.4. The nature and extent of mitigation conditions are dependent on the results of the public interest review in 33 CFR 320.4.

(6) *Affected Environment*. See Ref. 40 CFR 1502.15.

(7) *Environmental Consequences*. See Ref. 40 CFR 1502.16.

(8) *List of Preparers*. See Ref. 40 CFR 1502.17.

(9) *Public Involvement*. This section should list the dates and nature of all public notices, scoping meetings and public hearings and include a list of all parties notified.

(10) *Appendices*. See 40 CFR 1502.18. Appendices should be used to the maximum extent practicable to minimize the length of the main text of the EIS. Appendices normally should not be circulated with every copy of the EIS, but appropriate appendices should be provided routinely to parties with special interest and expertise in the particular subject.

(11) *Index*. The Index of an EIS, at the end of the document, should be designed to provide for easy reference to items discussed in the main text of the EIS.

10. *Notice of Intent*. The district engineer shall follow the guidance in 33 CFR part 230, Appendix C in preparing a notice of intent to prepare a draft EIS for publication in the FEDERAL REGISTER.

11. *Public Hearing*. If a public hearing is to be held pursuant to 33 CFR part 327 for a permit application requiring an EIS, the actions analyzed by the draft EIS should be considered at the public hearing. The district engineer should make the draft EIS available to the public at least 15 days in advance of the hearing. If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1506.6(c)(2), the district engineer should coordinate a joint hearing with that agency whenever appropriate.

12. *Organization and Content of Final EIS*. The organization and content of the final EIS including the abbreviated final EIS procedures shall follow the guidance in 33 CFR 230.14(a).

13. *Comments Received on the Final EIS*. For permit cases to be decided at the district level, the district engineer should consider all incoming comments and provide responses when substantive issues are raised which have not been addressed in the final EIS. For permit cases decided at higher authority, the district engineer shall forward the final EIS comment letters together with appropriate responses to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR part 1504, the district engineer will follow the guidance in paragraph 19 of this appendix.

14. *EIS Supplement*. See 33 CFR 230.13(b).

15. *Filing Requirements*. See 40 CFR 1506.9. Five (5) copies of EISs shall be sent to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The official review periods commence with EPA's publication of a notice of availability of the draft or

final EISs in the FEDERAL REGISTER. Generally, this notice appears on Friday of each week. At the same time they are mailed to EPA for filing, one copy of each draft or final EIS, or EIS supplement should be mailed to HQUSACE (CECW-OR) WASH DC 20314–1000.

16. *Timing*. 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

17. *Expedited Filing*. 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. The district engineer will provide the necessary information and facts to HQUSACE (CECW-RE) WASH DC 20314–1000 (with copy to CECW-OR) for consultation with EPA for a reduction in the prescribed review periods.

18. *Record of Decision*. In those cases involving an EIS, the statement of findings will be called the record of decision and shall incorporate the requirements of 40 CFR 1505.2. The record of decision is not to be included when filing a final EIS and may not be signed until 30 days after the notice of availability of the final EIS is published in the FEDERAL REGISTER. To avoid duplication, the record of decision may reference the EIS.

19. *Predecision Referrals by Other Agencies*. See 40 CFR part 1504. The decisionmaker should notify any potential referring Federal agency and CEQ of a final decision if it is contrary to the announced position of a potential referring agency. (This pertains to a NEPA referral, not a 404(q) referral under the Clean Water Act. The procedures for a 404(q) referral are outlined in the 404(q) Memoranda of Agreement. The potential referring agency will then have 25 calendar days to refer the case to CEQ under 40 CFR part 1504. Referrals will be transmitted through division to CECW-RE for further guidance with an information copy to CECW-OR.

20. *Review of Other Agencies' EISs*. District engineers should provide comments directly to the requesting agency specifically related to the Corps jurisdiction by law or special expertise as defined in 40 CFR 1508.15 and 1508.26 and identified in Appendix II of CEQ regulations (49 FR 49750, December 21, 1984). If the district engineer determines that another agency's draft EIS which involves a Corps permit action is inadequate with respect to the Corps permit action, the district engineer should attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If the district engineer finds that the final EIS is inadequate with respect to the Corps permit action, the district engineer should incorporate the other agency's final EIS or a portion thereof and prepare an appropriate and adequate NEPA document to address the Corps involvement with the proposed action. See 33 CFR 230.21 for guidance. The agency which prepared the original EIS should be given the opportunity to provide additional information to that contained in the EIS in order for the Corps to have all relevant information available for a sound decision on the permit.

21. *Monitoring*. Monitoring compliance with permit requirements should be carried out in accordance with 33 CFR 230.15 and with 33 CFR part 325.

[53 FR 3134, Feb. 3, 1988]

APPENDIX C TO PART 325—PROCEDURES FOR THE PROTECTION OF HISTORIC PROPERTIES

1. Definitions
2. General Policy
3. Initial Review
4. Public Notice
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10. District Engineer Decision
11. Historic Properties Discovered During Construction
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14. Emergency Procedures
15. Criteria of Effect and Adverse Effect

1. Definitions

a. *Designated historic property* is a historic property listed in the National Register of Historic Places (National Register) or which has been determined eligible for listing in the National Register pursuant to 36 CFR part 63. A historic property that, in both the opinion of the SHPO and the district engineer, appears to meet the criteria for inclusion in the National Register will be treated as a ''designated historic property.''

b. *Historic property* is a property which has historical importance to any person or group. This term includes the types of districts, sites, buildings, structures or objects eligible for inclusion, but not necessarily listed, on the National Register.

c. *Certified local government* is a local government certified in accordance with section 101(c)(1) of the NHPA (See 36 CFR part 61).

d. The term ''criteria for inclusion in the National Register'' refers to the criteria published by the Department of Interior at 36 CFR 60.4.

e. An ''effect'' on a ''designated historic property'' occurs when the undertaking may alter the characteristics of the property that qualified the property for inclusion in the National Register. Consideration of effects on ''designated historic properties'' includes indirect effects of the undertaking. The criteria for effect and adverse effect are described in Paragraph 15 of this appendix.

f. The term ''undertaking'' as used in this appendix means the work, structure or discharge that requires a Department of the Army permit pursuant to the Corps regulations at 33 CFR 320–334.

g. Permit area.

(1) The term ''permit area'' as used in this appendix means those areas comprising the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three tests must all be satisfied for an activity undertaken outside the waters of the United States to be included within the ''permit area'':

(i) Such activity would not occur but for the authorization of the work or structures within the waters of the United States;

(ii) Such activity must be integrally related to the work or structures to be authorized within waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and

(iii) Such activity must be directly associated (first order impact) with the work or structures to be authorized.

(2) For example, consider an application for a permit to construct a pier and dredge an access channel so that an industry may be established and operated on an upland area.

(i) Assume that the industry requires the access channel and the pier and that without such channel and pier the project would not be feasible. Clearly then, the industrial site, even though upland, would be within the ''permit area.'' It would not be established ''but for'' the access channel and pier; it also is integrally related to the work and structure to be authorized; and finally it is directly associated with the work and structure to be authorized. Similarly, all three tests are satisfied for the dredged material disposal site and it too is in the ''permit area'' even if located on uplands.

(ii) Consider further that the industry, if established, would cause local agencies to extend water and sewer lines to service the area of the industrial site. Assume that the extension would not itself involve the waters of the United States and is not solely the result of the industrial facility. The extensions would not be within the ''permit area'' because they would not be directly associated with the work or structure to be authorized.

(iii) Now consider that the industry, if established, would require increased housing for its employees, but that a private developer would develop the housing. Again, even if the housing would not be developed but for the authorized work and structure, the housing would not be within the permit area because it would not be directly associated with or integrally related to the work or structure to be authorized.

(3) Consider a different example. This time an industry will be established that requires no access to the navigable waters for its operation. The plans for the facility, however, call for a recreational pier with an access channel. The pier and channel will be used for the company-owned yacht and employee recreation. In the example, the industrial site is not included within the permit area. Only areas of dredging, dredged material disposal, and pier construction would be within the permit area.

(4) Lastly, consider a linear crossing of the waters of the United States; for example, by a transmission line, pipeline, or highway.

(i) Such projects almost always *can* be undertaken without Corps authorization, if they are designed to avoid affecting the waters of the United States. Corps authorization is sought because it is less expensive or more convenient for the applicant to do so than to avoid affecting the waters of the United States. Thus the ''but for'' test is not met by the entire project right-of-way. The ''same undertaking'' and ''integral relationship'' tests are met, but this is not sufficient to make the whole right-of-way part of the permit area. Typically, however, some portion of the right-of-way, approaching the crossing, would not occur in its given configuration ''but for'' the authorized activity. This portion of the right-of-way, whose location is determined by the location of the crossing, meets all three tests and hence is part of the permit area.

(ii) Accordingly, in the case of the linear crossing, the permit area shall extend in either direction from the crossing to that point at which alternative alignments leading to reasonable alternative locations for the crossing can be considered and evaluated. Such a point may often coincide with the physical feature of the waterbody to be crossed, for example, a bluff, the limit of the flood plain, a vegetational change, etc., or with a jurisdictional feature associated with the waterbody, for example, a zoning change, easement limit, etc., although such features should not be controlling in selecting the limits of the permit area.

2. General Policy

This appendix establishes the procedures to be followed by the U.S. Army Corps of Engineers (Corps) to fulfill the requirements set forth in the National Historic Preservation Act (NHPA), other applicable historic preservation laws, and Presidential directives as they relate to the regulatory program of the Corps of Engineers (33 CFR parts 320–334).

a. The district engineer will take into account the effects, if any, of proposed undertakings on historic properties both within and beyond the waters of the U.S. Pursuant to section 110(f) of the NHPA, the district engineer, where the undertaking that is the

subject of a permit action may directly and adversely affect any National Historic Landmark, shall, to the maximum extent possible, condition any issued permit as may be necessary to minimize harm to such landmark.

b. In addition to the requirements of the NHPA, all historic properties are subject to consideration under the National Environmental Policy Act, (33 CFR part 325, appendix B), and the Corps' public interest review requirements contained in 33 CFR 320.4. Therefore, historic properties will be included as a factor in the district engineer's decision on a permit application.

c. In processing a permit application, the district engineer will generally accept for Federal or Federally assisted projects the Federal agency's or Federal lead agency's compliance with the requirements of the NHPA.

d. If a permit application requires the preparation of an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act, the draft EIS will contain the information required by paragraph 9.a. below. Furthermore, the SHPO and the ACHP will be given the opportunity to participate in the scoping process and to comment on the Draft and Final EIS.

e. During pre-application consultations with a prospective applicant the district engineer will encourage the consideration of historic properties at the earliest practical time in the planning process.

f. This appendix is organized to follow the Corps standard permit process and to indicate how historic property considerations are to be addressed during the processing and evaluating of permit applications. The procedures of this Appendix are not intended to diminish the full consideration of historic properties in the Corps regulatory program. Rather, this appendix is intended to provide for the maximum consideration of historic properties within the time and jurisdictional constraints of the Corps regulatory program. The Corps will make every effort to provide information on historic properties and the effects of proposed undertakings on them to the public by the public notice within the time constraints required by the Clean Water Act. Within the time constraints of applicable laws, executive orders, and regulations, the Corps will provide the maximum coordination and comment opportunities to interested parties especially the SHPO and ACHP. The Corps will discuss with and encourage the applicant to avoid or minimize effects on historic properties. In reaching its decisions on permits, the Corps will adhere to the goals of the NHPA and other applicable laws dealing with historic properties.

3. Initial Review

a. Upon receipt of a completed permit application, the district engineer will consult district files and records, the latest published version(s) of the National Register, lists of properties determined eligible, and other appropriate sources of information to determine if there are any designated historic properties which may be affected by the proposed undertaking. The district engineer will also consult with other appropriate sources of information for knowledge of undesignated historic properties which may be affected by the proposed undertaking. The district engineer will establish procedures (e.g., telephone calls) to obtain supplemental information from the SHPO and other appropriate sources. Such procedures shall be accomplished within the time limits specified in this appendix and 33 CFR part 325.

b. In certain instances, the nature, scope, and magnitude of the work, and/or structures to be permitted may be such that there is little likelihood that a historic property exists or may be affected. Where the district engineer determines that such a situation exists, he will include a statement to this effect in the public notice. Three such situations are:

(1) Areas that have been extensively modified by previous work. In such areas, historic properties that may have at one time existed within the permit area may be presumed to have been lost unless specific information indicates the presence of such a property (e.g., a shipwreck).

(2) Areas which have been created in modern times. Some recently created areas, such as dredged material disposal islands, have had no human habitation. In such cases, it may be presumed that there is no potential for the existence of historic properties unless specific information indicates the presence of such a property.

(3) Certain types of work or structures that are of such limited nature and scope that there is little likelihood of impinging upon a historic property even if such properties were to be present within the affected area.

c. If, when using the pre-application procedures of 33 CFR 325.1(b), the district engineer believes that a designated historic property may be affected, he will inform the prospective applicant for consideration during project planning of the potential applicability of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716). The district engineer will also inform the prospective applicant that the Corps will consider any effects on historic properties in accordance with this appendix.

d. At the earliest practical time the district engineer will discuss with the applicant measures or alternatives to avoid or minimize effects on historic properties.

4. Public Notice.

a. Except as specified in subparagraph 4.c., the district engineer's current knowledge of

the presence or absence of historic properties and the effects of the undertaking upon these properties will be included in the public notice. The public notice will be sent to the SHPO, the regional office of the National Park Service (NPS), certified local governments (see paragraph (1.c.) and Indian tribes, and interested citizens. If there are designated historic properties which reasonably may be affected by the undertaking or if there are undesignated historic properties within the affected area which the district engineer reasonably expects to be affected by the undertaking and which he believes meet the criteria for inclusion in the National Register, the public notice will also be sent to the ACHP.

b. During permit evaluation for newly designated historic properties or undesignated historic properties which reasonably may be affected by the undertaking and which have been newly identified through the public interest review process, the district engineer will immediately inform the applicant, the SHPO, the appropriate certified local government and the ACHP of the district engineer's current knowledge of the effects of the undertaking upon these properties. Commencing from the date of the district engineer's letter, these entities will be given 30 days to submit their comments.

c. Locational and sensitive information related to archeological sites is excluded from the Freedom of Information Act (Section 304 of the NHPA and Section 9 of ARPA). If the district engineer or the Secretary of the Interior determine that the disclosure of information to the public relating to the location or character of sensitive historic resources may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located, then the district engineer will not include such information in the public notice nor otherwise make it available to the public. Therefore, the district engineer will furnish such information to the ACHP and the SHPO by separate notice.

5. Investigations

a. When initial review, addition submissions by the applicant, or response to the public notice indicates the existence of a potentially eligible property, the district engineer shall examine the pertinent evidence to determine the need for further investigation. The evidence must set forth specific reasons for the need to further investigate within the permit area and may consist of:

(1) Specific information concerning properties which may be eligible for inclusion in the National Register and which are known to exist in the vicinity of the project; and

(2) Specific information concerning known sensitive areas which are likely to yield resources eligible for inclusion in the National Register, particularly where such sensitive area determinations are based upon data collected from other, similar areas within the general vicinity.

b. Where the scope and type of work proposed by the applicant or the evidence presented leads the district engineer to conclude that the chance of disturbance by the undertaking to any potentially eligible historic property is too remote to justify further investigation, he shall so advise the reporting party and the SHPO.

c. If the district engineer's review indicates that an investigation for the presence of potentially eligible historic properties on the upland locations of the permit area (see paragraph 1.g.) is justified, the district engineer will conduct or cause to be conducted such an investigation. Additionally, if the notification indicates that a potentially eligible historic property may exist within waters of the U.S., the district engineer will conduct or cause to be conducted an investigation to determine whether this property may be eligible for inclusion in the National Register. Comments or information of a general nature will not be considered as sufficient evidence to warrant an investigation.

d. In addition to any investigations conducted in accordance with paragraph 6.a. above, the district engineeer may conduct or cause to be conducted additional investigations which the district engineer determines are essential to reach the public interest decision . As part of any site visit, Corps personnel will examine the permit area for the presence of potentially eligible historic properties. The Corps will notify the SHPO, if any evidence is found which indicates the presence of potentially eligible historic properties.

e. As determined by the district engineer, investigations may consist of any of the following: further consultations with the SHPO, the State Archeologist, local governments, Indian tribes, local historical and archeological societies, university archeologists, and others with knowledge and expertise in the identification of historical, archeological, cultural and scientific resources; field examinations; and archeological testing. In most cases, the district engineer will require, in accordance with 33 CFR 325.1(e), that the applicant conduct the investigation at his expense and usually by third party contract.

f. The Corps of Engineers' responsibilities to seek eligibility determinations for potentially eligible historic properties is limited to resources located within waters of the U.S. that are directly affected by the undertaking. The Corps responsibilities to identify potentially eligible historic properties is limited to resources located within the permit area that are directly affected by related upland activities. The Corps is not responsible for identifying or assessing potentially

eligible historic properties outside the permit area, but will consider the effects of undertakings on any known historic properties that may occur outside the permit area.

6. Eligibility determinations

a. For a historic property within waters of the U.S. that will be directly affected by the undertaking the district engineer will, for the purposes of this Appendix and compliance with the NHPA:

(1) Treat the historic property as a ''designated historic property,'' if both the SHPO and the district engineer agree that it is eligible for inclusion in the National Register; or

(2) Treat the historic property as not eligible, if both the SHPO and the district engineer agree that it is not eligible for inclusion in the National Register; or

(3) Request a determination of eligibility from the Keeper of the National Register in accordance with applicable National Park Service regulations and notify the applicant, if the SHPO and the district engineer disagree or the ACHP or the Secretary of the Interior so request. If the Keeper of the National Register determines that the resources are not eligible for listing in the National Register or fails to respond within 45 days of receipt of the request, the district engineer may proceed to conclude his action on the permit application.

b. For a historic property outside of waters of the U.S. that will be directly affected by the undertaking the district engineer will, for the purposes of this appendix and compliance with the NHPA:

(1) Treat the historic property as a ''designated historic property,'' if both the SHPO and the district engineer agree that it is eligible for inclusion in the National Register; or

(2) Treat the historic property as not eligible, if both the SHPO and the district engineer agree that it is not eligible for inclusion in the National Register; or

(3) Treat the historic property as not eligible unless the Keeper of the National Register determines it is eligible for or lists it on the National Register. (See paragraph 6.c. below.)

c. If the district engineer and the SHPO do not agree pursuant to paragraph 6.b.(1) and the SHPO notifies the district engineer that it is nominating a potentially eligible historic property for the National Register that may be affected by the undertaking, the district engineer will wait a reasonable period of time for that determination to be made before concluding his action on the permit. Such a reasonable period of time would normally be 30 days for the SHPO to nominate the historic property plus 45 days for the Keeper of the National Register to make such determination. The district engineer will encourage the applicant to cooperate with the SHPO in obtaining the information necessary to nominate the historic property.

7. Assessing Effects

a. *Applying the Criteria of Effect and Adverse Effect.* During the public notice comment period or within 30 days after the determination or discovery of a designated history property the district engineer will coordinate with the SHPO and determine if there is an effect and if so, assess the effect. (See Paragraph 15.)

b. *No Effect.* If the SHPO concurs with the district engineer's determination of no effect or fails to respond within 15 days of the district engineer's notice to the SHPO of a no effect determination, then the district engineer may proceed with the final decision.

c. *No Adverse Effect.* If the district engineer, based on his coordination with the SHPO (see paragraph 7.a.), determines that an effect is not adverse, the district engineer will notify the ACHP and request the comments of the ACHP. The district engineer's notice will include a description of both the project and the designated historic property; both the district engineer's and the SHPO's views, as well as any views of affected local governments, Indian tribes, Federal agencies, and the public, on the no adverse effect determination; and a description of the efforts to identify historic properties and solicit the views of those above. The district engineer may conclude the permit decision if the ACHP does not object to the district engineer's determination or if the district engineer accepts any conditions requested by the ACHP for a no adverse effect determination, or the ACHP fails to respond within 30 days of the district engineer's notice to the ACHP. If the ACHP objects or the district engineer does not accept the conditions proposed by the ACHP, then the effect shall be considered as adverse.

d. *Adverse Effect.* If an adverse effect on designated historic properties is found, the district engineer will notify the ACHP and coordinate with the SHPO to seek ways to avoid or reduce effects on designated historic properties. Either the district engineer or the SHPO may request the ACHP to participate. At its discretion, the ACHP may participate without such a request. The district engineer, the SHPO or the ACHP may state that further coordination will not be productive. The district engineer shall then request the ACHP's comments in accordance with paragraph 9.

8. Consultation

At any time during permit processing, the district engineer may consult with the involved parties to discuss and consider possible alternatives or measures to avoid or minimize the adverse effects of a proposed

activity. The district engineer will terminate any consultation immediately upon determining that further consultation is not productive and will immediately notify the consulting parties. If the consultation results in a mutual agreement among the SHPO, ACHP, applicant and the district engineer regarding the treatment of designated historic properties, then the district engineer may formalize that agreement either through permit conditioning or by signing a Memorandum of Agreement (MOA) with these parties. Such MOA will constitute the comments of the ACHP and the SHPO, and the district engineer may proceed with the permit decision. Consultation shall not continue beyond the comment period provided in paragraph 9.b.

9. ACHP Review and Comment

a. If: (i) The district engineer determines that coordination with the SHPO is unproductive; or (ii) the ACHP, within the appropriate comment period, requests additional information in order to provide its comments; or (iii) the ACHP objects to any agreed resolution of impacts on designated historic properties; the district engineer, normally within 30 days, shall provide the ACHP with:

(1) A project description, including, as appropriate, photographs, maps, drawings, and specifications (such as, dimensions of structures, fills, or excavations; types of materials and quantity of material);

(2) A listing and description of the designated historic properties that will be affected, including the reports from any surveys or investigations;

(3) A description of the anticipated adverse effects of the undertaking on the designated historic properties and of the proposed mitigation measures and alternatives considered, if any; and

(4) The views of any commenting parties regarding designated historic properties.

In developing this information, the district engineer may coordinate with the applicant, the SHPO, and any appropriate Indian tribe or certified local government.

Copies of the above information also should be forwarded to the applicant, the SHPO, and any appropriate Indian tribe or certified local government. The district engineer will not delay his decision but will consider any comments these parties may wish to provide.

b. The district engineer will provide the ACHP 60 days from the date of the district engineer's letter forwarding the information in paragraph 9.a., to provide its comments. If the ACHP does not comment by the end of this comment period, the district engineer will complete processing of the permit application. When the permit decision is otherwise delayed as provided in 33 CFR 325.2(d)(3) & (4), the district engineer will provide additional time for the ACHP to comment consistent with, but not extending beyond that delay.

10. District Engineer Decision

a. In making the public interest decision on a permit application, in accordance with 33 CFR 320.4, the district engineer shall weigh all factors, including the effects of the undertaking on historic properties and any comments of the ACHP and the SHPO, and any views of other interested parties. The district engineer will add permit conditions to avoid or reduce effects on historic properties which he determines are necessary in accordance with 33 CFR 325.4. In reaching his determination, the district engineer will consider the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716).

b. If the district engineer concludes that permitting the activity would result in the irrevocable loss of important scientific, prehistoric, historical, or archeological data, the district engineer, in accordance with the Archeological and Historic Preservation Act of 1974, will advise the Secretary of the Interior (by notifying the National Park Service (NPS)) of the extent to which the data may be lost if the undertaking is permitted, any plans to mitigate such loss that will be implemented, and the permit conditions that will be included to ensure that any required mitigation occurs.

11. Historic Properties Discovered During Construction

After the permit has been issued, if the district engineer finds or is notified that the permit area contains a previously unknown potentially eligible historic property which he reasonably expects will be affected by the undertaking, he shall immediately inform the Department of the Interior Departmental Consulting Archeologist and the regional office of the NPS of the current knowledge of the potentially eligible historic property and the expected effects, if any, of the undertaking on that property. The district engineer will seek voluntary avoidance of construction activities that could affect the historic property pending a recommendation from the National Park Service pursuant to the Archeological and Historic Preservation Act of 1974. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the district engineer may modify, suspend or revoke a permit in accordance with 33 CFR 325.7.

12. Regional General Permits

Potential impacts on historic properties will be considered in development and evaluation of general permits. However, many of

the specific procedures contained in this appendix are not normally applicable to general permits. In developing general permits, the district engineer will seek the views of the SHPO and, the ACHP and other organizations and/or individuals with expertise or interest in historic properties. Where designated historic properties are reasonably likely to be affected, general permits shall be conditioned to protect such properties or to limit the applicability of the permit coverage.

13. Nationwide General Permit

a. The criteria at paragraph 15 of this Appendix will be used for determining compliance with the nationwide permit condition at 33 CFR 330.5(b)(9) regarding the effect on designated historic properties. When making this determination the district engineer may consult with the SHPO, the ACHP or other interested parties.

b. If the district engineer is notified of a potentially eligible historic property in accordance with nationwide permit regulations and conditions, he will immediately notify the SHPO. If the district engineer believes that the potentially eligible historic property meets the criteria for inclusion in the National Register and that it may be affected by the proposed undertaking then he may suspend authorization of the nationwide permit until he provides the ACHP and the SHPO the opportunity to comment in accordance with the provisions of this Appendix. Once these provisions have been satisfied, the district engineer may notify the general permittee that the activity is authorized including any special activity specific conditions identified or that an individual permit is required.

14. Emergency Procedures

The procedures for processing permits in emergency situations are described at 33 CFR 325.2(e)(4). In an emergency situation the district engineer will make every reasonable effort to receive comments from the SHPO and the ACHP, when the proposed undertaking can reasonably be expected to affect a potentially eligible or designated historic property and will comply with the provisions of this Appendix to the extent time and the emergency situation allows.

15. Criteria of Effect and Adverse Effect

(a) An undertaking has an effect on a designated historic property when the undertaking may alter characteristics of the property that qualified the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant, and depending on a property's important characteristics, should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a designated historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on designated historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of this appendix:

(1) When the designated historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected designated historic properties through conformance with the Secretary's ''Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings'', or

(3) When the undertaking is limited to the transfer, lease, or sale of a designated historic property, and adequate restrictions or conditions are included to ensure preservation of the property's important historic features.

[55 FR 27003, June 29, 1990]

PART 326—ENFORCEMENT

Sec.
326.1 Purpose.
326.2 Policy.
326.3 Unauthorized activities.
326.4 Supervision of authorized activities.
326.5 Legal action.
326.6 Class I administrative penalties.

AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

SOURCE: 51 FR 41246, Nov. 13, 1986, unless otherwise noted.

§ 326.1 Purpose.

This part prescribes enforcement policies (§ 326.2) and procedures applicable to activities performed without required Department of the Army permits (§ 326.3) and to activities not in compliance with the terms and conditions of issued Department of the Army permits (§ 326.4). Procedures for initiating legal actions are prescribed in § 326.5. Nothing contained in this part shall establish a non-discretionary duty on the part of district engineers nor shall deviation from these precedures give rise to a private right of action against a district engineer.

§ 326.2 Policy.

Enforcement, as part of the overall regulatory program of the Corps, is based on a policy of regulating the waters of the United States by discouraging activities that have not been properly authorized and by requiring corrective measures, where appropriate, to ensure those waters are not misused and to maintain the integrity of the program. There are several methods discussed in the remainder of this part which can be used either singly or in combination to implement this policy, while making the most effective use of the enforcement resources available. As EPA has independent enforcement authority under the Clean Water Act for unauthorized discharges, the district engineer should normally coordinate with EPA to determine the most effective and efficient manner by which resolution of a section 404 violation can be achieved.

§ 326.3 Unauthorized activities.

(a) *Surveillance*. To detect unauthorized activities requiring permits, district engineers should make the best use of all available resources. Corps employees; members of the public; and representatives of state, local, and other Federal agencies should be encouraged to report suspected violations. Additionally, district engineers should consider developing joint surveillance procedures with Federal, state, or local agencies having similar regulatory responsibilities, special expertise, or interest.

(b) *Initial investigation*. District engineers should take steps to investigate suspected violations in a timely manner. The scheduling of investigations will reflect the nature and location of the suspected violations, the anticipated impacts, and the most effective use of inspection resources available to the district engineer. These investigations should confirm whether a violation exists, and if so, will identify the extent of the violation and the parties responsible.

(c) *Formal notifications to parties responsible for violations*. Once the district engineer has determined that a violation exists, he should take appropriate steps to notify the responsible parties.

(1) If the violation involves a project that is not complete, the district engineer's notification should be in the form of a cease and desist order prohibiting any further work pending resolution of the violation in accordance with the procedures contained in this part. See paragraph (c)(4) of this section for exception to this procedure.

(2) If the violation involves a completed project, a cease and desist order should not be necessary. However, the district engineer should still notify the responsible parties of the violation.

(3) All notifications, pursuant to paragraphs (c) (1) and (2) of this section, should identify the relevant statutory authorities, indicate potential enforcement consequences, and direct the responsible parties to submit any additional information that the district engineer may need at that time to determine what course of action he should pursue in resolving the violation; further information may be requested, as needed, in the future.

(4) In situations which would, if a violation were not involved, qualify for emergency procedures pursuant to 33 CFR part 325.2(e)(4), the district engineer may decide it would not be appropriate to direct that the unauthorized work be stopped. Therefore, in such situations, the district engineer may, at his discretion, allow the work to continue, subject to appropriate limitations and conditions as he may prescribe, while the violation is being resolved in accordance with the procedures contained in this part.

(5) When an unauthorized activity requiring a permit has been undertaken

by American Indians (including Alaskan natives, Eskimos, and Aleuts, but not including Native Hawaiians) on reservation lands or in pursuit of specific treaty rights, the district engineer should use appropriate means to coordinate proposed directives and orders with the Assistant Chief Counsel for Indian Affairs (DAEN-CCI).

(6) When an unauthorized activity requiring a permit has been undertaken by an official acting on behalf of a foreign government, the district engineer should use appropriate means to coordinate proposed directives and orders with the Office, Chief of Engineers, ATTN: DAEN-CCK.

(d) *Initial corrective measures.* (1) The district engineer should, in appropriate cases, depending upon the nature of the impacts associated with the unauthorized, completed work, solicit the views of the Environmental Protection Agency; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service, and other Federal, state, and local agencies to facilitate his decision on what initial corrective measures are required. If the district engineer determines as a result of his investigation, coordination, and preliminary evaluation that initial corrective measures are required, he should issue an appropriate order to the parties responsible for the violation. In determining what initial corrective measures are required, the district engineer should consider whether serious jeopardy to life, property, or important public resources (see 33 CFR 320.4) may be reasonably anticipated to occur during the period required for the ultimate resolution of the violation. In his order, the district engineer will specify the initial corrective measures required and the time limits for completing this work. In unusual cases where initial corrective measures substantially eliminate all current and future detrimental impacts resulting from the unauthorized work, further enforcement actions should normally be unnecessary. For all other cases, the district engineer's order should normally specify that compliance with the order will not foreclose the Government's options to initiate appropriate legal action or to later require the submission of a permit application.

(2) An order requiring initial corrective measures that resolve the violation may also be issued by the district engineer in situations where the acceptance or processing of an after-the-fact permit application is prohibited or considered not appropriate pursuant to § 326.3(e)(1) (iii) through (iv) below. However, such orders will be issued only when the district engineer has reached an independent determination that such measures are necessary and appropriate.

(3) It will not be necessary to issue a Corps permit in connection with initial corrective measures undertaken at the direction of the district engineer.

(e) *After-the-fact permit applications.* (1) Following the completion of any required initial corrective measures, the district engineer will accept an after-the-fact permit application unless he determines that one of the exceptions listed in subparagraphs i-iv below is applicable. Applications for after-the-fact permits will be processed in accordance with the applicable procedures in 33 CFR parts 320 through 325. Situations where no permit application will be processed or where the acceptance of a permit application must be deferred are as follows:

(i) No permit application will be processed when restoration of the waters of the United States has been completed that eliminates current and future detrimental impacts to the satisfaction of the district engineer.

(ii) No permit application will be accepted in connection with a violation where the district engineer determines that legal action is appropriate (§ 326.5(a)) until such legal action has been completed.

(iii) No permit application will be accepted where a Federal, state, or local authorization or certification, required by Federal law, has already been denied.

(iv) No permit application will be accepted nor will the processing of an application be continued when the district engineer is aware of enforcement litigation that has been initiated by other Federal, state, or local regulatory agencies, unless he determines that concurrent processing of an after-the-fact permit application is clearly appropriate.

(v) No appeal of an approved jurisdictional determination (JD) associated with an unauthorized activity or after-the-fact permit application will be accepted unless and until the applicant has furnished a signed statute of limitations tolling agreement to the district engineer. A separate statute of limitations tolling agreement will be prepared for each unauthorized activity. Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and evaluated by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is suspended until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or an application for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal. Such agreement will state that, in exchange for the Corps acceptance of any after-the-fact permit application and/or any administrative appeal associated with the unauthorized activity, the responsible party agrees that the statute of limitations will be suspended (*i.e.*, tolled) until one year after the final Corps decision on the after-the-fact permit application or, if there is an administrative appeal, one year after the final Corps decision as defined at 33 CFR 331.10, whichever date is later.

(2) Upon completion of his review in accordance with 33 CFR parts 320 through 325, the district engineer will determine if a permit should be issued, with special conditions if appropriate, or denied. In reaching a decision to issue, he must determine that the work involved is not contrary to the public interest, and if section 404 is applicable, that the work also complies with the Environmental Protection Agency's section 404(b)(1) guidelines. If he determines that a denial is warranted, his notification of denial should prescribe any final corrective actions required. His notification should also establish a reasonable period of time for the applicant to complete such actions unless he determines that further information is required before the corrective measures can be specified. If further information is required, the final corrective measures may be specified at a later date. If an applicant refuses to undertake prescribed corrective actions ordered subsequent to permit denial or refuses to accept a conditioned permit, the district engineer may initiate legal action in accordance with § 326.5.

(f) *Combining steps.* The procedural steps in this section are in the normal sequence. However, these regulations do not prohibit the streamlining of the enforcement process through the combining of steps.

(g) *Coordination with EPA.* In all cases where the district engineer is aware that EPA is considering enforcement action, he should coordinate with EPA to attempt to avoid conflict or duplication. Such coordination applies to interim protective measures and after-the-fact permitting, as well as to appropriate legal enforcement actions.

[51 FR 41246, Nov. 13, 1986, as amended at 64 FR 11714, Mar. 9, 1999; 65 FR 16493, Mar. 28, 2000]

§ 326.4 Supervision of authorized activities.

(a) *Inspections.* District engineers will, at their discretion, take reasonable measures to inspect permitted activities, as required, to ensure that these activities comply with specified terms and conditions. To supplement inspections by their enforcement personnel, district engineers should encourage their other personnel; members of the public; and interested state, local, and other Federal agency representatives to report suspected violations of Corps permits. To facilitate inspections, district engineers will, in appropriate cases, require that copies of ENG Form 4336 be posted conspicuously at the sites of authorized activities and will make available to all interested persons information on the terms and conditions of issued permits.

The U.S. Coast Guard will inspect permitted ocean dumping activities pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(b) *Inspection limitations.* Section 326.4 does not establish a non-discretionary duty to inspect permitted activities for safety, sound engineering practices, or interference with other permitted or unpermitted structures or uses in the area. Further, the regulations implementing the Corps regulatory program do not establish a non-discretionary duty to inspect permitted activities for any other purpose.

(c) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activities will normally be paid by the Federal Government unless daily supervision or other unusual expenses are involved. In such unusual cases, the district engineer may condition permits to require permittees to pay inspection expenses pursuant to the authority contained in section 9701 of Pub L. 97–258 (33 U.S.C. 9701). The collection and disposition of inspection expense funds obtained from applicants will be administered in accordance with the relevant Corps regulations governing such funds.

(d) *Non-compliance.* If a district engineer determines that a permittee has violated the terms or conditions of the permit and that the violation is sufficiently serious to require an enforcement action, then he should, unless at his discretion he deems it inappropriate: (1) First contact the permittee;

(2) Request corrected plans reflecting actual work, if needed; and

(3) Attempt to resolve the violation. Resolution of the violation may take the form of the permitted project being voluntarily brought into compliance or of a permit modification (33 CFR 325.7(b)). If a mutually agreeable solution cannot be reached, a written order requiring compliance should normally be issued and delivered by personal service. Issuance of an order is not, however, a prerequisite to legal action. If an order is issued, it will specify a time period of not more than 30 days for bringing the permitted project into compliance, and a copy will be sent to the appropriate state official pursuant to section 404(s)(2) of the Clean Water Act. If the permittee fails to comply with the order within the specified period of time, the district engineer may consider using the suspension/revocation procedures in 33 CFR 325.7(c) and/or he may recommend legal action in accordance with § 326.5.

§ 326.5 Legal action.

(a) *General.* For cases the district engineer determines to be appropriate, he will recommend criminal or civil actions to obtain penalties for violations, compliance with the orders and directives he has issued pursuant to §§ 326.3 and 326.4, or other relief as appropriate. Appropriate cases for criminal or civil action include, but are not limited to, violations which, in the district engineer's opinion, are willful, repeated, flagrant, or of substantial impact.

(b) *Preparation of case.* If the district engineer determines that legal action is appropriate, he will prepare a litigation report or such other documentation that he and the local U.S. Attorney have mutually agreed to, which contains an analysis of the information obtained during his investigation of the violation or during the processing of a permit application and a recommendation of appropriate legal action. The litigation report or alternative documentation will also recommend what, if any, restoration or mitigative measures are required and will provide the rationale for any such recommendation.

(c) *Referral to the local U.S. Attorney.* Except as provided in paragraph (d) of this section, district engineers are authorized to refer cases directly to the U.S. Attorney. Because of the unique legal system in the Trust Territories, all cases over which the Department of Justice has no authority will be referred to the Attorney General for the trust Territories. Information copies of all letters of referral shall be forwarded to the appropriate division counsel, the Office, Chief of Engineers, ATTN: DAEN-CCK, the Office of the Assistant Secretary of the Army (Civil Works), and the Chief of the Environmental Defense Section, Lands and Natural Resources Division, U.S. Department of Justice.

(d) *Referral to the Office, Chief of Engineers.* District engineers will forward

litigation reports with recommendations through division offices to the Office, Chief of Engineers, ATTN: DAEN-CCK, for all cases that qualify under the following criteria:

(1) Significant precedential or controversial questions of law or fact;

(2) Requests for elevation to the Washington level by the Department of Justice;

(3) Violations of section 9 of the Rivers and Harbors Act of 1899;

(4) Violations of section 103 the Marine Protection, Research and Sanctuaries Act of 1972;

(5) All cases involving violations by American Indians (original of litigation report to DAEN-CCI with copy to DAEN-CCK) on reservation lands or in pursuit of specific treaty rights;

(6) All cases involving violations by officials acting on behalf of foreign governments; and

(7) Cases requiring action pursuant to paragraph (e) of this section.

(e) *Legal option not available.* In cases where the local U.S. Attorney declines to take legal action, it would be appropriate for the district engineer to close the enforcement case record unless he believes that the case warrants special attention. In that situation, he is encouraged to forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN-CCK, for direct coordination through the Office of the Assistant Secretary of the Army (Civil Works) with the Department of Justice. Further, the case record should not be closed if the district engineer anticipates that further administrative enforcement actions, taken in accordance with the procedures prescribed in this part, will identify remedial measures which, if not complied with by the parties responsible for the violation, will result in appropriate legal action at a later date.

§ 326.6 Class I administrative penalties.

(a) *Introduction.* (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205 of the National Fishing Enhancement Act. Under section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $27,500. Under section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $11,000 for each violation.

(2) These procedures supplement the existing enforcement procedures at §§ 326.1 through 326.5. However, as a matter of Corps enforcement discretion once the Corps decides to proceed with an administrative penalty under these procedures it shall not subsequently pursue judicial action pursuant to § 326.5. Therefore, an administrative penalty should not be pursued if a subsequent judicial action for civil penalties is desired. An administrative civil penalty may be pursued in conjunction with a compliance order; request for restoration and/or request for mitigation issued under § 326.4.

(3) *Definitions.* For the purposes of this section of the regulation:

(i) *Corps* means the Secretary of the Army, acting through the U.S. Army Corps of Engineers, with respect to the matters covered by this regulation.

(ii) *Interested person outside the Corps* includes the permittee, any person who filed written comments on the proposed penalty order, and any other person not employed by the Corps with an interest in the subject of proposed penalty order, and any attorney of record for those persons.

(iii) *Interested Corps staff* means those Corps employees, whether temporary or permanent, who may investigate, litigate, or present evidence, arguments, or the position of the Corps in the hearing or who participated in the preparation, investigation or deliberations concerning the proposed penalty order, including any employee, contractor, or consultant who may be called as a witness.

(iv) *Permittee* means the person to whom the Corps issued a permit under section 404 of the Clean Water Act, (or section 10 of the Rivers and Harbors Act for an Artificial Reef) the conditions and limitations of which permit have allegedly been violated.

(v) *Presiding Officer* means a member of Corps Counsel staff or any other

qualified person designated by the District Engineer (DE), to hold a hearing on a proposed administrative civil penalty order (hereinafter referred to as ''proposed order'') in accordance with the rules set forth in this regulation and to make such recommendations to the DE as prescribed in this regulation.

(vi) *Ex parte communication* means any communication, written or oral, relating to the merits of the proceeding, between the Presiding Officer and an interested person outside the Corps or the interested Corps staff, which was not originally filed or stated in the administrative record or in the hearing. Such communication is not an ''ex parte communication'' if all parties have received prior written notice of the proposed communication and have been given the opportunity to participate herein.

(b) *Initiation of action*. (1) If the DE or a delegatee of the DE finds that a recipient of a Department of the Army permit (hereinafter referred to as ''the permittee'') has violated any permit condition or limitation contained in that permit, the DE is authorized to prepare and process a proposed order in accordance with these procedures. The proposed order shall specify the amount of the penalty which the permittee may be assessed and shall describe with reasonable specificity the nature of the violation.

(2) The permittee will be provided actual notice, in writing, of the DE's proposal to issue an administrative civil penalty and will be advised of the right to request a hearing and to present evidence on the alleged violation. Notice to the permittee will be provided by certified mail, return receipt requested, or other notice, at the discretion of the DE when he determines justice so requires. This notice will be accompanied by a copy of the proposed order, and will include the following information:

(i) A description of the alleged violation and copies of the applicable law and regulations;

(ii) An explanation of the authority to initiate the proceeding;

(iii) An explanation, in general terms, of the procedure for assessing civil penalties, including opportunities for public participation;

(iv) A statement of the amount of the penalty that is proposed and a statement of the maximum amount of the penalty which the DE is authorized to assess for the violations alleged;

(v) A statement that the permittee may within 30 calendar days of receipt of the notice provided under this subparagraph, request a hearing prior to issuance of any final order. Further, that the permittee must request a hearing within 30 calendar days of receipt of the notice provided under this subparagraph in order to be entitled to receive such a hearing;

(vi) The name and address of the person to whom the permittee must send a request for hearing;

(vii) Notification that the DE may issue the final order on or after 30 calendar days following receipt of the notice provided under these rules, if the permittee does not request a hearing; and

(viii) An explanation that any final order issued under this section shall become effective 30 calendar days following its issuance unless a petition to set aside the order and to hold a hearing is filed by a person who commented on the proposed order and such petition is granted or an appeal is taken under section 309(g)(8) of the Clean Water Act.

(3) At the same time that actual notice is provided to the permittee, the DE shall give public notice of the proposed order, and provide reasonable opportunity for public comment on the proposed order, prior to issuing a final order assessing an administrative civil penalty. Procedures for giving public notice and providing the opportunity for public comment are contained in § 326.6(c).

(4) At the same time that actual notice is provided to the permittee, the DE shall provide actual notice, in writing, to the appropriate state agency for the state in which the violation occurred. Procedures for providing actual notice to and consulting with the appropriate state agency are contained in § 326.6(d).

(c) *Public notice and comment*. (1) At the same time the permittee and the appropriate state agency are provided actual notice, the DE shall provide

public notice of and a reasonable opportunity to comment on the DE's proposal to issue an administrative civil penalty against the permittee.

(2) A 30 day public comment period shall be provided. Any person may submit written comments on the proposed administrative penalty order. The DE shall include all written comments in an administrative record relating to the proposed order. Any person who comments on a proposed order shall be given notice of any hearing held on the proposed order. Such persons shall have a reasonable opportunity to be heard and to present evidence in such hearings.

(3) If no hearing is requested by the permittee, any person who has submitted comments on the proposed order shall be given notice by the DE of any final order issued, and will be given 30 calendar days in which to petition the DE to set aside the order and to provide a hearing on the penalty. The DE shall set aside the order and provide a hearing in accordance with these rules if the evidence presented by the commenter in support of the commenter's petition for a hearing is material and was not considered when the order was issued. If the DE denies a hearing, the DE shall provide notice to the commenter filing the petition for the hearing, together with the reasons for the denial. Notice of the denial and the reasons for the denial shall be published in the FEDERAL REGISTER by the DE.

(4) The DE shall give public notice by mailing a copy of the information listed in paragraph (c)(5), of this section to:

(i) Any person who requests notice;

(ii) Other persons on a mailing list developed to include some or all of the following sources:

(A) Persons who request in writing to be on the list;

(B) Persons on ''area lists'' developed from lists of participants in past similar proceedings in that area, including hearings or other actions related to section 404 permit issuance as required by § 325.3(d)(1). The DE may update the mailing list from time to time by requesting written indication of continued interest from those listed. The DE may delete from the list the name of any person who fails to respond to such a request.

(5) All public notices under this subpart shall contain at a minimum the information provided to the permittee as described in § 326.6(b)(2) and:

(i) A statement of the opportunity to submit written comments on the proposed order and the deadline for submission of such comments;

(ii) Any procedures through which the public may comment on or participate in proceedings to reach a final decision on the order;

(iii) The location of the administrative record referenced in § 326.6(e), the times at which the administrative record will be available for public inspection, and a statement that all information submitted by the permittee and persons commenting on the proposed order is available as part of the administrative record, subject to provisions of law restricting the public disclosure of confidential information.

(d) *State consultation.* (1) At the same time that the permittee is provided actual notice, the DE shall send the appropriate state agency written notice of proposal to issue an administrative civil penalty order. This notice will include the same information required pursuant to § 326.6(c)(5).

(2) For the purposes of this regulation, the appropriate State agency will be the agency administering the 401 certification program, unless another state agency is agreed to by the District and the respective state through formal/informal agreement with the state.

(3) The appropriate state agency will be provided the same opportunity to comment on the proposed order and participate in any hearing that is provided pursuant to § 326.6(c).

(e) *Availability of the administrative record.* (1) At any time after the public notice of a proposed penalty order is given under § 326.6(c), the DE shall make available the administrative record at reasonable times for inspection and copying by any interested person, subject to provisions of law restricting the public disclosure of confidential information. Any person requesting copies of the administrative record or portions of the administrative record may be required by the DE

to pay reasonable charges for reproducing the information requested.

(2) The administrative record shall include the following:

(i) Documentation relied on by the DE to support the violations alleged in the proposed penalty order with a summary of violations, if a summary has been prepared;

(ii) Proposed penalty order or assessment notice;

(iii) Public notice of the proposed order with evidence of notice to the permittee and to the public;

(iv) Comments by the permittee and/or the public on the proposed penalty order, including any requests for a hearing;

(v) All orders or notices of the Presiding Officer;

(vi) Subpoenas issued, if any, for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with any hearings;

(vii) All submittals or responses of any persons or comments to the proceeding, including exhibits, if any;

(viii) A complete and accurate record or transcription of any hearing;

(ix) The recommended decision of the Presiding Officer and final decision and/or order of the Corps issued by the DE; and

(x) Any other appropriate documents related to the administrative proceeding;

(f) *Counsel.* A permittee may be represented at all stages of the proceeding by counsel. After receiving notification that a permittee or any other party or commenter is represented by counsel, the Presiding Officer and DE shall direct all further communications to that counsel.

(g) *Opportunity for hearing.* (1) The permittee may request a hearing and may provide written comments on the proposed administrative penalty order at any time within 30 calendar days after receipt of the notice set forth in § 326.6(b)(2). The permittee must request the hearing in writing, specifying in summary form the factual and legal issues which are in dispute and the specific factual and legal grounds for the permittee's defense.

(2) The permittee waives the right to a hearing to present evidence on the alleged violation or violations if the permittee does not submit the request for the hearing to the official designated in the notice of the proposed order within 30 calendar days of receipt of the notice. The DE shall determine the date of receipt of notice by permittee's signed and dated return receipt or such other evidence that constitutes proof of actual notice on a certain date.

(3) The DE shall promptly schedule requested hearings and provide reasonable notice of the hearing schedule to all participants, except that no hearing shall be scheduled prior to the end of the thirty day public comment period provided in § 326.6(c)(2). The DE may grant any delays or continuances necessary or desirable to resolve the case fairly.

(4) The hearing shall be held at the district office or a location chosen by the DE, except the permittee may request in writing upon a showing of good cause that the hearing be held at an alternative location. Action on such request is at the discretion of the DE.

(h) *Hearing.* (1) Hearings shall afford permittees with an opportunity to present evidence on alleged violations and shall be informal, adjudicatory hearings and shall not be subject to section 554 or 556 of the Administrative Procedure Act. Permittees may present evidence either orally or in written form in accordance with the hearing procedures specified in § 326.6(i).

(2) The DE shall give written notice of any hearing to be held under these rules to any person who commented on the proposed administrative penalty order under § 326.6(c). This notice shall specify a reasonable time prior to the hearing within which the commenter may request an opportunity to be heard and to present oral evidence or to make comments in writing in any such hearing. The notice shall require that any such request specify the facts or issues which the commenter wishes to address. Any commenter who files comments pursuant to § 326.6(c)(2) shall have a right to be heard and to present evidence at the hearing in conformance with these procedures.

(3) The DE shall select a member of the Corps counsel staff or other qualified person to serve as Presiding Officer of the hearing. The Presiding Officer shall exercise no other responsibility, direct or supervisory, for the investigation or prosecution of any case before him. The Presiding Officer shall conduct hearings as specified by these rules and make a recommended decision to the DE.

(4) The Presiding Officer shall consider each case on the basis of the evidence presented, and must have no prior connection with the case. The Presiding Officer is solely responsible for the recommended decision in each case.

(5) *Ex parte communications.* (i) No interested person outside the Corps or member of the interested Corps staff shall make, or knowingly cause to be made, any ex parte communication on the merits of the proceeding.

(ii) The Presiding Officer shall not make, or knowingly cause to be made, any ex parte communication on the proceeding to any interested person outside the Corps or to any member of the interested Corps staff.

(iii) The DE may replace the Presiding Officer in any proceeding in which it is demonstrated to the DE's satisfaction that the Presiding Officer has engaged in prohibited ex parte communications to the prejudice of any participant.

(iv) Whenever an ex parte communication in violation of this section is received by the Presiding Officer or made known to the Presiding Officer, the Presiding Officer shall immediately notify all participants in the proceeding of the circumstances and substance of the communication and may require the person who made the communication or caused it to be made, or the party whose representative made the communication or caused it to be made, to the extent consistent with justice and the policies of the Clean Water Act, to show cause why that person or party's claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(v) The prohibitions of this paragraph apply upon designation of the Presiding Officer and terminate on the date of final action or the final order.

(i) *Hearing procedures.* (1) The Presiding Officer shall conduct a fair and impartial proceeding in which the participants are given a reasonable opportunity to present evidence.

(2) The Presiding Officer may subpoena witnesses and issue subpoenas for documents pursuant to the provisions of the Clean Water Act.

(3) The Presiding Officer shall provide interested parties a reasonable opportunity to be heard and to present evidence. Interested parties include the permittee, any person who filed a request to participate under 33 CFR 326.6(c), and any other person attending the hearing. The Presiding Officer may establish reasonable time limits for oral testimony.

(4) The permittee may not challenge the permit condition or limitation which is the subject matter of the administrative penalty order.

(5) Prior to the commencement of the hearing, the DE shall provide to the Presiding Officer the complete administrative record as of that date. During the hearing, the DE, or an authorized representative of the DE may summarize the basis for the proposed administrative order. Thereafter, the administrative record shall be admitted into evidence and the Presiding Officer shall maintain the administrative record of the proceedings and shall include in that record all documentary evidence, written statements, correspondence, the record of hearing, and any other relevant matter.

(6) The Presiding Officer shall cause a tape recording, written transcript or other permanent, verbatim record of the hearing to be made, which shall be included in the administrative record, and shall, upon written request, be made available, for inspection or copying, to the permittee or any person, subject to provisions of law restricting the public disclosure of confidential information. Any person making a request may be required to pay reasonable charges for copies of the administrative record or portions thereof.

(7) In receiving evidence, the Presiding Officer is not bound by strict rules of evidence. The Presiding Officer

may determine the weight to be accorded the evidence.

(8) The permittee has the right to examine, and to respond to the administrative record. The permittee may offer into evidence, in written form or through oral testimony, a response to the administrative record including, any facts, statements, explanations, documents, testimony, or other exculpatory items which bear on any appropriate issues. The Presiding Officer may question the permittee and require the authentication of any written exhibit or statement. The Presiding Officer may exclude any repetitive or irrelevant matter.

(9) At the close of the permittee's presentation of evidence, the Presiding Officer should allow the introduction of rebuttal evidence. The Presiding Officer may allow the permittee to respond to any such rebuttal evidence submitted and to cross-examine any witness.

(10) The Presiding Officer may take official notice of matters that are not reasonably in dispute and are commonly known in the community or are ascertainable from readily available sources of known accuracy. Prior to taking official notice of a matter, the Presiding Officer shall give the Corps and the permittee an opportunity to show why such notice should not be taken. In any case in which official notice is taken, the Presiding Officer shall place a written statement of the matters as to which such notice was taken in the record, including the basis for such notice and a statement that the Corps or permittee consented to such notice being taken or a summary of the objections of the Corps or the permittee.

(11) After all evidence has been presented, any participant may present argument on any relevant issue, subject to reasonable time limitations set at the discretion of the Presiding Officer.

(12) The hearing record shall remain open for a period of 10 business days from the date of the hearing so that the permittee or any person who has submitted comments on the proposed order may examine and submit responses for the record.

(13) At the close of this 10 business day period, the Presiding Officer may allow the introduction of rebuttal evidence. The Presiding Officer may hold the record open for an additional 10 business days to allow the presentation of such rebuttal evidence.

(j) *The decision.* (1) Within a reasonable time following the close of the hearing and receipt of any statements following the hearing and after consultation with the state pursuant to § 326.6(d), the Presiding Officer shall forward a recommended decision accompanied by a written statement of reasons to the DE. The decision shall recommend that the DE withdraw, issue, or modify and issue the proposed order as a final order. The recommended decision shall be based on a preponderance of the evidence in the administrative record. If the Presiding Officer finds that there is not a preponderance of evidence in the record to support the penalty or the amount of the penalty in a proposed order, the Presiding Officer may recommend that the order be withdrawn or modified and then issued on terms that are supported by a preponderance of evidence on the record. The Presiding Officer also shall make the complete administrative record available to the DE for review.

(2) The Presiding Officer's recommended decision to the DE shall become part of the administrative record and shall be made available to the parties to the proceeding at the time the DE's decision is released pursuant to § 326.6(j)(5). The Presiding Officer's recommended decision shall not become part of the administrative record until the DE's final decision is issued, and shall not be made available to the permittee or public prior to that time.

(3) The rules applicable to Presiding Officers under § 326.6(h)(5) regarding ex parte communications are also applicable to the DE and to any person who advises the DE on the decision or the order, except that communications between the DE and the Presiding Officer do not constitute ex parte communications, nor do communications between the DE and his staff prior to issuance of the proposed order.

(4) The DE may request additional information on specified issues from the

participants, in whatever form the DE designates, giving all participants a fair opportunity to be heard on such additional matters. The DE shall include this additional information in the administrative record.

(5) Within a reasonable time following receipt of the Presiding Officer's recommended decision, the DE shall withdraw, issue, or modify and issue the proposed order as a final order. The DE's decision shall be based on a preponderance of the evidence in the administrative record, shall consider the penalty factors set out in section 309(g)(3) of the CWA, shall be in writing, shall include a clear and concise statement of reasons for the decision, and shall include any final order assessing a penalty. The DE's decision, once issued, shall constitute final Corps action for purposes of judicial review.

(6) The DE shall issue the final order by sending the order, or written notice of its withdrawal, to the permittee by certified mail. Issuance of the order under this subparagraph constitutes final Corps action for purposes of judicial review.

(7) The DE shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to every person who submitted written comments on the proposed order.

(8) The notice shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The notice shall also note the right of a commenter to petition for a hearing pursuant to 33 CFR 326.6(c)(3) if no hearing was previously held.

(k) *Effective date of order*. (1) Any final order issued under this subpart shall become effective 30 calendar days following its issuance unless an appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, or in the case where no hearing was held prior to the final order, and a petition for hearing is filed by a prior commenter.

(2) If a petition for hearing is received within 30 days after the final order is issued, the DE shall:

(i) Review the evidence presented by the petitioner.

(ii) If the evidence is material and was not considered in the issuance of the order, the DE shall immediately set aside the final order and schedule a hearing. In that case, a hearing will be held, a new recommendation will be made by the Presiding Officer to the DE and a new final decision issued by the DE.

(iii) If the DE denies a hearing under this subparagraph, the DE shall provide to the petitioner, and publish in the FEDERAL REGISTER, notice of, and the reasons for, such denial.

(l) *Judicial review*. (1) Any permittee against whom a final order assessing a civil penalty under these regulations or any person who provided written comments on a proposed order may obtain judicial review of the final order.

(2) In order to obtain judicial review, the permittee or commenter must file a notice of appeal in the United States District Court for either the District of Columbia, or the district in which the violation was alleged to have occurred, within 30 calendar days after the date of issuance of the final order.

(3) Simultaneously with the filing of the notice of appeal, the permittee or commenter must send a copy of such notice by certified mail to the DE and the Attorney General.

[54 FR 50709, Dec. 8, 1989, as amended at 69 FR 35518, June 25, 2004]

PART 327—PUBLIC HEARINGS

Sec.
327.1 Purpose.
327.2 Applicability.
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327.11 Public notice.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 51 FR 41249, Nov. 13, 1986, unless otherwise noted.

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in

the conduct of public hearings conducted in the evaluation of a proposed DA permit action or Federal project as defined in § 327.3 of this part including those held pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) *Public hearing* means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) *Permit action*, as used herein means the evaluation of and decision on an application for a DA permit pursuant to sections 9 or 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, or section 103 of the MPRSA, as amended, or the modification, suspension or revocation of any DA permit (see 33 CFR 325.7).

(c) *Federal project* means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to section 404 of the Clean Water Act, or section 103 of the MPRSA.

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a DA permit application or a Federal project whenever a public hearing is needed for making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7).

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a DA permit application or on a Federal project, that a public hearing be held to consider the material matters at issue in the permit application or with respect to Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the district engineer may expeditiously attempt to resolve the issues informally. Otherwise, he shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 of this part. Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The district engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(c) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(d) In fixing the time and place for a hearing, the convenience and necessity of the interested public will be duly considered.

§ 327.5 Presiding officer.

(a) The district engineer, in whose district a matter arises, shall normally serve as the presiding officer. When the district engineer is unable to serve, he may designate the deputy district engineer or other qualified person as presiding officer. In cases of unusual interest, the Chief of Engineers or the division engineer may appoint such person as he deems appropriate to serve as the presiding officer.

(b) The presiding officer shall include in the administrative record of the permit action the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to or in support of the proposed action, the

hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The administrative record shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

At each public hearing, the district counsel or his designee may serve as legal advisor to the presiding officer. In appropriate circumstances, the district engineer may waive the requirement for a legal advisor to be present.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, or may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) The presiding officer shall make an opening statement outlining the purpose of the hearing and prescribing the general procedures to be followed.

(b) Hearings shall be conducted by the presiding officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral or written statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing record prior to the time the hearing record is closed to public submissions, and may present proposed findings and recommendations. The presiding officer shall afford participants a reasonable opportunity for rebuttal.

(c) The presiding officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(d) Cross-examination of witnesses shall not be permitted.

(e) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate district engineer.

(f) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the presiding officer for reasons of redundancy, be received in evidence and shall constitute a part of the record.

(g) The presiding officer shall allow a period of not less than 10 days after the close of the public hearing for submission of written comments.

(h) In appropriate cases, the district engineer may participate in joint public hearings with other Federal or state agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or state agency allows a cross-examination in its public hearing, the district engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

§ 327.9 Filing of the transcript of the public hearing.

Where the presiding officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as presiding officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the presiding officer and the transcript of the public hearing and evidence submitted thereat shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Authority of the presiding officer.

Presiding officers shall have the following authority:

(a) To regulate the course of the hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice should normally provide for a period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to state and local agencies and other parties having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and provided to newspapers of general circulation for publication. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft environmental impact statement or environmental assessment.

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

Sec.

328.1 Purpose.
328.2 General scope.
328.3 Definitions.
328.4 Limits of jurisdiction.
328.5 Changes in limits of waters of the United States.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 51 FR 41250, Nov. 13, 1986, unless otherwise noted.

§ 328.1 Purpose.

This section defines the term ''waters of the United States'' as it applies to the jurisdictional limits of the authority of the Corps of Engineers under the Clean Water Act. It prescribes the policy, practice, and procedures to be used in determining the extent of jurisdiction of the Corps of Engineers concerning ''waters of the United States.'' The terminology used by section 404 of the Clean Water Act includes ''navigable waters'' which is defined at section 502(7) of the Act as ''waters of the United States including the territorial seas.'' To provide clarity and to avoid confusion with other Corps of Engineer regulatory programs, the term ''waters of the United States'' is used throughout 33 CFR parts 320 through 330. This section does not apply to authorities under the Rivers and Harbors Act of 1899 except that some of the same waters may be regulated under both statutes (see 33 CFR parts 322 and 329).

§ 328.2 General scope.

Waters of the United States include those waters listed in § 328.3(a). The lateral limits of jurisdiction in those waters may be divided into three categories. The categories include the territorial seas, tidal waters, and nontidal waters (see 33 CFR 328.4 (a), (b), and (c), respectively).

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term *waters of the United States* means

(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie

potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(iii) Which are used or could be used for industrial purpose by industries in interstate commerce;

(4) All impoundments of waters otherwise defined as waters of the United States under the definition;

(5) Tributaries of waters identified in paragraphs (a) (1) through (4) of this section;

(6) The territorial seas;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (6) of this section.

(8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

(b) The term *wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(c) The term *adjacent* means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are ''adjacent wetlands.''

(d) The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(e) The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(f) The term *tidal waters* means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

[51 FR 41250, Nov. 13, 1986, as amended at 58 FR 45036, Aug. 25, 1993]

§ 328.4 Limits of jurisdiction.

(a) *Territorial Seas.* The limit of jurisdiction in the territorial seas is measured from the baseline in a seaward direction a distance of three nautical miles. (See 33 CFR 329.12)

(b) *Tidal waters of the United States.* The landward limits of jurisdiction in tidal waters:

(1) Extends to the high tide line, or

(2) When adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this section.

(c) *Non-tidal waters of the United States.* The limits of jurisdiction in non-tidal waters:

(1) In the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark, or

(2) When adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands.

(3) When the water of the United States consists only of wetlands the jurisdiction extends to the limit of the wetland.

§ 328.5 Changes in limits of waters of the United States.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of waters of the United States. Gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterway which also change the boundaries of the waters of the United States. For example, changing sea levels or subsidence of land may cause some areas to become waters of the United States while siltation or a change in drainage may remove an area from waters of the United States. Man-made changes may affect the limits of waters of the United States; however, permanent changes should not be presumed until the particular circumstances have been examined and verified by the district engineer. Verification of changes to the lateral limits of jurisdiction may be obtained from the district engineer.

PART 329—DEFINITION OF NAVIGABLE WATERS OF THE UNITED STATES

Sec.

329.1 Purpose.
329.2 Applicability.
329.3 General policies.
329.4 General definition.
329.5 General scope of determination.
329.6 Interstate or foreign commerce.
329.7 Intrastate or interstate nature of waterway.
329.8 Improved or natural conditions of the waterbody.
329.9 Time at which commerce exists or determination is made.
329.10 Existence of obstructions.
329.11 Geographic and jurisdictional limits of rivers and lakes.
329.12 Geographic and jurisdictional limits of oceanic and tidal waters.
329.13 Geographic limits: Shifting boundaries.
329.14 Determination of navigability.
329.15 Inquiries regarding determinations.
329.16 Use and maintenance of lists of determinations.

AUTHORITY: 33 U.S.C. 401 *et seq.*

SOURCE: 51 FR 41251, Nov. 13, 1986, unless otherwise noted.

§ 329.1 Purpose.

This regulation defines the term ''navigable waters of the United States'' as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning ''navigable waters of the United States.'' This definition does not apply to authorities under the Clean Water Act which definitions are described under 33 CFR parts 323 and 328.

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers districts and divisions having civil works responsibilities.

§ 329.3 General policies.

Precise definitions of ''navigable waters of the United States'' or ''navigability'' are ultimately dependent on judicial interpretation and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by Federal courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been

used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General scope of determination.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in paragraph (a) of this section; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or foreign commerce.

(a) *Nature of commerce: type, means, and extent of use.* The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 of this part, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river ''navigable''; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) *Nature of commerce: interstate and intrastate.* Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same state. It is only necessary that goods may be brought from, or eventually be destined to go to, another state. (For purposes of this regulation, the term ''interstate commerce'' hereinafter includes ''foreign commerce'' as well.)

§ 329.7 Intrastate or interstate nature of waterway.

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or natural conditions of the waterbody.

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) *Existing improvements: artificial waterbodies.* (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal

open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area (see § 329.12(b) of this part).

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to transport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) *Non-existing improvements, past or potential.* A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever ''reasonable'' improvements may potentially be made. The improvement need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a ''reasonable'' improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were ''reasonable'' at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at which commerce exists or determination is made.

(a) *Past use.* A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as ''navigable in law'' even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of ''navigable in law,'' the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are non-navigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

(b) *Future or potential use.* Navigability may also be found in a waterbody's susceptibility for use in its ordinary condition or by reasonable improvement to transport interstate commerce. This may be either in its natural or improved condition, and may thus be existent although there has been no actual use to date. Non-use in the past therefore does not prevent recognition of the potential for future use.

§ 329.10 Existence of obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a ''channel'' of commerce, even though boats had to be removed from the water in some stretches, or logs be brought

around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and jurisdictional limits of rivers and lakes.

(a) *Jurisdiction over entire bed.* Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark. Jurisdiction thus extends to the edge (as determined above) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation or other barriers. Marshlands and similar areas are thus considered navigable in law, but only so far as the area is subject to inundation by the ordinary high waters.

(1) The ''ordinary high water mark'' on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) *Upper limit of navigability.* The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet farther upstream.

§ 329.12 Geographic and jurisdictional limits of oceanic and tidal waters.

(a) *Ocean and coastal waters.* The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the baseline (The Territorial Seas). Wider zones are recognized for special regulatory powers exercised over the outer continental shelf. (See 33 CFR 322.3(b)).

(1) *Baseline defined.* Generally, where the shore directly contacts the open sea, the line on the shore reached by the ordinary low tides comprises the baseline from which the distance of three geographic miles is measured. The baseline has significance for both domestic and international law and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the baseline may have to be drawn seaward of such bodies.

(2) *Shoreward limit of jurisdiction.* Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the ''apparent shoreline'' which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) *Bays and estuaries.* Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by paragraph (a)(2) of this section) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered ''navigable in law,'' but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean

high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§ 329.13 Geographic limits: Shifting boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain ''navigable in law,'' even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determination of navigability.

(a) *Effect on determinations.* Although conclusive determinations of navigability can be made only by federal Courts, those made by federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional questions arise, district personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) *Procedures of determination.* A determination whether a waterbody is a navigable water of the United States will be made by the division engineer, and will be based on a report of findings prepared at the district level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the district engineer, accompanied by an opinion of the district counsel, and forwarded to the division engineer for final determination. Each report of findings will be based substantially on applicable portions of the format in paragraph (c) of this section.

(c) *Suggested format of report of findings:*

(1) Name of waterbody:

(2) Tributary to:

(3) Physical characteristics:

(i) Type: (river, bay, slough, estuary, etc.)

(ii) Length:

(iii) Approximate discharge volumes: Maximum, Minimum, Mean:

(iv) Fall per mile:

(v) Extent of tidal influence:

(vi) Range between ordinary high and ordinary low water:

(vii) Description of improvements to navigation not listed in paragraph (c)(5) of this section:

(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce:

(5) Authorized projects:

(i) Nature, condition and location of any improvements made under projects authorized by Congress:

(ii) Description of projects authorized but not constructed:

(iii) List of known survey documents or reports describing the waterbody:

(6) Past or present interstate commerce:

(i) General types, extent, and period in time:

(ii) Documentation if necessary:

(7) Potential use for interstate commerce, if applicable:

(i) If in natural condition:

(ii) If improved:

(8) Nature of jurisdiction known to have been exercised by Federal agencies if any:

(9) State or Federal court decisions relating to navigability of the waterbody, if any:

(10) Remarks:

(11) Finding of navigability (with date) and recommendation for determination:

§ 329.15 Inquiries regarding determinations.

(a) Findings and determinations should be made whenever a question arises regarding the navigability of a waterbody. Where no determination

has been made, a report of findings will be prepared and forwarded to the division engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the division engineer. If a need develops for an energency determination, district engineers may act in reliance on a finding prepared as in section 329.14 of this part. The report of findings should then be forwarded to the division engineer on an expedited basis.

(b) Where determinations have been made by the division engineer, inquiries regarding the *navigability* of specific portions of waterbodies covered by these determinations may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that _____ (River) (Bay) (Lake, etc.) is a navigable water of the United States from _____ to _____. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the *jurisdiction* of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or

(2) If not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and maintenance of lists of determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each district office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the division engineer; changes are not considered final until a determination has been made by the division engineer.

PART 330—NATIONWIDE PERMIT PROGRAM

Sec.

330.1 Purpose and policy.
330.2 Definitions.
330.3 Activities occurring before certain dates.
330.4 Conditions, limitations, and restrictions.
330.5 Issuing, modifying, suspending, or revoking nationwide permits and authorizations.
330.6 Authorization by nationwide permit.

AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 56 FR 59134, Nov. 22, 1991, unless otherwise noted.

§ 330.1 Purpose and policy.

(a) *Purpose.* This part describes the policy and procedures used in the Department of the Army's nationwide permit program to issue, modify, suspend, or revoke nationwide permits; to identify conditions, limitations, and restrictions on the nationwide permits; and, to identify any procedures, whether required or optional, for authorization by nationwide permits.

(b) *Nationwide permits.* Nationwide permits (NWPs) are a type of general permit issued by the Chief of Engineers and are designed to regulate with little, if any, delay or paperwork certain activities having minimal impacts. The NWPs are proposed, issued, modified, reissued (extended), and revoked from time to time after an opportunity for public notice and comment. Proposed NWPs or modifications to or reissuance of existing NWPs will be adopted only after the Corps gives notice and allows the public an opportunity to comment on and request a public hearing regarding the proposals. The Corps will give full consideration to all comments received prior to reaching a final decision.

(c) *Terms and conditions.* An activity is authorized under an NWP only if

that activity and the permittee satisfy all of the NWP's terms and conditions. Activities that do not qualify for authorization under an NWP still may be authorized by an individual or regional general permit. The Corps will consider unauthorized any activity requiring Corps authorization if that activity is under construction or completed and does not comply with all of the terms and conditions of an NWP, regional general permit, or an individual permit. The Corps will evaluate unauthorized activities for enforcement action under 33 CFR part 326. The district engineer (DE) may elect to suspend enforcement proceedings if the permittee modifies his project to comply with an NWP or a regional general permit. After considering whether a violation was knowing or intentional, and other indications of the need for a penalty, the DE can elect to terminate an enforcement proceeding with an after-the-fact authorization under an NWP, if all terms and conditions of the NWP have been satisfied, either before or after the activity has been accomplished.

(d) *Discretionary authority*. District and division engineers have been delegated a discretionary authority to suspend, modify, or revoke authorizations under an NWP. This discretionary authority may be used by district and division engineers only to further condition or restrict the applicability of an NWP for cases where they have concerns for the aquatic environment under the Clean Water Act section 404(b)(1) Guidelines or for any factor of the public interest. Because of the nature of most activities authorized by NWP, district and division engineers will not have to review every such activity to decide whether to exercise discretionary authority. The terms and conditions of certain NWPs require the DE to review the proposed activity before the NWP authorizes its construction. However, the DE has the discretionary authority to review any activity authorized by NWP to determine whether the activity complies with the NWP. If the DE finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest, he shall modify the NWP authorization to reduce or eliminate those adverse effects, or he shall instruct the prospective permittee to apply for a regional general permit or an individual permit. Discretionary authority is also discussed at 33 CFR 330.4(e) and 330.5.

(e) *Notifications*. (1) In most cases, permittees may proceed with activities authorized by NWPs without notifying the DE. However, the prospective permittee should carefully review the language of the NWP to ascertain whether he must notify the DE prior to commencing the authorized activity. For NWPs requiring advance notification, such notification must be made in writing as early as possible prior to commencing the proposed activity. The permittee may presume that his project qualifies for the NWP unless he is otherwise notified by the DE within a 30-day period. The 30-day period starts on the date of receipt of the notification in the Corps district office and ends 30 calendar days later regardless of weekends or holidays. If the DE notifies the prospective permittee that the notification is incomplete, a new 30-day period will commence upon receipt of the revised notification. The prospective permittee may not proceed with the proposed activity before expiration of the 30-day period unless otherwise notified by the DE. If the DE fails to act within the 30-day period, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the NWP authorization.

(2) The DE will review the notification and may add activity-specific conditions to ensure that the activity complies with the terms and conditions of the NWP and that the adverse impacts on the aquatic environment and other aspects of the public interest are individually and cumulatively minimal.

(3) For some NWPs involving discharges into wetlands, the notification must include a wetland delineation. The DE will review the notification and determine if the individual and cumulative adverse environmental effects are more than minimal. If the adverse effects are more than minimal the DE will notify the prospective permittee that an individual permit is required or

that the prospective permittee may propose measures to mitigate the loss of special aquatic sites, including wetlands, to reduce the adverse impacts to minimal. The prospective permittee may elect to propose mitigation with the original notification. The DE will consider that proposed mitigation when deciding if the impacts are minimal. The DE shall add activity-specific conditions to ensure that the mitigation will be accomplished. If sufficient mitigation cannot be developed to reduce the adverse environmental effects to the minimal level, the DE will not allow authorization under the NWP and will instruct the prospective permittee on procedures to seek authorization under an individual permit.

(f) *Individual Applications*. DEs should review all incoming applications for individual permits for possible eligibility under regional general permits or NWPs. If the activity complies with the terms and conditions of one or more NWP, he should verify the authorization and so notify the applicant. If the DE determines that the activity could comply after reasonable project modifications and/or activity-specific conditions, he should notify the applicant of such modifications and conditions. If such modifications and conditions are accepted by the applicant, verbally or in writing, the DE will verify the authorization with the modifications and conditions in accordance with 33 CFR 330.6(a). However, the DE will proceed with processing the application as an individual permit and take the appropriate action within 15 calendar days of receipt, in accordance with 33 CFR 325.2(a)(2), unless the applicant indicates that he will accept the modifications or conditions.

(g) *Authority*. NWPs can be issued to satisfy the permit requirements of section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, section 103 of the Marine Protection, Research, and Sanctuaries Act, or some combination thereof. The applicable authority will be indicated at the end of each NWP. NWPs and their conditions previously published at 33 CFR 330.5 and 330.6 will remain in effect until they expire or are modified or revoked in accordance with the procedures of this part.

§ 330.2 Definitions.

(a) The definitions found in 33 CFR parts 320–329 are applicable to the terms used in this part.

(b) *Nationwide* permit refers to a type of general permit which authorizes activities on a nationwide basis unless specifically limited. (Another type of general permit is a ''regional permit'' which is issued by division or district engineers on a regional basis in accordance with 33 CFR part 325). (See 33 CFR 322.2(f) and 323.2(h) for the definition of a general permit.)

(c) *Authorization* means that specific activities that qualify for an NWP may proceed, provided that the terms and conditions of the NWP are met. After determining that the activity complies with all applicable terms and conditions, the prospective permittee may assume an authorization under an NWP. This assumption is subject to the DE's authority to determine if an activity complies with the terms and conditions of an NWP. If requested by the permittee in writing, the DE will verify in writing that the permittee's proposed activity complies with the terms and conditions of the NWP. A written verification may contain activity-specific conditions and regional conditions which a permittee must satisfy for the authorization to be valid.

(d) *Headwaters* means non-tidal rivers, streams, and their lakes and impoundments, including adjacent wetlands, that are part of a surface tributary system to an interstate or navigable water of the United States upstream of the point on the river or stream at which the average annual flow is less than five cubic feet per second. The DE may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means. For streams that are dry for long periods of the year, DEs may establish the point where headwaters begin as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

(e) *Isolated waters* means those nontidal waters of the United States that are:

(1) Not part of a surface tributary system to interstate or navigable waters of the United States; and

(2) Not adjacent to such tributary waterbodies.

(f) *Filled area* means the area within jurisdictional waters which is eliminated or covered as a direct result of the discharge (*i.e.*, the area actually covered by the discharged material). It does not include areas excavated nor areas impacted as an indirect effect of the fill.

(g) *Discretionary authority* means the authority described in §§ 330.1(d) and 330.4(e) which the Chief of Engineers delegates to division or district engineers to modify an NWP authorization by adding conditions, to suspend an NWP authorization, or to revoke an NWP authorization and thus require individual permit authorization.

(h) *Terms and conditions*. The ''terms'' of an NWP are the limitations and provisions included in the description of the NWP itself. The ''conditions'' of NWPs are additional provisions which place restrictions or limitations on all of the NWPs. These are published with the NWPs. Other conditions may be imposed by district or division engineers on a geographic, category-of-activity, or activity-specific basis (See 33 CFR 330.4(e)).

(i) *Single and complete project* means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwater or isolated water, or several different headwaters or isolated waters, the cumulative total of all filled areas should be the basis for deciding whether or not the project will be covered by an NWP. For linear projects, the ''single and complete project'' (*i.e.*, single and complete crossing) will apply to each crossing of a separate water of the United States (*i.e.*, single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

(j) *Special aquatic sites* means wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries, and refuges as defined at 40 CFR 230.40 through 230.45.

§ 330.3 Activities occurring before certain dates.

The following activities were permitted by NWPs issued on July 19, 1977, and, unless the activities are modified, they do not require further permitting:

(a) Discharges of dredged or fill material into waters of the United States outside the limits of navigable waters of the United States that occurred before the phase-in dates which extended Section 404 jurisdiction to all waters of the United States. The phase-in dates were: After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands; after September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area; and after July 1, 1977, discharges into all waters of the United States, including wetlands. (section 404)

(b) Structures or work completed before December 18, 1968, or in waterbodies over which the DE had not asserted jurisdiction at the time the activity occurred, provided in both instances, there is no interference with navigation. Activities completed shoreward of applicable Federal Harbor lines before May 27, 1970 do not require specific authorization. (section 10)

§ 330.4 Conditions, limitations, and restrictions.

(a) *General*. A prospective permittee must satisfy all terms and conditions of an NWP for a valid authorization to occur. Some conditions identify a ''threshold'' that, if met, requires additional procedures or provisions contained in other paragraphs in this section. It is important to remember that the NWPs only authorize activities from the perspective of the Corps regulatory authorities and that other Federal, state, and local permits, approvals, or authorizations may also be required.

(b) *Further information.* (1) DEs have authority to determine if an activity complies with the terms and conditions of an NWP.

(2) NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

(3) NWPs do not grant any property rights or exclusive privileges.

(4) NWPs do not authorize any injury to the property or rights of others.

(5) NWPs do not authorize interference with any existing or proposed Federal project.

(c) *State 401 water quality certification.* (1) State 401 water quality certification pursuant to section 401 of the Clean Water Act, or waiver thereof, is required prior to the issuance or reissuance of NWPs authorizing activities which may result in a discharge into waters of the United States.

(2) If, prior to the issuance or reissuance of such NWPs, a state issues a 401 water quality certification which includes special conditions, the division engineer will make these special conditions regional conditions of the NWP for activities which may result in a discharge into waters of United States in that state, unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case, the conditioned 401 water quality certification will be considered a denial of the certification (see paragraph (c)(3) of this section).

(3) If a state denies a required 401 water quality certification for an activity otherwise meeting the terms and conditions of a particular NWP, that NWP's authorization for all such activities within that state is denied without prejudice until the state issues an individual 401 water quality certification or waives its right to do so. State denial of 401 water quality certification for any specific NWP affects only those activities which may result in a discharge. That NWP continues to authorize activities which could not reasonably be expected to result in discharges into waters of the United States.[1]

(4) DEs will take appropriate measures to inform the public of which activities, waterbodies, or regions require an individual 401 water quality certification before authorization by NWP.

(5) The DE will not require or process an individual permit application for an activity which may result in a discharge and otherwise qualifies for an NWP solely on the basis that the 401 water quality certification has been denied for that NWP. However, the district or division engineer may consider water quality, among other appropriate factors, in determining whether to exercise his discretionary authority and require a regional general permit or an individual permit.

(6) In instances where a state has denied the 401 water quality certification for discharges under a particular NWP, permittees must furnish the DE with an individual 401 water quality certification or a copy of the application to the state for such certification. For NWPs for which a state has denied the 401 water quality certification, the DE will determine a reasonable period of time after receipt of the request for an activity-specific 401 water quality certification (generally 60 days), upon the expiration of which the DE will presume state waiver of the certification for the individual activity covered by the NWP's. However, the DE and the state may negotiate for additional time for the 401 water quality certification, but in no event shall the period exceed one (1) year (see 33 CFR 325.2(b)(1)(ii)). Upon receipt of an individual 401 water quality certification, or if the prospective permittee demonstrates to the DE state waiver of

[1] NWPs numbered 1, 2, 8, 9, 10, 11, 19, 24, 28, and 35, do not require 401 water quality certification since they would authorize activities which, in the opinion of the Corps, could not reasonably be expected to result in a discharge and in the case of NWP 8 is seaward of the territorial seas. NWPs numbered 3, 4, 5, 6, 7, 13, 14, 18, 20, 21, 22, 23, 27, 32, 36, 37, and 38, involve various activities, some of which may result in a discharge and require 401 water quality certification, and others of which do not. State denial of 401 water quality certification for any specific NWP in this category affects only those activities which may result in a discharge. For those activities not involving discharges, the NWP remains in effect. NWPs numbered 12, 15, 16, 17, 25, 26, and 40 involve activities which would result in discharges and therefore 401 water quality certification is required.

such certification, the proposed work can be authorized under the NWP. For NWPs requiring a 30-day predischarge notification the district engineer will immediately begin, and complete, his review prior to the state action on the individual section 401 water quality certification. If a state issues a conditioned individual 401 water quality certification for an individual activity, the DE will include those conditions as activity-specific conditions of the NWP.

(7) Where a state, after issuing a 401 water quality certification for an NWP, subsequently attempts to withdraw it for substantive reasons after the effective date of the NWP, the division engineer will review those reasons and consider whether there is substantial basis for suspension, modification, or revocation of the NWP authorization as outlined in § 330.5. Otherwise, such attempted state withdrawal is not effective and the Corps will consider the state certification to be valid for the NWP authorizations until such time as the NWP is modified or reissued.

(d) *Coastal zone management consistency determination.* (1) Section 307(c)(1) of the Coastal Zone Management Act (CZMA) requires the Corps to provide a consistency determination and receive state agreement prior to the issuance, reissuance, or expansion of activities authorized by an NWP that authorizes activities within a state with a Federally-approved Coastal Management Program when activities that would occur within, or outside, that state's coastal zone will affect land or water uses or natural resources of the state's coastal zone.

(2) If, prior to the issuance, reissuance, or expansion of activities authorized by an NWP, a state indicates that additional conditions are necessary for the state to agree with the Corps consistency determination, the division engineer will make such conditions regional conditions for the NWP in that state, unless he determines that the conditions do not comply with the provisions of 33 CFR 325.4 or believes for some other specific reason it would be inappropriate to include the conditions. In this case, the state's failure to agree with the Corps consistency determination without the conditions will be considered to be a disagreement with the Corps consistency determination.

(3) When a state has disagreed with the Corps consistency determination, authorization for all such activities occurring within or outside the state's coastal zone that affect land or water uses or natural resources of the state's coastal zone is denied without prejudice until the prospective permittee furnishes the DE an individual consistency certification pursuant to section 307(c)(3) of the CZMA and demonstrates that the state has concurred in it (either on an individual or generic basis), or that concurrence should be presumed (see paragraph (d)(6) of this section).

(4) DEs will take appropriate measures, such as public notices, to inform the public of which activities, waterbodies, or regions require prospective permittees to make an individual consistency determination and seek concurrence from the state.

(5) DEs will not require or process an individual permit application for an activity otherwise qualifying for an NWP solely on the basis that the activity has not received CZMA consistency agreement from the state. However, the district or division engineer may consider that factor, among other appropriate factors, in determining whether to exercise his discretionary authority and require a regional general permit or an individual permit application.

(6) In instances where a state has disagreed with the Corps consistency determination for activities under a particular NWP, permittees must furnish the DE with an individual consistency concurrence or a copy of the consistency certification provided to the state for concurrence. If a state fails to act on a permittee's consistency certification within six months after receipt by the state, concurrence will be presumed. Upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP. For NWPs requiring a 30-day predischarge notification the DE will immediately begin, and may complete, his review

prior to the state action on the individual consistency certification. If a state indicates that individual conditions are necessary for consistency with the state's Federally-approved coastal management program for that individual activity, the DE will include those conditions as activity-specific conditions of the NWP unless he determines that such conditions do not comply with the provisions of 33 CFR 325.4. In the latter case the DE will consider the conditioned concurrence as a nonconcurrence unless the permittee chooses to comply voluntarily with all the conditions in the conditioned concurrence.

(7) Where a state, after agreeing with the Corps consistency determination, subsequently attempts to reverse it's agreement for substantive reasons after the effective date of the NWP, the division engineer will review those reasons and consider whether there is substantial basis for suspension, modification, or revocation as outlined in 33 CFR 330.5. Otherwise, such attempted reversal is not effective and the Corps will consider the state CZMA consistency agreement to be valid for the NWP authorization until such time as the NWP is modified or reissued.

(8) Federal activities must be consistent with a state's Federally-approved coastal management program to the maximum extent practicable. Federal agencies should follow their own procedures and the Department of Commerce regulations appearing at 15 CFR part 930 to meet the requirements of the CZMA. Therefore, the provisions of 33 CFR 330.4(d)(1)–(7) do not apply to Federal activities. Indian tribes doing work on Indian Reservation lands shall be treated in the same manner as Federal applicants.

(e) *Discretionary authority*. The Corps reserves the right (*i.e.*, discretion) to modify, suspend, or revoke NWP authorizations. Modification means the imposition of additional or revised terms or conditions on the authorization. Suspension means the temporary cancellation of the authorization while a decision is made to either modify, revoke, or reinstate the authorization. Revocation means the cancellation of the authorization. The procedures for modifying, suspending, or revoking NWP authorizations are detailed in § 330.5.

(1) A division engineer may assert discretionary authority by modifying, suspending, or revoking NWP authorizations for a specific geographic area, class of activity, or class of waters within his division, including on a statewide basis, whenever he determines sufficient concerns for the environment under the section 404(b)(1) Guidelines or any other factor of the public interest so requires, or if he otherwise determines that the NWP would result in more than minimal adverse environmental effects either individually or cumulatively.

(2) A DE may assert discretionary authority by modifying, suspending, or revoking NWP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the DE determines that a proposed specific activity covered by an NWP would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the NWP authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by NWP and provide instructions on how to seek authorization under a regional general or individual permit.

(3) The division or district engineer will restore authorization under the NWPs at any time he determines that his reason for asserting discretionary authority has been satisfied by a condition, project modification, or new information.

(4) When the Chief of Engineers modifies or reissues an NWP, division engineers must use the procedures of § 330.5 to reassert discretionary authority to reinstate regional conditions or revocation of NWP authorizations for specific geographic areas, class of activities, or class of waters. Division engineers will update existing documentation for each NWP. Upon modification or reissuance of NWPs, previous activity-specific conditions or revocations of NWP authorization will remain in effect unless the DE specifically removes

the activity-specific conditions or revocations.

(f) *Endangered species*. No activity is authorized by any NWP if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or to destroy or adversely modify the critical habitat of such species.

(1) Federal agencies should follow their own procedures for complying with the requirements of the ESA.

(2) Non-federal permittees shall notify the DE if any Federally listed (or proposed for listing) endangered or threatened species or critical habitat might be affected or is in the vicinity of the project. In such cases, the prospective permittee will not begin work under authority of the NWP until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. If the DE determines that the activity may affect any Federally listed species or critical habitat, the DE must initiate section 7 consultation in accordance with the ESA. In such cases, the DE may:

(i) Initiate section 7 consultation and then, upon completion, authorize the activity under the NWP by adding, if appropriate, activity-specific conditions; or

(ii) Prior to or concurrent with section 7 consultation, assert discretionary authority (see 33 CFR 330.4(e)) and require an individual permit (see 33 CFR 330.5(d)).

(3) Prospective permittees are encouraged to obtain information on the location of threatened or endangered species and their critical habitats from the U.S. Fish and Wildlife Service, Endangered Species Office, and the National Marine Fisheries Service.

(g) *Historic properties*. No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places, is authorized until the DE has complied with the provisions of 33 CFR part 325, appendix C.

(1) Federal permittees should follow their own procedures for compliance with the requirements of the National Historic Preservation Act and other Federal historic preservation laws.

(2) Non-federal permittees will notify the DE if the activity may affect historic properties which the National Park Service has listed, determined eligible for listing, or which the prospective permittee has reason to believe may be eligible for listing, on the National Register of Historic Places. In such cases, the prospective permittee will not begin the proposed activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. If a property in the permit area of the activity is determined to be an historic property in accordance with 33 CFR part 325, appendix C, the DE will take into account the effects on such properties in accordance with 33 CFR part 325, appendix C. In such cases, the district engineer may:

(i) After complying with the requirements of 33 CFR part 325, appendix C, authorize the activity under the NWP by adding, if appropriate, activity-specific conditions; or

(ii) Prior to or concurrent with complying with the requirements of 33 CFR part 325, appendix C, he may assert discretionary authority (see 33 CFR 330.4(e)) and instruct the prospective permittee of procedures to seek authorization under a regional general permit or an individual permit. (See 33 CFR 330.5(d).)

(3) The permittee shall immediately notify the DE if, before or during prosecution of the work authorized, he encounters an historic property that has not been listed or determined eligible for listing on the National Register, but which the prospective permittee has reason to believe may be eligible for listing on the National Register.

(4) Prospective permittees are encouraged to obtain information on the location of historic properties from the State Historic Preservation Officer and the National Register of Historic Places.

§ 330.5 Issuing, modifying, suspending, or revoking nationwide permits and authorizations.

(a) *General*. This section sets forth the procedures for issuing and reissuing NWPs and for modifying, suspending, or revoking NWPs and authorizations under NWPs.

(b) *Chief of Engineers*. (1) Anyone may, at any time, suggest to the Chief of Engineers, (ATTN: CECW-OR), any new NWPs or conditions for issuance, or changes to existing NWPs, which he believes to be appropriate for consideration. From time-to-time new NWPs and revocations of or modifications to existing NWPs will be evaluated by the Chief of Engineers following the procedures specified in this section. Within five years of issuance of the NWPs, the Chief of Engineers will review the NWPs and propose modification, revocation, or reissuance.

(2) *Public notice*. (i) Upon proposed issuance of new NWPs or modification, suspension, revocation, or reissuance of existing NWPs, the Chief of Engineers will publish a document seeking public comments, including the opportunity to request a public hearing. This document will also state that the information supporting the Corps' provisional determination that proposed activities comply with the requirements for issuance under general permit authority is available at the Office of the Chief of Engineers and at all district offices. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(ii) Concurrent with the Chief of Engineers' notification of proposed, modified, reissued, or revoked NWPs, DEs will notify the known interested public by a notice issued at the district level. The notice will include proposed regional conditions or proposed revocations of NWP authorizations for specific geographic areas, classes of activities, or classes of waters, if any, developed by the division engineer.

(3) *Documentation*. The Chief of Engineers will prepare appropriate NEPA documents and, if applicable, section 404(b)(1) Guidelines compliance analyses for proposed NWPs. Documentation for existing NWPs will be modified to reflect any changes in these permits and to reflect the Chief of Engineers' evaluation of the use of the permit since the last issuance. Copies of all comments received on the document will be included in the administrative record. The Chief of Engineers will consider these comments in making his decision on the NWPs, and will prepare a statement of findings outlining his views regarding each NWP and discussing how substantive comments were considered. The Chief of Engineers will also determine the need to hold a public hearing for the proposed NWPs.

(4) *Effective dates*. The Chief of Engineers will advise the public of the effective date of any issuance, modification, or revocation of an NWP.

(c) *Division Engineer*. (1) A division engineer may use his discretionary authority to modify, suspend, or revoke NWP authorizations for any specific geographic area, class of activities, or class of waters within his division, including on a statewide basis, by issuing a public notice or notifying the individuals involved. The notice will state his concerns regarding the environment or the other relevant factors of the public interest. Before using his discretionary authority to modify or revoke such NWP authorizations, division engineers will:

(i) Give an opportunity for interested parties to express their views on the proposed action (the DE will publish and circulate a notice to the known interested public to solicit comments and provide the opportunity to request a public hearing);

(ii) Consider fully the views of affected parties;

(iii) Prepare supplemental documentation for any modifications or revocations that may result through assertion of discretionary authority. Such documentation will include comments received on the district public notices and a statement of findings showing how substantive comments were considered;

(iv) Provide, if appropriate, a grandfathering period as specified in § 330.6(b) for those who have commenced work or are under contract to commence in reliance on the NWP authorization; and

(v) Notify affected parties of the modification, suspension, or revocation, including the effective date (the DE will publish and circulate a notice to the known interested public and to anyone who commented on the proposed action).

(2) The modification, suspension, or revocation of authorizations under an NWP by the division engineer will become effective by issuance of public notice or a notification to the individuals involved.

(3) A copy of all regional conditions imposed by division engineers on activities authorized by NWPs will be forwarded to the Office of the Chief of Engineers, ATTN: CECW-OR.

(d) *District Engineer*. (1) When deciding whether to exercise his discretionary authority to modify, suspend, or revoke a case specific activity's authorization under an NWP, the DE should consider to the extent relevant and appropriate: Changes in circumstances relating to the authorized activity since the NWP itself was issued or since the DE confirmed authorization under the NWP by written verification; the continuing need for, or adequacy of, the specific conditions of the authorization; any significant objections to the authorization not previously considered; progress inspections of individual activities occurring under an NWP; cumulative adverse environmental effects resulting from activities occurring under the NWP; the extent of the permittee's compliance with the terms and conditions of the NWPs; revisions to applicable statutory or regulatory authorities; and, the extent to which asserting discretionary authority would adversely affect plans, investments, and actions the permittee has made or taken in reliance on the permit; and, other concerns for the environment, including the aquatic environment under the section 404(b)(1) Guidelines, and other relevant factors of the public interest.

(2) *Procedures*. (i) When considering whether to modify or revoke a specific authorization under an NWP, whenever practicable, the DE will initially hold informal consultations with the permittee to determine whether special conditions to modify the authorization would be mutually agreeable or to allow the permittee to furnish information which satisfies the DE's concerns. If a mutual agreement is reached, the DE will give the permittee written verification of the authorization, including the special conditions. If the permittee furnishes information which satisfies the DE's concerns, the permittee may proceed. If appropriate, the DE may suspend the NWP authorization while holding informal consultations with the permittee.

(ii) If the DE's concerns remain after the informal consultation, the DE may suspend a specific authorization under an NWP by notifying the permittee in writing by the most expeditious means available that the authorization has been suspended, stating the reasons for the suspension, and ordering the permittee to stop any activities being done in reliance upon the authorization under the NWP. The permittee will be advised that a decision will be made either to reinstate or revoke the authorization under the NWP; or, if appropriate, that the authorization under the NWP may be modified by mutual agreement. The permittee will also be advised that within 10 days of receipt of the notice of suspension, he may request a meeting with the DE, or his designated representative, to present information in this matter. After completion of the meeting (or within a reasonable period of time after suspending the authorization if no meeting is requested), the DE will take action to reinstate, modify, or revoke the authorization.

(iii) Following completion of the suspension procedures, if the DE determines that sufficient concerns for the environment, including the aquatic environment under the section 404(b)(1) Guidelines, or other relevant factors of the public interest so require, he will revoke authorization under the NWP. The DE will provide the permittee a written final decision and instruct him on the procedures to seek authorization under a regional general permit or an individual permit.

(3) The DE need not issue a public notice when asserting discretionary authority over a specific activity. The modification, suspension, or revocation will become effective by notification to the prospective permittee.

§ 330.6 Authorization by nationwide permit.

(a) *Nationwide permit verification.* (1) Nationwide permittees may, and in some cases must, request from a DE confirmation that an activity complies with the terms and conditions of an NWP. DEs should respond as promptly as practicable to such requests.

(2) If the DE decides that an activity does not comply with the terms or conditions of an NWP, he will notify the person desiring to do the work and instruct him on the procedures to seek authorization under a regional general permit or individual permit.

(3) If the DE decides that an activity does comply with the terms and conditions of an NWP, he will notify the nationwide permittee.

(i) The DE may add conditions on a case-by-case basis to clarify compliance with the terms and conditions of an NWP or to ensure that the activity will have only minimal individual and cumulative adverse effects on the environment, and will not be contrary to the public interest.

(ii) The DE's response will state that the verification is valid for a specific period of time (generally but no more than two years) unless the NWP authorization is modified, suspended, or revoked. The response should also include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.6(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP. Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than two years may be used if deemed appropriate.

(iii) For activities where a state has denied 401 water quality certification and/or did not agree with the Corps consistency determination for an NWP the DE's response will state that the proposed activity meets the terms and conditions for authorization under the NWP with the exception of a state 401 water quality certification and/or CZM consistency concurrence. The response will also indicate the activity is denied without prejudice and cannot be authorized until the requirements of §§ 330.4(c)(3), 330.4(c)(6), 330.4(d)(3), and 330.4(d)(6) are satisfied. The response will also indicate that work may only proceed subject to the terms and conditions of the state 401 water quality certification and/or CZM concurrence.

(iv) Once the DE has provided such verification, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the authorization.

(b) *Expiration of nationwide permits.* The Chief of Engineers will periodically review NWPs and their conditions and will decide to either modify, reissue, or revoke the permits. If an NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. Activities which have commenced (i.e, are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within twelve months of the date of an NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). Activities completed under the authorization of an NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

(c) *Multiple use of nationwide permits.* Two or more different NWPs can be combined to authorize a ''single and complete project'' as defined at 33 CFR 330.2(i). However, the same NWP cannot be used more than once for a single and complete project.

(d) *Combining nationwide permits with individual permits.* Subject to the following qualifications, portions of a larger project may proceed under the authority of the NWPs while the DE evaluates an individual permit application for other portions of the same project, but only if the portions of the

project qualifying for NWP authorization would have independent utility and are able to function or meet their purpose independent of the total project. When the functioning or usefulness of a portion of the total project qualifying for an NWP is dependent on the remainder of the project, such that its construction and use would not be fully justified even if the Corps were to deny the individual permit, the NWP does not apply and all portions of the project must be evaluated as part of the individual permit process.

(1) When a portion of a larger project is authorized to proceed under an NWP, it is with the understanding that its construction will in no way prejudice the decision on the individual permit for the rest of the project. Furthermore, the individual permit documentation must include an analysis of the impacts of the entire project, including related activities authorized by NWP.

(2) NWPs do not apply, even if a portion of the project is not dependent on the rest of the project, when any portion of the project is subject to an enforcement action by the Corps or EPA.

(e) *After-the-fact authorizations.* These authorizations often play an important part in the resolution of violations. In appropriate cases where the activity complies with the terms and conditions of an NWP, the DE can elect to use the NWP for resolution of an after-the-fact permit situation following a consideration of whether the violation being resolved was knowing or intentional and other indications of the need for a penalty. For example, where an unauthorized fill meets the terms and conditions of NWP 13, the DE can consider the appropriateness of allowing the residual fill to remain, in situations where said fill would normally have been permitted under NWP 13. A knowing, intentional, willful violation should be the subject of an enforcement action leading to a penalty, rather than an after-the-fact authorization. Use of after-the-fact NWP authorization must be consistent with the terms of the Army/EPA Memorandum of Agreement on Enforcement. Copies are available from each district engineer.

PART 331—ADMINISTRATIVE APPEAL PROCESS

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APPENDIX D TO PART 331—PROCESS FOR UNACCEPTABLE REQUEST FOR APPEAL

AUTHORITY: 33 U.S.C. 401 *et seq.*, 1344, 1413.

SOURCE: 65 FR 16493, Mar. 28, 2000, unless otherwise noted.

§331.1 Purpose and policy.

(a) *General.* The purpose of this Part is to establish policies and procedures to be used for the administrative appeal of approved jurisdictional determinations (JDs), permit applications denied with prejudice, and declined permits. The appeal process will allow the affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree. The basis for an appeal and the specific policies and procedures of the appeal process are described in the following sections. It shall be the policy of the Corps of Engineers to promote and maintain an administrative appeal process that is independent, objective, fair, prompt, and efficient.

(b) *Level of decision maker.* Appealable actions decided by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in §331.2). References to the division engineer in this Part shall be understood as

also referring to a higher level Army official when such official is conducting an administrative appeal.

§ 331.2 Definitions.

The terms and definitions contained in 33 CFR Parts 320 through 330 are applicable to this part. In addition, the following terms are defined for the purposes of this part:

Affected party means a permit applicant, landowner, a lease, easement or option holder (*i.e.*, an individual who has an identifiable and substantial legal interest in the property) who has received an approved JD, permit denial, or has declined a proffered individual permit.

Agent(s) means the affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent the appellant's interests.

Appealable action means an approved JD, a permit denial, or a declined permit, as these terms are defined in this section.

Appellant means an affected party who has filed an appeal of an approved JD, a permit denial or declined permit under the criteria and procedures of this part.

Approved jurisdictional determination means a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. Approved JDs are clearly designated appealable actions and will include a basis of JD with the document.

Basis of jurisdictional determination is a summary of the indicators that support the Corps approved JD. Indicators supporting the Corps approved JD can include, but are not limited to: indicators of wetland hydrology, hydric soils, and hydrophytic plant communities; indicators of ordinary high water marks, high tide lines, or mean high water marks; indicators of adjacency to navigable or interstate waters; indicators that the wetland or waterbody is of part of a tributary system; or indicators of linkages between isolated water bodies and interstate or foreign commerce.

Declined permit means a proffered individual permit, including a letter of permission, that an applicant has refused to accept, because he has objections to the terms and special conditions therein. A declined permit can also be an individual permit that the applicant originally accepted, but where such permit was subsequently modified by the district engineer, pursuant to 33 CFR 325.7, in such a manner that the resulting permit contains terms and special conditions that lead the applicant to decline the modified permit, provided that the applicant has not started work in waters of the United States authorized by such permit. Where an applicant declines a permit (either initial or modified), the applicant does not have a valid permit to conduct regulated activities in waters of the United States, and must not begin construction of the work requiring a Corps permit unless and until the applicant receives and accepts a valid Corps permit.

Denial determination means a letter from the district engineer detailing the reasons a permit was denied with prejudice. The decision document for the project will be attached to the denial determination in all cases.

Jurisdictional determination (JD) means a written Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). Additionally, the term includes a written reverification of expired JDs and a written reverification of JDs where new information has become available that may affect the previously written determination. For example, such geographic JDs may include, but are not limited to, one or more of the following determinations: the presence or absence of wetlands; the location(s) of the wetland boundary, ordinary high water mark, mean high water mark, and/or high tide line; interstate commerce nexus for isolated waters; and adjacency of wetlands to other waters of the United States. All JDs will be in writing and will be identified as either

preliminary or approved. JDs do not include determinations that a particular activity requires a DA permit.

Notification of Appeal Process (NAP) means a fact sheet that explains the criteria and procedures of the administrative appeal process. Every approved JD, permit denial, and every proffered individual permit returned for reconsideration after review by the district engineer in accordance with §331.6(b) will have an NAP form attached.

Notification of Applicant Options (NAO) means a fact sheet explaining an applicant's options with a proffered individual permit under the administrative appeal process.

Permit denial means a written denial with prejudice (see 33 CFR 320.4(j)) of an individual permit application as defined in 33 CFR 325.5(b).

Preliminary JDs are written indications that there may be waters of the United States on a parcel or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.

Proffered permit means a permit that is sent to an applicant that is in the proper format for the applicant to sign (for a standard permit) or accept (for a letter of permission). The term ''initial proffered permit'' as used in this part refers to the first time a permit is sent to the applicant. The initial proffered permit is not an appealable action. However, the applicant may object to the terms or conditions of the initial proffered permit and, if so, a second reconsidered permit will be sent to the applicant. The term ''proffered permit'' as used in this part refers to the second permit that is sent to the applicant. Such proffered permit is an appealable action.

Request for appeal (RFA) means the affected party's official request to initiate the appeal process. The RFA must include the name of the affected party, the Corps file number of the approved JD, denied permit, or declined permit, the reason(s) for the appeal, and any supporting data and information. No new information may be submitted. A grant of right of entry for the Corps to the project site is a condition of the RFA to allow the RO to clarify elements of the record or to conduct field tests or sampling for purposes directly related to the appeal. A standard RFA form will be provided to the affected party with the NAP form. For appeals of decisions related to unauthorized activities a signed tolling agreement, as required by 33 CFR 326.3(e)(1)(v), must be included with the RFA, unless a signed tolling agreement has previously been furnished to the Corps district office. The affected party initiates the administrative appeal process by providing an acceptable RFA to the appropriate Corps of Engineers division office. An acceptable RFA contains all the required information and provides reasons for appeal that meets the criteria identified in §331.5.

Review officer (RO) means the Corps official responsible for assisting the division engineer or higher authority responsible for rendering the final decision on the merits of an appeal.

Tolling agreement refers to a document signed by any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact (ATF) permit, where the application is accepted and evaluated by the Corps. The agreement states that the affected party agrees to have the statute of limitations regarding any violation associated with that approved JD or application ''tolled'' or temporarily set aside until one year after the final Corps decision, as defined at §331.10. No ATF permit application or administrative appeal associated with an unauthorized activity will be accepted until a tolling agreement is furnished to the district engineer.

§331.3 Review officer.

(a) *Authority*. (1) The division engineer has the authority and responsibility for administering a fair, reasonable, prompt, and effective administrative appeal process. The division engineer may act as the review officer (RO), or may delegate, either generically or on a case-by-case basis, any authority or responsibility described in this part as that of the RO. With the exception of JDs, as described in this paragraph (a)(1), the division engineer

may not delegate any authority or responsibility described in this part as that of the division engineer. For approved JDs only, the division engineer may delegate any authority or responsibility described in this part as that of the division engineer, including the final appeal decision. In such cases, any delegated authority must be granted to an official that is at the same or higher grade level than the grade level of the official that signed the approved JD. Regardless of any delegation of authority or responsibility for ROs or for final appeal decisions for approved JDs, the division engineer retains overall responsibility for the administrative appeal process.

(2) The RO will assist the division engineer in reaching and documenting the division engineer's decision on the merits of an appeal, if the division engineer has delegated this responsibility as explained in paragraph (a)(1) of this section. The division engineer has the authority to make the final decision on the merits of the appeal. Neither the RO nor the division engineer has the authority to make a final decision to issue or deny any particular permit nor to make an approved JD, pursuant to the administrative appeal process established by this part. The authority to issue or deny permits remains with the district engineer. However, the division engineer may exercise the authority at 33 CFR 325.8(c) to elevate any permit application, and subsequently make the final permit decision. In such a case, any appeal process of the district engineer's initial decision is terminated. If a particular permit application is elevated to the division engineer pursuant to 33 CFR 325.8(c), and the division engineer's decision on the permit application is a permit denial or results in a declined permit, that permit denial or declined permit would be subject to an administrative appeal to the Chief of Engineers.

(3) *Qualifications*. The RO will be a Corps employee with extensive knowledge of the Corps regulatory program. Where the permit decision being appealed was made by the division engineer or higher authority, a Corps official at least one level higher than the decision maker shall make the decision on the merits of the RFA, and this Corps official shall appoint a qualified individual as the RO to conduct the appeal process.

(b) *General*—(1) *Independence*. The RO will not perform, or have been involved with, the preparation, review, or decision making of the action being appealed. The RO will be independent and impartial in reviewing any appeal, and when assisting the division engineer to make a decision on the merits of the appeal.

(2) *Review*. The RO will conduct an independent review of the administrative record to address the reasons for the appeal cited by the applicant in the RFA. In addition, to the extent that it is practicable and feasible, the RO will also conduct an independent review of the administrative record to verify that the record provides an adequate and reasonable basis supporting the district engineer's decision, that facts or analysis essential to the district engineer's decision have not been omitted from the administrative record, and that all relevant requirements of law, regulations, and officially promulgated Corps policy guidance have been satisfied. Should the RO require expert advice regarding any subject, he may seek such advice from any employee of the Corps or of another Federal or state agency, or from any recognized expert, so long as that person had not been previously involved in the action under review.

§ 331.4 Notification of appealable actions.

Affected parties will be notified in writing of a Corps decision on those activities that are eligible for an appeal. For approved JDs, the notification must include an NAP fact sheet, an RFA form, and a basis of JD. For permit denials, the notification must include a copy of the decision document for the permit application, an NAP fact sheet and an RFA form. For proffered individual permits, when the initial proffered permit is sent to the applicant, the notification must include an NAO fact sheet. For declined permits (*i.e.*, proffered individual permits that the applicant refuses to accept and sends back to the Corps), the notification must include an NAP fact sheet

and an RFA form. Additionally, an affected party has the right to obtain a copy of the administrative record.

§ 331.5 Criteria.

(a) *Criteria for appeal*—(1) *Submission of RFA.* The appellant must submit a completed RFA (as defined at § 331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit. An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal.* The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable.* An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (e.g., the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, etc. (See 33 CFR 320.4(j));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superceded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in § 331.11.

§ 331.6 Filing an appeal.

(a) An affected party appealing an approved JD, permit denial or declined permit must submit an RFA that is received by the division engineer within 60 days of the date of the NAP. Flow charts illustrating the appeal process are in the Appendices of this part.

(b) In the case where an applicant objects to an initial proffered individual permit, the appeal process proceeds as follows. To initiate the appeal process

regarding the terms and special conditions of the permit, the applicant must write a letter to the district engineer explaining his objections to the permit. The district engineer, upon evaluation of the applicant's objections, may: Modify the permit to address all of the applicant's objections or modify the permit to address some, but not all, of the applicant's objections, or not modify the permit, having determined that the permit should be issued as previously written. In the event that the district engineer agrees to modify the initial proffered individual permit to address all of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet and an RFA form as well. Should the district engineer modify the initial proffered individual permit to address some, but not all, of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet, RFA form, and a copy of the decision document for the project. If the district engineer does not modify the initial proffered individual permit, the district engineer will proffer the unmodified permit to the applicant a second time, enclosing an NAP fact sheet, an RFA form, and a copy of the decision document. If the applicant still has objections, after receiving the second proffered permit (modified or unmodified), the applicant may decline such proffered permit; this declined permit may be appealed to the division engineer upon submittal of a complete RFA form. The completed RFA must be received by the division engineer within 60 days of the NAP. A flow chart of an applicant's options for an initial proffered individual permit is shown in appendix B of this part. A flow chart of the appeal process for a permit denial or a declined permit (*i.e.*, a proffered permit declined after the Corps decision on the applicant's objections to the initial proffered permit) is shown in appendix A of this part. A flow chart of the appeal process for an approved jurisdictional determination is shown in appendix C of this part. A flow chart of the process for when an unacceptable request for appeal is returned to an applicant is shown in appendix D of this part.

(c) An approved JD will be reconsidered by the district engineer if the affected party submits new information or data to the district engineer within 60 days of the date of the NAP. (An RFA that contains new information will either be returned to the district engineer for reconsideration or the appeal will be processed if the applicant withdraws the new information.) The district engineer has 60 days from the receipt of such new information or data to review the new information or data, consider whether or not that information changes the previously approved JD, and, reissue the approved JD or issue a new approved JD. The reconsideration of an approved JD by the district engineer does not commence the administrative appeal process. The affected party may appeal the district engineer's reissued or new approved JD.

(d) The district engineer may not delegate his signature authority to deny the permit with prejudice or to return an individual permit to the applicant with unresolved objections. The district engineer may delegate signature authority for JDs, including approved JDs.

(e) Affected parties may appeal approved JDs where the determination was dated after March 28, 2000, but may not appeal approved JDs dated on or before March 28, 2000. The Corps will begin processing JD appeals no later than May 30, 2000. All appeals must meet the criteria set forth in § 331.5. If work is authorized by either general or individual permit, and the affected party wishes to request an appeal of the JD associated with the general permit authorization or individual permit or the special conditions of the proffered individual permit, the appeal must be received by the Corps and the appeal process concluded prior to the commencement of any work in waters of the United States and prior to any work that could alter the hydrology of waters of the United States.

§ 331.7 Review procedures.

(a) *General.* The administrative appeal process for approved JDs, permit denials, and declined permits is a one level appeal, normally to the division

engineer. The appeal process will normally be conducted by the RO. The RO will document the appeal process, and assist the division engineer in making a decision on the merits of the appeal. The division engineer may participate in the appeal process as the division engineer deems appropriate. The division engineer will make the decision on the merits of the appeal, and provide any instructions, as appropriate, to the district engineer.

(b) *Requests for the appeal of approved JDs, permit denials, or declined permits.* Upon receipt of an RFA, the RO shall review the RFA to determine whether the RFA is acceptable (*i.e.*, complete and meets the criteria for appeal). If the RFA is acceptable, the RO will so notify the appellant in writing within 30 days of the receipt of the acceptable RFA. If the RO determines that the RFA is not complete the RO will so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the RO believes that the RFA does not meet the criteria for appeal (see §331.5), the RO will make a recommendation on the RFA to the division engineer. If the division engineer determines that the RFA is not acceptable, the division engineer will notify the appellant of this determination by a certified letter detailing the reason(s) why the appeal failed to meet the criteria for appeal. No further administrative appeal is available, unless the appellant revises the RFA to correct the deficiencies noted in the division engineer's letter or the RO's letter. The revised RFA must be received by the division engineer within 30 days of the date of the Corps letter indicating that the initial RFA is not acceptable. If the RO determines that the revised RFA is still not complete, the RO will again so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the division engineer determines that the revised RFA is still not acceptable, the division engineer will notify the appellant of this determination by a certified letter within 30 days of the date of the receipt of the revised RFA, and will advise the appellant that the matter is not eligible for appeal. No further RFAs will be accepted after this point.

(c) *Site investigations.* Within 30 days of receipt of an acceptable RFA, the RO should determine if a site investigation is needed to clarify the administrative record. The RO should normally conduct any such site investigation within 60 days of receipt of an acceptable RFA. The RO may also conduct a site investigation at the request of the appellant, provided the RO has determined that such an investigation would be of benefit in interpreting the administrative record. The appellant and the appellant's authorized agent(s) must be provided an opportunity to participate in any site investigation, and will be given 15 days notice of any site investigation. The RO will attempt to schedule any site investigation at the earliest practicable time acceptable to both the RO and the appellant. The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants at any site investigation. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps. For permit denials and declined permit appeals, any site investigation should be scheduled in conjunction with the appeal review conference, where practicable. If extenuating circumstances occur at the site that preclude the appellant and/or the RO from conducting any required site visit within 60 days, the RO may extend the time period for review. Examples of extenuating circumstances may include seasonal hydrologic conditions, winter weather, or disturbed site conditions. The site visit must be conducted as soon as practicable as allowed by the extenuating circumstances, however, in no case shall any site visit extend the total appeals process beyond twelve months from the date of receipt of the RFA. If any site visit delay is necessary, the RO will notify the appellant in writing.

(d) *Approved JD appeal meeting.* The RO may schedule an informal meeting moderated by the RO or conference call with the appellant, his authorized agent, or both, and appropriate Corps regulatory personnel to review and discuss issues directly related to the appeal for the purpose of clarifying the

administrative record. If a meeting is held, the appellant will bear his own costs associated with necessary arrangements, exhibits, travel, and representatives. The approved JD appeal meeting should be held at a location of reasonable convenience to the appellant and near the site where the approved JD was conducted.

(e) *Permit denials and declined permits appeal conference.* Conferences held in accordance with this part will be informal, and will be chaired by the RO. The purpose of the appeal conference is to provide a forum that allows the participants to discuss freely all relevant issues and material facts associated with the appeal. An appeal conference will be held for every appeal of a permit denial or a declined permit, unless the RO and the appellant mutually agree to forego a conference. The conference will take place within 60 days of receipt of an acceptable RFA, unless the RO determines that unforeseen or unusual circumstances require scheduling the conference for a later date. The purpose of the conference will be to allow the appellant and the Corps district representatives to discuss supporting data and information on issues previously identified in the administrative record, and to allow the RO the opportunity to clarify elements of the administrative record. Presentations by the appellant and the Corps district representatives may include interpretation, clarification, or explanation of the legal, policy, and factual bases for their positions. The conference will be governed by the following guidelines:

(1) *Notification.* The RO will set a date, time, and location for the conference. The RO will notify the appellant and the Corps district office in writing within 30 days of receipt of the RFA, and not less than 15 days before the date of the conference.

(2) *Facilities.* The conference will be held at a location that has suitable facilities and that is reasonably convenient to the appellant, preferably in the proximity of the project site. Public facilities available at no expense are preferred. If a free facility is not available, the Corps will pay the cost for the facility.

(3) *Participants.* The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants in the conference. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps, adjacent property owners or Federal or state agency personnel to clarify elements of the administrative record. The division engineer and/or the district engineer may attend the conference at their discretion. If the appellant or his authorized agent(s) fail to attend the appeal conference, the appeal process is terminated, unless the RO excuses the appellant for a justifiable reason. Furthermore, should the process be terminated in such a manner, the district engineer's original decision on the appealed action will be sustained.

(4) *The role of the RO.* The RO shall be in charge of conducting the conference. The RO shall open the conference with a summary of the policies and procedures for conducting the conference. The RO will conduct a fair and impartial conference, hear and fully consider all relevant issues and facts, and seek clarification of any issues of the administrative record, as needed, to allow the division engineer to make a final determination on the merits of the appeal. The RO will also be responsible for documenting the appeal conference.

(5) *Appellant rights.* The appellant, and/or the appellant's authorized agent(s), will be given a reasonable opportunity to present the appellant's views regarding the subject permit denial or declined permit.

(6) *Subject matter.* The purpose of the appeal conference will be to discuss the reasons for appeal contained in the RFA. Any material in the administrative record may be discussed during the conference, but the discussion should be focused on relevant issues needed to address the reasons for appeal contained in the RFA. The RO may question the appellant or the Corps representatives with respect to interpretation of particular issues in the record, or otherwise to clarify elements of the administrative record. Issues not identified in the administrative record by the date of the NAP for the application may not be raised or discussed, because substantive new information or project modifications would be treated as a

new permit application (see §331.5(b)(5)).

(7) *Documentation of the appeal conference*. The appeal conference is an informal proceeding, intended to provide clarifications and explanations of the administrative record for the RO and the division engineer; it is not intended to supplement the administrative record. Consequently, the proceedings of the conference will not be recorded verbatim by the Corps or any other party attending the conference, and no verbatim transcripts of the conference will be made. However, after the conference, the RO will write a memorandum for the record (MFR) summarizing the presentations made at the conference, and will provide a copy of that MFR to the division engineer, the appellant, and the district engineer.

(8) *Appellant costs*. The appellant will be responsible for his own expenses for attending the appeal conference.

(f) *Basis of decision and communication with the RO*. The appeal of an approved JD, a permit denial, or a declined permit is limited to the information contained in the administrative record by the date of the NAP for the application or approved JD, the proceedings of the appeal conference, and any relevant information gathered by the RO as described in §331.5. Neither the appellant nor the Corps may present new information not already contained in the administrative record, but both parties may interpret, clarify or explain issues and information contained in the record.

(g) *Applicability of appeal decisions*. Because a decision to determine geographic jurisdiction, deny a permit, or condition a permit depends on the facts, circumstances, and physical conditions particular to the specific project and/or site being evaluated, appeal decisions would be of little or no precedential utility. Therefore, an appeal decision of the division engineer is applicable only to the instant appeal, and has no other precedential effect. Such a decision may not be cited in any other administrative appeal, and may not be used as precedent for the evaluation of any other jurisdictional determination or permit application. While administrative appeal decisions lack precedential value and may not be cited by an appellant or a district engineer in any other appeal proceeding, the Corps goal is to have the Corps regulatory program operate as consistently as possible, particularly with respect to interpretations of law, regulation, an Executive Order, and officially-promulgated policy. Therefore, a copy of each appeal decision will be forwarded to Corps Headquarters; those decisions will be periodically reviewed at the headquarters level for consistency with law, Executive Orders, and policy. Additional official guidance will be issued as necessary to maintain or improve the consistency of the Corps' appellate and permit decisions.

§331.8 Timeframes for final appeal decisions.

The Division Engineer will make a final decision on the merits of the appeal at the earliest practicable time, in accordance with the following time limits. The administrative appeal process is initiated by the receipt of an RFA by the division engineer. The Corps will review the RFA to determine whether the RFA is acceptable. The Corps will notify the appellant accordingly within 30 days of the receipt of the RFA in accordance with §331.7(b). If the Corps determines that the RFA is acceptable, the RO will immediately request the administrative record from the district engineer. The division engineer will normally make a final decision on the merits of the appeal within 90 days of the receipt of an acceptable RFA unless any site visit is delayed pursuant to §331.7(c). In such case, the RO will complete the appeal review and the division engineer will make a final appeal decision within 30 days of the site visit. In no case will a site visit delay extend the total appeal process beyond twelve months from the date of receipt of an acceptable RFA.

§331.9 Final appeal decision.

(a) In accordance with the authorities contained in §331.3(a), the division engineer will make a decision on the merits of the appeal. While reviewing an appeal and reaching a decision on the merits of an appeal, the division engineer can consult with or seek information from any person, including the district engineer.

(b) The division engineer will disapprove the entirety of or any part of the district engineer's decision only if he determines that the decision on some relevant matter was arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the administrative record, or plainly contrary to a requirement of law, regulation, an Executive Order, or officially promulgated Corps policy guidance. The division engineer will not attempt to substitute his judgment for that of the district engineer regarding a matter of fact, so long as the district engineer's determination was supported by substantial evidence in the administrative record, or regarding any other matter if the district engineer's determination was reasonable and within the zone of discretion delegated to the district engineer by Corps regulations. The division engineer may instruct the district engineer on how to correct any procedural error that was prejudicial to the appellant (*i.e.*, that was not a ''harmless'' procedural error), or to reconsider the decision where any essential part of the district engineer's decision was not supported by accurate or sufficient information, or analysis, in the administrative record. The division engineer will document his decision on the merits of the appeal in writing, and provide a copy of this decision to the applicant (using certified mail) and the district engineer.

(c) The final decision of the division engineer on the merits of the appeal will conclude the administrative appeal process, and this decision will be filed in the administrative record for the project.

§ 331.10 Final Corps decision.

The final Corps decision on a permit application is the initial decision to issue or deny a permit, unless the applicant submits an RFA, and the division engineer accepts the RFA, pursuant to this Part. The final Corps decision on an appealed action is as follows:

(a) If the division engineer determines that the appeal is without merit, the final Corps decision is the district engineer's letter advising the applicant that the division engineer has decided that the appeal is without merit, confirming the district engineer's initial decision, and sending the permit denial or the proffered permit for signature to the appellant; or

(b) If the division engineer determines that the appeal has merit, the final Corps decision is the district engineer's decision made pursuant to the division engineer's remand of the appealed action. The division engineer will remand the decision to the district engineer with specific instructions to review the administrative record, and to further analyze or evaluate specific issues. If the district engineer determines that the effects of the district engineer's reconsideration of the administrative record would be narrow in scope and impact, the district engineer must provide notification only to those parties who commented or participated in the original review, and would allow 15 days for the submission of supplemental comments. For permit decisions, where the district engineer determines that the effect of the district engineer's reconsideration of the administrative record would be substantial in scope and impact, the district engineer's review process will include issuance of a new public notice, and/or preparation of a supplemental environmental analysis and decision document (see 33 CFR 325.7). Subsequently, the district engineer's decision made pursuant to the division engineer's remand of the appealed action becomes the final Corps permit decision. Nothing in this part precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

§ 331.11 Unauthorized activities.

Approved JDs, permit denials, and declined permits associated with after-the-fact permit applications are appealable actions for the purposes of this part. If the Corps accepts an after-the-fact permit application, an administrative appeal of an approved JD, permit denial, or declined permit may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section. An appeal of an approved JD associated with unauthorized activities will normally not be accepted unless the Corps accepts an after-the-fact permit application. However, in

rare cases, the district engineer may accept an appeal of such an approved JD, if the district engineer determines that the interests of justice, fairness, and administrative efficiency would be served thereby. Furthermore, no such appeal will be accepted if the unauthorized activity is the subject of a referral to the Department of Justice or the EPA, or for which the EPA has the lead enforcement authority or has requested lead enforcement authority.

(a) *Initial corrective measures.* If the district engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial corrective measures have been completed to the satisfaction of the district engineer.

(b) *Penalties.* If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity, and the division engineer determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law.

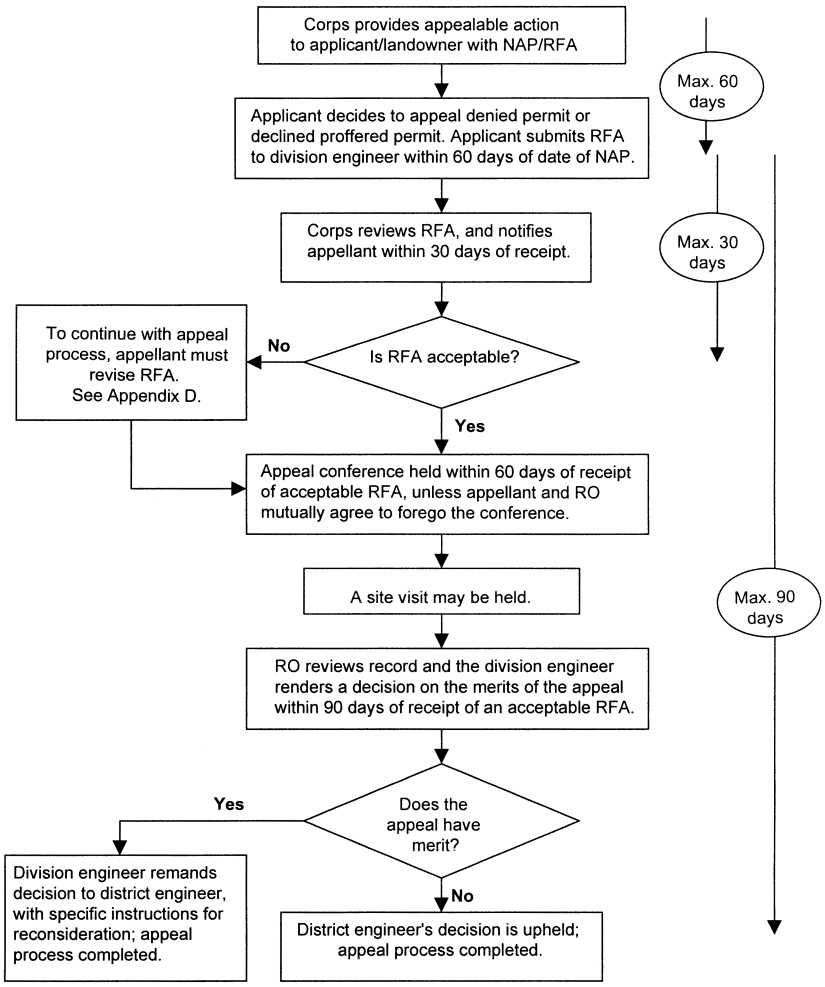
(c) *Tolling of statute of limitations.* Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that approved JD or application is tolled until one year after the final Corps decision, as defined at § 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal (See 33 CFR 326.3(e)(1)(v)). No administrative appeal associated with an unauthorized activity or after-the-fact permit application will be accepted until such signed tolling agreement is furnished to the district engineer.

§ 331.12 Exhaustion of administrative remedies.

No affected party may file a legal action in the Federal courts based on a permit denial or a proffered permit until after a final Corps decision has been made and the appellant has exhausted all applicable administrative remedies under this part. The appellant is considered to have exhausted all administrative remedies when a final Corps permit decision is made in accordance with § 331.10.

APPENDIX A TO PART 331—ADMINISTRATIVE APPEAL PROCESS FOR PERMIT DENIALS AND PROFFERED PERMITS

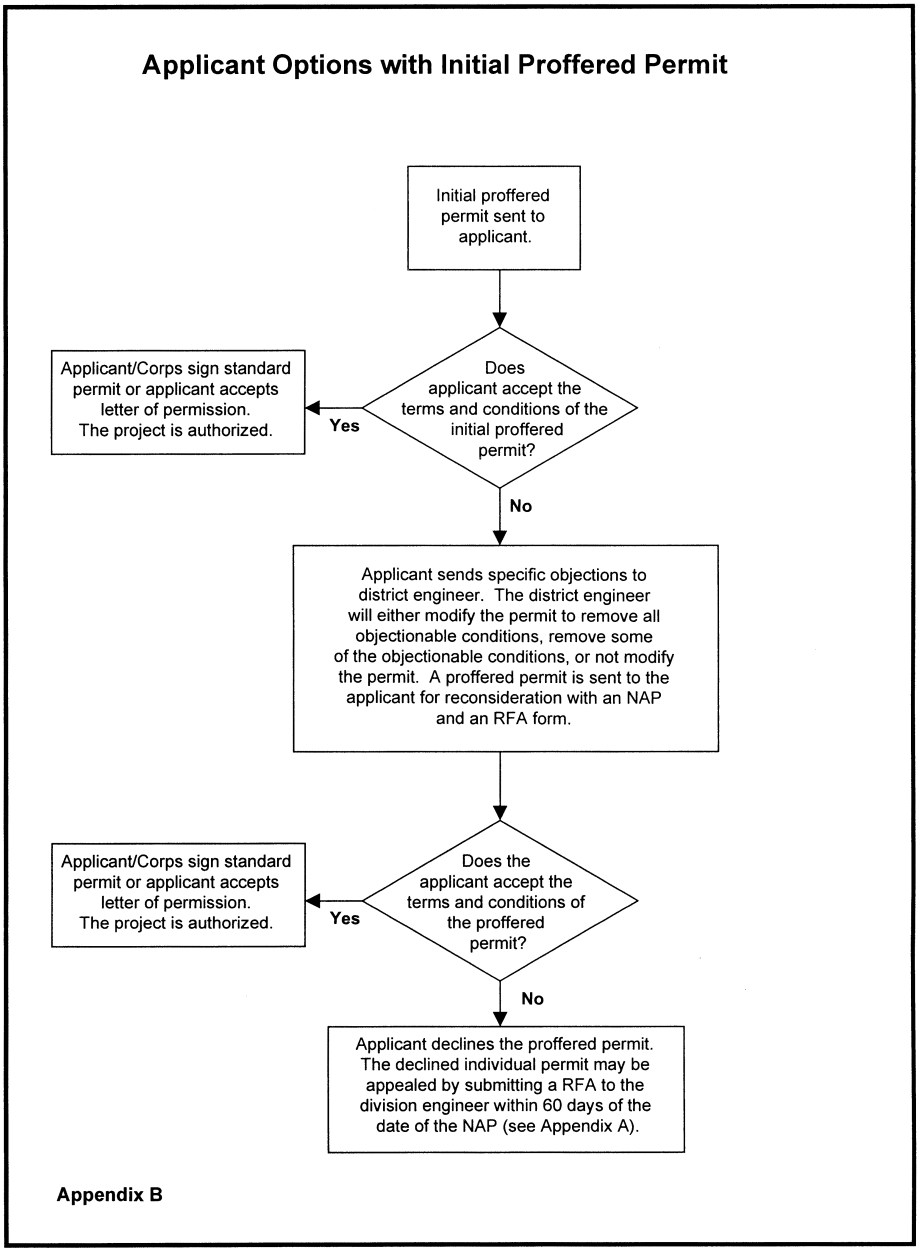
Administrative Appeal Process for Permit Denials and Proffered Permits



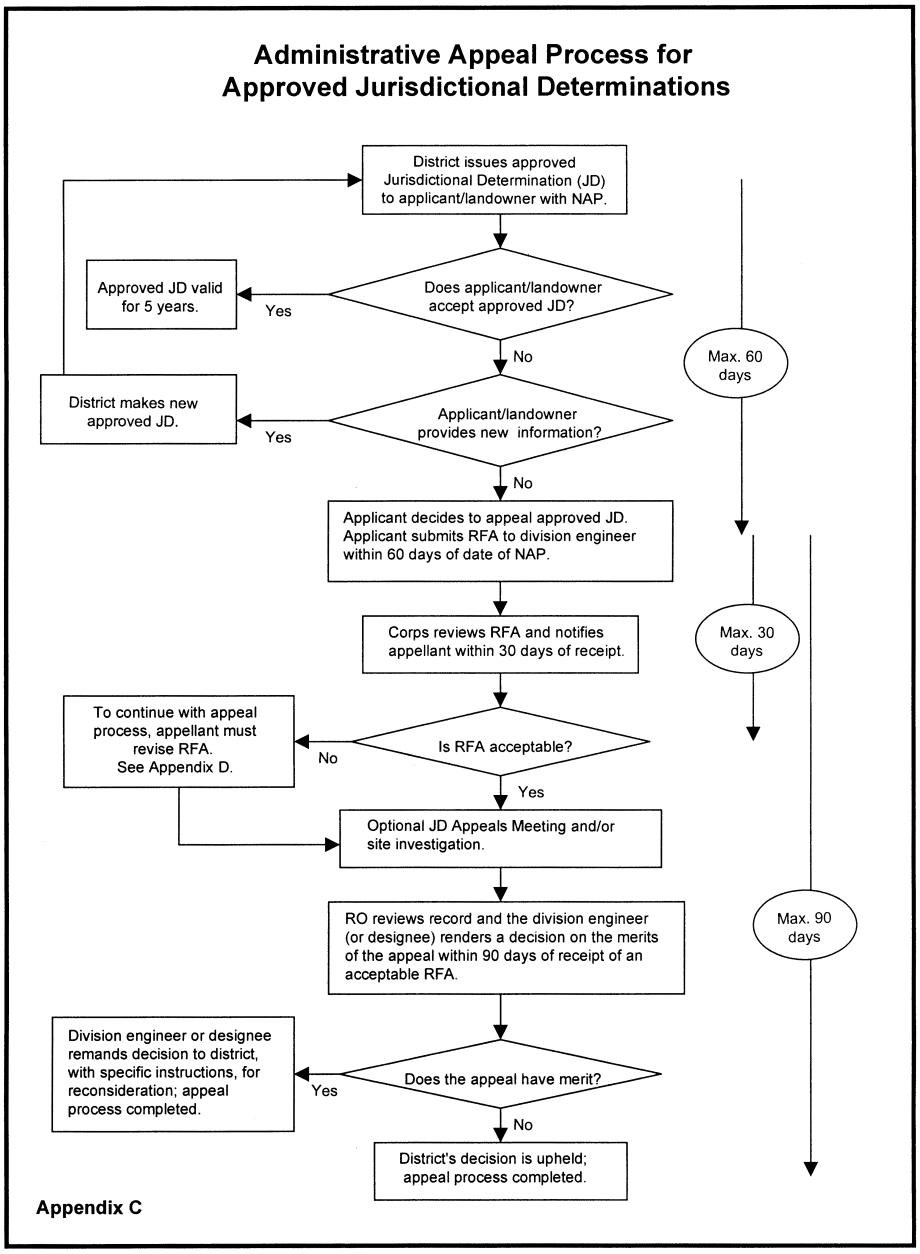
NOTE: If new information is provided to the Corps, the applicant will be asked if the applicant wishes to revise the project or record. If so, the appeal will be withdrawn and the case returned to the District for appropriate action. If not, then the Division Engineer will rule on the merits of the appeal based on the administrative record without consideration of the new information. However, the new information may cause the District Engineer to take action under 33 CFR 325.7, independent of the appeal process.

Appendix A

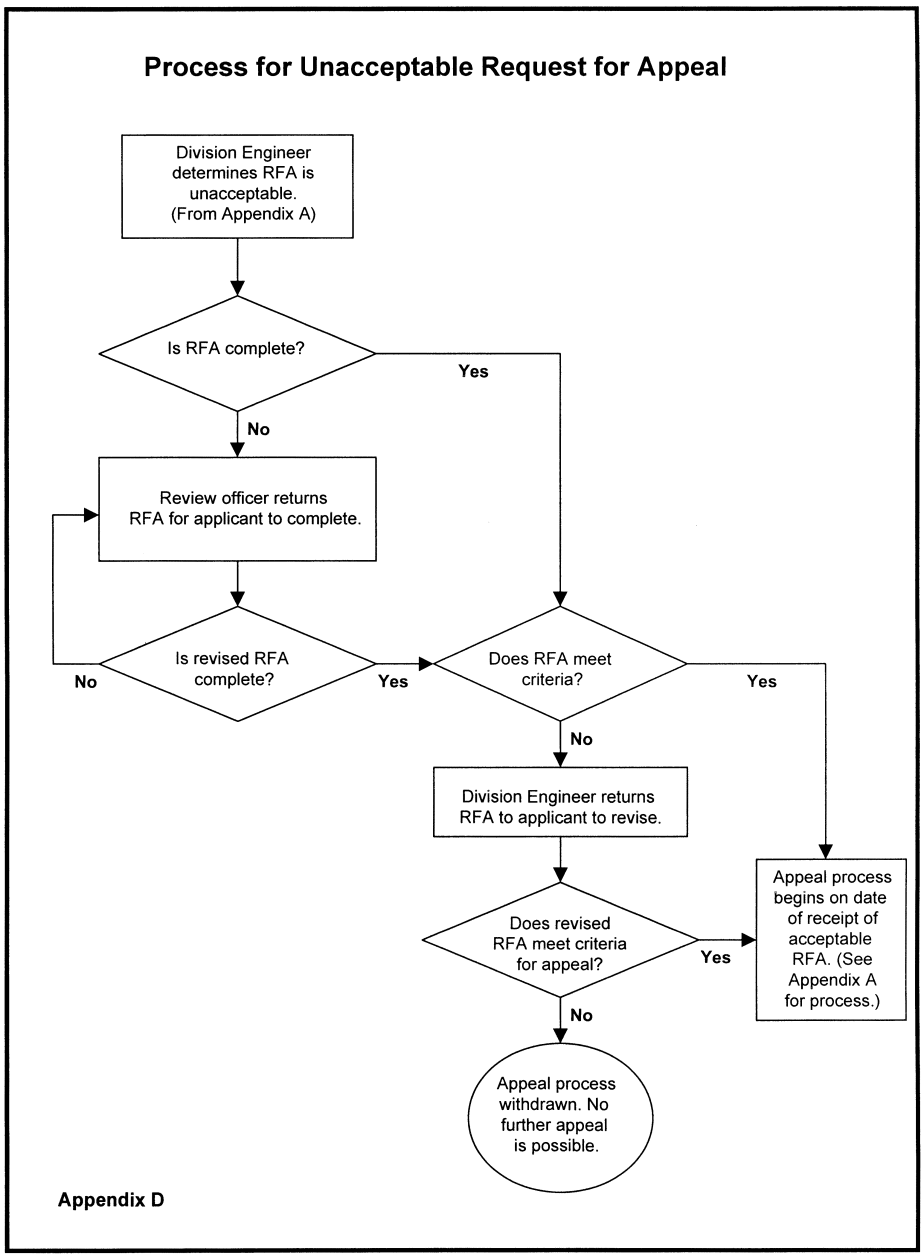
APPENDIX B TO PART 331—APPLICANT OPTIONS WITH INITIAL PROFFERED PERMIT



APPENDIX C TO PART 331—ADMINISTRATIVE APPEAL PROCESS FOR APPROVED JURISDICTIONAL DETERMINATIONS



APPENDIX D TO PART 331—PROCESS FOR UNACCEPTABLE REQUEST FOR APPEAL



PART 332—COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES

Sec.
332.1 Purpose and general considerations.
332.2 Definitions.
332.3 General compensatory mitigation requirements.
332.4 Planning and documentation.
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332.6 Monitoring.
332.7 Management.
332.8 Mitigation banks and in-lieu fee programs.

AUTHORITY: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; and Pub. L. 108–136.

SOURCE: 73 FR 19670, Apr. 10, 2008, unless otherwise noted.

§ 332.1 Purpose and general considerations.

(a) *Purpose.* (1) The purpose of this part is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of Department of the Army (DA) permits pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and/or sections 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403). This part implements section 314(b) of the 2004 National Defense Authorization Act (Pub. L. 108–136), which directs that the standards and criteria shall, to the maximum extent practicable, maximize available credits and opportunities for mitigation, provide for regional variations in wetland conditions, functions, and values, and apply equivalent standards and criteria to each type of compensatory mitigation. This part is intended to further clarify mitigation requirements established under U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (U.S. EPA) regulations at 33 CFR part 320 and 40 CFR part 230, respectively.

(2) This part has been jointly developed by the Secretary of the Army, acting through the Chief of Engineers, and the Administrator of the Environmental Protection Agency. From time to time guidance on interpreting and implementing this part may be prepared jointly by U.S. EPA and the Corps at the national or regional level. No modifications to the basic application, meaning, or intent of this part will be made without further joint rulemaking by the Secretary of the Army, acting through the Chief of Engineers and the Administrator of the Environmental Protection Agency, pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

(b) *Applicability.* This part does not alter the regulations at § 320.4(r) of this title, which address the general mitigation requirements for DA permits. In particular, it does not alter the circumstances under which compensatory mitigation is required or the definitions of ''waters of the United States'' or ''navigable waters of the United States,'' which are provided at parts 328 and 329 of this chapter, respectively. Use of resources as compensatory mitigation that are not otherwise subject to regulation under section 404 of the Clean Water Act and/or sections 9 or 10 of the Rivers and Harbors Act of 1899 does not in and of itself make them subject to such regulation.

(c) *Sequencing.* (1) Nothing in this section affects the requirement that all DA permits subject to section 404 of the Clean Water Act comply with applicable provisions of the Section 404(b)(1) Guidelines at 40 CFR part 230.

(2) Pursuant to these requirements, the district engineer will issue an individual section 404 permit only upon a determination that the proposed discharge complies with applicable provisions of 40 CFR part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines.

(3) Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines. During the

404(b)(1) Guidelines compliance analysis, the district engineer may determine that a DA permit for the proposed activity cannot be issued because of the lack of appropriate and practicable compensatory mitigation options.

(d) *Public interest.* Compensatory mitigation may also be required to ensure that an activity requiring authorization under section 404 of the Clean Water Act and/or sections 9 or 10 of the Rivers and Harbors Act of 1899 is not contrary to the public interest.

(e) *Accounting for regional variations.* Where appropriate, district engineers shall account for regional characteristics of aquatic resource types, functions and services when determining performance standards and monitoring requirements for compensatory mitigation projects.

(f) *Relationship to other guidance documents.* (1) This part applies instead of the ''Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks,'' which was issued on November 28, 1995, the ''Federal Guidance on the Use of In-Lieu Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act,'' which was issued on November 7, 2000, and Regulatory Guidance Letter 02–02, ''Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899'' which was issued on December 24, 2002. These guidance documents are no longer to be used as compensatory mitigation policy in the Corps Regulatory Program.

(2) In addition, this part also applies instead of the provisions relating to the amount, type, and location of compensatory mitigation projects, including the use of preservation, in the February 6, 1990, Memorandum of Agreement (MOA) between the Department of the Army and the Environmental Protection Agency on the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines. All other provisions of this MOA remain in effect.

§ 332.2 Definitions.

For the purposes of this part, the following terms are defined:

Adaptive management means the development of a management strategy that anticipates likely challenges associated with compensatory mitigation projects and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of compensatory mitigation projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that the aquatic resource functions are provided and involves analysis of monitoring results to identify potential problems of a compensatory mitigation project and the identification and implementation of measures to rectify those problems.

Advance credits means any credits of an approved in-lieu fee program that are available for sale prior to being fulfilled in accordance with an approved mitigation project plan. Advance credit sales require an approved in-lieu fee program instrument that meets all applicable requirements including a specific allocation of advance credits, by service area where applicable. The instrument must also contain a schedule for fulfillment of advance credit sales.

Buffer means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

Compensatory mitigation means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Compensatory mitigation project means compensatory mitigation implemented by the permittee as a requirement of a DA permit (*i.e.*, permittee-responsible mitigation), or by a mitigation bank or an in-lieu fee program.

Condition means the relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.

Credit means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

DA means Department of the Army.

Days means calendar days.

Debit means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation) means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

Fulfillment of advance credit sales of an in-lieu fee program means application of credits released in accordance with a credit release schedule in an approved mitigation project plan to satisfy the mitigation requirements represented by the advance credits. Only after any advance credit sales within a service area have been fulfilled through the application of released credits from an in-lieu fee project (in accordance with the credit release schedule for an approved mitigation project plan), may additional released credits from that project be sold or transferred to permittees. When advance credits are fulfilled, an equal number of new advance credits is restored to the program sponsor for sale or transfer to permit applicants.

Functional capacity means the degree to which an area of aquatic resource performs a specific function.

Functions means the physical, chemical, and biological processes that occur in ecosystems.

Impact means adverse effect.

In-kind means a resource of a similar structural and functional type to the impacted resource.

In-lieu fee program means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

In-lieu fee program instrument means the legal document for the establishment, operation, and use of an in-lieu fee program.

Instrument means mitigation banking instrument or in-lieu fee program instrument.

Interagency Review Team (IRT) means an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the district engineer on, the establishment and management of a mitigation bank or an in-lieu fee program.

Mitigation bank means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a mitigation bank sells compensatory mitigation credits to permittees whose

obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Mitigation banking instrument means the legal document for the establishment, operation, and use of a mitigation bank.

Off-site means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to the parcel containing the impact site.

On-site means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site.

Out-of-kind means a resource of a different structural and functional type from the impacted resource.

Performance standards are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Reference aquatic resources are a set of aquatic resources that represent the full range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Release of credits means a determination by the district engineer, in consultation with the IRT, that credits associated with an approved mitigation plan are available for sale or transfer, or in the case of an in-lieu fee program, for fulfillment of advance credit sales. A proportion of projected credits for a specific mitigation bank or in-lieu fee project may be released upon approval of the mitigation plan, with additional credits released as milestones specified in the credit release schedule are achieved.

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riparian areas are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

Service area means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

Services mean the benefits that human populations receive from functions that occur in ecosystems.

Sponsor means any public or private entity responsible for establishing, and in most circumstances, operating a mitigation bank or in-lieu fee program.

Standard permit means a standard, individual permit issued under the authority of section 404 of the Clean Water Act and/or sections 9 or 10 of the Rivers and Harbors Act of 1899.

Temporal loss is the time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Higher compensation ratios may be required to compensate for temporal loss. When the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the district engineer may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

Watershed means a land area that drains to a common waterway, such as a stream, lake, estuary, wetland, or ultimately the ocean.

Watershed approach means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs. A landscape perspective is used to identify the types and locations of compensatory mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by DA permits. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining compensatory mitigation requirements for DA permits.

Watershed plan means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans.

§ 332.3 General compensatory mitigation requirements.

(a) *General considerations.* (1) The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA permits. The district engineer must determine the compensatory mitigation to be required in a DA permit, based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. When evaluating compensatory mitigation options, the district engineer will consider what would be environmentally preferable. In making this determination, the district engineer must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project. In many cases, the environmentally preferable compensatory mitigation may be provided through mitigation banks or in-lieu fee programs because they usually involve consolidating compensatory mitigation projects where ecologically appropriate, consolidating resources, providing financial planning and scientific expertise (which often is not practical for permittee-responsible compensatory mitigation projects), reducing temporal losses of functions, and reducing uncertainty over project success. Compensatory mitigation requirements must be commensurate with the amount and type of impact that is associated with a particular DA permit. Permit applicants are responsible for proposing an appropriate compensatory mitigation option to offset unavoidable impacts.

(2) Compensatory mitigation may be performed using the methods of restoration, enhancement, establishment, and in certain circumstances preservation. Restoration should generally be the first option considered because the likelihood of success is greater and the impacts to potentially ecologically important uplands are reduced compared to establishment, and the potential gains in terms of aquatic resource

functions are greater, compared to enhancement and preservation.

(3) Compensatory mitigation projects may be sited on public or private lands. Credits for compensatory mitigation projects on public land must be based solely on aquatic resource functions provided by the compensatory mitigation project, over and above those provided by public programs already planned or in place. All compensatory mitigation projects must comply with the standards in this part, if they are to be used to provide compensatory mitigation for activities authorized by DA permits, regardless of whether they are sited on public or private lands and whether the sponsor is a governmental or private entity.

(b) *Type and location of compensatory mitigation*. (1) When considering options for successfully providing the required compensatory mitigation, the district engineer shall consider the type and location options in the order presented in paragraphs (b)(2) through (b)(6) of this section. In general, the required compensatory mitigation should be located within the same watershed as the impact site, and should be located where it is most likely to successfully replace lost functions and services, taking into account such watershed scale features as aquatic habitat diversity, habitat connectivity, relationships to hydrologic sources (including the availability of water rights), trends in land use, ecological benefits, and compatibility with adjacent land uses. When compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell). Compensation for impacts to aquatic resources in coastal watersheds (watersheds that include a tidal water body) should also be located in a coastal watershed where practicable. Compensatory mitigation projects should not be located where they will increase risks to aviation by attracting wildlife to areas where aircraft-wildlife strikes may occur (e.g., near airports).

(2) *Mitigation bank credits*. When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor. Since an approved instrument (including an approved mitigation plan and appropriate real estate and financial assurances) for a mitigation bank is required to be in place before its credits can begin to be used to compensate for authorized impacts, use of a mitigation bank can help reduce risk and uncertainty, as well as temporal loss of resource functions and services. Mitigation bank credits are not released for debiting until specific milestones associated with the mitigation bank site's protection and development are achieved, thus use of mitigation bank credits can also help reduce risk that mitigation will not be fully successful. Mitigation banks typically involve larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation. Also, development of a mitigation bank requires site identification in advance, project-specific planning, and significant investment of financial resources that is often not practicable for many in-lieu fee programs. For these reasons, the district engineer should give preference to the use of mitigation bank credits when these considerations are applicable. However, these same considerations may also be used to override this preference, where appropriate, as, for example, where an in-lieu fee program has released credits available from a specific approved in-lieu fee project, or a permittee-responsible project will restore an outstanding resource based on rigorous scientific and technical analysis.

(3) *In-lieu fee program credits*. Where permitted impacts are located within the service area of an approved in-lieu fee program, and the sponsor has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor. Where permitted impacts are not located in the service area of an approved mitigation bank, or the approved mitigation bank does not have the appropriate number and

resource type of credits available to offset those impacts, in-lieu fee mitigation, if available, is generally preferable to permittee-responsible mitigation. In-lieu fee projects typically involve larger, more ecologically valuable parcels, and more rigorous scientific and technical analysis, planning and implementation than permittee-responsible mitigation. They also devote significant resources to identifying and addressing high-priority resource needs on a watershed scale, as reflected in their compensation planning framework. For these reasons, the district engineer should give preference to in-lieu fee program credits over permittee-responsible mitigation, where these considerations are applicable. However, as with the preference for mitigation bank credits, these same considerations may be used to override this preference where appropriate. Additionally, in cases where permittee-responsible mitigation is likely to successfully meet performance standards before advance credits secured from an in-lieu fee program are fulfilled, the district engineer should also give consideration to this factor in deciding between in-lieu fee mitigation and permittee-responsible mitigation.

(4) *Permittee-responsible mitigation under a watershed approach.* Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option. Where practicable and likely to be successful and sustainable, the resource type and location for the required permittee-responsible compensatory mitigation should be determined using the principles of a watershed approach as outlined in paragraph (c) of this section.

(5) *Permittee-responsible mitigation through on-site and in-kind mitigation.* In cases where a watershed approach is not practicable, the district engineer should consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.

(6) *Permittee-responsible mitigation through off-site and/or out-of-kind mitigation.* If, after considering opportunities for on-site, in-kind compensatory mitigation as provided in paragraph (b)(5) of this section, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted impacts, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted impacts or is environmentally preferable to on-site or in-kind mitigation, the district engineer should require that this alternative compensatory mitigation be provided.

(c) *Watershed approach to compensatory mitigation.* (1) The district engineer must use a watershed approach to establish compensatory mitigation requirements in DA permits to the extent appropriate and practicable. Where a watershed plan is available, the district engineer will determine whether the plan is appropriate for use in the watershed approach for compensatory mitigation. In cases where the district engineer determines that an appropriate watershed plan is available, the watershed approach should be based on that plan. Where no such plan is available, the watershed approach should be based on information provided by the project sponsor or available from other sources. The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.

(2) *Considerations.* (i) A watershed approach to compensatory mitigation considers the importance of landscape position and resource type of compensatory mitigation projects for the sustainability of aquatic resource functions within the watershed. Such an approach considers how the types and locations of compensatory mitigation projects will provide the desired aquatic resource functions, and will continue to function over time in a changing landscape. It also considers the habitat requirements of important species, habitat loss or conversion trends,

sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed, such as storm water management or habitat conservation programs. It includes the protection and maintenance of terrestrial resources, such as non-wetland riparian areas and uplands, when those resources contribute to or improve the overall ecological functioning of aquatic resources in the watershed. Compensatory mitigation requirements determined through the watershed approach should not focus exclusively on specific functions (e.g., water quality or habitat for certain species), but should provide, where practicable, the suite of functions typically provided by the affected aquatic resource.

(ii) Locational factors (e.g., hydrology, surrounding land use) are important to the success of compensatory mitigation for impacted habitat functions and may lead to siting of such mitigation away from the project area. However, consideration should also be given to functions and services (e.g., water quality, flood control, shoreline protection) that will likely need to be addressed at or near the areas impacted by the permitted impacts.

(iii) A watershed approach may include on-site compensatory mitigation, off-site compensatory mitigation (including mitigation banks or in-lieu fee programs), or a combination of on-site and off-site compensatory mitigation.

(iv) A watershed approach to compensatory mitigation should include, to the extent practicable, inventories of historic and existing aquatic resources, including identification of degraded aquatic resources, and identification of immediate and long-term aquatic resource needs within watersheds that can be met through permittee-responsible mitigation projects, mitigation banks, or in-lieu fee programs. Planning efforts should identify and prioritize aquatic resource restoration, establishment, and enhancement activities, and preservation of existing aquatic resources that are important for maintaining or improving ecological functions of the watershed. The identification and prioritization of resource needs should be as specific as possible, to enhance the usefulness of the approach in determining compensatory mitigation requirements.

(v) A watershed approach is not appropriate in areas where watershed boundaries do not exist, such as marine areas. In such cases, an appropriate spatial scale should be used to replace lost functions and services within the same ecological system (e.g., reef complex, littoral drift cell).

(3) *Information needs*. (i) In the absence of a watershed plan determined by the district engineer under paragraph (c)(1) of this section to be appropriate for use in the watershed approach, the district engineer will use a watershed approach based on analysis of information regarding watershed conditions and needs, including potential sites for aquatic resource restoration activities and priorities for aquatic resource restoration and preservation. Such information includes: current trends in habitat loss or conversion; cumulative impacts of past development activities, current development trends, the presence and needs of sensitive species; site conditions that favor or hinder the success of compensatory mitigation projects; and chronic environmental problems such as flooding or poor water quality.

(ii) This information may be available from sources such as wetland maps; soil surveys; U.S. Geological Survey topographic and hydrologic maps; aerial photographs; information on rare, endangered and threatened species and critical habitat; local ecological reports or studies; and other information sources that could be used to identify locations for suitable compensatory mitigation projects in the watershed.

(iii) The level of information and analysis needed to support a watershed approach must be commensurate with the scope and scale of the proposed impacts requiring a DA permit, as well as the functions lost as a result of those impacts.

(4) *Watershed scale*. The size of watershed addressed using a watershed approach should not be larger than is appropriate to ensure that the aquatic resources provided through compensation activities will effectively compensate

for adverse environmental impacts resulting from activities authorized by DA permits. The district engineer should consider relevant environmental factors and appropriate locally developed standards and criteria when determining the appropriate watershed scale in guiding compensation activities.

(d) *Site selection.* (1) The compensatory mitigation project site must be ecologically suitable for providing the desired aquatic resource functions. In determining the ecological suitability of the compensatory mitigation project site, the district engineer must consider, to the extent practicable, the following factors:

(i) Hydrological conditions, soil characteristics, and other physical and chemical characteristics;

(ii) Watershed-scale features, such as aquatic habitat diversity, habitat connectivity, and other landscape scale functions;

(iii) The size and location of the compensatory mitigation site relative to hydrologic sources (including the availability of water rights) and other ecological features;

(iv) Compatibility with adjacent land uses and watershed management plans;

(v) Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources (e.g., shallow sub-tidal habitat, mature forests), cultural sites, or habitat for federally- or state-listed threatened and endangered species; and

(vi) Other relevant factors including, but not limited to, development trends, anticipated land use changes, habitat status and trends, the relative locations of the impact and mitigation sites in the stream network, local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern), water quality goals, floodplain management goals, and the relative potential for chemical contamination of the aquatic resources.

(2) District engineers may require onsite, off-site, or a combination of onsite and off-site compensatory mitigation to replace permitted losses of aquatic resource functions and services.

(3) Applicants should propose compensation sites adjacent to existing aquatic resources or where aquatic resources previously existed.

(e) *Mitigation type.* (1) In general, in-kind mitigation is preferable to out-of-kind mitigation because it is most likely to compensate for the functions and services lost at the impact site. For example, tidal wetland compensatory mitigation projects are most likely to compensate for unavoidable impacts to tidal wetlands, while perennial stream compensatory mitigation projects are most likely to compensate for unavoidable impacts to perennial streams. Thus, except as provided in paragraph (e)(2) of this section, the required compensatory mitigation shall be of a similar type to the affected aquatic resource.

(2) If the district engineer determines, using the watershed approach in accordance with paragraph (c) of this section that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed, the district engineer may authorize the use of such out-of-kind compensatory mitigation. The basis for authorization of out-of-kind compensatory mitigation must be documented in the administrative record for the permit action.

(3) For difficult-to-replace resources (e.g., bogs, fens, springs, streams, Atlantic white cedar swamps) if further avoidance and minimization is not practicable, the required compensation should be provided, if practicable, through in-kind rehabilitation, enhancement, or preservation since there is greater certainty that these methods of compensation will successfully offset permitted impacts.

(f) *Amount of compensatory mitigation.* (1) If the district engineer determines that compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources, the amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions. In cases where appropriate functional or condition assessment methods or other suitable metrics are available, these methods should be used where practicable to determine how

much compensatory mitigation is required. If a functional or condition assessment or other suitable metric is not used, a minimum one-to-one acreage or linear foot compensation ratio must be used.

(2) The district engineer must require a mitigation ratio greater than one-to-one where necessary to account for the method of compensatory mitigation (e.g., preservation), the likelihood of success, differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project, temporal losses of aquatic resource functions, the difficulty of restoring or establishing the desired aquatic resource type and functions, and/or the distance between the affected aquatic resource and the compensation site. The rationale for the required replacement ratio must be documented in the administrative record for the permit action.

(3) If an in-lieu fee program will be used to provide the required compensatory mitigation, and the appropriate number and resource type of released credits are not available, the district engineer must require sufficient compensation to account for the risk and uncertainty associated with in-lieu fee projects that have not been implemented before the permitted impacts have occurred.

(g) *Use of mitigation banks and in-lieu fee programs*. Mitigation banks and in-lieu fee programs may be used to compensate for impacts to aquatic resources authorized by general permits and individual permits, including after-the-fact permits, in accordance with the preference hierarchy in paragraph (b) of this section.

(h) *Preservation*. (1) Preservation may be used to provide compensatory mitigation for activities authorized by DA permits when all the following criteria are met:

(i) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;

(ii) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available;

(iii) Preservation is determined by the district engineer to be appropriate and practicable;

(iv) The resources are under threat of destruction or adverse modifications; and

(v) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust).

(2) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach described in paragraph (c) of this section, but compensation ratios shall be higher.

(i) *Buffers*. District engineers may require the restoration, establishment, enhancement, and preservation, as well as the maintenance, of riparian areas and/or buffers around aquatic resources where necessary to ensure the long-term viability of those resources. Buffers may also provide habitat or corridors necessary for the ecological functioning of aquatic resources. If buffers are required by the district engineer as part of the compensatory mitigation project, compensatory mitigation credit will be provided for those buffers.

(j) *Relationship to other federal, tribal, state, and local programs*. (1) Compensatory mitigation projects for DA permits may also be used to satisfy the environmental requirements of other programs, such as tribal, state, or local wetlands regulatory programs, other federal programs such as the Surface Mining Control and Reclamation Act, Corps civil works projects, and Department of Defense military construction projects, consistent with the terms and requirements of these programs and subject to the following considerations:

(i) The compensatory mitigation project must include appropriate compensation required by the DA permit

for unavoidable impacts to aquatic resources authorized by that permit.

(ii) Under no circumstances may the same credits be used to provide mitigation for more than one permitted activity. However, where appropriate, compensatory mitigation projects, including mitigation banks and in-lieu fee projects, may be designed to holistically address requirements under multiple programs and authorities for the same activity.

(2) Except for projects undertaken by federal agencies, or where federal funding is specifically authorized to provide compensatory mitigation, federally-funded aquatic resource restoration or conservation projects undertaken for purposes other than compensatory mitigation, such as the Wetlands Reserve Program, Conservation Reserve Program, and Partners for Wildlife Program activities, cannot be used for the purpose of generating compensatory mitigation credits for activities authorized by DA permits. However, compensatory mitigation credits may be generated by activities undertaken in conjunction with, but supplemental to, such programs in order to maximize the overall ecological benefits of the restoration or conservation project.

(3) Compensatory mitigation projects may also be used to provide compensatory mitigation under the Endangered Species Act or for Habitat Conservation Plans, as long as they comply with the requirements of paragraph (j)(1) of this section.

(k) *Permit conditions*. (1) The compensatory mitigation requirements for a DA permit, including the amount and type of compensatory mitigation, must be clearly stated in the special conditions of the individual permit or general permit verification (see 33 CFR 325.4 and 330.6(a)). The special conditions must be enforceable.

(2) For an individual permit that requires permittee-responsible mitigation, the special conditions must:

(i) Identify the party responsible for providing the compensatory mitigation;

(ii) Incorporate, by reference, the final mitigation plan approved by the district engineer;

(iii) State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and

(iv) Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan.

(3) For a general permit activity that requires permittee-responsible compensatory mitigation, the special conditions must describe the compensatory mitigation proposal, which may be either conceptual or detailed. The general permit verification must also include a special condition that states that the permittee cannot commence work in waters of the United States until the district engineer approves the final mitigation plan, unless the district engineer determines that such a special condition is not practicable and not necessary to ensure timely completion of the required compensatory mitigation. To the extent appropriate and practicable, special conditions of the general permit verification should also address the requirements of paragraph (k)(2) of this section.

(4) If a mitigation bank or in-lieu fee program is used to provide the required compensatory mitigation, the special conditions must indicate whether a mitigation bank or in-lieu fee program will be used, and specify the number and resource type of credits the permittee is required to secure. In the case of an individual permit, the special condition must also identify the specific mitigation bank or in-lieu fee program that will be used. For general permit verifications, the special conditions may either identify the specific mitigation bank or in-lieu fee program, or state that the specific mitigation bank or in-lieu fee program used to provide the required compensatory mitigation must be approved by the district engineer before the credits are secured.

(l) *Party responsible for compensatory mitigation*. (1) For permittee-responsible mitigation, the special conditions of the DA permit must clearly indicate the party or parties responsible for the implementation, performance, and

long-term management of the compensatory mitigation project.

(2) For mitigation banks and in-lieu fee programs, the instrument must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project(s). The instrument must also contain a provision expressing the sponsor's agreement to assume responsibility for a permittee's compensatory mitigation requirements, once that permittee has secured the appropriate number and resource type of credits from the sponsor and the district engineer has received the documentation described in paragraph (l)(3) of this section.

(3) If use of a mitigation bank or in-lieu fee program is approved by the district engineer to provide part or all of the required compensatory mitigation for a DA permit, the permittee retains responsibility for providing the compensatory mitigation until the appropriate number and resource type of credits have been secured from a sponsor and the district engineer has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor. Copies of this documentation will be retained in the administrative records for both the permit and the instrument. If the sponsor fails to provide the required compensatory mitigation, the district engineer may pursue measures against the sponsor to ensure compliance.

(m) *Timing*. Implementation of the compensatory mitigation project shall be, to the maximum extent practicable, in advance of or concurrent with the activity causing the authorized impacts. The district engineer shall require, to the extent appropriate and practicable, additional compensatory mitigation to offset temporal losses of aquatic functions that will result from the permitted activity.

(n) *Financial assurances*. (1) The district engineer shall require sufficient financial assurances to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with applicable performance standards. In cases where an alternate mechanism is available to ensure a high level of confidence that the compensatory mitigation will be provided and maintained (e.g., a formal, documented commitment from a government agency or public authority) the district engineer may determine that financial assurances are not necessary for that compensatory mitigation project.

(2) The amount of the required financial assurances must be determined by the district engineer, in consultation with the project sponsor, and must be based on the size and complexity of the compensatory mitigation project, the degree of completion of the project at the time of project approval, the likelihood of success, the past performance of the project sponsor, and any other factors the district engineer deems appropriate. Financial assurances may be in the form of performance bonds, escrow accounts, casualty insurance, letters of credit, legislative appropriations for government sponsored projects, or other appropriate instruments, subject to the approval of the district engineer. The rationale for determining the amount of the required financial assurances must be documented in the administrative record for either the DA permit or the instrument. In determining the assurance amount, the district engineer shall consider the cost of providing replacement mitigation, including costs for land acquisition, planning and engineering, legal fees, mobilization, construction, and monitoring.

(3) If financial assurances are required, the DA permit must include a special condition requiring the financial assurances to be in place prior to commencing the permitted activity.

(4) Financial assurances shall be phased out once the compensatory mitigation project has been determined by the district engineer to be successful in accordance with its performance

standards. The DA permit or instrument must clearly specify the conditions under which the financial assurances are to be released to the permittee, sponsor, and/or other financial assurance provider, including, as appropriate, linkage to achievement of performance standards, adaptive management, or compliance with special conditions.

(5) A financial assurance must be in a form that ensures that the district engineer will receive notification at least 120 days in advance of any termination or revocation. For third-party assurance providers, this may take the form of a contractual requirement for the assurance provider to notify the district engineer at least 120 days before the assurance is revoked or terminated.

(6) Financial assurances shall be payable at the direction of the district engineer to his designee or to a standby trust agreement. When a standby trust is used (e.g., with performance bonds or letters of credit) all amounts paid by the financial assurance provider shall be deposited directly into the standby trust fund for distribution by the trustee in accordance with the district engineer's instructions.

(o) *Compliance with applicable law.* The compensatory mitigation project must comply with all applicable federal, state, and local laws. The DA permit, mitigation banking instrument, or in-lieu fee program instrument must not require participation by the Corps or any other federal agency in project management, including receipt or management of financial assurances or long-term financing mechanisms, except as determined by the Corps or other agency to be consistent with its statutory authority, mission, and priorities.

§ 332.4 Planning and documentation.

(a) *Pre-application consultations.* Potential applicants for standard permits are encouraged to participate in pre-application meetings with the Corps and appropriate agencies to discuss potential mitigation requirements and information needs.

(b) *Public review and comment.* (1) For an activity that requires a standard DA permit pursuant to section 404 of the Clean Water Act, the public notice for the proposed activity must contain a statement explaining how impacts associated with the proposed activity are to be avoided, minimized, and compensated for. This explanation shall address, to the extent that such information is provided in the mitigation statement required by § 325.1(d)(7) of this chapter, the proposed avoidance and minimization and the amount, type, and location of any proposed compensatory mitigation, including any out-of-kind compensation, or indicate an intention to use an approved mitigation bank or in-lieu fee program. The level of detail provided in the public notice must be commensurate with the scope and scale of the impacts. The notice shall not include information that the district engineer and the permittee believe should be kept confidential for business purposes, such as the exact location of a proposed mitigation site that has not yet been secured. The permittee must clearly identify any information being claimed as confidential in the mitigation statement when submitted. In such cases, the notice must still provide enough information to enable the public to provide meaningful comment on the proposed mitigation.

(2) For individual permits, district engineers must consider any timely comments and recommendations from other federal agencies; tribal, state, or local governments; and the public.

(3) For activities authorized by letters of permission or general permits, the review and approval process for compensatory mitigation proposals and plans must be conducted in accordance with the terms and conditions of those permits and applicable regulations including the applicable provisions of this part.

(c) *Mitigation plan*—(1) *Preparation and approval.* (i) For individual permits, the permittee must prepare a draft mitigation plan and submit it to the district engineer for review. After addressing any comments provided by the district engineer, the permittee must prepare a final mitigation plan, which must be approved by the district engineer prior to issuing the individual permit. The approved final mitigation

plan must be incorporated into the individual permit by reference. The final mitigation plan must include the items described in paragraphs (c)(2) through (c)(14) of this section, but the level of detail of the mitigation plan should be commensurate with the scale and scope of the impacts. As an alternative, the district engineer may determine that it would be more appropriate to address any of the items described in paragraphs (c)(2) through (c)(14) of this section as permit conditions, instead of components of a compensatory mitigation plan. For permittees who intend to fulfill their compensatory mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans need include only the items described in paragraphs (c)(5) and (c)(6) of this section, and the name of the specific mitigation bank or in-lieu fee program to be used.

(ii) For general permits, if compensatory mitigation is required, the district engineer may approve a conceptual or detailed compensatory mitigation plan to meet required time frames for general permit verifications, but a final mitigation plan incorporating the elements in paragraphs (c)(2) through (c)(14) of this section, at a level of detail commensurate with the scale and scope of the impacts, must be approved by the district engineer before the permittee commences work in waters of the United States. As an alternative, the district engineer may determine that it would be more appropriate to address any of the items described in paragraphs (c)(2) through (c)(14) of this section as permit conditions, instead of components of a compensatory mitigation plan. For permittees who intend to fulfill their compensatory mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans need include only the items described in paragraphs (c)(5) and (c)(6) of this section, and either the name of the specific mitigation bank or in-lieu fee program to be used or a statement indicating that a mitigation bank or in-lieu fee program will be used (contingent upon approval by the district engineer).

(iii) Mitigation banks and in-lieu fee programs must prepare a mitigation plan including the items in paragraphs (c)(2) through (c)(14) of this section for each separate compensatory mitigation project site. For mitigation banks and in-lieu fee programs, the preparation and approval process for mitigation plans is described in § 332.8.

(2) *Objectives.* A description of the resource type(s) and amount(s) that will be provided, the method of compensation (*i.e.*, restoration, establishment, enhancement, and/or preservation), and the manner in which the resource functions of the compensatory mitigation project will address the needs of the watershed, ecoregion, physiographic province, or other geographic area of interest.

(3) *Site selection.* A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the compensatory mitigation project site. (See § 332.3(d).)

(4) *Site protection instrument.* A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project site (see § 332.7(a)).

(5) *Baseline information.* A description of the ecological characteristics of the proposed compensatory mitigation project site and, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about

the impact site, not the mitigation bank or in-lieu fee project site.

(6) *Determination of credits.* A description of the number of credits to be provided, including a brief explanation of the rationale for this determination. (See § 332.3(f).)

(i) For permittee-responsible mitigation, this should include an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.

(ii) For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.

(7) *Mitigation work plan.* Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures. For stream compensatory mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

(8) *Maintenance plan.* A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

(9) *Performance standards.* Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives. (See § 332.5.)

(10) *Monitoring requirements.* A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included. (See § 332.6.)

(11) *Long-term management plan.* A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management. (See § 332.7(d).)

(12) *Adaptive management plan.* A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success. (See § 332.7(c).)

(13) *Financial assurances.* A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards (see § 332.3(n)).

(14) *Other information.* The district engineer may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the compensatory mitigation project.

§ 332.5 Ecological performance standards.

(a) The approved mitigation plan must contain performance standards that will be used to assess whether the project is achieving its objectives. Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).

(b) Performance standards must be based on attributes that are objective and verifiable. Ecological performance standards must be based on the best

available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. The use of reference aquatic resources to establish performance standards will help ensure that those performance standards are reasonably achievable, by reflecting the range of variability exhibited by the regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.

§ 332.6 Monitoring.

(a) *General*. (1) Monitoring the compensatory mitigation project site is necessary to determine if the project is meeting its performance standards, and to determine if measures are necessary to ensure that the compensatory mitigation project is accomplishing its objectives. The submission of monitoring reports to assess the development and condition of the compensatory mitigation project is required, but the content and level of detail for those monitoring reports must be commensurate with the scale and scope of the compensatory mitigation project, as well as the compensatory mitigation project type. The mitigation plan must address the monitoring requirements for the compensatory mitigation project, including the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring, the frequency for submitting monitoring reports to the district engineer, and the party responsible for submitting those monitoring reports to the district engineer.

(2) The district engineer may conduct site inspections on a regular basis (e.g., annually) during the monitoring period to evaluate mitigation site performance.

(b) *Monitoring period*. The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs). Following project implementation, the district engineer may reduce or waive the remaining monitoring requirements upon a determination that the compensatory mitigation project has achieved its performance standards. Conversely the district engineer may extend the original monitoring period upon a determination that performance standards have not been met or the compensatory mitigation project is not on track to meet them. The district engineer may also revise monitoring requirements when remediation and/or adaptive management is required.

(c) *Monitoring reports*. (1) The district engineer must determine the information to be included in monitoring reports. This information must be sufficient for the district engineer to determine how the compensatory mitigation project is progressing towards meeting its performance standards, and may include plans (such as as-built plans), maps, and photographs to illustrate site conditions. Monitoring reports may also include the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

(2) The permittee or sponsor is responsible for submitting monitoring reports in accordance with the special conditions of the DA permit or the terms of the instrument. Failure to submit monitoring reports in a timely manner may result in compliance action by the district engineer.

(3) Monitoring reports must be provided by the district engineer to interested federal, tribal, state, and local

resource agencies, and the public, upon request.

§ 332.7 Management.

(a) *Site protection.* (1) The aquatic habitats, riparian areas, buffers, and uplands that comprise the overall compensatory mitigation project must be provided long-term protection through real estate instruments or other available mechanisms, as appropriate. Long-term protection may be provided through real estate instruments such as conservation easements held by entities such as federal, tribal, state, or local resource agencies, non-profit conservation organizations, or private land managers; the transfer of title to such entities; or by restrictive covenants. For government property, long-term protection may be provided through federal facility management plans or integrated natural resources management plans. When approving a method for long-term protection of non-government property other than transfer of title, the district engineer shall consider relevant legal constraints on the use of conservation easements and/or restrictive covenants in determining whether such mechanisms provide sufficient site protection. To provide sufficient site protection, a conservation easement or restrictive covenant should, where practicable, establish in an appropriate third party (e.g., governmental or non-profit resource management agency) the right to enforce site protections and provide the third party the resources necessary to monitor and enforce these site protections.

(2) The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (e.g., clear cutting or mineral extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project. Where appropriate, multiple instruments recognizing compatible uses (e.g., fishing or grazing rights) may be used.

(3) The real estate instrument, management plan, or other long-term protection mechanism must contain a provision requiring 60-day advance notification to the district engineer before any action is taken to void or modify the instrument, management plan, or long-term protection mechanism, including transfer of title to, or establishment of any other legal claims over, the compensatory mitigation site.

(4) For compensatory mitigation projects on public lands, where federal facility management plans or integrated natural resources management plans are used to provide long-term protection, and changes in statute, regulation, or agency needs or mission results in an incompatible use on public lands originally set aside for compensatory mitigation, the public agency authorizing the incompatible use is responsible for providing alternative compensatory mitigation that is acceptable to the district engineer for any loss in functions resulting from the incompatible use.

(5) A real estate instrument, management plan, or other long-term protection mechanism used for site protection of permittee-responsible mitigation must be approved by the district engineer in advance of, or concurrent with, the activity causing the authorized impacts.

(b) *Sustainability.* Compensatory mitigation projects shall be designed, to the maximum extent practicable, to be self-sustaining once performance standards have been achieved. This includes minimization of active engineering features (e.g., pumps) and appropriate siting to ensure that natural hydrology and landscape context will support long-term sustainability. Where active long-term management and maintenance are necessary to ensure long-term sustainability (e.g., prescribed burning, invasive species control, maintenance of water control structures, easement enforcement), the responsible party must provide for such management and maintenance. This includes the provision of long-term financing mechanisms where necessary. Where needed, the acquisition and protection of water rights must be secured and documented in the permit conditions or instrument.

(c) *Adaptive management.* (1) If the compensatory mitigation project cannot be constructed in accordance with

the approved mitigation plans, the permittee or sponsor must notify the district engineer. A significant modification of the compensatory mitigation project requires approval from the district engineer.

(2) If monitoring or other information indicates that the compensatory mitigation project is not progressing towards meeting its performance standards as anticipated, the responsible party must notify the district engineer as soon as possible. The district engineer will evaluate and pursue measures to address deficiencies in the compensatory mitigation project. The district engineer will consider whether the compensatory mitigation project is providing ecological benefits comparable to the original objectives of the compensatory mitigation project.

(3) The district engineer, in consultation with the responsible party (and other federal, tribal, state, and local agencies, as appropriate), will determine the appropriate measures. The measures may include site modifications, design changes, revisions to maintenance requirements, and revised monitoring requirements. The measures must be designed to ensure that the modified compensatory mitigation project provides aquatic resource functions comparable to those described in the mitigation plan objectives.

(4) Performance standards may be revised in accordance with adaptive management to account for measures taken to address deficiencies in the compensatory mitigation project. Performance standards may also be revised to reflect changes in management strategies and objectives if the new standards provide for ecological benefits that are comparable or superior to the approved compensatory mitigation project. No other revisions to performance standards will be allowed except in the case of natural disasters.

(d) *Long-term management*. (1) The permit conditions or instrument must identify the party responsible for ownership and all long-term management of the compensatory mitigation project. The permit conditions or instrument may contain provisions allowing the permittee or sponsor to transfer the long-term management responsibilities of the compensatory mitigation project site to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager, after review and approval by the district engineer. The land stewardship entity need not be identified in the original permit or instrument, as long as the future transfer of long-term management responsibility is approved by the district engineer.

(2) A long-term management plan should include a description of long-term management needs, annual cost estimates for these needs, and identify the funding mechanism that will be used to meet those needs.

(3) Any provisions necessary for long-term financing must be addressed in the original permit or instrument. The district engineer may require provisions to address inflationary adjustments and other contingencies, as appropriate. Appropriate long-term financing mechanisms include non-wasting endowments, trusts, contractual arrangements with future responsible parties, and other appropriate financial instruments. In cases where the long-term management entity is a public authority or government agency, that entity must provide a plan for the long-term financing of the site.

(4) For permittee-responsible mitigation, any long-term financing mechanisms must be approved in advance of the activity causing the authorized impacts.

§ 332.8 Mitigation banks and in-lieu fee programs.

(a) *General considerations*. (1) All mitigation banks and in-lieu fee programs must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits.

(2) To the maximum extent practicable, mitigation banks and in-lieu fee project sites must be planned and designed to be self-sustaining over time, but some active management and maintenance may be required to ensure their long-term viability and sustainability. Examples of acceptable management activities include maintaining fire-dependent habitat communities in

the absence of natural fire and controlling invasive exotic plant species.

(3) All mitigation banks and in-lieu fee programs must comply with the standards in this part, if they are to be used to provide compensatory mitigation for activities authorized by DA permits, regardless of whether they are sited on public or private lands and whether the sponsor is a governmental or private entity.

(b) *Interagency Review Team.* (1) The district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks and in-lieu fee programs. The district engineer or his designated representative serves as Chair of the IRT. In cases where a mitigation bank or in-lieu fee program is proposed to satisfy the requirements of another federal, tribal, state, or local program, in addition to compensatory mitigation requirements of DA permits, it may be appropriate for the administering agency to serve as co-Chair of the IRT.

(2) In addition to the Corps, representatives from the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, NOAA Fisheries, the Natural Resources Conservation Service, and other federal agencies, as appropriate, may participate in the IRT. The IRT may also include representatives from tribal, state, and local regulatory and resource agencies, where such agencies have authorities and/or mandates directly affecting, or affected by, the establishment, operation, or use of the mitigation bank or in-lieu fee program. The district engineer will seek to include all public agencies with a substantive interest in the establishment of the mitigation bank or in-lieu fee program on the IRT, but retains final authority over its composition.

(3) The primary role of the IRT is to facilitate the establishment of mitigation banks or in-lieu fee programs through the development of mitigation banking or in-lieu fee program instruments. The IRT will review the prospectus, instrument, and other appropriate documents and provide comments to the district engineer. The district engineer and the IRT should use a watershed approach to the extent practicable in reviewing proposed mitigation banks and in-lieu fee programs. Members of the IRT may also sign the instrument, if they so choose. By signing the instrument, the IRT members indicate their agreement with the terms of the instrument. As an alternative, a member of the IRT may submit a letter expressing concurrence with the instrument. The IRT will also advise the district engineer in assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument. In order to ensure timely processing of instruments and other documentation, comments from IRT members must be received by the district engineer within the time limits specified in this section. Comments received after these deadlines will only be considered at the discretion of the district engineer to the extent that doing so does not jeopardize the deadlines for district engineer action.

(4) The district engineer will give full consideration to any timely comments and advice of the IRT. The district engineer alone retains final authority for approval of the instrument in cases where the mitigation bank or in-lieu fee program is used to satisfy compensatory mitigation requirements of DA permits.

(5) *MOAs with other agencies.* The district engineer and members of the IRT may enter into a memorandum of agreement (MOA) with any other federal, state or local government agency to perform all or some of the IRT review functions described in this section. Such MOAs must include provisions for appropriate federal oversight of the review process. The district engineer retains sole authority for final approval of instruments and other documentation required under this section.

(c) *Compensation planning framework for in-lieu fee programs.* (1) The approved instrument for an in-lieu fee program must include a compensation planning framework that will be used to select, secure, and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities. The compensation planning framework must support a watershed approach to compensatory mitigation.

All specific projects used to provide compensation for DA permits must be consistent with the approved compensation planning framework. Modifications to the framework must be approved as a significant modification to the instrument by the district engineer, after consultation with the IRT.

(2) The compensation planning framework must contain the following elements:

(i) The geographic service area(s), including a watershed-based rationale for the delineation of each service area;

(ii) A description of the threats to aquatic resources in the service area(s), including how the in-lieu fee program will help offset impacts resulting from those threats;

(iii) An analysis of historic aquatic resource loss in the service area(s);

(iv) An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;

(v) A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide;

(vi) A prioritization strategy for selecting and implementing compensatory mitigation activities;

(vii) An explanation of how any preservation objectives identified in paragraph (c)(2)(v) of this section and addressed in the prioritization strategy in paragraph (c)(2)(vi) satisfy the criteria for use of preservation in § 332.3(h);

(viii) A description of any public and private stakeholder involvement in plan development and implementation, including, where appropriate, coordination with federal, state, tribal and local aquatic resource management and regulatory authorities;

(ix) A description of the long-term protection and management strategies for activities conducted by the in-lieu fee program sponsor;

(x) A strategy for periodic evaluation and reporting on the progress of the program in achieving the goals and objectives in paragraph (c)(2)(v) of this section, including a process for revising the planning framework as necessary; and

(xi) Any other information deemed necessary for effective compensation planning by the district engineer.

(3) The level of detail necessary for the compensation planning framework is at the discretion of the district engineer, and will take into account the characteristics of the service area(s) and the scope of the program. As part of the in-lieu fee program instrument, the compensation planning framework will be reviewed by the IRT, and will be a major factor in the district engineer's decision on whether to approve the instrument.

(d) *Review process.* (1) The sponsor is responsible for preparing all documentation associated with establishment of the mitigation bank or in-lieu fee program, including the prospectus, instrument, and other appropriate documents, such as mitigation plans for a mitigation bank. The prospectus provides an overview of the proposed mitigation bank or in-lieu fee program and serves as the basis for public and initial IRT comment. For a mitigation bank, the mitigation plan, as described in § 332.4(c), provides detailed plans and specifications for the mitigation bank site. For in-lieu fee programs, mitigation plans will be prepared as in-lieu fee project sites are identified after the instrument has been approved and the in-lieu fee program becomes operational. The instrument provides the authorization for the mitigation bank or in-lieu fee program to provide credits to be used as compensatory mitigation for DA permits.

(2) *Prospectus.* The prospectus must provide a summary of the information regarding the proposed mitigation bank or in-lieu fee program, at a sufficient level of detail to support informed public and IRT comment. The review process begins when the sponsor submits a complete prospectus to the district engineer. For modifications of approved instruments, submittal of a new prospectus is not required; instead, the sponsor must submit a written request for an instrument modification accompanied by appropriate documentation. The district engineer must notify the sponsor within 30 days whether or not a submitted prospectus is complete. A complete prospectus includes the following information:

(i) The objectives of the proposed mitigation bank or in-lieu fee program.

(ii) How the mitigation bank or in-lieu fee program will be established and operated.

(iii) The proposed service area.

(iv) The general need for and technical feasibility of the proposed mitigation bank or in-lieu fee program.

(v) The proposed ownership arrangements and long-term management strategy for the mitigation bank or in-lieu fee project sites.

(vi) The qualifications of the sponsor to successfully complete the type(s) of mitigation project(s) proposed, including information describing any past such activities by the sponsor.

(vii) For a proposed mitigation bank, the prospectus must also address:

(A) The ecological suitability of the site to achieve the objectives of the proposed mitigation bank, including the physical, chemical, and biological characteristics of the bank site and how that site will support the planned types of aquatic resources and functions; and

(B) Assurance of sufficient water rights to support the long-term sustainability of the mitigation bank.

(viii) For a proposed in-lieu fee program, the prospectus must also include:

(A) The compensation planning framework (see paragraph (c) of this section); and

(B) A description of the in-lieu fee program account required by paragraph (i) of this section.

(3) *Preliminary review of prospectus.* Prior to submitting a prospectus, the sponsor may elect to submit a draft prospectus to the district engineer for comment and consultation. The district engineer will provide copies of the draft prospectus to the IRT and will provide comments back to the sponsor within 30 days. Any comments from IRT members will also be forwarded to the sponsor. This preliminary review is optional but is strongly recommended. It is intended to identify potential issues early so that the sponsor may attempt to address those issues prior to the start of the formal review process.

(4) *Public review and comment.* Within 30 days of receipt of a complete prospectus or an instrument modification request that will be processed in accordance with paragraph (g)(1) of this section, the district engineer will provide public notice of the proposed mitigation bank or in-lieu fee program, in accordance with the public notice procedures at 33 CFR 325.3. The public notice must, at a minimum, include a summary of the prospectus and indicate that the full prospectus is available to the public for review upon request. For modifications of approved instruments, the public notice must instead summarize, and make available to the public upon request, whatever documentation is appropriate for the modification (e.g., a new or revised mitigation plan). The comment period for public notice will be 30 days, unless the district engineer determines that a longer comment period is appropriate. The district engineer will notify the sponsor if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary. Copies of all comments received in response to the public notice must be distributed to the other IRT members and to the sponsor within 15 days of the close of the public comment period. The district engineer and IRT members may also provide comments to the sponsor at this time, and copies of any such comments will also be distributed to all IRT members. If the construction of a mitigation bank or an in-lieu fee program project requires a DA permit, the public notice requirement may be satisfied through the public notice provisions of the permit processing procedures, provided all of the relevant information is provided.

(5) *Initial evaluation.* (i) After the end of the comment period, the district engineer will review the comments received in response to the public notice, and make a written initial evaluation as to the potential of the proposed mitigation bank or in-lieu fee program to provide compensatory mitigation for activities authorized by DA permits. This initial evaluation letter must be provided to the sponsor within 30 days of the end of the public notice comment period.

(ii) If the district engineer determines that the proposed mitigation

bank or in-lieu fee program has potential for providing appropriate compensatory mitigation for activities authorized by DA permits, the initial evaluation letter will inform the sponsor that he/she may proceed with preparation of the draft instrument (see paragraph (d)(6) of this section).

(iii) If the district engineer determines that the proposed mitigation bank or in-lieu fee program does not have potential for providing appropriate compensatory mitigation for DA permits, the initial evaluation letter must discuss the reasons for that determination. The sponsor may revise the prospectus to address the district engineer's concerns, and submit the revised prospectus to the district engineer. If the sponsor submits a revised prospectus, a revised public notice will be issued in accordance with paragraph (d)(4) of this section.

(iv) This initial evaluation procedure does not apply to proposed modifications of approved instruments.

(6) *Draft instrument.* (i) After considering comments from the district engineer, the IRT, and the public, if the sponsor chooses to proceed with establishment of the mitigation bank or in-lieu fee program, he must prepare a draft instrument and submit it to the district engineer. In the case of an instrument modification, the sponsor must prepare a draft amendment (e.g., a specific instrument provision, a new or modified mitigation plan), and submit it to the district engineer. The district engineer must notify the sponsor within 30 days of receipt, whether the draft instrument or amendment is complete. If the draft instrument or amendment is incomplete, the district engineer will request from the sponsor the information necessary to make the draft instrument or amendment complete. Once any additional information is submitted, the district engineer must notify the sponsor as soon as he determines that the draft instrument or amendment is complete. The draft instrument must be based on the prospectus and must describe in detail the physical and legal characteristics of the mitigation bank or in-lieu fee program and how it will be established and operated.

(ii) For mitigation banks and in-lieu fee programs, the draft instrument must include the following information:

(A) A description of the proposed geographic service area of the mitigation bank or in-lieu fee program. The service area is the watershed, ecoregion, physiographic province, and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required by DA permits. The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area. For example, in urban areas, a U.S. Geological Survey 8-digit hydrologic unit code (HUC) watershed or a smaller watershed may be an appropriate service area. In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area. Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable. The economic viability of the mitigation bank or in-lieu fee program may also be considered in determining the size of the service area. The basis for the proposed service area must be documented in the instrument. An in-lieu fee program or umbrella mitigation banking instrument may have multiple service areas governed by its instrument (e.g., each watershed within a state or Corps district may be a separate service area under the instrument); however, all impacts and compensatory mitigation must be accounted for by service area;

(B) Accounting procedures;

(C) A provision stating that legal responsibility for providing the compensatory mitigation lies with the sponsor once a permittee secures credits from the sponsor;

(D) Default and closure provisions;

(E) Reporting protocols; and

(F) Any other information deemed necessary by the district engineer.

(iii) For a mitigation bank, a complete draft instrument must include the following additional information:

(A) Mitigation plans that include all applicable items listed in § 332.4(c)(2) through (14); and

(B) A credit release schedule, which is tied to achievement of specific milestones. All credit releases must be approved by the district engineer, in consultation with the IRT, based on a determination that required milestones have been achieved. The district engineer, in consultation with the IRT, may modify the credit release schedule, including reducing the number of available credits or suspending credit sales or transfers altogether, where necessary to ensure that all credit sales or transfers remain tied to compensatory mitigation projects with a high likelihood of meeting performance standards;

(iv) For an in-lieu fee program, a complete draft instrument must include the following additional information:

(A) The compensation planning framework (see paragraph (c) of this section);

(B) Specification of the initial allocation of advance credits (see paragraph (n) of this section) and a draft fee schedule for these credits, by service area, including an explanation of the basis for the allocation and draft fee schedule;

(C) A methodology for determining future project-specific credits and fees; and

(D) A description of the in-lieu fee program account required by paragraph (i) of this section.

(7) *IRT review*. Upon receipt of notification by the district engineer that the draft instrument or amendment is complete, the sponsor must provide the district engineer with a sufficient number of copies of the draft instrument or amendment to distribute to the IRT members. The district engineer will promptly distribute copies of the draft instrument or amendment to the IRT members for a 30-day comment period. The 30-day comment period begins 5 days after the district engineer distributes the copies of the draft instrument or amendment to the IRT. Following the comment period, the district engineer will discuss any comments with the appropriate agencies and with the sponsor. The district engineer will seek to resolve issues using a consensus based approach, to the extent practicable, while still meeting the decision-making time frames specified in this section. Within 90 days of receipt of the complete draft instrument or amendment by the IRT members, the district engineer must notify the sponsor of the status of the IRT review. Specifically, the district engineer must indicate to the sponsor if the draft instrument or amendment is generally acceptable and what changes, if any, are needed. If there are significant unresolved concerns that may lead to a formal objection from one or more IRT members to the final instrument or amendment, the district engineer will indicate the nature of those concerns.

(8) *Final instrument*. The sponsor must submit a final instrument to the district engineer for approval, with supporting documentation that explains how the final instrument addresses the comments provided by the IRT. For modifications of approved instruments, the sponsor must submit a final amendment to the district engineer for approval, with supporting documentation that explains how the final amendment addresses the comments provided by the IRT. The final instrument or amendment must be provided directly by the sponsor to all members of the IRT. Within 30 days of receipt of the final instrument or amendment, the district engineer will notify the IRT members whether or not he intends to approve the instrument or amendment. If no IRT member objects, by initiating the dispute resolution process in paragraph (e) of this section within 45 days of receipt of the final instrument or amendment, the district engineer will notify the sponsor of his final decision and, if the instrument or amendment is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the instrument or amendment is approved, arrange for it to be signed by the appropriate parties. For mitigation banks, the final instrument must contain the information items listed in paragraphs (d)(6)(ii), and (iii) of this section. For in-lieu fee programs, the

final instrument must contain the information items listed in paragraphs (d)(6)(ii) and (iv) of this section. For the modification of an approved instrument, the amendment must contain appropriate information, as determined by the district engineer. The final instrument or amendment must be made available to the public upon request.

(e) *Dispute resolution process.* (1) Within 15 days of receipt of the district engineer's notification of intent to approve an instrument or amendment, the Regional Administrator of the U.S. EPA, the Regional Director of the U.S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service, and/or other senior officials of agencies represented on the IRT may notify the district engineer and other IRT members by letter if they object to the approval of the proposed final instrument or amendment. This letter must include an explanation of the basis for the objection and, where feasible, offer recommendations for resolving the objections. If the district engineer does not receive any objections within this time period, he may proceed to final action on the instrument or amendment.

(2) The district engineer must respond to the objection within 30 days of receipt of the letter. The district engineer's response may indicate an intent to disapprove the instrument or amendment as a result of the objection, an intent to approve the instrument or amendment despite the objection, or may provide a modified instrument or amendment that attempts to address the objection. The district engineer's response must be provided to all IRT members.

(3) Within 15 days of receipt of the district engineer's response, if the Regional Administrator or Regional Director is not satisfied with the response he may forward the issue to the Assistant Administrator for Water of the U.S. EPA, the Assistant Secretary for Fish and Wildlife and Parks of the U.S. FWS, or the Undersecretary for Oceans and Atmosphere of NOAA, as appropriate, for review and must notify the district engineer by letter via electronic mail or facsimile machine (with copies to all IRT members) that the issue has been forwarded for Headquarters review. This step is available only to the IRT members representing these three federal agencies, however other IRT members who do not agree with the district engineer's final decision do not have to sign the instrument or amendment or recognize the mitigation bank or in-lieu fee program for purposes of their own programs and authorities. If an IRT member other than the one filing the original objection has a new objection based on the district engineer's response, he may use the first step in this procedure (paragraph (e)(1) of this section) to provide that objection to the district engineer.

(4) If the issue has not been forwarded to the objecting agency's Headquarters, then the district engineer may proceed with final action on the instrument or amendment. If the issue has been forwarded to the objecting agency's Headquarters, the district engineer must hold in abeyance the final action on the instrument or amendment, pending Headquarters level review described below.

(5) Within 20 days from the date of the letter requesting Headquarters level review, the Assistant Administrator for Water, the Assistant Secretary for Fish and Wildlife and Parks, or the Undersecretary for Oceans and Atmosphere must either notify the Assistant Secretary of the Army (Civil Works) (ASA(CW)) that further review will not be requested, or request that the ASA(CW) review the final instrument or amendment.

(6) Within 30 days of receipt of the letter from the objecting agency's Headquarters request for ASA(CW)'s review of the final instrument, the ASA(CW), through the Director of Civil Works, must review the draft instrument or amendment and advise the district engineer on how to proceed with final action on that instrument or amendment. The ASA(CW) must immediately notify the Assistant Administrator for Water, the Assistant Secretary for Fish and Wildlife and Parks, and/or the Undersecretary for Oceans and Atmosphere of the final decision.

(7) In cases where the dispute resolution procedure is used, the district engineer must notify the sponsor of his final decision within 150 days of receipt of the final instrument or amendment.

(f) *Extension of deadlines.* (1) The deadlines in paragraphs (d) and (e) of this section may be extended by the district engineer at his sole discretion in cases where:

(i) Compliance with other applicable laws, such as consultation under section 7 of the Endangered Species Act or section 106 of the National Historic Preservation Act, is required;

(ii) It is necessary to conduct government-to-government consultation with Indian tribes;

(iii) Timely submittal of information necessary for the review of the proposed mitigation bank or in-lieu fee program or the proposed modification of an approved instrument is not accomplished by the sponsor; or

(iv) Information that is essential to the district engineer's decision cannot be reasonably obtained within the specified time frame.

(2) In such cases, the district engineer must promptly notify the sponsor in writing of the extension and the reason for it. Such extensions shall be for the minimum time necessary to resolve the issue necessitating the extension.

(g) *Modification of instruments.* (1) *Approval of an amendment to an approved instrument.* Modification of an approved instrument, including the addition and approval of umbrella mitigation bank sites or in-lieu fee project sites or expansions of previously approved mitigation bank or in-lieu fee project sites, must follow the appropriate procedures in paragraph (d) of this section, unless the district engineer determines that the streamlined review process described in paragraph (g)(2) of this section is warranted.

(2) *Streamlined review process.* The streamlined modification review process may be used for the following modifications of instruments: changes reflecting adaptive management of the mitigation bank or in-lieu fee program, credit releases, changes in credit releases and credit release schedules, and changes that the district engineer determines are not significant. If the district engineer determines that the streamlined review process is warranted, he must notify the IRT members and the sponsor of this determination and provide them with copies of the proposed modification. IRT members and the sponsor have 30 days to notify the district engineer if they have concerns with the proposed modification. If IRT members or the sponsor notify the district engineer of such concerns, the district engineer shall attempt to resolve those concerns. Within 60 days of providing the proposed modification to the IRT, the district engineer must notify the IRT members of his intent to approve or disapprove the proposed modification. If no IRT member objects, by initiating the dispute resolution process in paragraph (e) of this section, within 15 days of receipt of this notification, the district engineer will notify the sponsor of his final decision and, if the modification is approved, arrange for it to be signed by the appropriate parties. If any IRT member initiates the dispute resolution process, the district engineer will so notify the sponsor. Following conclusion of the dispute resolution process, the district engineer will notify the sponsor of his final decision, and if the modification is approved, arrange for it to be signed by the appropriate parties.

(h) *Umbrella mitigation banking instruments.* A single mitigation banking instrument may provide for future authorization of additional mitigation bank sites. As additional sites are selected, they must be included in the mitigation banking instrument as modifications, using the procedures in paragraph (g)(1) of this section. Credit withdrawal from the additional bank sites shall be consistent with paragraph (m) of this section.

(i) *In-lieu fee program account.* (1) The in-lieu fee program sponsor must establish a program account after the instrument is approved by the district engineer, prior to accepting any fees from permittees. If the sponsor accepts funds from entities other than permittees, those funds must be kept in separate accounts. The program account must be established at a financial institution that is a member of the Federal Deposit Insurance Corporation. All interests and earnings accruing to the program account must remain in that account for use by the in-lieu fee program for the purposes of providing

compensatory mitigation for DA permits. The program account may only be used for the selection, design, acquisition, implementation, and management of in-lieu fee compensatory mitigation projects, except for a small percentage (as determined by the district engineer in consultation with the IRT and specified in the instrument) that can be used for administrative costs.

(2) The sponsor must submit proposed in-lieu fee projects to the district engineer for funding approval. Disbursements from the program account may only be made upon receipt of written authorization from the district engineer, after the district engineer has consulted with the IRT. The terms of the program account must specify that the district engineer has the authority to direct those funds to alternative compensatory mitigation projects in cases where the sponsor does not provide compensatory mitigation in accordance with the time frame specified in paragraph (n)(4) of this section.

(3) The sponsor must provide annual reports to the district engineer and the IRT. The annual reports must include the following information:

(i) All income received, disbursements, and interest earned by the program account;

(ii) A list of all permits for which in-lieu fee program funds were accepted. This list shall include: The Corps permit number (or the state permit number if there is no corresponding Corps permit number, in cases of state programmatic general permits or other regional general permits), the service area in which the authorized impacts are located, the amount of authorized impacts, the amount of required compensatory mitigation, the amount paid to the in-lieu fee program, and the date the funds were received from the permittee;

(iii) A description of in-lieu fee program expenditures from the account, such as the costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration;

(iv) The balance of advance credits and released credits at the end of the report period for each service area; and

(v) Any other information required by the district engineer.

(4) The district engineer may audit the records pertaining to the program account. All books, accounts, reports, files, and other records relating to the in-lieu fee program account shall be available at reasonable times for inspection and audit by the district engineer.

(j) *In-lieu fee project approval.* (1) As in-lieu fee project sites are identified and secured, the sponsor must submit mitigation plans to the district engineer that include all applicable items listed in § 332.4(c)(2) through (14). The mitigation plan must also include a credit release schedule consistent with paragraph (o)(8) of this section that is tied to achievement of specific performance standards. The review and approval of in-lieu fee projects will be conducted in accordance with the procedures in paragraph (g)(1) of this section, as modifications of the in-lieu fee program instrument. This includes compensatory mitigation projects conducted by another party on behalf of the sponsor through requests for proposals and awarding of contracts.

(2) If a DA permit is required for an in-lieu fee project, the permit should not be issued until all relevant provisions of the mitigation plan have been substantively determined, to ensure that the DA permit accurately reflects all relevant provisions of the approved mitigation plan, such as performance standards.

(k) *Coordination of mitigation banking instruments and DA permit issuance.* In cases where initial establishment of the mitigation bank, or the development of a new project site under an umbrella banking instrument, involves activities requiring DA authorization, the permit should not be issued until all relevant provisions of the mitigation plan have been substantively determined. This is to ensure that the DA permit accurately reflects all relevant provisions of the final instrument, such as performance standards.

(l) *Project implementation.* (1) The sponsor must have an approved instrument prior to collecting funds from permittees to satisfy compensatory mitigation requirements for DA permits.

(2) Authorization to sell credits to satisfy compensatory mitigation requirements in DA permits is contingent on compliance with all of the terms of the instrument. This includes constructing a mitigation bank or in-lieu fee project in accordance with the mitigation plan approved by the district engineer and incorporated by reference in the instrument. If the aquatic resource restoration, establishment, enhancement, and/or preservation activities cannot be implemented in accordance with the approved mitigation plan, the district engineer must consult with the sponsor and the IRT to consider modifications to the instrument, including adaptive management, revisions to the credit release schedule, and alternatives for providing compensatory mitigation to satisfy any credits that have already been sold.

(3) An in-lieu fee program sponsor is responsible for the implementation, long-term management, and any required remediation of the restoration, establishment, enhancement, and/or preservation activities, even though those activities may be conducted by other parties through requests for proposals or other contracting mechanisms.

(m) *Credit withdrawal from mitigation banks*. The mitigation banking instrument may allow for an initial debiting of a percentage of the total credits projected at mitigation bank maturity, provided the following conditions are satisfied: the mitigation banking instrument and mitigation plan have been approved, the mitigation bank site has been secured, appropriate financial assurances have been established, and any other requirements determined to be necessary by the district engineer have been fulfilled. The mitigation banking instrument must provide a schedule for additional credit releases as appropriate milestones are achieved (see paragraph (o)(8) of this section). Implementation of the approved mitigation plan shall be initiated no later than the first full growing season after the date of the first credit transaction.

(n) *Advance credits for in-lieu fee programs*. (1) The in-lieu fee program instrument may make a limited number of advance credits available to permittees when the instrument is approved. The number of advance credits will be determined by the district engineer, in consultation with the IRT, and will be specified for each service area in the instrument. The number of advance credits will be based on the following considerations:

(i) The compensation planning framework;

(ii) The sponsor's past performance for implementing aquatic resource restoration, establishment, enhancement, and/or preservation activities in the proposed service area or other areas; and

(iii) The projected financing necessary to begin planning and implementation of in-lieu fee projects.

(2) To determine the appropriate number of advance credits for a particular service area, the district engineer may require the sponsor to provide confidential supporting information that will not be made available to the general public. Examples of confidential supporting information may include prospective in-lieu fee project sites.

(3) As released credits are produced by in-lieu fee projects, they must be used to fulfill any advance credits that have already been provided within the project service area before any remaining released credits can be sold or transferred to permittees. Once previously provided advance credits have been fulfilled, an equal number of advance credits is re-allocated to the sponsor for sale or transfer to fulfill new mitigation requirements, consistent with the terms of the instrument. The number of advance credits available to the sponsor at any given time to sell or transfer to permittees in a given service area is equal to the number of advance credits specified in the instrument, minus any that have already been provided but not yet fulfilled.

(4) Land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer determines that more or less time is needed to plan and implement an in-lieu fee project. If the district engineer

determines that there is a compensatory mitigation deficit in a specific service area by the third growing season after the first advance credit in that service area is sold, and determines that it would not be in the public interest to allow the sponsor additional time to plan and implement an in-lieu fee project, the district engineer must direct the sponsor to disburse funds from the in-lieu fee program account to provide alternative compensatory mitigation to fulfill those compensation obligations.

(5) The sponsor is responsible for complying with the terms of the in-lieu fee program instrument. If the district engineer determines, as a result of review of annual reports on the operation of the in-lieu fee program (see paragraphs (p)(2) and (q)(1) of this section), that it is not performing in compliance with its instrument, the district engineer will take appropriate action, which may include suspension of credit sales, to ensure compliance with the in-lieu fee program instrument (see paragraph (o)(10) of this section). Permittees that secured credits from the in-lieu fee program are not responsible for in-lieu fee program compliance.

(o) *Determining credits.* (1) *Units of measure.* The principal units for credits and debits are acres, linear feet, functional assessment units, or other suitable metrics of particular resource types. Functional assessment units or other suitable metrics may be linked to acres or linear feet.

(2) *Assessment.* Where practicable, an appropriate assessment method (e.g., hydrogeomorphic approach to wetlands functional assessment, index of biological integrity) or other suitable metric must be used to assess and describe the aquatic resource types that will be restored, established, enhanced and/or preserved by the mitigation bank or in-lieu fee project.

(3) *Credit production.* The number of credits must reflect the difference between pre- and post-compensatory mitigation project site conditions, as determined by a functional or condition assessment or other suitable metric.

(4) *Credit value.* Once a credit is debited (sold or transferred to a permittee), its value cannot change.

(5) *Credit costs.* (i) The cost of compensatory mitigation credits provided by a mitigation bank or in-lieu fee program is determined by the sponsor.

(ii) For in-lieu fee programs, the cost per unit of credit must include the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources in that service area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition, project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the in-lieu fee program. The cost per unit credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of credit must also take into account the resources necessary for the long-term management and protection of the in-lieu fee project. In addition, the cost per unit credit must include financial assurances that are necessary to ensure successful completion of in-lieu fee projects.

(6) *Credits provided by preservation.* These credits should be specified as acres, linear feet, or other suitable metrics of preservation of a particular resource type. In determining the compensatory mitigation requirements for DA permits using mitigation banks or in-lieu fee programs, the district engineer should apply a higher mitigation ratio if the requirements are to be met through the use of preservation credits. In determining this higher ratio, the district engineer must consider the relative importance of both the impacted and the preserved aquatic resources in sustaining watershed functions.

(7) *Credits provided by riparian areas, buffers, and uplands.* These credits should be specified as acres, linear feet, or other suitable metrics of riparian area, buffer, and uplands, respectively. Non-aquatic resources can only be used as compensatory mitigation for impacts to aquatic resources authorized by DA permits when those resources are essential to maintaining the ecological viability of adjoining aquatic

resources. In determining the compensatory mitigation requirements for DA permits using mitigation banks and in-lieu fee programs, the district engineer may authorize the use of riparian area, buffer, and/or upland credits if he determines that these areas are essential to sustaining aquatic resource functions in the watershed and are the most appropriate compensation for the authorized impacts.

(8) *Credit release schedule.* (i) *General considerations.* Release of credits must be tied to performance-based milestones (e.g., construction, planting, establishment of specified plant and animal communities). The credit release schedule should reserve a significant share of the total credits for release only after full achievement of ecological performance standards. When determining the credit release schedule, factors to be considered may include, but are not limited to: The method of providing compensatory mitigation credits (e.g., restoration), the likelihood of success, the nature and amount of work needed to generate the credits, and the aquatic resource type(s) and function(s) to be provided by the mitigation bank or in-lieu fee project. The district engineer will determine the credit release schedule, including the share to be released only after full achievement of performance standards, after consulting with the IRT. Once released, credits may only be used to satisfy compensatory mitigation requirements of a DA permit if the use of credits for a specific permit has been approved by the district engineer.

(ii) For single-site mitigation banks, the terms of the credit release schedule must be specified in the mitigation banking instrument. The credit release schedule may provide for an initial debiting of a limited number of credits once the instrument is approved and other appropriate milestones are achieved (see paragraph (m) of this section).

(iii) For in-lieu fee projects and umbrella mitigation bank sites, the terms of the credit release schedule must be specified in the approved mitigation plan. When an in-lieu fee project or umbrella mitigation bank site is implemented and is achieving the performance-based milestones specified in the credit release schedule, credits are generated in accordance with the credit release schedule for the approved mitigation plan. If the in-lieu fee project or umbrella mitigation bank site does not achieve those performance-based milestones, the district engineer may modify the credit release schedule, including reducing the number of credits.

(9) *Credit release approval.* Credit releases for mitigation banks and in-lieu fee projects must be approved by the district engineer. In order for credits to be released, the sponsor must submit documentation to the district engineer demonstrating that the appropriate milestones for credit release have been achieved and requesting the release. The district engineer will provide copies of this documentation to the IRT members for review. IRT members must provide any comments to the district engineer within 15 days of receiving this documentation. However, if the district engineer determines that a site visit is necessary, IRT members must provide any comments to the district engineer within 15 days of the site visit. The district engineer must schedule the site visit so that it occurs as soon as it is practicable, but the site visit may be delayed by seasonal considerations that affect the ability of the district engineer and the IRT to assess whether the applicable credit release milestones have been achieved. After full consideration of any comments received, the district engineer will determine whether the milestones have been achieved and the credits can be released. The district engineer shall make a decision within 30 days of the end of that comment period, and notify the sponsor and the IRT.

(10) *Suspension and termination.* If the district engineer determines that the mitigation bank or in-lieu fee program is not meeting performance standards or complying with the terms of the instrument, appropriate action will be taken. Such actions may include, but are not limited to, suspending credit sales, adaptive management, decreasing available credits, utilizing financial assurances, and terminating the instrument.

(p) *Accounting procedures.* (1) For mitigation banks, the instrument must

contain a provision requiring the sponsor to establish and maintain a ledger to account for all credit transactions. Each time an approved credit transaction occurs, the sponsor must notify the district engineer.

(2) For in-lieu fee programs, the instrument must contain a provision requiring the sponsor to establish and maintain an annual report ledger in accordance with paragraph (i)(3) of this section, as well as individual ledgers that track the production of released credits for each in-lieu fee project.

(q) *Reporting*. (1) *Ledger account*. The sponsor must compile an annual ledger report showing the beginning and ending balance of available credits and permitted impacts for each resource type, all additions and subtractions of credits, and any other changes in credit availability (e.g., additional credits released, credit sales suspended). The ledger report must be submitted to the district engineer, who will distribute copies to the IRT members. The ledger report is part of the administrative record for the mitigation bank or in-lieu fee program. The district engineer will make the ledger report available to the public upon request.

(2) *Monitoring reports*. The sponsor is responsible for monitoring the mitigation bank site or the in-lieu fee project site in accordance with the approved monitoring requirements to determine the level of success and identify problems requiring remedial action or adaptive management measures. Monitoring must be conducted in accordance with the requirements in § 332.6, and at time intervals appropriate for the particular project type and until such time that the district engineer, in consultation with the IRT, has determined that the performance standards have been attained. The instrument must include requirements for periodic monitoring reports to be submitted to the district engineer, who will provide copies to other IRT members.

(3) *Financial assurance and long-term management funding report*. The district engineer may require the sponsor to provide an annual report showing beginning and ending balances, including deposits into and any withdrawals from, the accounts providing funds for financial assurances and long-term management activities. The report should also include information on the amount of required financial assurances and the status of those assurances, including their potential expiration.

(r) *Use of credits*. Except as provided below, all activities authorized by DA permits are eligible, at the discretion of the district engineer, to use mitigation banks or in-lieu fee programs to fulfill compensatory mitigation requirements for DA permits. The district engineer will determine the number and type(s) of credits required to compensate for the authorized impacts. Permit applicants may propose to use a particular mitigation bank or in-lieu fee program to provide the required compensatory mitigation. In such cases, the sponsor must provide the permit applicant with a statement of credit availability. The district engineer must review the permit applicant's compensatory mitigation proposal, and notify the applicant of his determination regarding the acceptability of using that mitigation bank or in-lieu fee program.

(s) *IRT concerns with use of credits*. If, in the view of a member of the IRT, an issued permit or series of issued permits raises concerns about how credits from a particular mitigation bank or in-lieu fee program are being used to satisfy compensatory mitigation requirements (including concerns about whether credit use is consistent with the terms of the instrument), the IRT member may notify the district engineer in writing of the concern. The district engineer shall promptly consult with the IRT to address the concern. Resolution of the concern is at the discretion of the district engineer, consistent with applicable statutes, regulations, and policies regarding compensatory mitigation requirements for DA permits. Nothing in this section limits the authorities designated to IRT agencies under existing statutes or regulations.

(t) *Site protection*. (1) For mitigation bank sites, real estate instruments, management plans, or other long-term mechanisms used for site protection must be finalized before any credits can be released.

(2) For in-lieu fee project sites, real estate instruments, management plans, or other long-term protection mechanisms used for site protection must be finalized before advance credits can become released credits.

(u) *Long-term management.* (1) The legal mechanisms and the party responsible for the long-term management and the protection of the mitigation bank site must be documented in the instrument or, in the case of umbrella mitigation banking instruments and in-lieu fee programs, the approved mitigation plans. The responsible party should make adequate provisions for the operation, maintenance, and long-term management of the compensatory mitigation project site. The long-term management plan should include a description of long-term management needs and identify the funding mechanism that will be used to meet those needs.

(2) The instrument may contain provisions for the sponsor to transfer long-term management responsibilities to a land stewardship entity, such as a public agency, non-governmental organization, or private land manager.

(3) The instrument or approved mitigation plan must address the financial arrangements and timing of any necessary transfer of long-term management funds to the steward.

(4) Where needed, the acquisition and protection of water rights should be secured and documented in the instrument or, in the case of umbrella mitigation banking instruments and in-lieu fee programs, the approved mitigation site plan.

(v) *Grandfathering of existing instruments.* (1) *Mitigation banking instruments.* All mitigation banking instruments approved on or after July 9, 2008 must meet the requirements of this part. Mitigation banks approved prior to July 9, 2008 may continue to operate under the terms of their existing instruments. However, any modification to such a mitigation banking instrument on or after July 9, 2008, including authorization of additional sites under an umbrella mitigation banking instrument, expansion of an existing site, or addition of a different type of resource credits (e.g., stream credits to a wetland bank) must be consistent with the terms of this part.

(2) *In-lieu fee program instruments.* All in-lieu fee program instruments approved on or after July 9, 2008 must meet the requirements of this part. In-lieu fee programs operating under instruments approved prior to July 9, 2008 may continue to operate under those instruments for two years after the effective date of this rule, after which time they must meet the requirements of this part, unless the district engineer determines that circumstances warrant an extension of up to three additional years. The district engineer must consult with the IRT before approving such extensions. Any revisions made to the in-lieu fee program instrument on or after July 9, 2008 must be consistent with the terms of this part. Any approved project for which construction was completed under the terms of a previously approved instrument may continue to operate indefinitely under those terms if the district engineer determines that the project is providing appropriate mitigation substantially consistent with the terms of this part.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

Sec.

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334.40 Atlantic Ocean in vicinity of Duck Island, Maine, Isles of Shoals; naval aircraft bombing target area.
334.45 Kennebec River, Bath Iron Works Shipyard, Naval Restricted Area, Bath, Maine.
334.50 Piscataqua River at Portsmouth Naval Shipyard, Kittery, Maine; restricted areas.
334.60 Cape Cod Bay south of Wellfleet Harbor, Mass.; naval aircraft bombing target area.

334.70 Buzzards Bay, and adjacent waters, Mass.; danger zones for naval operations.
334.75 Thames River, Naval Submarine Base New London, restricted area.
334.78 Rhode Island Sound, Atlantic Ocean, approximately 4.0 nautical miles due south of Lands End in Newport, RI; restricted area for naval practice minefield.
334.80 Narragansett Bay, RI; restricted area.
334.81 Narragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Naval Restricted Area, Newport, Rhode Island.
334.82 Narragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.
334.85 New York Harbor, adjacent to the Stapleton Naval Station, Staten Island, New York; restricted area.
334.100 Atlantic Ocean off Cape May, N.J.; Coast Guard Rifle Range.
334.102 Sandy Hook Bay, Naval Weapons Station EARLE, Piers and Terminal Channel, Restricted Area, Middletown, New Jersey.
334.110 Delaware Bay off Cape Henlopen, Del.; naval restricted area.
334.120 Delaware Bay off Milford Neck; naval aircraft bombing target area.
334.130 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.
334.140 Chesapeake Bay; U.S. Army Proving Ground Reservation, Aberdeen, Md.
334.150 Severn River at Annapolis, Md.; experimental test area, U.S. Navy Marine Engineering Laboratory.
334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.
334.160 Severn River, at U.S. Naval Academy Santee Basin, Annapolis, Md.; naval restricted area.
334.170 Chesapeake Bay, in the vicinity of Chesapeake Beach, Md.; firing range, Naval Research Laboratory.
334.180 Patuxent River, Md.; restricted areas, U.S. Naval Air Test Center, Patuxent River, Md.
334.190 Chesapeake Bay, in vicinity of Bloodsworth Island, MD, U.S. Navy.
334.200 Chesapeake Bay, Point Lookout to Cedar Point; aerial and surface firing range and target area, U.S. Naval Air Station, Patuxent River, Maryland, danger zones.
334.210 Chesapeake Bay, in vicinity of Tangier Island; naval guided missiles test operations area.
334.220 Chesapeake Bay, south of Tangier Island, Va.; naval firing range.
334.230 Potomac River.
334.240 Potomac River, Mattawoman Creek and Chicamuxen Creek; U.S. Naval Propellant Plant, Indian Head, Md.
334.250 Gunston Cove, at Whitestone Point, Va.; U.S. Army restricted area.
334.260 York River, Va.; naval restricted areas.
334.270 York River adjacent to Cheatham Annex Depot, Naval Supply Center, Williamsburg, Va.; restricted area.
334.275 North and Southwest Branch, Back River, Hampton, U.S. Air Force Base, Langley, Va.; restricted area.
334.280 James River between the entrance to Skiffes Creek and Mulberry Point, Va.; army training and small craft testing area.
334.290 Elizabeth River, Southern Branch, Va.; naval restricted areas.
334.293 Elizabeth River, Craney Island Refueling Pier Restricted Area, Portsmouth VA; Naval Restricted Area.
334.300 Hampton Roads and Willoughby Bay, Norfolk Naval Base, Naval Restricted Area, Norfolk, Virginia.
334.310 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.
334.320 Chesapeake Bay entrance; naval restricted area.
334.330 Atlantic Ocean and connecting waters in vicinity of Myrtle Island, Va.; Air Force practice bombing, rocket firing, and gunnery range.
334.340 Chesapeake Bay off Plumtree Island, Hampton, Va.; Air Force precision test area.
334.350 Chesapeake Bay off Fort Monroe, Va.; firing range danger zone.
334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapon Center.
334.370 Chesapeake Bay, Lynnhaven Roads; danger zones, U.S. Naval Amphibious Base.
334.380 Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia; naval firing range.
334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.
334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.
334.410 Albermarle Sound, Pamlico Sound, and adjacent waters, N.C.; danger zones for naval aircraft operations.
334.412 Albemarle Sound, Pamilico Sound, Harvey Point and adjacent waters, NC; restricted area.
334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.
334.430 Neuse River and tributaries at Marine Corps Air Station, Cherry Point, N.C.; restricted area.
334.440 New River, N.C., and vicinity; Marine Corps firing ranges.
334.450 Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, N.C.; restricted area.

334.460 Cooper River and tributaries at Charleston, SC.
334.470 Cooper River and Charleston Harbor, S.C.; restricted areas.
334.475 Brickyard Creek and tributaries and the Broad River at Beaufort, SC.
334.480 Archers Creek, Ribbon Creek and Broad River, S.C.; U.S. Marine Corps Recruit Depot rifle and pistol ranges, Parris Island.
334.490 Atlantic Ocean off Georgia Coast; air-to-air and air-to-water gunnery and bombing ranges for fighter and bombardment aircraft, U.S. Air Force.
334.500 St. Johns River, Fla., Ribault Bay; restricted area.
334.510 U.S. Navy Fuel Depot Pier, St. Johns River, Jacksonville, Fla.; restricted area.
334.515 U.S. Marine Slip area at Blount Island, Jacksonville, Fla.; restricted area.
334.520 Lake George, Fla.; naval bombing area.
334.530 Canaveral Harbor adjacent to the Navy pier at Port Canaveral, Fla.; restricted area.
334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.
334.550 Banana River at Cape Canaveral Air Force Station, Fla.; restricted area.
334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.
334.570 Banana River near Orsino, Fla.; restricted area.
334.580 Atlantic Ocean near Port Everglades, Fla.
334.590 Atlantic Ocean off Cape Canaveral, Fla.; Air Force missile testing area, Patrick Air Force Base, Fla.
334.600 TRIDENT Basin adjacent to Canaveral Harbor at Cape Canaveral Air Force Station, Brevard County, Fla.; danger zone.
334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.
334.620 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla.
334.630 Tampa Bay south of MacDill Air Force Base, Fla.; small-arms firing range and aircraft jettison, U.S. Air Force, MacDill Air Force Base.
334.635 Hillsborough Bay and waters contiguous to MacDill Air Force Base, Fla.; restricted area.
334.640 Gulf of Mexico south of Apalachee Bay, Fla.; Air Force rocket firing range.
334.650 Gulf of Mexico, south of St. George Island, Fla.; test firing range.
334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.
334.670 Gulf of Mexico south and west of Apalachicola, San Blas, and St. Joseph bays; air-to-air firing practice range, Tyndall Air Force Base, Fla.
334.680 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, small- arms firing range, Tyndall Air Force Base, Fla.
334.690 [Reserved]
334.700 Choctawhatchee Bay, aerial gunnery ranges, Air Proving Ground Center, Air Research and Development Command, Eglin Air Force Base, Fla.
334.710 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Fla.
334.720 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Headquarters Air Proving Ground Command, U.S. Air Force, Eglin Air Force Base, Fla.
334.730 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Fla.
334.740 Weekley Bayou, an arm of Boggy Bayou, Fla., at Eglin Air Force Base; restricted area.
334.750 Ben's Lake, a tributary of Choctawhatchee Bay, Fla., at Eglin Air Force Base; restricted area.
334.760 Naval Support Activity Panama City and Alligator Bayou, a tributary of St. Andrew Bay, Fla.; naval restricted area.
334.770 Gulf of Mexico and St. Andrew Sound, south of East Bay, Fla., Tyndall Drone Launch Corridor, Tyndall Air Force Base, Fla.; restricted area.
334.775 Naval Air Station Pensacola, Pensacola Bay, Pensacola and Gulf Breeze, Fla.; naval restricted area.
334.778 Pensacola Bay and waters contiguous to the Naval Air Station, Pensacola, FL; restricted area.
334.780 Pensacola Bay, Fla.; seaplane restricted area.
334.783 Arlington Channel, U.S. Coast Guard Base Mobile, Mobile, Alabama, Coast Guard Restricted Area.
334.786 Pascagoula Naval Station, Pascagoula, Mississippi; restricted area.
334.790 Sabine River at Orange, Tex.; restricted area in vicinity of the Naval and Marine Corps Reserve Center.
334.800 Corpus Christi Bay, Tex.; seaplane restricted area, U.S. Naval Air Station, Corpus Christi.
334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.
334.810 Holston River at Holston Ordnance Works, Kingsport, Tenn.; restricted area.
334.820 Lake Michigan; naval restricted area, U.S. Naval Training Center, Great Lakes, Ill.

334.830 Lake Michigan; small-arms range adjacent to U.S. Naval Training Center, Great Lakes, Ill.
334.840 Waters of Lake Michigan south of Northerly Island at entrance to Burnham Park Yacht Harbor, Chicago, Ill.; danger zone adjacent to airport on Northerly Island.
334.845 Wisconsin Air National Guard, Volk Field military exercise area located in Lake Michigan offshore from Manitowoc and Sheboygan Counties; danger zone.
334.850 Lake Erie, west end, north of Erie Ordnance Depot, Lacarne, Ohio.
334.855 Salt River, Rolling Fork River, Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky; danger zone.
334.860 San Diego Bay, Calif., Naval Amphibious Base; restricted area.
334.865 Naval Air Station North Island, San Diego, California, restricted area.
334.870 San Diego Harbor, Calif.; restricted area.
334.880 San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.
334.890 Pacific Ocean off Point Loma, Calif.; naval restricted area.
334.900 Pacific Ocean, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.
334.905 Pacific Ocean, offshore of Camp Pendleton, California; Fallbrook restricted area.
334.910 Pacific Ocean, Camp Pendleton Boat Basin, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.
334.920 Pacific Ocean off the east coast of San Clemente Island, Calif.; naval restricted area.
334.921 Pacific Ocean at San Clemente Island, Calif.; naval restricted area.
334.930 Anaheim Bay Harbor, Calif.; Naval Weapons Station, Seal Beach.
334.938 Federal Correctional Institution, Terminal Island, San Pedro Bay, California; restricted area.
334.940 Pacific Ocean in vicinity of San Pedro, Calif.; practice firing range for U.S. Army Reserve, National Guard, and Coast Guard units.
334.950 Pacific Ocean at San Clemente Island, California; Navy shore bombardment areas.
334.960 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.
334.961 Pacific Ocean, San Clemente Island, California; naval danger zone off northwest shore.
334.980 Pacific Ocean, around San Nicolas Island, Calif.; naval restricted area.
334.990 Long Beach Harbor, Calif.; naval restricted area.
334.1010 San Francisco Bay in vicinity of Hunters Point; naval restricted area.
334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vincinity of Naval Air Station, Alameda.
334.1030 Oakland Inner Harbor adjacent to Alameda Facility, Naval Supply Center, Oakland; restricted area.
334.1040 Oakland Harbor in vicinity of Naval Supply Center, Oakland; restricted area and navigation.
334.1050 Oakland Outer Harbor adjacent to the Military Ocean Terminal, Bay Area, Pier No. 8 (Port of Oakland Berth No. 10); restricted area.
334.1060 Oakland Outer Harbor adjacent to the Oakland Army base; restricted area.
334.1065 U.S. Coast Guard Station, San Francisco Bay, Yerba Buena Island, San Francisco Bay, California; restricted area.
334.1070 San Francisco Bay between Treasure Island and Yerba Buena Island; naval restricted area.
334.1080 San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area.
334.1090 San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate restricted area.
334.1100 San Pablo Bay, Carquinez Strait, and Mare Island Strait in vicinity of U.S. Naval Shipyard, Mare Island; restricted area.
334.1110 Suisun Bay at Naval Weapons Station, Concord; restricted area.
334.1120 Pacific Ocean in the vicinity of Point Mugu, Calif.; naval small arms firing range.
334.1125 Pacific Ocean Naval Air Weapons Station, Point Mugu, Small Arms Range, Ventura County, California; danger zone.
334.1126 Naval Base Ventura County, Point Mugu, California; restricted area.
334.1127 Naval Base Ventura County, Port Hueneme, California; restricted area.
334.1130 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, Calif.; danger zones.
334.1140 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.
334.1150 Monterey Bay, Calif.
334.1160 San Pablo Bay, Calif.; target practice area, Mare Island Naval Shipyard, Vallejo.
334.1170 San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.
334.1180 Strait of Juan de Fuca, Wash.; air-to-surface weapon range, restricted area.
334.1190 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing area.
334.1200 Strait of Juan de Fuca, eastern end; off the westerly shore of Whidbey Island; naval restricted areas.
334.1210 Admiralty Inlet, entrance; naval restricted area.

334.1215 Port Gardner, Everett Naval Base, Naval Restricted Area, Everett, Washington.
334.1220 Hood Canal, Bangor; naval restricted areas.
334.1230 Port Orchard; naval restricted area.
334.1240 Sinclair Inlet; naval restricted areas.
334.1250 Carr Inlet; naval restricted areas.
334.1260 Dabob Bay, Whitney Point; naval restricted area.
334.1270 Port Townsend, Indian Island, Walan Point; naval restricted area.
334.1275 West Arm Behm Canal, Ketchikan, Alaska, restricted areas.
334.1280 Bristol Bay, Alaska; air-to-air weapon range, Alaskan Air Command, U.S. Air Force.
334.1290 In Bering Sea, Shemya Island Area, Alaska; meteorological rocket launching facility, Alaskan Air Command, U.S. Air Force.
334.1300 Blying Sound area, Gulf of Alaska, Alaska; air-to-air gunnery practice area, Alaskan Air Command, U.S. Air Force.
334.1310 Lutak Inlet, Alaska; restricted areas.
334.1320 Kuluk Bay, Adak, Alaska; naval restricted area.
334.1325 United States Army Restricted Area, Kuluk Bay, Adak, Alaska.
334.1330 Bering Strait, Alaska; naval restricted area off Cape Prince of Wales.
334.1340 Pacific Ocean, Hawaii; danger zones.
334.1350 Pacific Ocean, Island of Oahu, Hawaii; danger zone.
334.1360 Pacific Ocean at Barber's Point, Island of Oahu, Hawaii; danger zone.
334.1370 Pacific Ocean at Keahi Point, Island of Oahu, Hawaii; danger zone.
334.1380 Marine Corps Air Station, (MCAS) Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.
334.1390 Pacific Ocean at Barking Sands, Island of Kauai, Hawaii; missile range facility.
334.1400 Pacific Ocean, at Barbers Point, Island of Oahu, Hawaii; restricted area.
334.1410 Pacific Ocean, at Makapuu Point, Waimanalo, Island of Oahu, Hawaii, Makai Undersea Test Range.
334.1420 Pacific Ocean off Orote Point, Apra Harbor, Island of Guam, Marianas Islands; small-arms firing range.
334.1430 Apra Inner Harbor, Island of Guam; restricted area.
334.1440 Pacific Ocean at Kwajalein Atoll, Marshall Islands; missile testing area.
334.1450 Atlantic Ocean off north coast of Puerto Rico; practice firing areas, U.S. Army Forces Antilles.
334.1460 Atlantic Ocean and Vieques Sound, in vicinity of Culebra Island; bombing and gunnery target area.
334.1470 Caribbean Sea and Vieques Sound, in vicinity of Eastern Vieques; bombing and gunnery target area.
334.1480 Vieques Passage and Atlantic Ocean, off east coast of Puerto Rico and coast of Vieques Island; naval restricted areas.
334.1490 Caribbean Sea, at St. Croix, V.I.; restricted areas.

AUTHORITY: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

SOURCE: 50 FR 42696, Oct. 22, 1985, unless otherwise noted.

§ 334.1 Purpose.

The purpose of this part is to:

(a) Prescribe procedures for establishing, amending and disestablishing danger zones and restricted areas;

(b) List the specific danger zones and restricted areas and their boundaries; and

(c) Prescribe specific requirements, access limitations and controlled activities within the danger zones and restricted areas.

[58 FR 37607, July 12, 1993]

§ 334.2 Definitions.

(a) *Danger zone*. A defined water area (or areas) used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. The danger zones may be closed to the public on a full-time or intermittent basis, as stated in the regulations.

(b) *Restricted area*. A defined water area for the purpose of prohibiting or limiting public access to the area. Restricted areas generally provide security for Government property and/or protection to the public from the risks of damage or injury arising from the Government's use of that area.

[58 FR 37607, July 12, 1993]

§ 334.3 Special policies.

(a) *General*. The general regulatory policies stated in 33 CFR part 320 will be followed as appropriate. In addition, danger zone and restricted area regulations shall provide for public access to the area to the maximum extent practicable.

(b) *Food fishing industry*. The authority to prescribe danger zone and restricted area regulations must be exercised so as not to unreasonably interfere with or restrict the food fishing industry. Whenever the proposed establishment of a danger zone or restricted area may affect fishing operations, the District Engineer will consult with the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior and the Regional Director, National Marine Fisheries Service, National Oceanic & Atmospheric Administration (NOAA).

(c) *Temporary, occasional or intermittent use*. If the use of the water area is desired for a short period of time, not to exceed thirty days in duration, and that planned operations can be conducted safely without imposing unreasonable restrictions on navigation, and without promulgating restricted area regulations in accordance with the regulations in this section, applicants may be informed that formal regulations are not required. Activities of this type shall not reoccur more often than biennially (every other year), unless danger zone/restricted area rules are promulgated under this part. Proper notices for mariners requesting that vessels avoid the area will be issued by the Agency requesting such use of the water area, or if appropriate, by the District Engineer, to all known interested persons. Copies will also be sent to appropriate State agencies, the Commandant, U.S. Coast Guard, Washington, DC 20590, and Director, Defense Mapping Agency, Hydrographic Center, Washington, DC 20390, ATTN: Code NS 12. Notification to all parties and Agencies shall be made at least two weeks prior to the planned event, or earlier, if required for distribution of Local Notice to Mariners by the Coast Guard.

[58 FR 37607, July 12, 1993]

§ 334.4 Establishment and amendment procedures.

(a) *Application*. Any request for the establishment, amendment or revocation of a danger zone or restricted area must contain sufficient information for the District Engineer to issue a public notice, and as a minimum must contain the following:

(1) Name, address and telephone number of requestor including the identity of the command and DoD facility and the identity of a point of contact with phone number.

(2) Name of waterway and if a small tributary, the name of a larger connecting waterbody.

(3) Name of closest city or town, county/parish and state.

(4) Location of proposed or existing danger zone or restricted area with a map showing the location, if possible.

(5) A brief statement of the need for the area, its intended use and detailed description of the times, dates and extent of restriction.

(b) *Public notice*. (1) The Corps will normally publish public notices and FEDERAL REGISTER documents concurrently. Upon receipt of a request for the establishment, amendment or revocation of a danger zone or restricted area, the District Engineer should forward a copy of the request with his/her recommendation, a copy of the draft public notice and a draft FEDERAL REGISTER document to the Office of the Chief of Engineers, ATTN: CECW-OR. The Chief of Engineers will publish the proposal in the FEDERAL REGISTER concurrent with the public notice issued by the District Engineer.

(2) *Content*. The public notice and FEDERAL REGISTER documents must include sufficient information to give a clear understanding of the proposed action and should include the following items of information:

(i) Applicable statutory authority or authorities; (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3)

(ii) A reasonable comment period. The public notice should fix a limiting date within which comments will be received, normally a period not less than 30 days after publication of the notice.

(iii) The address of the District Engineer as the recipient of any comments received.

(iv) The identity of the applicant/proponent;

(v) The name or title, address and telephone number of the Corps employee from whom additional information concerning the proposal may be obtained;

(vi) The location of the proposed activity accompanied by a map of sufficient detail to show the boundaries of the area(s) and its relationship to the surrounding area.

(3) *Distribution*. Public notice will be distributed in accordance with 33 CFR 325.3(d)(1). In addition to this general distribution, public notices will be sent to the following Agencies:

(i) The Federal Aviation Administration (FAA) where the use of airspace is involved.

(ii) The Commander, Service Force, U.S. Atlantic Fleet, if a proposed action involves a danger zone off the U.S. Atlantic coast.

(iii) Proposed danger zones on the U.S. Pacific coast must be coordinated with the applicable commands as follows:

Alaska, Oregon and Washington:
Commander, Naval Base, Seattle
California:
Commander, Naval Base, San Diego
Hawaii and Trust Territories:
Commander, Naval Base, Pearl Harbor

(c) *Public hearing*. The District Engineer may conduct a public hearing in accordance with 33 CFR part 327.

(d) *Environmental documentation*. The District Engineer shall prepare environmental documentation in accordance with appendix B to 33 CFR part 325.

(e) *District Engineer's recommendation*. After closure of the comment period, and upon completion of the District Engineer's review he/she shall forward the case through channels to the Office of the Chief of Engineers, ATTN: CECW-OR with a recommendation of whether or not the danger zone or restricted area regulation should be promulgated. The District Engineer shall include a copy of environmental documentation prepared in accordance with appendix B to 33 CFR part 325, the record of any public hearings, if held, a summary of any comments received and a response thereto, and a draft of the regulation as it is to appear in the FEDERAL REGISTER.

(f) *Final decision*. The Chief of Engineers will notify the District Engineer of the final decision to either approve or disapprove the regulations. The District Engineer will notify the applicant/proponent and publish a public notice of the final decision. Concurrent with issuance of the public notice the Office of the Chief of Engineers will publish the final decision in the FEDERAL REGISTER and either withdraw the proposed regulation or issue the final regulation, as appropriate. The final rule shall become effective no sooner than 30 days after publication in the FEDERAL REGISTER unless the Chief of Engineers finds that sufficient cause exists and publishes that rationale with the regulations.

[58 FR 37608, July 12, 1993]

§ 334.5 Disestablishment of a danger zone.

(a) Upon receipt of a request from any agency for the disestablishment of a danger zone, the District Engineer shall notify that agency of its responsibility for returning the area to a condition suitable for use by the public. The agency must either certify that it has not used the area for a purpose that requires cleanup or that it has removed all hazardous materials and munitions, before the Corps will disestablish the area. The agency will remain responsible for the enforcement of the danger zone regulations to prevent unauthorized entry into the area until the area is deemed safe for use by the public and the area is disestablished by the Corps.

(b) Upon receipt of the certification required in paragraph (a) of this section, the District shall forward the request for disestablishment of the danger zone through channels to CECW-OR, with its recommendations. Notice of proposed rulemaking and public procedures as outlined in § 334.4 are not normally required before publication of the final rule revoking a restricted area or danger zone regulation. The disestablishment/revocation of the danger zone or restricted area regulation removes a restriction on a waterway.

[58 FR 37608, July 12, 1993]

§ 334.6 Datum.

(a) Geographic coordinates expressed in terms of latitude or longitude, or both, are not intended for plotting on maps or charts whose reference horizontal datum is the North American

Datum of 1983 (NAD 83), unless such geographic coordinates are expressly labeled NAD 83. Geographic coordinates without the NAD 83 reference may be plotted on maps or charts referenced to NAD 83 only after application of the appropriate corrections that are published on the particular map or chart being used.

(b) For further information on NAD 83 and National Service nautical charts please contact: Director, Coast Survey (N/CG2), National Ocean Service, NOAA, 1315 East-West Highway, Station 6147, Silver Spring, MD 20910–3282.

[60 FR 15233, Mar. 23, 1995]

§ 334.10 Gulf of Maine off Seal Island, Maine; naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 1.5 nautical miles, having its center just easterly of Seal Island at latitude 43°53′00″ and longitude 68°44′00″.

(b) *The regulations.* (1) No aerial bombing practice will take place in the danger zone after 5:00 p.m. Mondays through Saturdays, at any time on Sundays, or during foggy or inclement weather.

(2) Vessels or other watercraft will be allowed to enter the danger zone any time there are no aerial bombing exercises being conducted.

(3) No live ammunition or explosives will be dropped in the area.

(4) Suitable Notice to Mariners, by appropriate methods, will be issued by the Commander, First Coast Guard District, Boston, Massachusetts; upon request of the Commandant, First Naval District, Boston, Massachusetts, or his designated agent.

(5) Prior to the conducting of each bombing practice, the area will be patrolled by a naval aircraft or surface vessel to ensure that no persons or watercraft are within the danger zone. Vessels may be requested to veer off when drops are to be made, however, drops will be made only when the area is clear. The patrol aircraft will employ the method of warning known as ''buzzing'' which consists of low flight by the airplane and repeated opening and closing of the throttle.

(6) Any such watercraft shall, upon being so warned, immediately leave the designated area and, until the conclusion of the practice, shall remain at such distance that it will be safe from falling projectiles.

(7) The regulations of this section shall be enforced by the Commandant, First Naval District, Boston, Massachusetts, or such agencies as he may designate.

[24 FR 7379, Sept. 12, 1959. Redesignated at 50 FR 42696, Oct. 22, 1985; as amended at 62 FR 17551, Apr. 10, 1997]

§ 334.20 Gulf of Maine off Cape Small, Maine; naval aircraft practice mining range area.

(a) *The danger zone.* Within an area bounded as follows: Beginning at latitude 43°43′00″, longitude 69°46′00″; thence to latitude 43°38′30″, longitude 69°46′00″; thence to latitude 43°38′30″, longitude 69°49′30″; thence to latitude 43°42′10″, longitude 69°49′30″; thence to the point of beginning.

(b) *The regulations.* (1) Test drops from aircraft will be made within the area at intermittent periods from noon until sunset local time and only during periods of good visibility.

(2) Testing will not restrict any fishing, recreational, or commercial activities in the testing area.

(3) Aircraft will patrol the area prior to and during test periods to insure that no surface vessels are within the area. No test drops will be made while surface vessels are transitting the area.

(4) No live ammunition or explosives will be dropped in the area.

(5) The regulations of this section shall be enforced by the Commandant, First Naval District, Boston, Mass., or such agencies as he may designate.

[36 FR 5218, Mar. 18, 1971. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.30 Gulf of Maine off Pemaquid Point, Maine; naval sonobuoy test area.

(a) *The area.* The test area or ''Foul Area'' encompasses a circular area one nautical mile in radius, the center of which is located 7.9 nautical miles, bearing 187° magnetic from Pemaquid Light.

(b) *The regulations.* (1) Sonobuoy drops will be made only in the designated area and when visibility is at least three miles.

(2) Sonobuoy drop tests will normally be conducted at intermittent periods on a 5-day week basis, Monday through Friday. However, on occasion tests may be conducted intermittently on a seven-day week basis.

(3) Prior to and during the period when sonobuoys are being dropped, an escort vessel or naval aircraft will be in the vicinity to ensure that no persons or vessels are in the testing area. Vessels may be requested to veer off when sonobuoys are about to be dropped, however, drops will be made only when the area is clear.

(4) The sonobuoys drops will be made in connection with the production and experimentation of sonobuoys.

(5) No live ammunition or explosives will be involved.

(6) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Air Station, Brunswick, Maine, or such agencies as he may designate.

[27 FR 4280, May 4, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17551, Apr. 10, 1997]

§ 334.40 Atlantic Ocean in vicinity of Duck Island, Maine, Isles of Shoals; naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 500 yards having its center on Shag Rock in the vicinity of Duck Island at latitude 43°00′12″, longitude 70°36′12″.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone from 8:00 a.m. to 5:00 p.m. (local time) daily, except as authorized by the enforcing agency.

(2) This section shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

[14 FR 5592, Sept. 13, 1949. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17551, Apr. 10, 1997]

§ 334.45 Kennebec River, Bath Iron Works Shipyard, Naval Restricted Area, Bath, Maine.

(a) *The area.* The waters within a coffin shaped area on the west side of the river south of the Carlton (Route 1) highway bridge beginning on the western shore at latitude 43°54′40.7″ N, longitude 069°48′44.8″ W; thence easterly to latitude 43°54′ 40.7″ N, longitude 069°48′36.8″ W; thence southeasterly to latitude 43°54′10.4″ N, longitude 069°48′34.7″ W; thence southwesterly to latitude 43°53′55.1″ N, longitude 069°48′39.1″ W; thence westerly to latitude 43°53′55.1″ N, longitude 69°48′51.8″ W; thence northerly along the westerly shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted areas without permission from the Supervisor of Shipbuilding, USN Bath Maine or his authorized representative

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the, Supervisor of Shipbuilding, Conversion and Repair Bath, United States Navy and/or such agencies or persons as he/she may designate.

[67 FR 20446, Apr. 25, 2002]

§ 334.50 Piscataqua River at Portsmouth Naval Shipyard, Kittery, Maine; restricted areas.

(a) *The areas.*

Area No. 1: The area bounded by a line at a point on the easterly side of Seavey Island at latitude 43°04′37″ N, longitude 70°43′44″ W, thence to latitude 43°04′36″ N; longitude 70°43′40″ N, thence to the pier on the westerly side of Clark Island at latitude 43°04′36.5″ N, longitude 70°43′34″ W; thence along the northerly side of Clark Island to a point on the easterly side at latitude 43°04′37″ N, longitude 70°43′25″ W, thence northeasterly to the easterly side of Jamaica Island at latitude 43°04′49″ N, longitude 70°43′24″ W, thence along the southerly and westerly sides of Jamaica Island and thence generally along the easterly side of Seavey Island to the point of beginning.

Area No. 2: The area bounded by a line beginning at a point on the southerly side of Seavey Island at Henderson Point at latitude 43°04′29″ N, longitude 70°44′14″ W; thence to latitude 43°04′29.5″ N, longitude 70°44′17.4″ W; thence to latitude 43°04′36.6″ N, longitude 70°44′22.6″ W; thence to latitude 43°04′44.8″ N, longitude 70°44′33.2″ W; thence to latitude 43°04′47.4″ N, longitude 70°44′42.1″ W; thence to latitude 43°04′48″ N, longitude 70°44′52″ W; thence to latitude 43°04′49″ N, longitude 70°44′54″ W; thence to

latitude 43°04′51″ N, longitude 70°44′55″ W; thence to latitude 43°04′53″ N, longitude 70°44′53″ W; thence to latitude 43°04′57″ N, longitude 70°44′47″ W; thence to latitude 43°04′58″ N, longitude 70°44′46″ W; thence to latitude 43°05′02″ N, longitude 70°44′36″ W; thence to latitude 43°05′04″ N, longitude 70°44′31″ W; thence along the westerly side of Seavey Island to the beginning point.

(b) *The regulations.* All persons, vessels and other craft, except those vessels under the supervision of or contract to local military or naval authority, are prohibited from entering the restricted areas without permission from the Commander, Portsmouth Naval Shipyard or his/her authorized representative.

[46 FR 43045, Aug. 26, 1981, 46 FR 61116, Dec. 15, 1981. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17551, Apr. 10, 1997]

§ 334.60 Cape Cod Bay south of Wellfleet Harbor, Mass.; naval aircraft bombing target area.

(a) *The danger zone.* A circular area with a radius of 1,000 yards having its center on the aircraft bombing target hulk James Longstreet in Cape Cod Bay at latitude 41°49′46″, longitude 70°02′54″.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone at any time, except as authorized by the enforcing agency.

(2) This section shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

[14 FR 5592, Sept. 13, 1949. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17551, Apr. 10, 1997]

§ 334.70 Buzzards Bay, and adjacent waters, Mass.; danger zones for naval operations.

(a) *Atlantic Ocean in vicinity of No Mans Land*—(1) *The area.* The waters surrounding No Mans Land within an area bounded as follows: Beginning at latitude 41°12′30″, longitude 70°50′30″; thence northwesterly to latitude 41°15′30″, longitude 70°51′30″; thence northeasterly to latitude 41°17′30″, longitude 70°50′30″; thence southeasterly to latitude 41°16′00″, longitude 70°47′30″; thence south to latitude 41°12′30″, longitude 70°47′30″; thence westerly to the point of beginning.

(2) *The regulations.* The vessel or person shall at any time enter or remain within a rectangular portion of the area bounded on the north by latitude 41°16′00″, on the east by longitude 70°47′30″, on the south by latitude 41°12′30″, and on the west by longitude 70°50′30″, or within the remainder of the area between November 1, and April 30, inclusive, except by permission of the enforcing agency.

(3) The regulations in this paragraph shall be enforced by the Commandant, First Naval District, and such agencies as he may designate.

[26 FR 11195, Nov. 28, 1961, as amended at 27 FR 10296, Oct. 20, 1962; 33 FR 10930, Aug. 1, 1968. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.75 Thames River, Naval Submarine Base New London, restricted area.

(a) *The area:* The open waters of the Thames River approximately 5 nautical miles upriver from its mouth along the boundary between Groton and Waterford, Connecticut, within an area bounded as follows: From a point on the eastern shore at latitude 41°24′14.4″ N, longitude 72°05′38.0″ W then northerly along the coast to latitude 41°24′20.0″ N, longitude 72°05′37.9″ W then westerly across the river to a point on the western shore at latitude 41°24′20.0″ N, longitude 72°05′55.5″ W then southerly along the coast to a point on the western shore at latitude 41°24′5.0″ N, longitude 72°05′55.7″ W then easterly to the western edge of the dredged channel to a point located at latitude 41°24′04.1″ N, longitude 72°05′51.2″ W then southerly along the western edge of the dredged channel to a point at latitude 41°24′00″ N, longitude 72°05′52.6″ W then southerly along the western edge of the dredged channel to a point located at latitude 41°23′57.1″ N, longitude 72°05′52.5″ W then southerly to buoy ''11'' located at a point at latitude 41°23′45.6″ N, longitude 72°05′53.7″ W then southerly to buoy ''B'' on the northeastern shore of Mamacoke Hill to a point at latitude 41°23′33.8″ N, longitude 72°05′53.7″ W then southerly along the shore to buoy ''A at latitude 41°23′25.0″ N, longitude 72°05′45.4″ W then southeasterly to buoy ''9'' at a point located at latitude 41°23′15.0″ N, longitude 72°05′35.0″ W then easterly to a point on the eastern

shore at latitude 41°23′15.0″ N, longitude 72°05′17.9″ W then northerly along the shore to a point on the eastern shore at latitude 41°23′15.8″ N, longitude 72°05′17.9″ W then along the following points:

Latitude	Longitude
41°23′15.8″ N	72°05′22.0″ W
41°23′25.9″ N	72°05′29.9″ W
41°23′33.8″ N	72°05′34.7″ W
41°23′37.0″ N	72°05′38.0″ W
41°23′41.0″ N	72°05′40.3″ W
41°23′47.2″ N	72°05′42.3″ W
41°23′53.8″ N	72°05′43.7″ W
41°23′59.8″ N	72°05′43.0″ W
41°24′12.4″ N	72°05′43.2″ W

Then to the point of beginning on the eastern shore.

(b) *The regulations.* (1) Vessels and other watercraft within the designated navigation channel may proceed through the restricted area at normal operating speeds without stopping. Vessels and watercraft may also utilize the water area within the restricted area located between the western edge of the designated channel and the western shore for fishing, anchoring and other recreational uses. However, all persons, vessels and watercraft, except U.S. military personnel and vessels must leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuvering, operations or security.

(2) Commercial fishermen and shell fishermen may fish within the restricted area provided their vessels display registration numbers issued by the Naval Submarine Base, New London, Connecticut. The registration numbers may be obtained by contacting the Commanding Officer, Naval Submarine Base New London. All commercial fishermen and shell fishermen must also leave the restricted area when notified by personnel of the New London Submarine Base that such use will interfere with submarine maneuevering, operations or security.

(3) Vessels which are owned, operated or sponsored by local, state municipalities or academic institutions preparing for or participating in a water sport or water related recreational event sponsored by those local or state municipalities or academic institutions, or private or commercial vessels engaged in observing the conduct of the above event shall be exempt from the restrictions above, providing:

(i) The Commanding Officer, Naval Submarine Base New London, and the Coast Guard Captain of the Port are advised in writing at least 48 hours in advance of the event, or

(ii) The event was publicized in such a manner that the local public in general had a reasonable opportunity to learn of the event 48 hours in advance.

(4) The regulations in this section shall be enforced by the Commander, U.S. Naval Submarine Base New London, Connecticut, and such agencies as he/she may designate.

[53 FR 47802, Nov. 28, 1988, as amended at 54 FR 7033, Feb. 16, 1989; 62 FR 17552, Apr. 10, 1997]

§ 334.78 Rhode Island Sound, Atlantic Ocean, approximately 4.0 nautical miles due south of Lands End in Newport, R. I.; restricted area for naval practice minefield

(a) *The area.* The open waters of Rhode Island Sound approximately 4.0 nautical miles due south of Lands End, Newport, Rhode Island, within an area bounded as follows: Beginning at latitude 41°20′29″ N., longitude 71°19′54″ W.; thence 2000 yards easterly to latitude 41°20′29″ N., longitude 71°18′34″ W.; thence 3000 yards southerly to latitude 41°18′57″ N., longitude 71°18′34″ W.; thence 2000 yards westerly to latitude 41°18′57″ N., longitude 71°19′54″ W.; thence 3000 yards northerly to the point of beginning.

(b) *The regulations.* (1) No persons, vessels or other watercraft will be allowed to enter the designated area during minefield training.

(2) The practice minefield will consist of six inert drill mines each 16 inches in diameter and 5 feet long and one concrete sonar target 48 inches in diameter and 48 inches high located within the designated area. The sonar target will be permanently located in the extreme northeast corner within the designated drill minefield area. The six drill mines will be steel with all internal mechanisms and explosives removed and concrete filled. Drill mines will be removed from the designated

area within 72 hours after each minehunting training exercise.

(3) Training activities will be limited to minehunting operations using only onboard sonar. Neither variable depth sonar devices or mechanical minesweeping operations will be utilized in the area.

(4) Training periods will be 2–3 days in length and 10–15 times a year, however during the time period July 1–mid-October, minehunting exercises will be held to minimum.

(5) Notice to mariners will be issued 6–8 weeks in advance of a scheduled practice exercise by the Commander, U.S. Naval Base, Newport, Rhode Island.

(6) The regulations of this section shall be enforced by the Commander, U.S. Naval Base, Newport, Rhode Island, and such agencies as he/she may designate.

[52 FR 28556, July 31, 1987, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.80 Narragansett Bay, RI; restricted area.

(a) Beginning at a point on the east shore of Conanicut Island at latitude 41°33′15″; thence southeasterly to latitude 41°32′44″, longitude 71°21′17″; thence southerly to latitude 41°32′09″, longitude 71°21′17″; thence southeasterly to latitude 41°31′50″, longitude 71°21′10″; thence southeasterly to latitude 41°31′26″, longitude 71°20′33″ thence easterly to latitude 41°31′27″, longitude 71°20′06″ thence northerly to a point on the southwesterly shore of Prudence Island at latitude 41°35′00″, thence northerly along the southwesterly shore of Prudence Island to a point at latitude 41°35′43″ longitude 71°20′15 5″; thence northwesterly to latitude 41°37′21″, longitude 71°20′48″; thence west to latitude 41°37′21″ longitude 71°21′48″; and thence south to latitude 41°33′54″, longitude 71°21′48″.

(b) *The Regulations.* (1) No person or vessel shall at any time, under any circumstances, anchor or fish or tow a drag of any kind in the prohibited area because of the extensive cable system located therein.

(2) Orders and instructions issued by patrol craft or other authorized representatives of the enforcing agency shall be carried out promptly by persons or vessels in or in the vicinity of the prohibited area.

(3) The regulations in this section shall be enforced by the Commander U.S. Naval Base, Newport, RI, and such agencies as he may designate.

[33 FR 4464, Mar. 13, 1968. Redesignated at 50 FR 42696, Oct. 22, 1985; 58 FR 37608, July 12, 1993; 62 FR 17552, Apr. 10, 1997]

§ 334.81 Narragansett Bay, East Passage, Coddington Cove, Naval Station Newport, Naval Restricted Area, Newport, Rhode Island.

(a) *The area.* All of the navigable waters of Coddington Cove east of a line that connects Coddington Point at latitude 41°31′24.0″ N, longitude 071°19′24.0″ W; with the outer end of the Coddington Cove Breakwater on the north side of the cove at latitude 41°31′55.7″ N, longitude 071°19′28.2″ W.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area without specific permission from the Commanding Officer, Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, and/or such agencies or persons as he/she may designate.

[67 FR 65313, Oct. 24, 2002]

§ 334.82 Narragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.

(a) *The area.* The waters within a ''C-shaped'' area adjacent to and surrounding Coasters Harbor

Island beginning at Coddington Point at latitude 41°31′24.0″ N, longitude 71°19′24.0″ W; thence west southwest to latitude 41°31′21.5″ N, longitude 71°19′45.0″ W; thence south southwest to latitude 41°31′04.2″ N, longitude 71°19′52.8″ W; thence due south to latitude 41°30′27.3″ N, longitude 71°19′52.8″

W; thence south southeast to 41°30′13.8″ N, longitude 71°19′42.0″ W; thence southeast to latitude 41°30′10.2″ N, longitude 71°19′32.6″ W; thence due east to latitude 41°30′10.2″ N, longitude 71°19′20.0″ W; thence northerly along the mainland shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and Federal, local or State law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

[69 FR 35519, June 25, 2004]

§ 334.85 New York Harbor, adjacent to the Stapleton Naval Station, Staten Island, New York; restricted area.

(a) *The area.* The waters of New York Harbor beginning at a point on shore at latitude 40°38′02″ N, longitude 074°04′24″ W; thence easterly to latitude 40°38′02.5″ N, longitude 074°04′09″ W; thence southerly to latitude 40°37′53″ N, longitude 074°04′07″ W; thence east-southeasterly to latitude 40°37′50″ N, longitude 074°03′50.2″ W; thence south-southeasterly to latitude 40°37′37.5″ N, longitude 074°03′46″ W; thence southwesterly to the shore line at latitude 40°37′24.5″ N, longitude 074°04′18″ W; thence northerly along the shore line to the point of origin.

(b) *The regulations.* (1) The portion of the restricted area extending from the shore out to a line 600 feet east of the U.S. Pierhead Line is closed to all persons and vessels except those vessels owned by, under hire to or performing work for Naval Station New York, Staten Island, New York.

(2) The portion of the restricted area beginning 600 feet seaward of the U.S. Pierhead Line is open to transiting vessels only. Vessels shall proceed across the area by the most direct route and without unnecessary delay. For vessels under sail, necessary tacking shall constitute a direct route.

(3) Commercial vessels at anchor will be permitted to swing into the seaward portion of the restricted area while at anchor and during the tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station New York, and such agencies as he/she shall designate.

[56 FR 5300, Feb. 8, 1991]

§ 334.100 Atlantic Ocean off Cape May, N.J.; Coast Guard Rifle Range.

(a) *The danger zone.* The waters of the Atlantic Ocean within an area described as follows: Beginning at Cape May West Jetty Light; thence 180° true, 800 yards; thence 250° true, 1,325 yards; and thence 335° true to the shore line.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger area between sunrise and sunset daily, except as authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commander, Third Coast Guard District, or his authorized representative.

[25 FR 12244, Nov. 30, 1960. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.102 Sandy Hook Bay, Naval Weapons Station EARLE, Piers and Terminal Channel, Restricted Area, Middletown, New Jersey.

(a) *The area.* All of the navigable waters within the area bounded by these coordinates:

Latitude 40°25′55.6″ N, longitude 074°04′31.4″ W; thence to
Latitude 40°26′54.0″ N, longitude 074°03′53.0″ W; thence to
Latitude 40°26′58.0″ N, longitude 074°04′03.0″ W; thence to
Latitude 40°27′56.0″ N, longitude 074°03′24.0″ W; thence to
Latitude 40°27′41.7″ N, longitude 074°02′45.0″ W; thence to
Latitude 40°28′23.5″ N, longitude 074°02′16.6″W; thence to
Latitude 40°28′21.2″ N, longitude 074°01′56.0″ W; thence to
Latitude 40°28′07.9″ N, longitude 074°02′18.6″ W; thence to

Latitude 40°27′39.3″ N, longitude 074°02′38.3″ W; thence to
Latitude 40°27′28.5″ N, longitude 074°02′10.4″ W; thence to
Latitude 40°26′29.5″ N, longitude 074°02′51.2″ W; thence to
Latitude 40°26′31.4″ N, longitude 074°02′55.4″ W; thence to
Latitude 40°25′27.1″ N, longitude 074°03′39.7″W longitude;
and thence along the shoreline to the point of origin (NAD 83).

The Department of the Navy plans to install buoys along these coordinates to outline the Restricted Area.

(b) *The regulation.* (1) Except as set forth in subparagraph (b)(2), no persons, unauthorized vessels or other unauthorized craft may enter the restricted area at any time;

(2) Vessels are authorized to cross the Terminal Channel provided that there are no naval vessels then transiting the channel bounded by:

Latitude 40°27′41.7″ N, longitude 074°02′45.0″ W; thence to
Latitude 40°28′23.5″ N, longitude 074°02′16.6″ W; thence to
Latitude 40°28′21.2″ N, longitude 074°01′56.0″ W; thence to
Latitude 40°28′07.9″ N, longitude 074°02′18.6″ W; thence to
Latitude 40°27′39.3″ N, longitude 074°02′38.3″ W); and (3) No person may swim in the Restricted Area.

(c) *Enforcement.* The regulation in this section, promulgated by the U.S. Army Corps of Engineers, shall be enforced by the Commanding Officer, Naval Weapons Station Earle, and/or other persons or agencies as he/she may designate.

[68 FR 37971, June 26, 2003]

§ 334.110 Delaware Bay off Cape Henlopen, Del.; naval restricted area.

(a) *The area.* Beginning at a point on the south shore of Delaware Bay at longitude 75°06′12″; thence to latitude 38°47′25″, longitude 75°06′20″; thence to latitude 38°47′48″, longitude 75°06′00″; thence to latitude 38°50′43″, longitude 75°02′11″; thence to latitude 38°49′16″, longitude 74°59′35″; thence to a point on the shore at latitude 38°46′09″; thence northwesterly and southwesterly along the shore at Cape Henlopen to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawl fishing, crabbing, dragging, grappling, and towing with hawser on bottom are prohibited in the area and no object attached to a vessel shall be placed on or near the bottom.

(2) This section does not apply to anchored floating navigational aids or to placement or removal of such aids by the Coast Guard.

(3) This section does not apply to vessels engaged in commercial or pleasure boat fishing provided anchors, trawls, and ground tackle are not used.

(4) The regulations in this section shall be enforced by the Commandant, Fourth Naval District, and such agencies as he may designate.

[18 FR 4047, July 10, 1953. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.120 Delaware Bay off Milford Neck; naval aircraft bombing target area.

(a) *The danger zone.* A circular area of one nautical mile radius having its center in Delaware Bay at latitude 38°58′12″, longitude 75°17′30″.

(b) *The regulations.* (1) Anchoring, trawling, crabbing, fishing and dragging in the danger zone are prohibited during daylight hours.

(2) The regulations in this section shall be enforced by the Commandant, Fourth Naval District, and such agencies as he may designate.

[20 FR 563, Jan. 26, 1955. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.130 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.

(a) *The area.* An area immediately offshore from Wallops Island defined by lines drawn as follows: Beginning at latitude 37°51′30″ N., longitude 75°27′30″ W.; thence to latitude 37°51′30″ N., longitude 75°17′12″ W.; thence to latitude 37°43′18″ N., longitude 75°29′42″ W.; and thence to latitude 37°49′18″ N., longitude 75°29′42″ W.

(b) *The regulations.* (1) Persons and vessels may enter and operate in the danger zone at all times when warning signals are not displayed.

(2) When warning signals are displayed, all persons and vessels in the danger zone, except vessels entering or departing Chincoteague Inlet, shall

leave the zone promptly by the shortest possible route and shall remain outside the zone until allowed by a patrol boat to enter or the dangers signal has been discontinued. Vessels entering or departing Chincoteague Inlet shall take the shortest passage possible through the danger zone upon display of the danger signal.

(3) The intent to conduct rocket-launching operations involving the area shall be indicated by a signal consisting of a large orange-colored, ''blimp-shaped'' balloon by day and a signal rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50′38″, longitude 75°28′47″ and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50′16″, longitude 75°29′07″. The appropriate one of these signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until danger no longer exists.

(4) The regulations in this section shall be enforced by the Director, Wallops Station, National Aeronautics and Space Administration, Wallops Island, Va., or such agencies as he may designate.

[31 FR 13445, Oct. 18, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.140 Chesapeake Bay; U.S. Army Proving Ground Reservation, Aberdeen, Md.

(a) *Restricted area defined.* The following indicates the limits of the waters of or adjacent to the Aberdeen Proving Ground, Maryland, and inside of which boundaries will lie the restricted area known as the Aberdeen Proving Ground, Maryland.

(1) Beginning at a point on the westerly side of Chesapeake Bay, at the south side of the mouth of Swan Creek, Harford County, Maryland, the most northerly point of the reservation known as Plum Point; thence southeasterly along the low water mark on the shore of Chesapeake Bay to and across the north entrance of Spesutie Narrows to and thence along the low water mark on the north shore of Spesutie Island to Locust Point; thence along straight line from Locust Point to Turkey Point for a distance of approximately 1,400 yards; thence following a line parallel with and 1,000 yards from the low water mark on the easterly shore of Spesutie Island to a point 1,000 yards due southeast of Sandy Point; thence approximately southwest in a straight line to a point approximately 1,250 yards S. 10°30′ W. from Bear Point; thence approximately 9,275 yards S. 51°04′ W. to a point in Chesapeake Bay about 1,700 yards due east from Taylor Island Point; thence southwesterly in a straight course, except such variations as may be necessary to include all of Pooles Island to the southwesterly point of Pooles Island, thence in a northwesterly direction to the most southwesterly point of Spry Island, including all of Spry Island; thence northwesterly in a straight line to extreme southerly island off Lower Island Point; thence northwesterly in a straight line through Brier Point to a point in Seneca Creek where this line intersects a straight line which passes through monuments No. 124 and No. 125 on westerly part of Carroll Island; thence northeasterly in a straight line passing through Marshy Point, at the junction of Dundee Creek and Saltpeter Creek, to the intersection of the center line of Reardon Inlet with Gunpowder River, except such variations as may be necessary to exclude any and all parts of the point of land on the westerly side of Gunpowder River about one mile south of Oliver Point; thence northerly along the center line of Reardon Inlet to its intersection with the southeasterly line of the right of way of the Pennsylvania Railroad; thence northeast along the Pennsylvania Railroad following the reservation boundary line to shore of Bush River, and along its western shore to Fairview Point; thence northeast in a straight line across Bush River to concrete monument No. 64, located on the eastern shore of Bush River, south of Chelsea; thence along the eastern shore of Bush River northerly to the mouth of Sod Run; thence by a broken line along the boundary of the reservation to Swan Creek; and thence in a straight line to Plum Point. (The above description may be traced on Coast and Geodetic Chart No. 1226).

(b) *Authority delegated Commanding Officer*. The Commanding Officer, Aberdeen Proving Ground, has been delegated the authority by the Secretary of the Army to designate from time to time by suitably posted bulletins or announcements, the conditions under which the public, including food fishermen and crabbers, may enter restricted waters of the Aberdeen Proving Ground.

(c) *Penalty*. All persons who enter the restricted waters, except as authorized in this section, without the authority of the Commanding Officer, Aberdeen Proving Ground, Md., are under the terms of the information given above, guilty of a misdemeanor and upon conviction thereon are punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months.

(d) *Entrance into restricted waters by the public*. (1) The following water areas are closed to the public at all times:

(i) Supesutie Narrows—all waters north and east of a line between Bear Point and Black Point;

(ii) All creeks except Landerick Creek;

(iii) The water adjacent to Carroll Island which lies between Brier Point and Lower Island Point also known as Hawthorne Cove;

(iv) The waters immediately off the mouth of Romney Creek;

(v) The waters adjacent to Abbey Point Recovery Field more accurately described as area number 16; depicted in Aberdeen Proving Ground Regulation 210–10, Appendix A.

(vi) The waters on the north side of the Bush River from Pond Point to Chelsea Chimney are closed for fishing purposes.

(2) The remainder of the restricted areas will normally be open for authorized use (including navigation and fishing) during the following hours:

(i) Monday through Thursday, 5 p.m. to 7:30 a.m.;

(ii) Weekends, 5 p.m. Friday to 7:30 a.m. Monday;

(iii) National (not state) holidays, 5 p.m. the day preceding the holiday to 7:30 a.m. the day following the holiday.

(3) When requirements of tests, as determined by the Commanding Officer, Aberdeen Proving Ground, or his designee, necessitate closing the restricted areas during the aforementioned times and days, the Commanding Officer, Aberdeen Proving Ground, will publish appropriate circulars or cause to be broadcast over local radio stations notices informing the public of the time and days which entrance to the restricted waters of Aberdeen Proving Ground by the general public will be prohibited.

(4) A fleet of patrol boats will be positioned at the perimeter of the restricted water zone boundaries (except in extreme weather conditions such as gales or ice) during periods of testing to prevent unauthorized entry. If necessary to attract attention of another vessel about to penetrate the restricted area, the patrol boat may operate a distinctive rotating blue and red light, public address system, sound a siren, or by radio contact on shipshore FM channel 16 and citizen band channel 12. Buoys will mark the restricted waters along the Chesapeake Bay perimeter during the period, normally 4 June through 1 October annually.

(5) *Authorized use*. Authorized use as used in this section is defined as fishing from a vessel, navigation using a vessel to traverse a water area or anchoring a vessel in a water area. Any person who touches any land, or docks or grounds a vessel, within the boundaries of Aberdeen Proving Ground, Maryland, is not using the area for an authorized use and is in violation of this regulation. Further, water skiing in the water area of Aberdeen Proving Ground is permitted as an authorized use when the water area is open for use by the general public providing that no water skier touches any land, either dry land (fast land) or subaqueous land and comes no closer then 200 meters from any shoreline. Further, if any person is in the water area of Aberdeen Proving Ground, Maryland, outside of any vessel (except for the purposes of water skiing as outlined above) including, but not limited to, swimming, scuba diving, or other purpose, that person is not using the water in an authorized manner and is in violation of this regulation.

(e) *Entry onto land and limitation of firing over land*. (1) Entry onto any land, either dry land (fast land) or subaqueous land, within the boundaries of

the Aberdeen Proving Ground Reservation as defined in paragraph (a)(1) of this section is prohibited at all times. Provided, the Commander, Aberdeen Proving Ground, is authorized to grant exceptions to this regulation either by written permission or by local regulation. Entry onto the land is punishable as in paragraph (c) of this section.

(2) There are no limitations on test firing by Federal testing facilities at Aberdeen Proving Ground over land belonging to Aberdeen Proving Ground.

(f) *Permits required from the Commanding Officer to set fixed nets in restricted waters.* (1) Fishermen and crabbers desiring to set fixed nets within the restricted waters of Aberdeen Proving Ground Reservation are required in every instance to have a written permit. A fixed net for the purpose of this paragraph is defined as a pound net, staked gill net, hedge fike net, hoop net, eel pot, crab pot, and all other types of nets fastened by means of poles, stakes, weights, or anchors. Permits to fish and crab within the restricted waters of Aberdeen Proving Ground may be obtained by written application to the Commanding Officer, Department of the Army, Aberdeen Proving Ground, Attention: Provost Marshall Division, Aberdeen Proving Ground, Md. Applicants for permits must state the location at which they desire to set fixed nets and state the period of time for which they desire the permit to cover. Nets placed in the restricted waters are subject to damage by gunfire and bombing, and the risk of such damage will be assumed by the holder of the permit.

(2) Holders of permits for setting fixed nets must comply with the provisions of this part and also with § 206.50(d) of this chapter.

(g) *Identification signs required at each location of fixed nets.* Fishermen and crabbers who have been granted permits to fish or crab within the restricted waters of Aberdeen Proving Ground Reservation with fixed nets must at each location have a stake securely driven at the outer end of the line of nets on which is mounted a sign board which contains their name and permit number. All stakes set within the restricted area established by this regulation will project at least three (3) feet above the surface of the water at all ordinary high stages of the tide. Nets and other fishing and crabbing structures erected will be marked by stakes set at intervals not greater than fifty (50) feet. Fishing and crabbing structures erected in Aberdeen Proving Ground waters will be plainly marked on both ends, and will be lighted with a white light between sunset and sunrise, by and at the expense of the owner.

(h) *Removal of pound net poles and/or stakes.* At the end of the fishing and crabbing season, fishermen and crabbers must remove and haul away from the location all pound nets, pots, poles or stakes used in their operation. Pound net poles or stakes must not be cast adrift after removal.

(i) *Restrictions on fishermen and crabbers.* It must be distinctly understood that holders of permits to fish or crab are not authorized to enter the restricted waters of Aberdeen Proving Ground Reservation outside the hours as announced by the Commanding Officer, Aberdeen Proving Ground. In addition, the privileges granted in this paragraph include no right to land nor to cut or procure pound net poles or stakes on the Aberdeen Proving Ground Reservation.

(j) Aberdeen Proving Ground Regulations (APGR) 210–10 will govern commercial fishing and crabbing and APGR 210–26 will govern recreational (noncommercial) fishing and crabbing. This section shall be enforced by the Commander, Aberdeen Proving Ground, and such agencies as he/she may designate.

(k) *Compliance with Federal, State and county laws required.* The taking of fish and crabs in the waters of Aberdeen Proving Ground Reservation and the setting of and location of nets, in a manner not in compliance with Federal, State, and county laws is prohibited.

(40 Stat. 266; 33 U.S.C. 3)

[13 FR 6915, Nov. 24, 1948, and 32 FR 15673, Nov. 14, 1967, as amended at 42 FR 41281, Aug. 16, 1977; 48 FR 54597, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.150 Severn River at Annapolis, Md.; experimental test area, U.S. Navy Marine Engineering Laboratory.

(a) *The restricted area.* The waters of Severn River shoreward of a line beginning at the southeasternmost corner of the U.S. Navy Marine Engineering Laboratory sea wall and running thence southwesterly perpendicular to the main Severn River channel, approximately 560 feet, thence northwesterly parallel to and 50 feet shoreward of the edge of the channel, 1,035 feet, and thence northeasterly perpendicular to the channel, approximately 600 feet, to the shore. Spar buoys will mark the corners of the area adjacent to the channel.

(b) *The regulations.* (1) No vessel or person other than specifically authorized military and naval vessels and persons shall enter or remain in the area during its use for experimental purposes. At all other times vessels and persons may use the area without restriction.

(2) The area will be in use intermittently, and this use will be signified by the presence of white-painted boats or floats, which will be lighted at night.

(3) Upon observing the boats or floats referred to in paragraph (b)(2) of this section, or upon being warned, vessels and persons shall immediately vacate the area and remain outside the area during the period of use.

(4) The regulations in this section shall be enforced by the Commandant, Severn River Naval Command, and such agencies as he may designate.

[17 FR 2573, Mar. 25, 1952, as amended at 30 FR 5631, Apr. 21, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.155 Severn River, Naval Station Annapolis, Small Boat Basin, Annapolis, MD; naval restricted area.

(a) *The area.* The waters within the Naval Station Annapolis small boat basin and adjacent waters of the Severn River enclosed by a line beginning at the southeast corner of the U.S. Navy Marine Engineering Laboratory; thence to latitude 38°58′56.5″, longitude 76°28′11.5″; thence to latitude 38°58′50.5″, longitude 76°27′52″; thence to the southeast corner of the Naval Station's seawall.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(c) *Enforcement.* The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, in Annapolis, Maryland, and such agencies as he/she may designate.

[63 FR 68140, Dec. 9, 1998]

§ 334.160 Severn River, at U.S. Naval Academy Santee Basin, Annapolis, Md.; naval restricted area.

(a) *The area.* The waters within the U.S. Naval Academy Santee Basin and adjacent waters of Severn River inclosed by a line beginning at the northeast corner of Dewey Field seawall; thence to latitude 38°59′03″, longitude 76°28′47.5″; thence to latitude 38°58′58″, longitude 76°28′40″; and thence to the northwest corner of Farragut Field seawall.

(b) *The regulations.* (1) No person in the water, vessel or other craft shall enter or remain in the restricted area at any time except as authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Superintendent, U.S. Naval Academy, Annapolis, Md., and such agencies as he may designate.

[32 FR 10299, July 13, 1967. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.170 Chesapeake Bay, in the vicinity of Chesapeake Beach, Md.; firing range, Naval Research Laboratory.

(a) *The danger zone*—(1) *Area A.* A roughly rectangular area bounded on the north by latitude 38°39′55″; on the south by latitude 38°39′09″; on the east by longitude 76°31′03″; and on the west by the shore of Chesapeake Bay.

(2) *Area B.* The sector of a circle bounded by radii of 9,600 yards bearing 31° (to Bloody Point Bar Light) and 137°30′ (to Choptank River Approach Buoy 2), respectively, from the center at the southeast corner of building No. 3; excluding Area A.

(3) *Area C.* The segment of a circle inclosed by the arcs of two circles having radii of 9,600 yards and 13,200 yards, respectively, and bounded by the extended radii marking the north and south limits of Area B.

NOTE: All bearings referred to true meridian.

(4) *Area D.* A roughly rectangular area bounded on the north by an east-west line through Chesapeake Beach Light 2 at the entrance channel to Fishing Creek; on the south by an east-west line through Plum Point Shoal Buoy 1 northeast from Breezy Point; on the east by the established fishing structure limit line; and on the west by the shore of Chesapeake Bay.

(b) *The regulations.* (1) No person or vessel shall enter or remain in Area A at any time.

(2) No person or vessel shall enter or remain in Area B or Area C between the hours of 1:00 p.m. and 5:00 p.m. daily except Sundays, except that through navigation of commercial craft will be permitted in Area C at all times, but such vessels shall proceed on their normal course and shall not delay their progress.

(3) No fishing structures, other than those presently in established locations, which may be maintained, will be permitted to be established in Area D without specific permission from the Commanding Officer, Naval Research Laboratory.

(4) The areas will be in use throughout the year, and no further notice is contemplated that firing is continuing.

(5) Prior to the conduct of each firing practice a patrol vessel will patrol the range to warn navigation. ''Baker'' will be flown from a conspicuous point on the patrol vessel and from a prominent position on shore.

(6) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he/she may designate.

[13 FR 6916, Nov. 24, 1948, as amended at 17 FR 4832, May 28, 1952; 48 FR 54597, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.180 Patuxent River, Md.; restricted areas, U.S. Naval Air Test Center, Patuxent River, Md.

(a) Except in the gut off the tip of Point Patience, no person in the water and no craft shall approach closer than 75 yards to the beaches, shoreline, or piers of the area formerly occupied by the U.S. Naval Mine Warfare Test Station, or of U.S. Naval Air Station property. A person in the water or a civilian craft shall not approach rafts, barges, or platforms closer than 100 yards.

(b) Diving tenders will exhibit a square red flag with white X when underwater diving takes place from naval small craft. At such times, persons in the water and civilian craft shall stay at least 200 yards clear of these vessels and the civilian craft shall proceed at a speed not greater than five knots when within 1,000 yards thereof.

(c) On occasions, seaplane landings and takeoffs will be practiced in the seadrome area north of the U.S. Naval Air Station, Patuxent River. This area includes those waters of the Patuxent River between Town Point and Hog Point shoreward of a line described as follows: Beginning at a point on the shore just west of Lewis Creek, bearing 161°30′ true, 2,000 yards from Patuxent River Light 8; thence to a point bearing 130° true, 1,850 yards from Patuxent River Light 8; thence to a piont bearing 247°30′ true, 3,650 yards from Drum Point Light 2; thence to point bearing 235° true, 2,060 yards from Drum Point Light 2; thence to a point bearing 129° true, 700 yards from Drum Point Light 2; thence to a point bearing 137° true, 1,060 yards from Drum Point Light 2; and thence to a point on the shore west of Harper Creek entrance, bearing 158°30′ true, 1,900 yards from Drum Point Light 2.

(d) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md., and such agencies as he may designate.

[30 FR 4198, Mar. 31, 1965, as amended at 48 FR 54598, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.190 Chesapeake Bay, in vicinity of Bloodsworth Island, MD, U.S. Navy.

(a) *The areas*—(1) *Prohibited area.* All waters within a circle 0.5 miles in radius with its center at latitude 38°10′00″, longitude 76°06′00″; Bloodsworth Island, Pone Island, Northeast Island, and Adams Island.

(2) *The danger zone.* All waters of Chesapeake Bay and Tangier Sound within an area bounded as follows: Beginning at latitude 38°08′15″, longitude

76°10′00″; thence to latitude 38°12′00″, longitude 76°10′00″; thence to latitude 38°12′00″, longitude 76°07′00″; thence to latitude 38°13′00″, longitude 76°06′00″; thence to latitude 38°13′00″, longitude 76°04′00″; thence to latitude 38°12′00″, longitude 76°02′00″; thence to latitude 38°12′00″, longitude 76°00′00″; thence to latitude 38°08′15″, longitude 76°00′00″; thence to the point of beginning, excluding the prohibited area described in paragraph (a)(1) of this section.

(b) *The regulations.* (1) No person, vessel or other craft shall approach closer than 75 yards to the beaches, shoreline, or piers of Bloodsworth Island, Pone Island, Northeast Island, Adams Island, or any Patuxent River Naval Air Station property at any time unless authorized to do so by the enforcing agency. No person, vessel or other craft shall approach rafts, barges, or platforms closer than 100 yards.

(2) No person, vessel, or other craft shall enter or remain in the danger zone when notified by the enforcing authority to keep clear. Any watercraft under way or at anchor, upon being so warned, shall immediately vacate the area and shall remain outside the area until conclusion of potentially hazardous test or training events.

(3) The area will be in use intermittently throughout the year.

(4) Prior to the commencement of any potentially hazardous test or training event that requires clearing of non-participant boats from the danger zone, surface or air search of the entire area will be made for the purpose of locating and warning all craft and persons not connected with the test or training event, and a patrol will be maintained throughout the duration of the event.

(5) All persons, vessels, or other craft shall clear the area when warned by patrol vessels.

(6) Patrol vessels will provide warning that a potentially hazardous test or training event is in progress or is about to commence; when so warned, fishing or oystering vessels or other craft not directly connected with the event shall not navigate within the danger zone. Deep-draft vessels proceeding in established navigation channels normally will be permitted to traverse the area upon coordination with range patrol vessels. The patrol vessels will ensure safe separation between all non-participant vessels and potentially hazardous operations.

(7) When potentially hazardous testing or training is not in progress or is not about to commence, oystering and fishing boats and other craft may operate within the danger zone.

(8) All potentially hazardous test or training events will be performed in such a way as to contain the hazard footprint to the established danger zone described in paragraph (a) of this section. Naval authorities will not be responsible for damage to nets, traps, buoys, pots, fish pounds, stakes, or other equipment that may be located within the danger zone.

(9) Nothing in this regulation shall be intended to prevent the lawful use of approved waterfowl hunting blinds along the shorelines of Bloodsworth Island range complex, provided that all necessary licenses and permits have been obtained from the Maryland Department of Natural Resources and the completed copy of the permit has been submitted to the Conservation Division Director at NAS Patuxent River. Waterfowl hunters must observe all warnings and range clearances, as noted herein.

(10) The regulations in this section shall be enforced by the Commander, Naval Air Station Patuxent River, Maryland, and such agencies as he/she may designate.

[72 FR 65668, Nov. 23, 2007]

§ 334.200 Chesapeake Bay, Point Lookout to Cedar Point; aerial and surface firing range and target area, U.S. Naval Air Station, Patuxent River, Maryland, danger zones.

(a) *Aerial firing range*—(1) *The danger zone.* The waters of Chesapeake Bay within an area described as follows: Beginning at the easternmost extremity of Cedar Point; thence easterly to the southern tip of Barren Island; thence southeasterly to latitude 38°01′15″, longitude 76°05′33″; thence southwesterly to latitude 37°59′25″, longitude 76°10′54″; thence northwesterly to latitude 38°02′20″, longitude 76°17′26″; thence northerly to Point No Point Light; thence northwesterly to the shore at latitude 38°15′45″; thence northeasterly

along the shore to the point of beginning. Aerial and surface firing and dropping of nonexplosive ordnance will be conducted throughout the year.

(2) *The regulations.* (i) Through navigation of surface craft outside the target areas will be permitted at all times. Vessels shall proceed on their normal course and shall not delay their progress.

(ii) Prior to firing or ordnance drops, the range will be patrolled by naval surface craft or aircraft to warn watercraft likely to be endangered. Surface craft so employed will display a square red flag. Naval aircraft will use a method of warning consisting of repeated shallow dives in the area, following each dive by a sharp pullup.

(iii) Any watercraft under way or at anchor, upon being so warned, shall immediately vacate the area and shall remain outside the area until conclusion of firing practice.

(iv) Nothing in this section shall prevent the taking of shellfish or the setting of fishing structures within the range outside target areas in accordance with Federal and State regulations: *Provided*, That no permanent or temporary fishing structures or oyster ground markers shall be placed on the western side of the Chesapeake Bay between Point No Point and Cedar Point without prior written approval of the Commanding Officer, U.S. Naval Air Station, Patuxent River, Md.

(v) Naval authorities will not be responsible for damage caused by projectiles, bombs, missiles, or Naval or Coast Guard vessels to fishing structures or fishing equipment which may be located in the aerial firing range immediately adjacent to the target areas.

(b) *Target areas*—(1) *Prohibited area.* A circular area with a radius of 1,000 yards having its center at latitude 38°13′00″, longitude 76°19′00″ identified as Hooper Target.

(2) *The area.* A circular area with a radius of 1000 yards having its center at latitude 38 degrees 02 minutes 18 seconds longitude 76 degrees 09 minutes 26 seconds identified as Hannibal Target.

(3) *The regulations.* Nonexplosive projectiles and bombs will be dropped at frequent intervals in the target areas. Hooper and Hannibal target areas shall be closed to navigation at all times, except for vessels engaged in operational and maintenance activities as directed by the Commanding Officer of the U.S. Naval Air Station, Patuxent River, Maryland. No person in the waters, vessel, or other craft shall enter or remain in the closed area or climb on targets except on prior written approval of the Commanding Officer, U.S. Naval Air Station, Patuxent River, Maryland.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Patuxent River, Maryland and such agencies as he or she may designate.

[31 FR 13648, Oct. 22, 1966, as amended at 48 FR 54598, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 64 FR 18581, Apr. 15, 1999]

§ 334.210 Chesapeake Bay, in vicinity of Tangier Island; naval guided missiles test operations area.

(a) *The danger zone*—(1) *Prohibited area.* A circle 1,000 yards in radius with its center at latitude 37°47′54″, longitude 76°03′48″.

(2) *Restricted area.* A circle three nautical miles in radius with its center at latitude 37°47′54″, longitude 76°03′48″, excluding the prohibited area.

(b) *The regulations.* (1) Persons, vessels or other craft shall not enter or remain in the prohibited area at any time unless authorized to do so by the enforcing agency.

(2) Except as otherwise provided in paragraph (b)(6) of this section, persons, vessels or other craft shall not enter or remain in the restricted area when firing is or will soon be in progress unless authorized to do so by the enforcing agency.

(3) Advance notice will be given of the date on which the first firing is to be conducted and such notice will be published in ''Notice to Mariners.'' Thereafter, the danger zone will be in use intermittently throughout the year and no further notice is contemplated that firing is continuing.

(4) Warning that firing is or will soon be in progress will be indicated by a red flag displayed from one of six dolphin platforms on the perimeter of the prohibited area, and by patrol vessels within the danger zone or by aircraft

employing the method of warning known as ''buzzing'' which consists of low flight by the airplane and repeated opening and closing of the throttle. Surface or air search of the entire area will be made prior to the commencement of firing on each scheduled day. During periods of firing a patrol vessel will remain in the approaches to the restricted area and maintain continuous contact with the firing planes to warn when the area is not clear.

(5) Upon observing the warning flag or upon receiving a warning by any of the patrol vessels or aircraft, persons, vessels or other craft shall immediately vacate the restricted area and remain outside the area until the conclusion of firing for the day.

(6) This section shall not deny traverse of portions of the restricted area by commercial craft proceeding in established steamer lanes, but when firing is or will soon be in progress all such craft shall proceed on their normal course through the area with all practicable speed.

(7) All projectiles, bombs and rockets will be fired to land within the prohibited area, and on or in the immediate vicinity of a target in the restricted area located adjacent to the west side of Tangier Island. The Department of the Navy will not be responsible for damages by such projectiles, bombs, or rockets to nets, traps, buoys, pots, fishpounds, stakes, or other equipment which may be located within the restricted area.

(8) The regulations of this section shall be enforced by the Commander, Naval Air Bases, Fifth Naval District, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6918, Nov. 24, 1948, as amended at 22 FR 3706, May 25, 1957; 24 FR 3760, May 6, 1959. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.220 Chesapeake Bay, south of Tangier Island, Va.; naval firing range.

(a) *The danger zone.* Beginning at latitude 37°46′39″, longitude 75°57′43″, thence to latitude 37°43′42″, longitude 75°55′30″; thence to latitude 37°27′00″, longitude 76°02′48″; thence to latitude 37°27′00″; longitude 76°08′00″; thence to latitude 37°45′00″, longitude 76°09′48″; thence to latitude 37°45′00″, longitude 76°08′51″; and thence along the circumference of a circle of five nautical miles radius whose center is at latitude 37°47′54″, longitude 76°03′48″, to the point of beginning.

(b) *The regulations.* (1) Any vessel propelled by mechanical means or by sail at a speed greater than five knots may proceed through the danger zone to and from points without, but not from one point to another point within, the area, except when especially notified to the contrary.

(2) All vessels, other than naval craft, are forbidden to anchor within the danger zone except in cases of great emergency. All vessels anchoring under circumstances of great emergency within the area shall leave the area immediately after the emergency ceases or upon notification by the enforcing agency.

(3) Fishing, oystering, clamming, crabbing, and other aquatic activities are forbidden within the limits of the danger zone, except that existing fishing structures licensed by the State of Virginia may be maintained and operated: *Provided*, The owners thereof obtain written permits from the enforcing agency designated in paragraph (b)(5) of this section.

(4) Day and night firing over the range will be conducted intermittently by one or more vessels, depending on weather and operating schedules. When firing is in progress, adequate patrol by naval craft will be conducted to prevent vessels from entering or remaining within the danger zone.

(5) This section shall be enforced by the Commandant, Fifth Naval District, U. S. Naval Base, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6918, Nov. 24, 1948, as amended at 22 FR 6965, Dec. 4, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.230 Potomac River.

(a) *Naval Surface Weapons Center, Dahlgren, Va.*—(1) *The danger zone*—(i) *Lower zone.* The entire portion of the lower Potomac River between a line from Point Lookout, Maryland, to Smith Point, Virginia, and a line from Buoy 14 (abreast of St. Clements Island) to a point near the northeast shore of Hollis Marsh at latitude

38°10′00″, longitude 76°45′23.5″. Long range and aerial machine gun firing is normally conducted in this zone at infrequent intervals.

(ii) *Middle zone*. Beginning at the intersection of the Potomac River Bridge with the Virginia shore; thence to Light 33; thence to latitude 38°19′06″, longitude 76°57′07″ which point is about 3,300 yards east-southeast of Light 30; thence to Line of Fire Buoy O, about 1,150 yards southwesterly of Swan Point; thence to Line of Fire Buoy M, about 1,700 yards south of Potomac View; thence to Line of Fire Buoy K, about 1,400 yards southwesterly of the lower end of Cobb Island; thence to Buoy 14, abreast of St. Clements Island, thence southwesterly to a point near the northeast shore of Hollis Marsh at latitude 38°10′00″, longitude 76°45′23.5″; thence northwesterly to Line of Fire Buoy J, about 3,000 yards off Popes Creek, Virginia; thence to Line of Fire Buoy L, about 3,600 yards off Church Point; thence to Line of Fire Buoy N, about 900 yards off Colonial Beach; thence to Line of Fire Buoy P., about 1,000 yards off Bluff Point; thence northwest to latitude 38°17′52″, longitude 77°01′00″, a point of the Virginia shore on property of Naval Surface Weapons Center, a distance of about 3,800 yards; thence northerly along the shore of the Naval Surface Weapons Center to Baber Point, latitude 38°18′42″, longitude 77°01′45″; and thence north-northwest to latitude 38°19′09″, longitude 77°02′08″, a point on the Main Dock at the Naval Surface Weapons Center. Firing is normally conducted in this zone daily except Saturdays, Sundays, and national holidays.

(iii) *Upper zone*. Beginning at Mathias Point, Va.; thence north to Light 5; thence in a northeasterly direction to Light 6; thence east-southeast to Lighted Buoy 2, thence east-southeast to a point on the Maryland shore at approximately latitude 38°23′35″, longitude 76°59′18″; thence southerly with the Maryland shore to a line passing through Light 1 to the Virginia shore, parallel to the Potomac River Bridge; thence northerly with the Virginia shore to the point of beginning. Aerial bombing and strafing is normally conducted in this zone at infrequent intervals.

(2) *The regulations*. (i) Firing normally takes place between the hours of 8:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays, and national holidays, with infrequent night firing between 4:00 p.m. and 10:30 p.m. During a national emergency, firing will take place between the hours of 6:00 a.m. and 10:30 p.m. daily except Sundays.

(ii) When firing is in progress, no person, or fishing or oystering vessels shall operate within the danger zone affected unless so authorized by the Naval Surface Weapons Center's patrol boats. Oystering and fishing boats or other craft may cross the river in the danger zone only after they have reported to the patrol boat and received instructions as to when and where to cross. Deep-draft vessels using dredged channels and propelled by mechanical power at a speed greater than five miles per hour may proceed directly through the danger zones without restriction except when especially notified to the contrary. Unless instructed to the contrary by the patrol boat, small craft navigating up or down the Potomac River during firing hours shall proceed outside of the northeastern boundary of the Middle Danger Zone. All craft desiring to enter the Middle Danger Zone when proceeding in or out of Upper Machodoc Creek during firing hours will be instructed by the patrol boat; for those craft which desire to proceed in or out of Upper Machodoc Creek on a course between the western shore of the Potomac River and a line from the Main Dock of the Naval Surface Weapons Center to Line of Fire Buoy P, clearance will be granted to proceed upon request directed to the patrol boat.

(iii) The regulations in this section shall be enforced by the Commander, Naval Surface Weapons Center and such agencies as he/she may designate. Patrol boats, in the execution of their mission assigned herein, shall display a square red flag during daylight hours for purposes of identification; at night time, a 32 point red light shall be displayed at the mast head. The Naval Surface Weapons Center (Range Control) can be contacted by Marine VHF

radio (Channel 16) or by telephone (703) 663–8791.

(b) *Accotink Bay, Accotink Creek, and Pohick Bay; U.S. Military Reservation, Fort Belvoir, Va.*—(1) *The danger zone.* The waters of Accotink Bay, Accotink Creek, and Pohick Bay, Virginia, within and adjacent to the target ranges of the U.S. Military Reservation, Fort Belvoir, as follows: All of Accotink Bay; all of Accotink Creek below the bridge which crosses Accotink Creek approximately 400 yards south of U.S. Highway No. 1; and that portion of Pohick Bay bordering its north shore. The mouth of Accotink Bay and that portion of Pohick Bay within the danger zone will be marked by the Post Commander with suitable warning buoys.

(2) *The regulations.* (i) When firing affecting the area is in progress, the Post Commander will post guards at such locations that the waters in the danger zone may be observed and arrange signals whereby these guards may stop the firing should any person be seen in the danger zone. When firing is in progress, the Post Commander will cause to be displayed both on the east shore of Accotink Bay at its mouth and near the danger zone boundary on Accotink Creek a red streamer which shall be visible to a person in a boat near those points.

(ii) Persons desiring to cross the waters in the danger zone shall first determine whether a red streamer is displayed on the east Shore of Accotink Bay at its mouth or near the danger zone boundary on Accotink Creek. If the red streamer is displayed, it will indicate that firing is in progress and that the waters in the danger zone are covered by rifle fire, and the area shall not be entered until the streamer is lowered.

(iii) The Post Commander is hereby authorized by using such agencies and equipment necessary to stop all persons and boats at the boundary of the danger zone and prohibit their crossing the area until convenient to the firing schedule to do so.

[13 FR 6916, Nov. 24, 1948, as amended at 13 FR 9557, Dec. 31, 1948; 21 FR 2817, May 1, 1956; 22 FR 2951, Apr. 26, 1957; 28 FR 349, Jan. 12, 1963; 48 FR 54597, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.240 Potomac River, Mattawoman Creek and Chicamuxen Creek; U.S. Naval Surface Weapons Center, Indian Head Division, Indian Head, Md.

(a) *The danger zone.* Beginning at a point on the easterly shore of the Potomac River at latitude 38°36′00″, longitude 77°11′00″; thence to latitude 38°34′30″; longitude 77°13′00″; thence to latitude 38°33′20″, longitude 77°14′20″; thence to latitude 38°32′20″, longitude 77°15′10″; thence to latitude 38°32′00″, longitude 77°15′00″; thence to latitude 38°32′30″, longitude 77°14′00″; thence to latitude 38°32′30″, longitude 77°14′00″; thence upstream along the easterly shoreline of Chicamuxen Creek to its head thence downstream along the westerly shoreline of Chicamuxen Creek to the southernmost point of Stump Neck; thence northeasterly along the shoreline of Stump Neck to the mouth of Mattawoman Creek; thence along the southeasterly shore of Mattawoman Creek to the pilings remaining from the footbridge connecting the left bank of the creek to the Naval Surface Warfare Center, Indian Head Division; thence along the northwesterly shore of Mattawoman Creek from the pilings remaining from the footbridge to the mouth of the creek; thence in a northeasterly direction along the easterly shore of the Potomac River to the point of beginning.

(b) *The regulations.* (1) Firings consisting of controlled explosions within the danger zone, and controlled shore operations, or accidental explosions, hazardous to vessel traffic within the limits of the danger zone, may take place at any time of the day or night and on any day of the week.

(2) Flashing red lights, horns, and signs established at appropriate points will warn vessels of impending tests or operations considered to be hazardous to vessels within the danger zone.

(3) No persons or vessels except vessels of the United States or vessels authorized by the enforcing agency shall enter or remain in the danger zone while lights are flashing, when warning horns are in operation, or when warned or directed by a patrol vessel.

(4) Nothing in this section shall prohibit the use of Mattawoman Creek or Chicamuxen Creek as a harbor of refuge because of stress of weather.

(5) Except as prescribed in paragraph (b)(3) of this section, persons and vessels may enter and proceed through the danger zone without restriction. However, accidental explosions may occur at any time and persons and vessels entering the area do so at their own risk.

(6) Fishermen operating in the danger zone when warning signals are sounded shall evacuate the area immediately.

(7) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Surface Warfare Center, Indian Head Division, Indian Head, Maryland.

[26 FR 9748, Oct. 17, 1961, as amended at 48 FR 54598, Dec. 6, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17552, Apr. 10, 1997]

§ 334.250 Gunston Cove, at Whitestone Point, Va.; U.S. Army restricted area.

(a) *The area.* The waters within an area beginning at a point on the shoreline at longitude 77°08′36″; thence to latitude 38°40′22″, longitude 77°08′39″; thence to latitude 38°40′14″, longitude 77°08′22″; thence to a point on the shoreline at longitude 77°08′18″ and thence along the shoreline to the point of beginning.

(b) *The regulations.* No person, vessel, or other craft shall enter or remain in the area at any time except as authorized by the enforcing agency.

(c) The regulations in this section shall be enforced by the District Engineer, U.S. Army Engineer District, Philadelphia, Pa., and such agencies as he may designate.

[31 FR 16560, Dec. 28, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.260 York River, Va.; naval restricted areas.

(a) *The areas*—(1) *Naval mine service-testing area* (*prohibited*). A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15′25″ N., longitude 76°32′32″ W.; thence to latitude 37°15′42″ N., longitude 76°32′06″ W.; thence to latitude 37°15′27″ N., longitude 76°31′48″ W.; thence to latitude 37°15′05″ N., longitude 76°31′27″ W.; thence to a point on the shore line at latitude 37°14′51″ N., longitude 76°31′50″ W.; and thence along the shore line to the point of beginning.

(2) *Naval mine service-testing area* (*restricted*). A rectangular area adjacent to the northeast boundary of the prohibited area described in subparagraph (1) of this paragraph, beginning at latitude 37°16′00″ N., longitude 76°32′29″ W.; thence to latitude 37°16′23″ N., longitude 76°32′00″ W.; thence to latitude 37°15′27″ N., longitude 76°30′54″ W.; thence to latitude 37°15′05″ N., longitude 76°31′27″ W.; thence to latitude 37°15′27″ N., longitude 76°31′48″ W.; thence to latitude 37°15′42″ N., longitude 76°32′06″ W.; thence to latitude 37°15′40″ N., longitude 76°32′09″ W.; and thence to the point of beginning.

(3) *Explosives-Handling Berth (Naval).* A circular area of 600 yards radius with its center at latitude 37°13′56″ N., longitude 76°28′48″ W.

(b) *The regulations.* (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and

during such published periods of operation, fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retreiving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Va. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth when that berth is occupied by a vessel handling explosives.

(5) The regulations of this section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he may designate.

(Secs. 1–4, 40 Stat. 892, sec. 1, 38 Stat. 800; 33 U.S.C. 3, 471)

[26 FR 11198, Nov. 28, 1961, as amended at 27 FR 2465, Mar. 14, 1962; 30 FR 220, Jan. 8, 1965; 35 FR 4552, Mar. 14, 1970. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 58 FR 37608, July 12, 1993]

§ 334.270 York River adjacent to Cheatham Annex Depot, Naval Supply Center, Williamsburg, Va.; restricted area.

(a) *The area.* The waters of York River bounded as follows: Beginning at a point on shore at Cheatham Annex Depot at latitude 37°17′14″ N., longitude 76°35′38″ W.; thence to a point offshore at latitude 37°17′52″ N., longitude 76°35′20″ W.; thence approximately parallel to the shore to a point at latitude 37°17′23″ N., longitude 76°34′39″ W.; thence to the shore at latitude 37°16′58″ N., longitude 76°35′03″ W.; and thence along the shore at Cheatham Annex Depot to the point of beginning.

(b) *The regulations.* (1) No loitering will be permitted within the area. Oystermen may work their own leaseholds or public bottom within the area, provided they obtain special permission from the Officer in Charge, Cheatham Annex Depot, Naval Supply Center, Williamsburg, Virginia.

(2) The regulations in this section shall be enforced by the Officer in Charge, Cheatham Annex Depot, U.S. Naval Supply Center, Williamsburg, Virginia.

[22 FR 4814, July 9, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.275 North and Southwest Branch, Back River, Hampton, U.S. Air Force Base, Langley, Va.; restricted area.

(a) *The area.* Beginning at a point on the island at the entrance to Tide Mills Creek in the Southwest Branch of the Back River at latitude 37°03′50″ N, longitude 076°22′00″ W, thence along the shore of Langley Air Force Base, 35 yards off the ordinary mean high water (MHW) mark, to a point in the Northwest Branch of the Back River at latitude 37°06′40″ N, longitude 076°22′55″ W.

(b) *The regulations.* (1) No persons or vessels, recreational or commercial, may enter this restricted area without the permission of the Commanding Officer, Langley Air Force Base.

(2) The Commanding Officer shall not prevent persons from fulfilling their legal obligation to the Commonwealth of Virginia with regard to oyster planting ground leases that lie within the restricted area. The Commanding Officer may, at his/her discretion, require those persons and vessels working those leases to register with the Langley Air Force Base Security Officer on an annual basis. Failure to comply with this request may result in denial to access the oyster grounds until such time as the request has been complied with.

(3) Persons or vessels contracted with or utilized by the Commonwealth of Virginia to work the oyster grounds shall give verbal notification to the base Security Office prior to entering the restricted area.

(4) City, State and Federal law enforcement vessels may enter the restricted area at any time they deem necessary for the enforcement of their respective laws.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer of the Langley Air

Force Base and such agencies as he/she may designate.

[58 FR 47788, Sept. 10, 1993]

§ 334.280 James River between the entrance to Skiffes Creek and Mulberry Point, Va.; army training and small craft testing area.

(a) *The restricted area.* Beginning on the shore at latitude 37°09′54″ N., longitude 76°36′25″ W.; thence westerly to latitude 37°09′50″ N., longitude 76°37′45.5″ W.; thence southerly to latitude 37°09′00″ N., longitude 76°38′05″ W.; thence southerly to latitude 37°08′22″ N., longitude 76°37′55″ W.; thence due east to the shore at latitude 37°08′22″ N., longitude 76°37′22″ W.; thence northerly along the shore to the point of beginning.

(b) *The regulations.* (1) No vessels other than Department of the Army vessels, and no persons other than persons embarked in such vessels shall remain in or enter the restricted area except as provided in paragraph (b)(2) of this section.

(2) Nothing in the regulations of this section shall prevent the harvesting and cultivation of oyster beds or the setting of fish traps within the restricted area under regulations of the Department of the Army, nor will the passage of fishing vessels to or from authorized traps be unreasonably interfered with or restricted.

(3) Vessels anchored in the area shall be so anchored as not to obstruct the arc of visibility of Deepwater Shoals Light.

(4) The Commanding General, Fort Eustis, Va., will, to the extent possible give public notice from time to time through local news media and the Coast Guard's Local Notice to Mariners of the schedule of intended Army use of the restricted area.

(5) The continuation of the restricted area for more than 3 years after the date of its establishment shall be dependent upon the outcome of the consideration of a request for its continuance submitted to the District Engineer, U.S. Army Engineer District, Norfolk, Virginia, by the using agency at least 3 months prior to the expiration of the 3 years.

(6) The regulations in this section shall be enforced by the Commanding General, Fort Eustis, Va., and such agencies as he may designate.

[37 FR 4337, Mar. 2, 1972. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.290 Elizabeth River, Southern Branch, Va., naval restricted areas.

(a) *The areas*—(1) *St. Helena Annex Area.* Beginning at a point at St. Helena Annex of the Norfolk Naval Shipyard, on the eastern shore of Southern Branch of Elizabeth River, at latitude 36°49′43″, longitude 76°17′26.5″; thence in a southwesterly direction to a point on the eastern boundary of Norfolk Harbor 40-foot channel at latitude 36°49′42″, longitude 76°17′33″; thence in a southerly direction along the eastern boundary of Norfolk Harbor 40-foot channel to latitude 36°49′28″, longitude 76°17′27″; thence easterly to the shore at latitude 36°49′28″, longitude 76°17′22″; and thence, northerly along the shore to the point of beginning.

(2) *Norfolk Naval Shipyard Area.* Beginning at a point on the shore at the northeast corner of the Norfolk Naval Shipyard, at latitude 36°49′43.5″, longitude 76°17′41.5″; thence due east approximately 100 feet to the western boundary of Elizabeth River channel; thence in a southerly direction along the western boundary of the channel to the point where it passes through the draw of the Norfolk and Portsmouth Belt Line Railroad Bridge, thence in a southwesterly direction along the northerly side of the bridge to the western shore of Southern Branch of Elizabeth River; and thence along the shore in a northerly direction to the point of beginning.

(3) *Southgate Terminal Area.* Beginning at a point at the northeast corner of Southgate Terminal Annex of Norfolk Naval Shipyard, at latitude 36°48′23″, longitude 76°17′39″; thence east to latitude 36°48′23″, longitude 76°17′29″; thence southerly along the western boundary of Norfolk Harbor 35-foot channel to latitude 36°48′04″, longitude 76°17′33″; thence west to latitude 36°48′04″, longitude 76°17′41″; and thence along the shore in a northerly direction to the point of beginning.

(b) *The regulations.* (1) No vessels other than Naval vessels and other vessels authorized to move to and from piers at the Norfolk Naval Shipyard

and its two annexes described in paragraph (a) (1) and (3) of this section, and no person other than persons embarked in such vessels, shall enter the restricted areas.

(2) This section shall be enforced by the Commander, Norfolk Naval Shipyard, Portsmouth, Va., and such agencies as he may designate.

[19 FR 2232, Apr. 17, 1954, as amended at 35 FR 2660, Feb. 6, 1970. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.293 Elizabeth River, Craney Island Refueling Pier Restricted Area, Portsmouth VA; Naval Restricted Area.

(a) *The area.* (1) The waters within an area beginning at a point on the shore at latitude 36°53′17.4″ N, longitude 76°20′21″ W; thence easterly to latitude 36°53′16.8″ N, longitude 76°20′14.4″ W: thence southwesterly to latitude 36°53′00″ N, longitude 76°20′18″ W; thence southeasterly to latitude 36°52′55.2″ N, longitude 76°20′16.5″ W: thence southwesterly to latitude 36°52′52.2″ N, longitude 76°20′18″ W; thence southwesterly to latitude 36°52′49.8″ N, longitude 76°20′25.8″ W: thence northwesterly to latitude 36°52′58.2″ N, longitude 76°20′33.6″ W; thence northeasterly to a point on the shore at latitude 36°53′00″ N, longitude 76°20′30″ W; thence northerly along the shoreline to the point of beginning.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section, promulgated by the Corps of Engineers, shall be enforced by the Commander, Navy Region, Mid-Atlantic, and such agencies or persons as he/she may designate.

[67 FR 6654, Feb. 13, 2002]

§ 334.300 Hampton Roads and Willoughby Bay, Norfolk Naval Base, Naval Restricted Area, Norfolk, Virginia

(a) *The area.* (1) The waters within an area beginning at latitude 36°55′55″ N, longitude 76°20′02″ W; thence northwesterly to latitude 36°56′00″ N, longitude 76°20′08″ W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57′52″ N, longitude 76°20′00″ W; thence easterly to latitude 36°57′52″ N, longitude 76°19′35″ W; thence to latitude 36°57′47.7″ N, 76°18′57″ W; thence southeasterly to latitude 36°57′26″ N, longitude 76°18′42″ W; thence easterly to latitude 36°57′26.2″ N, longitude 76°17′55.2″ W; thence southerly to latitude 36°57′05″ N, longitude 76°17′52″ W; thence southeasterly to latitude 36°56′56.2″ N, longitude 76°17′27″ W; thence northeasterly to latitude 36°57′10″ N, latitude 76°16′29″ W; thence to the shoreline at latitude 36°57′18.8″ N, longitude 76°16′22″ W at the Naval Air Station.

(2) Beginning at a point on the Naval Station shore at latitude 36°56′37.5″ N, longitude 76°19′44″ W; thence westerly and northerly along the breakwater to its extremity at latitude 36°56′41.5″ N, longitude 76°19′54″ W; thence westerly to a point on the eastern limit of Norfolk Harbor Channel at latitude 36°56′41.5″ N, longitude 76°20′05.5″ W; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57′52″ N, longitude 76°20′00″ W; thence easterly to latitude 36°57′52″ N, longitude 76°19′35″ W; thence to latitude 36°57′47.7″ N., longitude 73°18′57″ W; thence southeasterly to latitude 36°57′26″ N, longitude 76°18′42″ W; thence easterly to latitude 36°57′26.2″ N, longitude 76°17′55.2″ W; thence southerly to latitude 36°57′05″ N, longitude 76°17′52″ W; thence southeasterly to latitude 36°56′56.2″ N, longitude 76°17′27″ W; thence northeasterly to latitude 36°57′10″ N, longitude 76°16′29″ W; and thence to the shoreline at latitude 36°57′18.8″ N, longitude 76°16′22″ W, at the Naval Air Station.

(b) *The regulation.* No vessel or persons may enter the restricted area unless specific authorization is granted by the Commander, Navy Region, Mid-Atlantic and/or other persons or agencies as he/she may designate.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region, Mid-Atlantic, and/or such agencies or persons as he/she may designate.

[67 FR 10844, Mar. 11, 2002]

§ 334.310 Chesapeake Bay, Lynnhaven Roads; navy amphibious training area.

(a) *The restricted area.* Beginning at latitude 36°55′47″, longitude 76°11′04.5″; thence to latitude 36°59′04″, longitude 76°10′11″; thence to latitude 36°58′28.5″, longitude 76°07′54″; thence to latitude 36°55′27.5″, longitude 76°08′42″; thence westerly along the shore and across the mouth of Little Creek to the point of beginning.

(b) *The regulations.* (1) No fish-pound stakes or structures shall be allowed in the restricted area.

(2) No person or vessel shall approach within 300 yards of any naval vessel or within 600 yards of any vessel displaying the red ''baker'' burgee.

(3) This section shall be enforced by the Commandant, Fifth Naval District, and such agencies as he may designate.

[13 FR 6920, Nov. 24, 1948, as amended at 22 FR 5956, July 27, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.320 Chesapeake Bay entrance; naval restricted area.

(a) *The area.* Beginning at a point on the south shore of Chesapeake Bay at longitude 76°03′06″; thence to latitude 37°01′18″, longitude 76°02′06″; thence to latitude 37°00′18″, longitude 75°55′54″; thence to latitude 36°58′00″, longitude 75°48′24″; thence to latitude 36°51′48″, longitude 75°51′00″; thence to the shore at longitude 75°58′48″, and thence northwesterly and southwesterly along the shore at Cape Henry to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, crabbing, fishing, and dragging in the area are prohibited, and no object attached to a vessel or otherwise shall be placed on or near the bottom.

(2) This section shall be enforced by the Commandant, Fifth Naval District, Norfolk, Va.

[18 FR 8159, Dec. 12, 1953, as amended at 28 FR 349, Jan. 12, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.330 Atlantic Ocean and connecting waters in vicinity of Myrtle Island, Va.; Air Force practice bombing, rocket firing, and gunnery range.

(a) *The danger zone.* The waters of the Atlantic Ocean and connecting waters within an area described as follows: Beginning at latitude 37°12′18″, longitude 75°46′00″; thence southwesterly to latitude 37°08′21″, longitude 75°50′00″; thence northwesterly along the arc of a circle having a radius of three nautical miles and centered at latitude 37°11′16″, longitude 75°49′29″, to latitude 37°10′14″, longitude 75°52′57″; thence northeasterly to latitude 37°14′30″, longitude 75°48′32″; thence southeasterly to 37°13′38″, longitude 75°46′18″; and thence southeasterly to the point of beginning.

(b) *The regulations.* (1) No person or vessel shall enter or remain in the danger zone except during intervals specified and publicized from time to time in local newspapers or by radio announcement.

(2) This section shall be enforced by the Commanding General, Tactical Air Command, Langley Air Force Base, Virginia, and such agencies as he may designate.

[18 FR 8698, Dec. 24, 1953. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997]

§ 334.340 Chesapeake Bay off Plumtree Island, Hampton, Va.; Air Force precision test area.

(a) *The danger zone.* The waters of Chesapeake Bay and connecting waters within an area bounded as follows: Beginning at latitude 37°08′12″, longitude 76°19′30″, which is a point on the circumference of a circle of 10,000-foot radius with its center on Plumtree Point at latitude 37°07′30″, longitude 76°17′36″; thence clockwise along the circumference of the circle to latitude 37°09′06″, longitude 76°18′00″; thence southeasterly to latitude 37°08′12″, longitude 76°17′48″; thence clockwise along the circumference of a circle of 4,000-foot radius (with its center at latitude 37°07′30″, longitude 76°17′36″) to latitude 37°07′48″, longitude 76°18′24″; thence northwesterly to the point of beginning.

(b) *The regulations.* (1) The danger zone will be in use not more than a total of 4 hours per month, which hours shall be during not more than any 2 days per month.

(2) No person or vessel shall enter or remain in the danger zone during periods of firing or bombing or when the zone is otherwise in use.

(3) The Commander, Tactical Air Command, Langley Air Force Base, Va., shall be responsible for publicizing in advance through the Coast Guard's ''Local Notice to Mariners,'' in the local press, and by radio from time to time the schedule of use of the area, and shall station patrol boats to warn vessels during periods of use.

(4) This section shall be enforced by the Commander, Tactical Air Command, Langley Air Force Base, Va., or such agency as he may designate.

(c) *Disestablishment of danger zone.* The danger zone will be disestablished not later than December 31, 1967, unless written application for its continuance shall have been made to and approved by the Secretary of the Army prior to that date.

[28 FR 1106, Feb. 5, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997]

§ 334.350 Chesapeake Bay off Fort Monroe, Va.; firing range danger zone.

(a) *The danger zone.* All of the water area lying within a section extending seaward a distance of 4,600 yards between radial lines bearing 83° True and 115° True, respectively, from a point on shore at latitude 37°01′30″ N., longitude 76°17′54″ W.

(b) *The regulations.* (1) No weapon having a greater range than the 30-calibre carbine is to be fired into the firing range danger zone.

(2) During periods when firing is in progress, red flags will be displayed at conspicuous locations on the beach. Observers will be on duty and firing will be suspended as long as any vessel is within the danger zone.

(3) Passage of vessels through the area will not be prohibited at any time, nor will commercial fishermen be prohibited from working fish nets within the area. No loitering or anchoring for other purposes will be permitted during announced firing periods.

(4) No firing will be done during hours of darkness or low visibility.

(5) The Commander, Fort Monroe, Va., is responsible for furnishing in advance the firing schedule to the Commander, 5th Coast Guard District, for publication in his ''Local Notice to Mariners'' and to the local press at Norfolk and Newport News, Va.

(c) The regulations in this section shall be enforced by the Commanding Officer, Fort Monroe, Va., and such agencies as he may designate.

[35 FR 6575, Apr. 24, 1970. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapon Center.

(a) *The area.* Beginning at latitude 37°01′03″, longitude 076°17′52″; thence to latitude 37°01′00″, longitude 076°16′11″; thence to latitude 36°59′43″, longitude 076°16′11″; thence to latitude 36°59′18″, longitude 076°17′52″; thence to latitude 37°00′05″, longitude 076°18′18″; thence north along the seawall to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, fishing and dragging are prohibited in the restricted area, and no object, either attached to a vessel or otherwise, shall be placed on or near the bottom unless authorized by the Facility Manager, Naval Surface Warfare Center, Dahlgren Division Coastal Systems Station Detachment, Fort Monroe, Virginia.

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he may designate.

[13 FR 6919, Nov. 24, 1948, as amended at 15 FR 2085, Apr. 13, 1950; 21 FR 421, Jan. 20, 1956; 21 FR 1593, Mar. 14, 1956. Redesignated at 50 FR 42696, Oct. 22, 1985, and further amended at 51 FR 4908, Feb. 10, 1986; 55 FR 45709, Oct. 31, 1990; 61 FR 34733, July 3, 1996]

§ 334.370 Chesapeake Bay, Lynnhaven Roads; danger zones, U.S. Naval Amphibious Base.

(a) *Underwater demolitions area (prohibited)*—(1) *The area.* A portion of the restricted area for Navy amphibious training operations described in Sec.

334.310 along the south shore of the Chesapeake Bay, bounded as follows: Beginning at a point at the mean high water line, latitude 36°55′26.5″, longitude 76°08′43″; thence 700 yards to latitude 36°55′48″, longitude 76°98′38″; thence 500 yards to latitude 36°55′46″, longitude 76°08′57″; thence 500 yards to latitude 36°55′37″, longitude 76°09′02″; thence 100 yards to latitude 36°55′36″, longitude 76°08′57″; thence 200 yards to the mean high water line at latitude 36°55′39.5″, longitude 76°08′59″; thence 400 yards along the mean high water line to the point of beginning. The area will be marked by range poles set on shore of the prolongation of the lines forming the eastern and western boundaries.

(2) *The regulations.* Persons or vessels, other than those vessels owned and operated by the United States, shall not enter the prohibited area at any time unless authorized to do so by the enforcing agency.

(b) *Small-arms firing range*—(1) *The Area.* Beginning at a point on the shore line at latitude 36°55′27″, longitude 76°08′38″; thence to latitude 36°55′50″, longitude 76°08′37″; thence to latitude 36°57′11″, longitude 76°08′11″; thence to latitude 36°56′53″, longitude 76°07′18″; thence to latitude 36°55′39″, longitude 76°07′46″; thence to latitude 36°55′22″, longitude 76°08′17″; thence along the shore line to the point of beginning.

(2) *The regulations.* (i) Passage of vessels through the area will not be prohibited at any time, nor will commercial fishermen be prohibited from working fish nets within the area. No loitering or anchoring for other purposes will be permitted.

(ii) A large red warning flag will be flown on shore during periods when firing is in progress. Observers will be on duty and firing will be suspended for the passage of vessels and for the placing and maintenance of fish nets within the area.

(c) This section shall be enforced by the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia.

[19 FR 1246, Mar. 5, 1954, as amended at 28 FR 225, Jan. 9, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 57 FR 40613, Sept. 4, 1992; 62 FR 17553, Apr. 10, 1997]

§ 334.380 Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, Virginia; naval firing range.

(a) *The danger zone.* All of the water within a sector extending seaward a distance of 7,500 yards between radial lines bearing 35° true and 92° true, respectively, from a point on the shore at latitude 36 47′33″ N, longitude 75 58′23″ W.

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purpose of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations which are visible from the water a minimum distance of four (4) nautical miles.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts shall be manned by the activity or agency operating the firing range at Fleet Combat Center. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on any ranges during the periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigational lights, or which would preclude a vessel from observing the red range flags or lights.

(6) The regulations in this section shall be enforced by the Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, Virginia, and other such agencies as he/she may designate.

[58 FR 53428, Oct. 15, 1993]

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

(a) *The danger zone.* A section extending seaward for a distance of 12,000 yards between two radial lines bearing 030° True and 083° True, respectively, from a point on shore at latitude 36°46′48″ N, longitude 75°57′24″ W; and an adjacent sector extending seaward for a distance of 15 nautical miles between

two radial lines bearing 083° True and 150° True, respectively, from the same shore position.

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts will be manned by the activity or agency operating the firing range at the Fleet Combat Center, Atlantic, Dam Neck, Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(5) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(6) The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet/Commander, Fleet Air Norfolk, Norfolk, Va., and such agencies as he may designate.

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[13 FR 6919, Nov. 24, 1948, as amended at 29 FR 5679, Apr. 29, 1964; 38 FR 16223, June 21, 1973. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 53428, Oct. 15, 1993; 60 FR 18543, Apr. 12, 1995]

§ 334.400 Atlantic Ocean south of entrance to Chesapeake Bay off Camp Pendleton, Virginia; naval restricted area.

(a) *The area.* Beginning at a point on the shore at Camp Pendleton at latitude 36°48′19″ N, longitude 75°57′49″ W; thence easterly 200 yards to latitude 36°48′20″ N, longitude 75°57′42″ W; thence northerly 400 yards to latitude 36°48′32″ N, longitude 75°57′45″ W; thence westerly 200 yards to latitude 36°48′31″ N, longitude 75°57′53″ W; and thence southerly 400 yards along the shore to the point of beginning.

(b) *The regulations.* (1) Persons or vessels, other than those vessels owned and operated by the United States shall not enter the area except by permission of the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia.

(2) This section shall be enforced by the Commanding Officer, U.S. Naval Amphibious Base, Little Creek, Norfolk, Virginia, and such agencies as he may designate.

[22 FR 8957, Nov. 6, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, amended at 58 FR 37608, July 12, 1993; 62 FR 17553, Apr. 10, 1997]

§ 334.410 Albemarle Sound, Pamlico Sound, and adjacent waters, NC; danger zones for naval aircraft operations.

(a) *Target areas*—(1) *North Landing River* (*Currituck Sound*). The waters of North Landing River within a radius of 1,000 yards from a target located at latitude 36°31′00″, longitude 76°01′40″.

(2) *Northern part of Currituck Sound.* Beginning at a point bearing 65°30′, 1,025 yards, from Currituck Sound Light 69; thence 86°, 6,000 yards; thence 193°, 4,425 yards; thence 267°30′, 2,775 yards; and thence to the point of beginning. The target is located at latitude 36°27′16″, longitude 75°56′30″.

NOTE: All bearings in this section are referred to true meridian.

(b) *Target and bombing area along south shore of Albemarle Sound.* Beginning at latitude 36°00′43″, longitude 76°19′20″; thence to latitude 36°02′40″, longitude 76°04′26″, thence to latitude 36°00′12″, longitude 76°04′26″; thence to latitude 35°59′35″, longitude 76°19′20″, and thence to the point of beginning. This area is divided into three subareas A, B, and C as follows: Area A, beginning at latitude 36°00′43″, longitude 76°19′20″; thence to latitude 36°01′20″, longitude 76°14′30″; thence to latitude 35°59′45″, longitude 76°14′30″; thence to latitude 35°59′35″, longitude 76°19′20″, and thence to the point of beginning. Area B, beginning at latitude 36°01′20″, longitude 76°14′30″; thence to latitude 36°02′18″, longitude 76°07′15″; thence to latitude 36°00′05″, longitude 76°07′15″;

thence to latitude 35°59′45″, longitude 76°14′30″; and thence to the point of beginning. Area C, beginning at latitude 36°02′18″, longitude 76°07′15″; thence to latitude 36°02′40″, longitude 76°04′26″; thence to latitude 36°00′12″, longitude 76°04′26″; thence to latitude 36°00′05″, longitude 76°07′15″; and thence to the point of beginning.

(c) *Naval Aviation Ordnance test area in Pamlico Sound in vicinity of Long Shoal.* A circular area with a radius of one and one-half miles having its center at latitude 35°32′18″, longitude 75°40′39″.

(d) *The regulations*—(1) *Target areas.* The area described in paragraph (a)(1) of this section will be used as a dive bombing target by naval aircraft. In peacetime, munitions will be limited to miniature bombs which contain only small explosive charges for producing smoke puffs to mark points of impact. All operations will be conducted during daylight hours, and the area will be open to navigation at night. No persons or vessels shall enter this area during the hours of daylight without special permission from the enforcing agency. The area will be patrolled and vessels will be warned not to enter. ''Buzzing'' by plane will warn vessels that they are in a danger zone, and upon being so warned vessels which have inadvertently entered the area shall immediately leave the area.

(2) *Target and bombing area.* The area described in paragraph (b) of this section will be used as a target and bombing area for both day and night operations. Dummy ammunition, waterfilled or smoke bombs and inert rockets will be used, except during wartime when live ammunition, bombs and rockets may be used. The area will be open to navigation except for periods when ordnance exercises are being conducted by naval aircraft. In area B described in paragraph (b) of the section the placing of nets, traps, buoys, pots, fishponds, stakes, or other equipment which may interfere with target vessels operating in the area shall not be permitted. The area will be patrolled and persons and vessels shall clear the area under patrol upon being warned by the surface patrol craft or when ''buzzed'' by patrolling aircraft. As a further means of warning vessels of naval aircraft operations in the area described in paragraph (b) of this section, a cluster of flashing red lights at night and a large red flag by day will be displayed from the range observation tower located in the approximate center of the shore side of this area.

(3) *Naval Aviation Ordnance test area.* The area described in paragraph (c) of this section shall be closed to persons and navigation except for such military personnel and vessels as may be directed by the enforcing agency to enter on assigned duties.

(4) *Enforcing agency.* The regulations in this section shall be enforced by the Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1: Chap. XIX, 40 Stat. 892; 33 U.S.C. 3)

[16 FR 3131, Apr. 10, 1951, as amended at 16 FR 7460, July 31, 1951; 19 FR 479, Jan. 28, 1954; 31 FR 12436, Sept. 20, 1966; 33 FR 3218, Feb. 21, 1968; 40 FR 3993, Jan. 27, 1975. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 53 FR 47953, Nov. 29, 1988; 61 FR 7215, Feb. 27, 1996; 62 FR 17553, Apr. 10, 1997]

§ 334.412 Albemarle Sound, Pamlico Sound, Harvey Point and adjacent waters, NC; restricted area.

(a) *The area.* Beginning on the north shore of Albemarle Sound and the easternmost tip of Harvey Point; thence southeasterly to Day Beacon number 3; thence southeasterly to latitude 36°03′06″, longitude 76°16′43″; thence southwesterly to latitude 36°02′18″, longitude 76°19′30″; thence northwesterly to latitude 36°04′18″, longitude 76°20′20″; thence 23°15′ True to the shore; and thence northeasterly along the shore to the point of beginning.

(b) *The regulations.* The restricted area described in this section is the inactive Harvey Point target range which was disestablished as a danger zone. The area will be open to public access for recreational and commercial uses, except that dredging, clamming, crabbing, seining, and anchoring of all vessels and any other activity which could result in disturbing or penetrating the bottom is prohibited.

(c) *Enforcing agency.* The regulations in this section shall be enforced by the

Commander, Naval Air Force, U.S. Atlantic Fleet, and such agencies as he/she shall designate.

[61 FR 7215, Feb. 27, 1996; 61 FR 26107, May 24, 1996]

§ 334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.

(a) *Bombing and rocket firing area in Pamlico Sound in vicinity of Brant Island*—(1) *The area*. The waters within a circular area with a radius of 3.0 statute miles having its center on the southern side of Brant Island at latitude 35°12′30″, longitude 76°26′30″.

(2) *The regulations*. The area shall be closed to navigation and personnel at all times except for vessels engaged in operational and maintenance work as directed by the enforcing agency. Prior to bombing or firing operations the area will be ''buzzed'' by plane. Upon being so warned vessels working in the area shall leave the area immediately.

(b) *Bombing, rocket firing, and strafing areas in Pamlico Sound and Neuse River*—(1) *The areas*. (i) The waters within a circular area with a radius of 1.8 statute miles having its center at latitude 35°02′12″, longitude 76°28′00″.

(ii) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 35°04′12″, longitude 76°28′24″.

(iii) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 35°01′42″, longitude 76°25′48″.

(iv) The waters within a circular area with a radius of 0.5 statute mile having its center at latitude 34°58′48″, longitude 76°26′12″.

(2) *The regulations*. (i) The area described in paragraph (b)(1) of this section will be used as bombing, rocket firing, and strafing areas. Live and dummy ammunition will be used. The area shall be closed to navigation and all persons at all times except for such vessels as may be directed by the enforcing agency to enter on assigned duties. The area will be patrolled and vessels ''buzzed'' by the patrol plane prior to the conduct of operations in the area. Vessels or personnel which have inadvertently entered the danger zone shall leave the area immediately upon being so warned.

(ii) The areas described in paragraphs (b)(1) (ii), (iii) and (iv) of this section shall be used for bombing, rocket firing, and strafing areas. Practice and dummy ammunition will be used. All operations will be conducted during daylight hours, and the areas will be open to navigation at night. No vessel or person shall enter these areas during the hours of daylight without special permission from the enforcing agency. The areas will be patrolled and vessels ''buzzed'' by the patrol plane prior to the conduct of operations in the areas. Vessels or personnel which have inadvertently entered the danger zones shall leave the area immediately upon being warned.

(c) *Enforcing agency*. The regulations of this section shall be enforced by the Commander, Marine Corps Air Bases, East, Cherry Point, North Carolina, or his authorized representatives.

[26 FR 9673, Oct. 13, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 61 FR 43970, Aug. 27, 1996]

§ 334.430 Neuse River and tributaries at Marine Corps Air Station, Cherry Point, N.C.; restricted area.

(a) *The area*. That portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservation.

(b) *The regulations*. (1) Except in cases of extreme emergency, all persons or vessels, other than those vessels operated by the U.S. Navy or Coast Guard are prohibited from entering this area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding General, U.S. Marine Corps Air Station, Cherry Point, North Carolina, and such agencies as he may designate.

[16 FR 2578, Mar. 21, 1951. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997]

§ 334.440 New River, N.C., and vicinity; Marine Corps firing ranges.

(a) *Atlantic Ocean east of New River Inlet*. The waters of the Atlantic Ocean within a sector bounded on the north by a line bearing 105° from latitude 34°37′25″, longitude 77°10′35″; on the east and south by the arc of a circle having a radius of 25,000 yards centered at latitude 34°34′15″, longitude 77°16′10″; on the west by a line bearing 205° from latitude 34°32′37″, longitude 77°18′34″, and on the northwest by the shore.

NOTE: All bearings in this section are referred to true meridian.

(b) *New River*. The firing ranges include all waters to the high waterline within eight sections described as follows:

(1) *Trap Bay Sector*. Bounded on the south by a line running from Cedar Point 280° to New River Light 70, thence 254° to Hatch Point; and on the northwest by a line running from Wilkins Bluff 232° to Hall Point.

(2) *Courthouse Bay Sector*. Bounded on the southeast by the northwest boundary of the Traps Bay Sector and on the west by Sneads Ferry Bridge.

(3) *Stone Bay Sector*. Bounded on the east by Sneads Ferry Bridge and on the north by a line running from a point on the east side of New River opposite the head of Sneads Creek 291°30′ to the south side of the mouth of Stone Creek.

(4) *Stone Creek Sector*. The northwest portion of Stone Bay, bounded on the south by the north boundary of the Stone Bay Sector; and on the east by longitude 77°26′.

(5) *Grey Point Sector*. Bounded on the south by the north boundary of the Stone Bay Sector; on the west by the east boundary of the Stone Creek Sector; and on the northeast by a line running from Town Point 113° to the south side of the mouth of French Creek.

(6) *Farnell Bay Sector*. Bounded on the south by the northeast boundary of the Grey Point Sector, including French Creek up to longitude 77°20′; and on the north by a line running from Hadnot Point 285°30′ to Holmes Point.

(7) *Morgan Bay Sector*. Bounded on the south by the north boundary of the Farnell Bay Sector, including Wallace Creek up to longitude 77°22′; and on the northwest by a line running from Paradise Point 243°30′ to Ragged Point.

(8) *Jacksonville Sector*. Bounded on the southeast by the northwest boundary of the Morgan Bay Sector, including Southwest Creek up to the point where it narrows to 200 feet in width, and Northeast Creek up to longitude 77°23′30″; and on the north by an east-west line passing through New River Day Beacon 41.

(c) *The regulations*. (1) No person shall enter or remain in the water in any closed section after notice of firing therein has been given. Sailing vessels and any watercraft having a speed of less than 5 knots shall keep clear of any closed sector at all times after notice of firing therein has been given. Vessels propelled by mechanical power at a speed greater than 5 knots may enter the sectors without restriction except when the firing signals are being displayed. When these signals are displayed, vessels shall clear the closed sectors immediately and no vessels shall enter such sectors until the signals indicate that firing has ceased.

(2) Firing will take place both day and night at irregular periods throughout the year. Insofar as training requirements will permit, underwater explosions will be restricted in the Atlantic Ocean sector (described in paragraph (a) of this section) during the periods May 1 and June 5, inclusive, and November 22 to December 15, inclusive.

(3) Two days in advance of the day when firing in any sector except the Stone Creek sector is scheduled to begin, the enforcing agency will warn the public of the contemplated firing, stating the sector or sectors to be closed, through the public press and the U.S. Coast Guard and, in the case of the Atlantic Ocean sector, the Cape Fear Pilots Association at Southport, and the Pilots Association at Moorehead City, North Carolina. The Stone Creek sector may be closed without advance notice.

(4) Towers at least 50 feet in height will be erected near the shore at the northeast and southwest limits of the Atlantic Ocean sector, and towers at least 25 feet in height will be erected near the easterly shore at the upper and lower limits of each New River sector. On days when firing is to take

place a red flag will be displayed on each of the towers marking the sector or sectors to be closed. These flags will be displayed by 8:00 a.m., and will be removed when firing ceases for the day. Suitable range markers will be erected indicating the bearings of the north and west limits of the Atlantic Ocean sector.

(5) During the night firing, red lights will be displayed on the towers; and, in the case of the Atlantic Ocean sector, searchlights will be employed as barrier lights to enable safety observers to detect vessels which may attempt to enter the danger zone.

(6) No person shall enter or remain within a 2 acre area surrounding a waterborne refueling training operation, in either the Grey Point Sector, Farnell Bay Sector, or Morgan Bay Sector as described in paragraph (b) of this section, for the duration of the training operation after a notice to conduct a waterborne refueling training operation has been published in the local notice to mariners and has been broadcast over the Marine Band radio network. The 2 acre area surrounding a waterborne refueling training operation will be patrolled and persons and vessels shall clear the area under patrol upon being warned by the surface patrol craft.

(d) *Target and bombing area in Atlantic Ocean in vicinity of Bear Inlet.* (1) The water within an area described as follows: Beginning at latitude 34°37′32″, longitude 77°12′03″; thence to latitude 34°36′58″, longitude 77°11′25″; thence to latitude 34°37′44″, longitude 77°10′35″; thence to 34°32′27″, longitude 77°06′30″; thence to latitude 34°28′55″, longitude 77°15′05″; thence to latitude 34°34′50″, longitude 77°15′10″; thence to the point of beginning.

(2) *The regulations.* Vessels may proceed along established waterways except during military training periods. Warning of military training periods will be given through Notices to Mariners and by displaying one hour prior to commencement a red danger streamer during daylight hours or a red light at night, from a flag pole 40 feet in height located at the U.S. Coast Guard Life Boat Station, Bogue Inlet, Swansboro, North Carolina, and from observation tower 40 feet in height located at the northern end of Onslow (Hurst) Beach. Prior to bombing and firing operations, the area will be searched by plane. Watercraft in the area will be warned by aircraft ''buzzing'' of the impending target practice. Upon being so warned, all persons and vessels shall leave the area as quickly as possible by the most direct route.

(e) *Inland waters in the Browns Inlet area between Bear Creek and Onslow Beach Bridge over the Atlantic Intracoastal Waterway*—(1) *The area.* Navigable waters between Bear Creek and Onslow Beach Bridge to include all inlets, streams, bays, and water therein contained, bounded on the north by Bear Creek, on the east and south by the Atlantic Ocean, to the meridian 77°16′20″; thence by this meridian to latitude 34°34′31″; and thence by a line bearing 44° from this point until the line intersects Bear Creek.

(2) *The regulations.* (i) No person shall enter or remain in the waters of this area due the possibility of unexploded projectiles.

(ii) Vessels may proceed through the Atlantic Intracoastal Waterway in the area without stopping except in cases of extreme emergencies.

(iii) All navigable waters in the area between the south bank of Bear Creek and the north bank of the north connecting channel between the Atlantic Intracoastal Waterway and Browns Inlet shall be closed to navigation at all times. There are highly sensitive unexploded projectiles within the limits of this area.

(iv) Vessels may proceed through the north connecting channel and the south connecting channel (Banks Channel) in the area between the Atlantic Intracoastal Waterway and Browns Inlet to the Atlantic Ocean without stopping during periods of nonmilitary use. Caution should be used when proceeding through these waters due to the presence of unexploded projectiles lying in this area.

(v) Navigable waters in the area between the south connecting channel (Banks Channel) leading to Browns Inlet and Onslow Beach Bridge on both sides of the Atlantic Intracoastal Waterway are open to unrestricted navigation during periods of nonmilitary use. An unknown element of risk exists

in this area due to the possible presence of unexploded projectiles.

(vi) Warning of impending military use of the area will be contained in weekly Notice to Mariners.

(vii) Vessels having specific authority from the Commanding General, Marine Corps Base, Camp Lejeune, North Carolina, may enter the area.

(f) *Enforcing agency*. The regulations of this section shall be enforced by the Commanding General, Marine Corps Base, Camp Lejeune, North Carolina, or his authorized representatives.

[26 FR 9673, Oct. 13, 1961, as amended at 48 FR 41160, Sept. 14, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997; 66 FR 15799, Mar. 21, 2001]

§ 334.450 Cape Fear River and tributaries at Sunny Point Army Terminal, Brunswick County, N.C.; restricted area.

(a) *The area*. That portion of Cape Fear River due west of the main ship channel extending from U.S. Coast Guard buoy No. 31A at the north approach channel to Sunny Point Army Terminal to U.S. Coast Guard buoy No. 23A at the south approach channel to Sunny Point Army Terminal and all waters of its tributaries therein.

(b) Except in cases of extreme emergency, all persons or vessels of any size or rafts other than those authorized by the Commander, Sunny Point Army Terminal, are prohibited from entering this area without prior permission of the enforcing agency.

(c) The regulations in this section shall be enforced by the Commander, Sunny Point Army Terminal, Southport, North Carolina, and such agencies as he may designate.

[22 FR 9432, Nov. 26, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997]

§ 334.460 Cooper River and tributaries at Charleston, SC.

(a) *The areas:*

(1) That portion of the Cooper River beginning on the west shore at latitude 32°52′37″, longitude 79°58′06″, thence to latitude 32°52′37″, longitude 79°58′03″, thence to latitude 32°52′27″, longitude 79°68′01″, thence to latitude 32°52′06″, longitude 79°57′54″ at the west channel edge, thence to latitude 32°51′48.5″, longitude 79°57′41.5″, thence to latitude 32°51′33″, longitude 79°57′27″, thence to latitude 32°51′19″, longitude 79°57′05″, thence to latitude 32°51′01″, longitude 79°56′07″, thence to latitude 32°50′50″, longitude 79°56′02″, thence to latitude 32°50′48″, longitude 79°56′07″ on the west shore, thence north along the shoreline including the reach of Noisett Creek to the eastern boundary of the Navy Base to the beginning point at the west shore at latitude 32°52′37″, longitude 79°58′06″.

(2) The reach of Shipyard Creek upstream from a line 300 feet from and parallel to the upstream limit of the Improved Federal Turning Basin.

(3) That portion of the interior Shipyard Creek commencing at latitude 32°49′50″, longitude 79°56′10″, being a point at the southern tip of the shoreline where the northern shore of Shipyard Creek joins the Cooper River, thence going along the northern shore of Shipyard Creek to the southern portion of the existing restructed area in paragraph (a)(2) of this section; thence along said line being 300 feet from and parallel to the upstream limit of the Improved Federal Turning Basin for a distance of 15 feet, thence to the most northerly point of the Improved Federal Turning Basin, thence along the northeastern edge for the Improved Turning Basin to the northeast edge of the main channel of Shipyard Creek to a point lying in the mouth of Shipyard Creek where it reaches the Cooper River at the northeast edge of the main channel of the Shipyard Creek and longitude 79°56′10″, thence to the beginning point at latitude 32°49′50″, longitude 79°56′10″.

(4) That portion of the Cooper River surrounding Pier Yankee beginning at a point on the west shore of the Cooper River at latitude 32°50′00″, longitude 79°56′10.5″, thence to latitude 32°50′00″, longitude 79°55′55″, thence to latitude 32°49′54″, longitude 79°55′55″, to latitude 32°49′50″, longitude 79°56′10″, thence north along the shore to the beginning point at the west shore of the Cooper River at latitude 32°50′00″, longitude 79°56′10.5″.

(5) That portion of the Cooper River beginning on the west channel edge at latitude 32°52′06″, longitude 79°57′54″, thence to the east shore at latitude

32°52′13″, longitude 79°57′30″, thence along the eastern shore to latitude 32°51′30″, longitude 79°56′15.5″, thence to latitude 32°51′01″, longitude 79°55′50″, thence to latitude 32°50′52″, longitude 79°56′03.5″, thence to latitude 32°51′01″, longitude 79°56′07″, thence to latitude 32°51′19″, longitude 79°57′05″, thence to latitude 32°51′33″, longitude 79°57′27″, thence to latitude 32°51′48.5″, longitude 79°57′41.5″, thence to the beginning point at the west channel edge at latitude 32°52′06″, longitude 79°57′54″.

(6) That portion of the Cooper River beginning on the west shore at latitude 32°50′48″, longitude 79°56′07″, thence to latitude 32°50′50″, longitude 79°56′02″, thence to latitude 32°50′32″, longitude 79°55′55″, thence to latitude 32°50′00″, longitude 79°55′55″, thence to latitude 32°50′00″, longitude 79°56′10.5″ on the west shore, thence along the shoreline to the beginning point on the west shore at latitude 32°50′48″, longitude 79°56′07″.

(7) That portion of Goose Creek beginning at a point on the west shore of Goose Creek at its intersection with the Cooper River at latitude 32°54′32″, longitude 79°57′04″; thence proceeding along the western shoreline of Goose Creek for approximately 6.9 miles to its intersection with the Seaboard Coastline Railroad at latitude 32°55′34″, latitude 79°59′30″; thence in a northwesterly direction along the Seaboard Coastline Railroad to latitude 32°55′37″, longitude 79°59′32″; thence proceeding along the eastern shoreline of Goose Creek in a southeasterly direction to latitude 32°54′33″ by 79°56′59″ thence back to 32°54′32″, longitude 79°57′04″.

(8) That portion of the Cooper River, extending from the mouth of Goose Creek, to a point approximately five-hundred (500) yards north of Red Bank Landing, a distance of approximately 4.8 miles, and the tributaries to the Cooper River within the area enclosed by the following arcs and their intersections:

(i) Radius=8255′ center of radius, latitude 32°55′45″, longitude 79°45′23″.

(ii) Radius=3790′ center of radius, latitude 32′55′00″, longitude 79°55′41″.

(iii) Radius=8255′ center of radius, latitude 32°55′41″, longitude 79°56′15″.

(iv) Radius=8255′ center of radius, latitude 32′56′09″, longitude 79°56′19″.

(9) That portion of the Cooper River beginning on the western shoreline at latitude 32°54′37″, longitude 79°57′01″; thence proceeding along the western shoreline in a northerly direction for approximately 4.8 miles to latitude 32°57′32″, longitude 79°55′27″; thence in a southerly direction for approximately 100 yards to latitude 32°57′29″, longitude 79°55′23″, thence in a southwesterly direction, paralleling the shoreline to latitude 32°56′48″, longitude 79°55′48″; thence in an easterly direction for approximately 50 yards to latitude 32°56′49″, longitude 79°55′46″, thence in a southerly direction, paralleling the shoreline, to latitude 32°56′40″, longitude 79°55′40″; thence in a westerly direction for approximately 50 yards to latitude 32°56′39″, longitude 79°55′42″; thence in a southwesterly direction, paralleling the shoreline, to latitude 32°56′15″, longitude 79°56′07″; thence in a southwesterly direction to latitude 32°56′05″, longitude 79°56′17″; thence in a westerly direction, for approximately 50 yards to latitude 32°56′05″, longitude 79°56′19″; thence in a southerly direction, paralleling the shoreline to latitude 32°55′45″, longitude 79°56′19″; thence in a southwesterly direction to latitude 32°55′42″, longitude 79°56′13″; thence in a southeasterly direction, parallel the shoreline, to latitude 32°55′18″, longitude 79°55′55″; thence in a southwesterly direction to latitude 32°55′16″, longitude 79°56′00″; thence in a southwesterly direction paralleling the shoreline to latitude 32°54′35″; longitude 79°56′57″, thence back to latitude 32°54′37″, and longitude 79°57′01″.

(10) That portion of the Cooper River beginning at a point near the center of the Cooper River at latitude 32°55′03″, longitude 79°55′42″; thence proceeding in an easterly direction to latitude, 32°55′03″; longitude 79°55′35″; thence in a southerly direction to latitude 32°54′52″, longitude 79°55′33″; thence in a westerly direction to latitude 32°54′53″, longitude 79°55′42″; thence in a northerly direction to latitude 32°55′03″, longitude 79°55′42″.

(11) That portion of Foster Creek beginning at a point on the southern shoreline of Foster Creek at its intersection with Back River at latitude 32°58′30″, longitude 79°56′33″; thence proceeding along the southern shoreline to

the terminus of Foster Creek; thence back down its northern shoreline of Foster Creek to latitude 32°58′34″, longitude 79°56′34″; thence back to latitude 32°58′30″, longitude 79°56′33″.

(12) *Danger zone.* That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 32°59′16″ N, longitude 79°57′23″ W; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″ N, longitude 79°57′29″ W; thence back down the western shoreline of the unnamed tributary to latitude 32°59′15″ N, longitude 79°57′26″ W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(13) *Danger zone.* Those portions of unnamed tributaries and associated marshes of Back River and Foster Creek that are generally described as lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation). Specifically, the area beginning at a point on the main shoreline which is the northern shore of an unnamed tributary of Back River at latitude 32°59′19″ N, longitude 79°56′52″ W, southwesterly to a point on or near the northern shoreline of Big Island at latitude 32°59′11″ N, longitude 79°56′59″ W; thence northwesterly to a point on the main shoreline, which is the northern shore of an unnamed tributary of Foster Creek, at latitude 32°59′16″ N, longitude 79°57′11″ W; thence easterly along the main shoreline, which is the northern shore of the unnamed tributaries of Foster Creek and Back River, back to the point of beginning at latitude 32°59′19″ N longitude 79°56′52″ W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(b) *The regulations:* (1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(1), (a)(2), and (a)(4) of this section at any time.

(2) Personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(5) of this section, shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Personnel, vessels and other watercraft may be restricted from using any or all of the area described in paragraphs (a)(3) and (a)(6) of this section without first obtaining an escort or other approval from Commander, Naval Base, Charleston, when deemed necessary and appropriately noticed by him/her for security purposes or other military operations.

(4) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the restricted area described in paragraph (a)(8) of this section shall proceed at normal speed, and under no circumstances anchor, fish, loiter, or photograph in any way until clear of the restricted area.

(5) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the areas described in paragraphs (a)(9) and (a)(10) of this section are prohibited from entering within one-hundred (100) yards of the west bank of the Cooper River, in those portions devoid of any vessels or manmade structures. In those areas where vessels or man-made structures are present, the restricted area will be 100 yards from the shoreline or 50 yards beyond those vessels or other manmade structures, whichever is the greater. This includes the area in paragraph (a)(10) of this section.

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7), (a)(8) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

(7) All restricted areas and all danger zones and the approaches leading to the danger zones will be marked with suitable warning signs.

(8) The regulations described in paragraphs (b) (1), (2) and (3) of this section shall be enforced by Commander, Naval

Base, Charleston, and such agencies as he/she may designate.

(9) The regulations in this section for the danger zones described in paragraphs (a)(12) and (a)(13) of this section and the regulations described in paragraphs (b) (4), (5) and (6) of this section, shall be enforced by the Commanding Officer, Naval Weapons Station Charleston, SC, and such agencies as he/she may designate.

(10) It is understood that none of the restrictions herein will apply to properly marked Federal vessels performing official duties. It is further understood that Federal employees will not take photographs from within the above described restricted areas.

(11) The unauthorized entering or crossing of the danger zones described in paragraphs (a)(12) and (a)(13) of this section by all persons, watercraft and vessels is prohibited at all times unless specifically authorized by the Commanding Officer of the U.S. Naval Weapons Station Charleston, SC.

[55 FR 3591, Feb. 2, 1990, as amended at 59 FR 2916, Jan. 19, 1994; 61 FR 64997, Dec. 10, 1996; 62 FR 17553, Apr. 10, 1997; 68 FR 57624, Oct. 6, 2003]

§ 334.470 Cooper River and Charleston Harbor, S.C.; restricted areas.

(a) *The restricted areas.* (1) Area No. 1 is that portion of the Cooper River beginning near the westerly shore north of Shipyard Creek at ''a'' Latitude 32°50′14″, Longitude 79°56′11″; thence to ''b'' Latitude 32°50′14″, Longitude 79°55′37″; thence to ''c'' Latitude 32°49′41″, Longitude 79°55′37″; thence to ''d'' Latitude 32°49′41″, Longitude 79°55′52″; thence to ''e'' Latitude 32°49′47″, Longitude 79°56′09″; and thence returning to ''a'' Latitude 32°50′14″, Longitude 79°56′11″.

(2) Area No. 2 is that portion of the Cooper River beginning at a point west of Shutes Folly Island at ''a'' Latitude 32°46′27″, Longitude 79°55′31″; thence to ''b'' Latitude 32°46′39″, Longitude 79°55′11″; thence to ''c'' Latitude 32°46′39″, Longitude 79°54′51″; thence to ''d'' Latitude 32°46′28″, Longitude 79°54′47″; thence to ''e'' Latitude 32°46′17″, Longitude 79°54′51″; thence to ''f'' Latitude 32°46′17″, Longitude 79°55′11″; and thence returning to ''a'' Latitude 32°46′27″, Longitude 79°55′31″.

(b) *The regulations.* (1) There shall be no introduction of magnetic material or magneto-electric field sources with the area.

(2) No person shall enter or remain in the water within the restricted areas. Ships transiting the areas will proceed without delay and shall not, except as noted below, lie to or anchor within the areas.

(i) Pleasure craft under 50 feet LOA will not normally be affected; however, such craft may be required to stand clear upon notification, in the event they are interfering with range operation.

(ii) Anchored commercial ships will be allowed to swing into the restricted area at the Shutes Folly Island site when the range is not in use. Shutes Folly Island Range usage will be indicated by range house display of the international DELTA signal flag.

(iii) This section shall be enforced by the Commandant, Sixth Naval District, Charleston, South Carolina, and such agencies as he may designate.

[42 FR 38177, July 27, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17553, Apr. 10, 1997]

§ 334.475 Brickyard Creek and tributaries and the Broad River at Beaufort, SC.

(a) *The areas:* (1) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude 32.457226°, longitude 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.458580°, longitude 80.689181°, thence to latitude 32.460413°, longitude 80.689228°, thence to latitude 32.461459°, longitude 80.689418°, thence to latitude 32.464015°, longitude 80.690294°, thence to latitude 32.470255°, longitude 80.690965°, thence to latitude 32.471309°, longitude 80.691196°, thence to latitude 32.475084°, longitude 80.692455°, thence to latitude 32.478161°, longitude 80.691546°, thence to latitude 32.479191°, longitude 80.691486°, thence to latitude 32.481817°, longitude 80.691939°, thence to latitude 32.493001°, longitude 80.689835°, thence to latitude 32.494422°, longitude 80.688296°, thence

to latitude 32.49727°, longitude 80.69172° on the east shore of the Marine Corps Air Station (MCAS), at its intersection with the Station's property boundary line, thence heading south along the eastern shoreline of the MCAS to a point along the northern shoreline of Mulligan Creek at latitude 32.48993°, longitude 80.69836°, thence southwesterly across Mulligan Creek to the shoreline of the MCAS, latitude 32.48771°, longitude 80.70424°, thence continuing along the eastern shoreline to its intersection with Albergottie Creek, latitude 32.45360°, longitude 80.70128, thence continuing along the southern shoreline of the MCAS to the intersection of Salt Creek with U.S. Highway 21, latitude 32.45047°, longitude 80.73153°, thence back down the southern creek edge of Salt and Albergottie Creeks, thence back to the starting point at the confluence of Albergottie Creek and the AIWW, latitude 32.457226°, longitude 80.687770°. NOTE: Situated within the boundaries of the area described in paragraph (a)(1) of this section are the areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and the danger zone described in paragraph (a)(10) of this section. Since additional regulations apply to these sections, they are excluded from the area described in paragraph (a)(1) given that they are more strictly regulated.

(2) That portion of Mulligan Creek located on the southern side of the MCAS runway, beginning at a point on the eastern shoreline of Mulligan Creek at latitude 32.48993°, longitude 80.69836°, thence southwesterly across Mulligan Creek to the shoreline of the MCAS, latitude 32.48771°, longitude 80.70424°, thence continuing in a northerly direction along the eastern shoreline of the MCAS, thence in a northeasterly direction along the and southern side of the MCAS runway, thence back down the eastern shoreline of Mulligan Creek to its starting point, latitude 32.48993°, longitude 80.69836°.

(3) That area adjacent to the Atlantic Intracoastal Waterway (AIWW), situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the west side of the AIWW navigational channel at latitude 32.463732°, longitude 80.690208°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.467999°, longitude 80.690749°, thence turning in a westerly direction and continuing to latitude 32.467834°, longitude 80.700080°, on the eastern shore of the MCAS, thence heading in a southward direction along the shoreline to latitude 32.463692°, longitude 80.698440°, thence turning in a westerly direction and returning back to the starting point on the west edge of the AIWW channel, latitude 32.463732°, longitude 80.690208°.

(4) That area contiguous to Albergottie Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS at latitude 32.452376°, longitude 80.708263°, thence continuing in a northerly direction along the shoreline, up to the shoreline adjacent to Kimes Avenue and back down the opposite shoreline in a southerly direction to a point at latitude 32.450643°, longitude 80.715653°, thence turning in an easterly direction and returning back to the starting point at latitude 32.452376°, longitude 80.708263°.

(5) That area contiguous to Salt Creek, situated within the boundaries of the area described in paragraph (a)(1) of this section, beginning at a point on the southern shoreline of the MCAS and the edge of Salt Creek at latitude 32.45194°, longitude 80.724473°, thence continuing in a northerly direction along the shoreline of the MCAS and continuing on to its intersection again with Salt Creek and adjacent to U.S. Highway 21, thence turning and continuing along the shoreline of Salt Creek in an easterly direction and returning back to the starting point at latitude 32.45194°, longitude 80.724473°.

(6) That section of the Atlantic Intracoastal Waterway (AIWW), beginning at the confluence of the AIWW and Albergottie Creek, being that point on the west side of the AIWW navigational channel at latitude 32.457226°, longitude 80.687770°, thence continuing in a northerly direction along the western channel edge of the AIWW to latitude 32.458580°, longitude 80.689181°, thence to latitude 32.460413°, longitude 80.689228°, thence to latitude 32.461459°,

longitude 80.689418°, thence to latitude 32.464015°, longitude 80.690294°, thence to latitude 32.470255°, longitude 80.690965°, thence to latitude 32.471309°, longitude 80.691196°, thence to latitude 32.475084°, longitude 80.692455°, thence to latitude 32.478161°, longitude 80.691546°, thence to latitude 32.479191°, longitude 80.691486°, thence to latitude 32.481817°, longitude 80.691939°, thence to latitude 32.493001°, longitude 80.689835°, thence to latitude 32.494422°, longitude 80.688296°, thence crossing the AIWW channel in a southeasterly direction to a point on the east side of the AIWW and the marsh edge of bank, latitude 32.49343°, longitude 80.68699°, thence southward along the edge of the AIWW and the waterward marsh edge of Ladies Island to a point on the west shoreline of Pleasant Point Peninsular, latitude 32.45806°, longitude 80.68668°, thence back across the AIWW navigational channel to the point of beginning, latitude 32.457226°, longitude 80.687770°.

(7) That portion of Mulligan Creek, beginning at its northern mouth and confluence with McCalleys Creek, latitude 32.50763°, longitude 80.69337°, thence proceeding in a westerly direction along the northern shoreline of Mulligan Creek to its intersection with Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°, thence back down the southern shoreline to its starting point at McCalleys Creek, latitude 32.50763°, longitude 80.69337°.

(8) That portion of Mulligan Creek, beginning at the Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°, thence proceeding in a south westerly direction along the northern shoreline of Mulligan Creek to the terminus of its western tributary, thence back down its southern shoreline to the terminus of its eastern terminus located at the northern end on the MCAS runway, latitude 32.49531°, longitude 80.70658°, thence back down the southern shoreline to its starting point at Perryclear Drive bridge crossing, latitude 32.50534°, longitude 80.69960°.

(9) (*Laurel Bay Military Family Housing Area, Broad River*). That section of the Broad River, beginning on the western shoreline of Laurel Bay Military Family Housing Area boundary line, at latitude 32.449295°, longitude 80.803205°, thence proceeding in a northerly direction along the shoreline to the housing area northern boundary line at latitude 32.471172°, longitude 80.809795°, thence proceeding a distance of 500 feet into the Broad River, latitude 32.471185°, longitude 80.811440°, thence proceeding in a southerly direction and maintaining a distance of 500 feet from the shoreline to latitude 32.449222°, longitude 80.804825°, thence back towards the shoreline to the point of beginning at latitude 32.449295°, longitude 80.803205°.

(10) (*Danger zone*). That portion of Mulligan Creek located adjacent to the MCAS firing range and the restricted area described in paragraph (a)(2) of this section, beginning at a point on the western shoreline of Mulligan Creek at latitude 32.48771°, longitude 80.70424°, thence northeasterly across Mulligan Creek to the opposite shoreline at latitude 32.48993°, longitude 80.69836°, thence continuing in a southeasterly direction to an upland island bordering the northern shoreline of Mulligan Creek at latitude 32.48579°, longitude 80.69706°, thence turning in a southwesterly direction and crossing Mulligan Creek to a point on the eastern shoreline of the MCAS at latitude 32.48533°, longitude 80.70240°, thence continuing along the eastern shoreline of the MCAS to its starting point at latitude 32.48771°, longitude 80.70424°.

(b) *The regulation:* (1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(8) of this section at any time.

(2) The public shall have unrestricted access and use of the waters described in paragraph (a)(6) of this section whenever the MCAS is in Force Protection Condition Normal, Alpha or Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(6) of this section shall proceed at normal speed and shall under no circumstances anchor, fish, loiter or photograph in any way until clear of the restricted area.

(3) The public shall have unrestricted access and use of the waters described in paragraphs (a)(1), (a)(7), and (a)(9) of this section whenever the MCAS is in Force Protection Condition Normal Alpha or Bravo. Whenever the facility is in Force Protection Condition Charlie or Delta, personnel, vessels and other watercraft are prohibited from entering the waters described in paragraphs (a)(1), (a)(7), and (a)(9) of this section, unless they first obtain an escort or other approval from the Commander, MCAS, Beaufort, South Carolina.

(4) Unauthorized personnel, vessels and other watercraft shall not enter the danger zone described in paragraph (a)(10) of this section at any time.

(5) All restricted areas and danger zones will be marked with suitable warning signs.

(6) It is understood that none of the restrictions herein will apply to properly marked Federal vessels performing official duties.

(7) It is further understood that unauthorized personnel will not take photographs from within the above described restricted areas.

(c) *Enforcement:* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer, MCAS Beaufort, or persons or agencies as he/she may authorize including any Federal Agency, State, Local or County Law Enforcement agency, or Private Security Firm in the employment of the facility, so long as the entity undertaking to enforce this Restricted Area has the legal authority to do so under the appropriate Federal, State or local laws.

[70 FR 43780, July 29, 2005]

§ 334.480 Archers Creek, Ribbon Creek and Broad River, S.C.; U.S. Marine Corps Recruit Depot rifle and pistol ranges, Parris Island.

(a) During periods when the rifle and pistol ranges on Parris Island are in use, the following areas will be restricted to navigation:

(1) *At the rifle range.* Archers Creek between Broad River and Beaufort River and Ribbon Creek from Broad Creek entrance. The area is inclosed by the following points:

Latitude	Longitude
32°21′40″	80°44′52″
32°21′51″	80°44′38″
32°21′54″	80°44′41″
32°22′01″	80°44′21″
32°22′08″	80°44′15″
32°22′15″	80°44′07″
32°22′17″	80°44′05″
32°22′20″	80°43′52″
32°22′17″	80°43′48″
32°22′17″	80°43′47″
32°21′44″	80°43′28″
32°21′30″	80°43′13″
32°20′55″	80°42′23″
32°20′21″	80°42′24″
32°20′06″	80°42′43″
32°20′12″	80°43′01″
32°20′18″	80°43′22″
32°20′28″	80°43′33″
32°20′30″	80°43′37″
32°20′35″	80°43′41″

and thence to point of beginning:

Latitude	Longitude
32°21′40″	80°44′52″

(2) *At the pistol range.* An area in Broad River inclosed by the following points:

Latitude	Longitude
32°20′09″	80°42′57″
32°19′27″	80°42′27″
32°18′57″	80°43′24″
32°19′39″	80°43′54″
32°20′00″	80°43′36″
32°20′00″	80°43′15″

The area will be adequately marked by red flags for the convenience and protection of the general public.

(b) Firing over these ranges will normally take place between the hours of 6:30 a.m. and 5 p.m., Monday through Friday, and from 6 a.m. to 12 noon on Saturday, National holidays excepted, and at other times as designated and properly published by the Commanding General, Parris Island Marine Base.

(c) No person, vessel and other watercraft shall enter the restricted waters when firing is in progress. At all other times these waters are open to navigation. Safety regulations shall be enforced at all times with the following specific precautions being provided by the Parris Island Marine Base:

(1) *At the rifle range.* Warning signs indicating the periods when the rifle range is in use will be posted by the entrances to Archers Creek and Ribbon Creek. Also the warning signs will be

placed at the corners of the rifle range impact area.

(2) *At the pistol range.* Warning flag shall be flown from top of a lookout tower with a sentry lookout during actual firing. Also a patrol boat shall be accessible for clearing the area and warning all approaching vessels of the danger zone area and the schedule of firing. During storms or similar emergencies this area shall be opened to vessels to reach safety without undue delay for the preservation of life and property.

(d) The regulations in this section shall be enforced by the Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina, and such agencies as he may designate.

[29 FR 6682, May 22, 1964, as amended at 36 FR 22238, Nov. 23, 1971. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.490 Atlantic Ocean off Georgia Coast; air-to-air and air-to-water gunnery and bombing ranges for fighter and bombardment aircraft, U.S. Air Force.

(a) *The danger zones*—(1) *For fighter aircraft.* An area approximately 30 miles offshore between Wassaw Sound and Brunswick, Georgia, described as follows: Beginning at latitude 31°55′30″, longitude 80°24′00″; thence 90° true to longitude 80°16′00″; thence southwesterly to latitude 31°10′00″, longitude 80°43′00″; thence 270° to longitude 80°51′00″; and then northeasterly to the point of beginning.

(2) *For bombardment aircraft.* An area approximately 70 miles off shore between Savannah Beach and Brunswick, Georgia, described as follows: Beginning at latitude 32°00′00″, longitude 79°43′00″; thence 90° true to longitude 79°07′00″; thence southwesterly to latitude 31°10′00″, longitude 79°24′00″; thence 270° true to longitude 80°00′00″; and thence northeasterly to the point of beginning.

(b) *The regulations.* (1) The danger zones shall be open to navigation except when aerial gunnery or bombing practice is being conducted.

(2) Prior to conducting each practice, the entire area will be patrolled by aircraft to warn any persons and watercraft found in the vicinity that such practice is about to take place. The warning will be by ''buzzing,'' (*i.e.*, by flying low over the person or watercraft.) Any person or watercraft shall, upon being so warned, immediately leave the area designated and shall remain outside the area until practice has ceased.

(3) The regulations in this section shall be enforced by the Commanding Officer, 2d Bombardment Wing, Hunter Air Force Base, Savannah, Georgia, and such agencies as he may designate.

[16 FR 818, Jan. 30, 1951, as amended at 16 FR 2397, Mar. 14, 1951. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.500 St. Johns River, Fla., Ribault Bay; restricted area.

(a) *The area.* All waters constituting the Turning Basin within the Naval Air Base Reservation, Mayport, Florida, and inclosed by a line bearing approximately 180° true from Ribault Channel Light 4 to the shore at a point connecting with the Naval Base boundary line fence.

(b) *The regulations.* (1) All persons, vessels and craft, except those vessels operated by the U.S. Navy or Coast Guard are prohibited from entering this area except in cases of extreme emergency.

(2) This section shall be enforced by the Commander, U.S. Naval Air Station, Jacksonville, Florida, and such agencies as he may designate.

[14 FR 2609, May 18, 1949. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 37609, July 12, 1993; 62 FR 17554, Apr. 10, 1997]

§ 334.510 U.S. Navy Fuel Depot Pier, St. Johns River, Jacksonville, Fla.; restricted area.

(a) The area is described as:

(1) A line running at 238.5° true and paralleling the pier at 100 feet is extended from the eastern edge of the mooring platform #59 to the western edge of platform #65. From these points the boundaries are extended to the shoreline along lines running at 328.5°.

(2) The easterly waterward coordinate being:

30°23′58.0″ N 81°37′15.0″ W

(3) The westerly waterward coordinate being:

30°23′53.0″ N 81°37′24.4″ W

(b) *The regulations.* (1) The use of waters as previously described by private and/or commercial floating craft or persons is prohibited with the exception of vessels or persons that have been specifically authorized to do so by the Officer in Charge of the Navy Fuel Depot.

(2) This regulation shall be enforced by the Officer in Charge, U.S. Navy Fuel Depot, Jacksonville, Florida, and such agencies as the officer in charge may designate.

[44 FR 12192, Mar. 6, 1979, as amended at 45 FR 27755, Apr. 24, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.515 U.S. Marine Slip area at Blount Island, Jacksonville, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the area identified at the U.S. Marine Corps Slip (also identified as Back River on many nautical maps) located on the southeastern side of Blount Island, Jacksonville, Florida. The entrance to the U.S. Marine Corps Slip is described as commencing from a line drawn between the southwesterly most shore point (latitude 30°23′34″ N., longitude 81°30′52″ W.) and the southeasterly most shore point (latitude 30°23′38″ N., longitude 81°30′36″ W.).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commanding Officer, Blount Island Command, Jacksonville, Florida, or his/her authorized representative. The cognizant Captain of the Port (COTP) or Federal Maritime Security Coordinator (FMSC), in performance of Homeland Security responsibilities, may from time to time, need to investigate or cause to investigate incidents of national security with the Blount Island Command Restricted Area. Authority to enter the restricted area under mission critical situations is herby granted to the COTP or FMSC, or his representative. Situations that require COTP or FMSC to immediately access the restricted area shall be reported to the Commanding Officer, Blount Island Command as soon as practicable.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Blount Island Command, Jacksonville, Florida, and/or such persons or agencies as he/she may designate.

[70 FR 67371, Nov. 7, 2005]

§ 334.520 Lake George, Fla.; naval bombing area.

(a) *The danger zone.* An area in the eastern part of Lake George described as follows: Beginning at latitude 29°13′16″, longitude 81°34′28″; thence along a line parallel to the navigation channel to latitude 29°20′05″, longitude 81°36′15″; thence along a line about three-fifths mile southerly from the Putnam-Volusia County line to latitude 29°20′19″, longitude 81°35′12″; thence to latitude 29°18′36″, longitude 81°33′53″; thence to latitude 29°13′22″, longitude 81°32′38″; and thence to the point of beginning. The area will be marked by appropriate warnings signs at the five corners and at the midpoint of the longer side.

(b) *The regulations.* (1) Bombing operations will be confined, as nearly as practicable, to the north-south center line of the danger zone, keeping well clear of the navigation channel.

(2) Prior to each bombing operation the danger zone will be patrolled by naval aircraft which will warn all persons and vessels to leave the area by ''zooming'' a safe distance to the side and at least 500 feet above the surface. Upon being so warned, such persons and vessels shall leave the danger zone immediately and shall not re-enter the danger zone until bombing operations have ceased.

(3) At intervals of not more than three months, public notices will be issued that bombing operations are continuing. Such notices will appear in the local newspaper and in ''Notice to Mariners''.

(4) The regulations in this section shall not deny passage through Lake

George by regular cargo-carrying vessels proceeding along established lanes for such vessels. When any such vessel is within the danger zone the officer in charge of the bombing operations will cause the cessation or postponement of such operations until the vessel has cleared the area. The vessel shall proceed on its normal course and shall not delay its progress.

(5) The regulations in this section shall be enforced by the Commander, Naval Air Bases, Sixth Naval District, Naval Air Station, Jacksonville, Florida, and such agencies as he may designate.

[16 FR 10992, Oct. 30, 1951. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.530 Canaveral Harbor adjacent to the Navy pier at Port Canaveral, Fla.; restricted area.

(a) *The area.* The waters of Canaveral Harbor within a line circumscribing the water approaches to the Navy pier along the northeasterly edge of the Canaveral Harbor turning basin at a distance of 200 feet from all portions of the pier including the dolphins 200 feet off the northwest end and 75 feet off the southeast end of the pier.

(b) *The regulations.* (1) All unauthorized vessels and personnel are prohibited from the area during specified periods.

(2) The area will be closed when a red square flag (bravo), and depending on the status of the hazardous operation, either an amber or red beacon, steady burning or rotating, day or night, when displayed from any of the three berths along the wharf.

(3) Lighted signs indicating the restricted area will be placed on the pier and adjacent thereto.

(4) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Ordnance Test Unit, AFMTC, Patrick Air Force Base, Florida.

[25 FR 12244, Nov. 30, 1960. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 61 FR 34733, July 3, 1996]

§ 334.540 Banana River at Cape Canaveral Missile Test Annex, Fla.; restricted area.

(a) *The area.* The waters within a semicircle with a radius of 10,000 feet centered on the easterly shore of Banana River at Cape Canaveral at latitude 28°27′23″, longitude 80°35′48″.

(b) *The regulations.* (1) All unauthorized persons and craft shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Commander, Air Force Missile Test Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

[26 FR 6646, July 26, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 37609, July 12, 1993; 62 FR 17554, Apr. 10, 1997]

§ 334.550 Banana River at Cape Canaveral Air Force Station, Fla.; restricted area.

(a) *The area.* (1) Starting at the northern boundary of the existing Prohibited Area as described in 33 CFR 334.171a, and the shoreline at latitude 28°28′58″ N; Longitude 80°35′26″ W; thence westerly along the northern boundary of 334.171a to latitude 28°28′58″ N, longitude 80°35′43″ W; thence N 04°06′25″ E for 4760.11 feet to latitude 28°29′45″ N, longitude 80°35′39″ W; thence due east to a point on the shoreline at latitude 28°29′45″ N, longitude 80°35′11″ W.

(b) *The regulation.* (1) All unauthorized persons and craft shall stay clear of this area at all times.

(2) The regulations in this section shall be enforced by the Commander, Eastern Space and Missile Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

[45 FR 76144, Nov. 18, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.560 Banana River at Patrick Air Force Base, Fla.; restricted area.

(a) *The area.* The waters within an area beginning at a point located at latitude 28°16′19″ N., longitude 80°36′28″ W.; proceed west to latitude 28°16′19″ N., longitude 80°36′35″ W.; thence, southwesterly to latitude 28°14′34″ N., longitude 80°37′08″ W.; thence, southerly to latitude 28°12′44″ N., longitude 80°37′18″ W.; thence, east to latitude 28°12′44″ N.,

longitude 80°37′11″ W. This encompasses an area reaching from the northern extent described to the southern extent described and extending from the mean high water line waterward a minimum distance of approximately 600 feet.

(b) *The regulations.* (1) All unauthorized persons and watercraft shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Commander, 45th Space Wing, Patrick Air Force Base, Florida, and such agencies as he/she may designate.

[29 FR 3702, Mar. 25, 1964. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 37609, July 12, 1993; 62 FR 17554, Apr. 10, 1997; 70 FR 67371, Nov. 7, 2005]

§ 334.570 Banana River near Orsino, Fla.; restricted area.

(a) *The area.* That part of Banana River N of the NASA Banana River Causeway near Orsino and extending above the head of said river to the N and westerly to Kennedy Parkway North.

(b) *The regulations.* (1) All unauthorized craft and personnel shall stay clear of the area at all times.

(2) The regulations in this section shall be enforced by the Director, John F. Kennedy Space Center, NASA, Cocoa Beach, Fla.

[30 FR 8831, July 14, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.580 Atlantic Ocean near Port Everglades, Fla.

(a) *The area.* Beginning at a point located at latitude 26°05′30″ N.—longitude 80°03′30″ W.; proceed west to latitude 26°05′30″ N.—longitude 80°06′30″ W.; Thence, southerly to latitude 26°03′00″ N.—longitude 80°06′42″ W.; Thence, east to latitude 26°03′00″ N.—longitude 80°05′44″ W.; Thence, south to latitude 26°01′36″ N.—longitude 80°05′44″ W.; Thence, east to latitude 26°01′36″ N.—longitude 80°03′30″ W.; Thence, north to the point of beginning.

(b) *The regulations.* (1) Anchoring, trawling, dredging, or attaching any object to the submerged sea bottom shall be prohibited in the above described area.

(2) The regulations of this section shall be enforced by the Facility Director, Naval Surface Warfare Center, Detachment Dania, Florida, and such agencies as he/she may designate.

[51 FR 1370, Jan. 13, 1986, as amended at 70 FR 67371, Nov. 7, 2005]

§ 334.590 Atlantic Ocean off Cape Canaveral, Fla.; Air Force missile testing area, Patrick Air Force Base, Fla.

(a) *The danger zone.* An area in the Atlantic Ocean immediately offshore from Cape Canaveral defined by a line 3 nautical miles from shore, said area terminating in the north at a line on a bearing of 70° from a point on shore at approximate latitude 28°35′ north and in the south at a line on a bearing of 115° from a point on the shore at approximate latitude 28°25′ north.

(b) *The regulations.* (1) All unauthorized persons and vessels are prohibited from operating within the danger zone during firing periods to be specified by the Commander, Air Force Missile Test Center, Patrick Air Force Base.

(2) Warning signals will be used to warn persons and vessels that the danger zone is active. These signals will be in the form of a large red ball and a red flashing high intensity beacon. One signal will be located on a 90-foot pole near the shoreline at the north end of the danger zone, and one signal will be located on a 90-foot pole near the shoreline about one-half mile north of the south limit of the danger zone. An amber rotating beacon and warning sign will be erected on the north side of the Port Canaveral ship channel to indicate to vessels about to leave the harbor that the danger zone is in use.

(3) When the signals in paragraph (b)(2) of this section are displayed, all persons and vessels, except those authorized personnel and patrol vessels, will immediately leave the danger zone by the most direct route and stay out until the signals are discontinued.

(4) The regulations in this paragraph shall be enforced by the Commander, Air Force Missile Test Center, Patrick Air Force Base, Fla., and such agencies as he may designate.

[22 FR 4814, July 9, 1957, as amended at 23 FR 3716, May 29, 1958; 27 FR 4778, May 19, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.600 TRIDENT Basin adjacent to Canaveral Harbor at Cape Canaveral Air Force Station, Brevard County, Fla.; danger zone.

(a) *The danger zone.* From the west side of the access channel at latitude 28°24′37″, longitude 80°35′35″ to the east side of the access channel at latitude 28°24′37″, longitude 80°35′26″ and the entire basin.

(b) *Regulations.* (1) No unauthorized person or vessel shall enter the area. The area will be used for loading and unloading explosives. The entrance to the basin will be marked by suitable boundary signs.

(2) The regulations will be enforced by the Commanding Officer, Naval Ordnance Test Unit, Patrick Air Force Base, Florida, or such agencies he may designate.

[41 FR 17898, Apr. 29, 1976. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted areas and danger zone.

(a) *The areas.* (1) All waters within 100 yards of the south shoreline of the Harry S. Truman Annex, beginning at a point on the shore at Latitude 24°32′45.3″ N., Longitude 81°47′51″ W.; thence to a point 100 yards due south of the south end of Whitehead Street of Latitude 24°32′42.3″ N., Longitude 81°47′51″ W.; thence extending westerly, paralleling the southerly shoreline of the Harry S. Truman Annex, to Latitude 24°32′37.6″ N., Longitude 81°48′32″ W., thence northerly to the shore at Latitude 24°32′41″ N., Longitude 81°48′31″ W. (Area #1).

(2) All waters within 100 yards of the westerly shoreline of the Harry S. Truman Annex and all waters within a portion of the Truman Annex Harbor, as defined by a line beginning on the shore at Latitude 24°33′00″ N., Longitude 81°48′41.7″ W.; thence to a point 100 yards due west at Latitude 24°33′00″ N., Longitude 81°48′45″ W.; thence northerly, paralleling the westerly shoreline of the Harry S. Truman Annex, including a portion of the Truman Annex Harbor entrance, to Latitude 24°33′23″ N., Longitude 81°48′37″ W.; thence southeasterly to the shore (sea wall) at Latitude 24°33′19.3″ N., Longitude 81°48′28.7″ W. (Area #2).

(3) All waters within 100 yards of the U.S. Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at Latitude 24°33′47.6″ N., Longitude 81°47′55.6″ W.; thence westerly to Latitude 24°33′48″ N., Longitude 81°48′00.9″ W.; thence due south to Latitude 24°33′45.8″ N., Longitude 81°48′00.9″ W.; thence westerly to Latitude 24°33′47″ N., Longitude 81°48′12″ W.; thence northerly to Latitude 24°34′06.2″ N., Longitude 81°48′10″ W.; thence easterly to a point joining the restricted area around Fleming Key at Latitude 24°34′03.3″ N., Longitude 81°47′55″ W. (Area #3).

(4) Beginning at the last point designated in area 3 at Latitude 24°34.0550′ N., Longitude 81°47.9166′ W.; proceed in a northwesterly direction to a point at Latitude 24°34.2725′ N., Longitude 81°48.1304′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.3562′ N., Longitude 81°48.0192′ W.; thence proceed in a northwesterly direction to a point at Latitude 24°34.4506′ N., Longitude 81°48.1444′ W.; thence proceed in a northwesterly direction to a point at Latitude 24°34.5619′ N., Longitude 81°48.1873′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.9084′ N., Longitude 81°48.0945′ W.; thence proceed in a northeasterly direction to a point at Latitude 24°34.9809′ N., Longitude 81°47.9400′ W.; proceed in a general northerly direction maintaining a distance of 100 yards from the shoreline of Fleming Key, continue around Fleming Key to a point easterly of the southeast corner of Fleming Key at Latitude 24°34.0133′ N., Longitude 81°47.6250′ W.; thence easterly to Latitude 24°33.9600′ N., Longitude 81°47.3333′ W.; thence southerly to a point on the shore at Latitude 24°33.9117′ N., Longitude 81°47.3450′ W. The Department of the Navy plans to install buoys along that portion of the restricted area boundary which marks the outer edge of the explosive hazard safety distance requirements.

(5) All waters contiguous to the southwesterly shoreline of Boca Chica Key beginning at a point on the southwest shoreline at Latitude 24°33′24″ N.,

Longitude 81°42′30″ W.; proceed due south 100 yards to Latitude 24°33′20.4″ N., Longitude 81°42′30″ W.; thence, maintaining a distance of 100 yards from the shoreline, proceed westerly and northerly to Latitude 24°34′03″ N., Longitude 81°42′47″ W.; thence due north to a point at the easterly end of the U.S. Highway 1 (Boca Chica Channel) bridge at Latitude 24°34′39″ N., Longitude 81°42′47″ W. (Area #5).

(6) *Danger zone.* All waters within an area along the northeast side of the Naval Air Station on Boca Chica Key defined by a line beginning at latitude 24°35.472′ N., longitude 81°41.824′ W.; thence proceed in a northerly direction to a point at latitude 24°36.289′ N., longitude 81°41.437′ W.; thence proceed westerly to a point at latitude 24°36.392′ N., longitude 81°41.970′ W.; thence to a point on shore at latitude 24°35.698′ N., longitude 81°41.981′ W.

(b) *The Regulations:* (1) Entering or crossing Restricted Areas #1 and #4 and the Danger Zone (Area #6) described in paragraph (a) of this section, by any person or vessel, is prohibited.

(2) Privately owned vessels, properly registered and bearing identification in accordance with Federal and/or State laws and regulations may transit the following portions of restricted areas #2, #3 and #5. NOTE: All vessels entering the areas at night must display lights as required by Federal laws and Coast Guard regulations or, if no constant lights are required, then the vessel must display a bright white light showing all around the horizon,

(i) The channel, approximately 75 yards in width, extending from the northwest corner of Pier D–3 of Trumbo Point Annex, eastward beneath the Fleming Key bridge and along the north shore of Trumbo Point Annex (area #3).

(ii) A channel of 150 feet in width which extends easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the Trumbo Point Annex piers on the north side of the Bight. While the legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government-owned pier or craft (area #3).

(iii) The dredged portion of Boca Chica channel from its seaward end to a point due south of the east end of the Boca Chica Bridge (area #5).

(iv) All of the portion of Restricted Area No. 2 that lies between the Truman Annex Mole and the Key West Harbor Range Channel. The transit zone extends to the northeasterly corner of the Truman Annex Mole, thence to the northwesterly end of the breakwater at Latitude 24°33′21.3″ N, Longitude 81°48′32.7″ W.

(3) Stopping or landing by any person and/or any vessel, other than Government-owned vessels and specifically authorized private craft in any of the restricted areas or danger zone described in paragraph (a) of this section is prohibited.

(4) Vessels using the restricted channel areas described in paragraph (b)(2) (i), (ii), (iii), and (iv) of this section shall proceed at speeds commensurate with minimum wake.

(c) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he/she may designate.

[54 FR 7033, Feb. 16, 1989, as amended at 59 FR 48802, Sept. 23, 1994; 62 FR 17554, Apr. 10, 1997; 70 FR 67371, Nov. 7, 2005; 72 FR 44973, Aug. 10, 2007]

§ 334.620 Straits of Florida and Florida Bay in vicinity of Key West, Fla.; operational training area, aerial gunnery range, and bombing and strafing target areas, Naval Air Station, Key West, Fla.

(a) *The danger zones*—(1) *Operational training area.* Waters of the Straits of Florida and Gulf of Mexico southwest, west and northwest of Key West bounded as follows: Beginning at latitude 25°45′00″, longitude 82°07′00″; thence southeast to latitude 24°49′00″, longitude 81°55′00″; thence southwest to latitude 24°37′30″, longitude 82°00′30″; thence westerly to latitude 24°37′30″, longitude 82°06′00″; thence southerly to latitude 24°28′30″, longitude 82°06′00″; thence southerly to latitude 24°25′00″, longitude 82°06′30″; thence easterly to latitude 24°25′00″, longitude 81°57′00″; thence southwesterly to latitude 23°30′00″, longitude 82°19′00″; thence westerly to latitude 23°30′00″, longitude

82°46′00″; thence northwesterly to latitude 23°52′30″, longitude 83°11′00″; thence northerly to latitude 24°25′00″, longitude 83°11′00″; thence easterly to latitude 24°25′00″, longitude 83°08′00″; thence clockwise along the arc of a circle with a radius of 92 miles centered at latitude 24°35′00″, longitude 81°41′15″ to latitude 25°45′05″, longitude 82°23′30″; thence east to point of beginning.

(2) *Bombing and strafing target areas.* (i) A circular area immediately west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°33.4′ and longitude 82°10.9′, not to include land area and area within Marquesas Keys. The target located within this area, a grounded LSIL will be used for bombing and aircraft rocket exercises.

(ii) A circular area located directly west of Marquesas Keys with a radius of three statute miles having its center at latitude 24°35.6′ and longitude 82°11.6′, not to include land area within Marquesas Keys. The targets located within this area, pile-mounted platforms, will be used as high altitude horizontal bombing range utilizing live ordnance up to and including 1,800 pounds of high explosives. In general, these explosives will be of an air-burst type, above 1,500 feet.

(iii) A circular area located west of Marquesas Keys with a radius of two nautical miles having its center at latitude 24°34′30″ and longitude 82°14′00″.

(b) *The regulations.* (1) In advance of scheduled air or surface operations which, in the opinion of the enforcing agency, may be dangerous to watercraft, appropriate warnings will be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, Corps of Engineers, Jacksonville, Florida, may direct. Such warnings will specify the location, type, time, and duration of operations, and give such other pertinent information as may be required in the interests of safety.

(2) Watercraft shall not be prohibited from passing through the operational training area except when the operations being conducted are of such nature that the exclusion of watercraft is required in the interest of safety or for accomplishment of the mission, or is considered important to the national security.

(3) When the warning to navigation interests states that bombing and strafing operations will take place over the designated target areas or that other operations hazardous to watercraft are proposed to be conducted in a specifically described portion of the overall area, all watercraft will be excluded from the target area or otherwise described zone of operations and no vessel shall enter or remain therein during the period operations are in progress.

(4) Aircraft and naval vessels conducting operations in any part of the operational training area will exercise caution in order not to endanger watercraft. Operations which may be dangerous to watercraft will not be conducted without first ascertaining that the zone of operations is clear. Any vessel in the zone of operations will be warned to leave and upon being so warned the vessel shall leave immediately.

(5) The regulations in this section shall be enforced by the Commandant, Sixth Naval District, Charleston, S.C., and such agencies as he may designate.

[26 FR 11197, Nov. 28, 1961, as amended at 27 FR 2508, Mar. 16, 1962; 31 FR 13129, Oct. 11, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.630 Tampa Bay south of MacDill Air Force Base, Fla.; small-arms firing range and aircraft jettison, U.S. Air Force, MacDill Air Force Base.

(a) *The danger zone.* Shoreward of a line beginning at latitude 27°49′27.38″, longitude 82°29′35.83″; thence to latitude 27°49′20.14″, longitude 82°29′42.78″; thence to latitude 27°48′44.82″, longitude 82°31′10.0″; thence to latitude 27°49′09.35″, longitude 82°32′24.56″; thence to latitude 27°49′38.62″, longitude 82°33′02.44″; and thence to a point on the shore line of MacDill Air Force Base at latitude 27°50′28.57″, longitude 82°32′15.0″. The area will be marked by suitable boundary signs or buoys.

(b) *The regulations.* (1) All persons, vessels and other watercraft are prohibited from entering the danger zone at all times.

(2) Advance notice will be given of the date on which the first firing practice shall begin. At intervals of not more than three months thereafter, notice will be sent out that firing practice is continuing. Such notices will appear in local newspapers and in ''Notice to Mariners.''

(3) The regulations in the section shall be enforced by the proper Air Force Authority at MacDill Air Force Base.

[13 FR 9559, Dec. 31, 1948. Redesignated at 14 FR 4904, August 9, 1949, and amended at 30 FR 884, Jan. 28, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.635 Hillsborough Bay and waters contiguous to MacDill Air Force Base, Fla.; restricted area.

(a) *The area.* The restricted area shall encompass all navigable waters of the United States, as defined at 33 CFR 329, within the following boundaries. Commencing from the shoreline at the northeast portion of the base at latitude 27°51′52.901″ N., longitude 82°29′18.329″ W., thence directly to latitude 27°52′00.672″ N., longitude 82°28′51.196″ W., thence directly to latitude 27°51′28.859″ N., longitude 82°28′10.412″ W., thence directly to latitude 27°51′01.067″ N., longitude 82°27′45.355″ W., thence directly to latitude 27°50′43.248″ N., longitude 82°27′36.491″ W., thence directly to latitude 27°50′19.817″ N., longitude 82°27′35.466″ W., thence directly to latitude 27°49′38.865″ N., longitude 82°27′43.642″ W., thence directly to latitude 27°49′20.204″ N., longitude 82°27′47.517″ W., thence directly to latitude 27°49′06.112″ N., longitude 82°27′52.750″ W., thence directly to latitude 27°48′52.791″ N., longitude 82°28′05.943″ W., thence directly to latitude 27°48′45.406″ N., longitude 82°28′32.309″ W., thence directly to latitude 27°48′52.162″ N., longitude 82°29′26.672″ W., thence directly to latitude 27°49′03.600″ N., longitude 82°30′23.629″ W., thence directly to latitude 27°48′44.820″ N., longitude 82°31′10.000″ W., thence directly to latitude 27°49′09.350″ N., longitude 82°32′24.556″ W., thence directly to latitude 27°49′38.620″ N., longitude 82°33′02.444″ W., thence directly to latitude 27°49′56.963″ N., longitude 82°32′45.023″ W., thence directly to latitude 27°50′05.447″ N., longitude 82°32′48.734″ W., thence directly to latitude 27°50′33.715″ N., longitude 82°32′45.220″ W., thence directly to a point on the western shore of the base at latitude 27°50′42.836″ N., longitude 82°32′10.972″ W. The restricted area will encompass an existing Danger Zone (§ 334.630).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering, transiting, anchoring, or drifting within the area described in paragraph (a) of this section for any reason without the permission of the Commander, MacDill Air Force Base, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, MacDill Air Force Base, Florida, and/or such persons or agencies as he/she may designate.

[70 FR 67371, Nov. 7, 1005]

§ 334.640 Gulf of Mexico south of Apalachee Bay, Fla.; Air Force rocket firing range.

(a) *The danger zone.* An area about 45 statute miles wide and 60 statute miles long, approximately parallel to and about 30 miles off the west coast of Florida, south of Apalachee Bay. The area is bounded as follows: Beginning at latitude 29°42′30″, longitude 84°40′00″; thence east along latitude 29°42′30″ to longitude 84°00′00″; thence southeast to latitude 28°56′00″, longitude 83°31′00″; thence southwest to latitude 28°37′00″, longitude 84°11′00″; thence northwest to latitude 29°17′30″, longitude 84°40′00″; thence northwest to latitude 29°32′00″, longitude 85°00′00″; thence northeast along a line three miles off the meanderings of the shore to the point of beginning.

(b) *The regulations.* (1) The fact that aerial rocket firing will be conducted over the danger zone will be advertised to the public through the usual media for the dissemination of information. Inasmuch as such firing is likely to be conducted during the day or night throughout the year without regard to

season, such advertising of firing will be repeated at intervals not exceeding three months and at more frequent intervals when in the opinion of the enforcing agency, repetition is necessary in the interest of public safety.

(2) Prior to the conduct of rocket firing, the area will be patrolled by surface patrol boat and/or patrol aircraft to insure that no persons or watercraft are within the danger zone and to warn any such persons or watercraft seen in the vicinity that rocket firing is about to take place in the area. When aircraft is used to patrol the area, low flight of the aircraft across the bow will be used as a signal or warning.

(3) Any such person or watercraft shall, upon being so warned, immediately leave the area, and until the conclusion of the firing shall remain at such a distance that they will be safe from the fallout resulting from such rocket firing.

(4) The regulations in this section shall not deny access to or egress from harbors contiguous to the danger zone in the case of regular passenger or cargo carrying vessels proceeding to or from such harbors. In the case of the presence of any such vessel in the danger zone the officer in charge shall cause the cessation or postponement of fire until the vessel shall have cleared that part of the area in which it might be endangered by the fallout. The vessel shall proceed on its normal course and shall not delay its progress unnecessarily. Masters are requested to avoid the danger zone whenever possible so that interference with firing training may be minimized.

(c) The regulations in this section shall be enforced by the Commander, Moody Air Force Base, Valdosta, Georgia, and such agencies as he may designate.

[21 FR 2944, May 3, 1956, as amended at 22 FR 3755, May 29, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17554, Apr. 10, 1997]

§ 334.650 Gulf of Mexico, south of St. George Island, Fla.; test firing range.

(a) *The danger zone.* A fan-shaped area bounded as follows:

	Latitude	Longitude
NW corner—	29°35′15″	85°03′12″
SW corner—	29°31′18″	85°07′31″
SE corner—	29°30′18″	84°59′18″
NE corner—	29°35′09″	85°01′53″

The seaward end of the area is an arc with a 10,500 meter radius with its center located on the south shore line of St. George Island 1,500 feet east of Cape St. George Light.

(b) *The regulations.* (1) The area shall be used from sunrise to sunset daily Mondays through Fridays for test firing helicopter armament.

(2) During firing, the entire area plus 5 miles beyond in all directions shall be kept under surveillance by one control helicopter equipped with FM and UHF communications to the Safety Office at range control to insure cease fire if an aircraft or surface vessel is observed approaching the area.

(3) The regulations in this section shall be enforced by the Commanding Officer, U.S. Army Aviation Test Board, Fort Rucker, Ala., and such agencies as he may designate.

[33 FR 4464, Mar. 13, 1968, as amended at 36 FR 15528, Aug. 17, 1971. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.

(a) *The restricted area.* A rectangular area excluding St. George Island with the eastern boundary of the area west of the channel through St. George Island within the following co-ordinates: Beginning at a point designated as the northeast corner latitude 29°38′20″ N, longitude 84°58′30″ W; thence southeast to latitude 29°35′23″ N, longitude 84°56′54″ W; thence southwest to latitude 29°34′15″ N, longitude 85°00′35″ W; thence northwest to latitude 29°37′10″ N, longitude 85°02′00″ W; thence northeast to point of beginning.

(b) *The regulations.* (1) The area will be used twice daily and during usage will be restricted to navigation for a period of one hour. It may be used freely at all other times.

(2) Patrol boats and aircraft will warn all persons and navigation out of the area before each testing period.

(3) The regulations in this section shall be enforced by the Commander, Headquarters 4756th Air Defense Wing (Weapons) U. S. Air Force, Tyndall Air Force Base, Florida, and such other agencies as he may designate.

[23 FR 5507, July 19, 1958, as amended at 23 FR 6555, Aug. 23, 1958. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.670 Gulf of Mexico south and west of Apalachicola, San Blas, and St. Joseph bays; air-to-air firing practice range, Tyndall Air Force Base, Fla.

(a) *The danger zone.* Beginning at latitude 29°40′00″, longitude 85°21′30″, in the vicinity of Cape San Blas; thence southeasterly to latitude 29°23′00″, longitude 84°39′00″; thence southwesterly to latitude 28°39′00″, longitude 84°49′00″; thence northwesterly to latitude 29°43′00″, longitude 85°53′00″; thence northeasterly to latitude 29°56′30″, longitude 85°38′30″; and thence southeasterly to the point of beginning.

(b) *The regulations.* (1) Air-to-air firing practice will ordinarily take place in the area during the hours of daylight, seven days per week. During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the danger area, the officer in charge of firing practice operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within range of the weapons being used. The vessel shall proceed on its normal course and not delay its progress.

(2) All persons and vessels will be warned to leave the danger area during firing practice by surface patrol boat and/or patrol aircraft. When aircraft is used to patrol the area, low flight of the aircraft overhead and/or across the bow will be used as a signal or warning. Upon being so warned all persons and vessels shall clear the area immediately.

(3) The area will be open to all vessels whenever firing practice is not being conducted.

(4) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

[16 FR 7460, July 31, 1951, as amended at 22 FR 3755, May 29, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.680 Gulf of Mexico, southeast of St. Andrew Bay East Entrance, small-arms firing range, Tyndall Air Force Base, Fla.

(a) *The danger zones*—(1) *Area No. 1.* The waters of the Gulf of Mexico, southeast of St. Andrew Bay East Entrance within a rectangular area beginning at a point on shore at latitude 30°04′32″, longitude 85°37′07″; thence to latitude 30°03′03″, longitude 85°38′42″; thence to latitude 30°02′14″, longitude 85°37′15″; thence to a point on shore at latitude 30°04′13″, longitude 85°36′47″; thence along the shoreline to the point of beginning.

(2) *Area No. 2.* The waters of the Gulf of Mexico and St. Andrew Sound within an area described as follows, but excluding Crooked Island: Beginning at a point on shore at latitude 30°02′56″, longitude 85°34′35″; thence to latitude 30°02′18″, longitude 85°36′18″; thence to latitude 30°01′24″, longitude 85°35′40″; thence to latitude 30°00′45″, longitude 85°34′41″; thence to a point on shore at latitude 30°02′10″, longitude 85°33′42″; thence along the shore line to the point of beginning.

(b) *The regulations.* (1) No person, vessel or other watercraft shall enter or remain in the areas during periods of firing. Area No. 1 will be used for firing practice between 6:30 a.m. and 5:00 p.m., as scheduled, Monday through Friday, with possibly some sporadic firings on Saturdays and Sundays. A 10′ × 18′ red flag will be displayed on a pole at the shoreline whenever firing is in progress.

(2) Area No. 2 will be operated on a sporadic schedule, with firings likely each day including Saturdays, Sundays, and holidays, between the hours of 6:00 a.m. and 5:00 p.m. A 10′ × 18′ red flag will be displayed on a pole at the shore line whenever firing is in progress.

(3) The regulations in this section shall be enforced by the Commanding

Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

(Sec. 7, 40 Stat. 266, Chap. XIX, 40 Stat. 892; (33 U.S.C. 1, 3))

[28 FR 3394, Apr. 6, 1963, as amended at 30 FR 16267, Dec. 30, 1965; 39 FR 44752, Dec. 27, 1974. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.690 [Reserved]

§ 334.700 Choctawhatchee Bay, aerial gunnery ranges, Air Proving Ground Center, Air Research and Development Command, Eglin Air Force Base, Fla.

(a) *The danger zones*—(1) *Aerial gunnery range in west part of Choctawhatchee Bay*. The waters of Choctawhatchee Bay within an area described as follows: Beginning at a point on the west shore at latitude 30°28′30″, longitude 86°30′00″; thence southeasterly to latitude 30°25′30″, longitude 86°21′30″; thence southwesterly to a point on the south shore at latitude 30°23′30″, longitude 86°23′00″; thence northwesterly to a point on the south shore at latitude 30°24′00″, longitude 86°25′00″; and thence northwesterly to the point of beginning; excluding that part of the area included within the aerial gunnery range along the north shore of Choctawhatchee Bay (described in paragraph (a)(2) of this section).

(2) *Aerial gunnery range along north shore of Choctawhatchee Bay*. The waters of Choctawhatchee Bay within an area described as follows: Beginning at a point in the waters of Choctawhatchee Bay at latitude 30°26′00″, longitude 86°25′30″; thence north to the shore at longitude 86°25′30″; thence southeasterly and northeasterly along the shore to longitude 86°15′00″; thence south to latitude 30°26′29″, longitude 86°15′00″; thence southwesterly to latitude 30°26′12″, longitude 86°20′35″; thence north to latitude 30°26′57″, longitude 86°20′35″; thence southwesterly to the point of beginning.

(b) *The regulations*—(1) *Aerial gunnery ranges*. (i) The aerial gunnery range in the west part of Choctawhatchee Bay (described in paragraph (a)(1) of this section) may be used by persons and watercraft except during periods when firing is conducted. During these periods, firing will be controlled by observation posts, and persons and watercraft will be warned by patrol boats. During periods of firing, traverse of this area shall not be denied to regular cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the area, the officer in charge of gunnery operations will cause the cessation or postponement of fire until the vessel has cleared that part of the area within the range of the weapons being used. The vessel shall proceed on its normal course and shall not delay its progress.

(ii) No person, vessel or other craft shall enter or remain within the aerial gunnery range along the north shore of Choctawhatchee Bay (described in paragraph (a)(2) of this section) at any time.

(2) *Enforcing Agency*. The regulations in this section shall be enforced by the Commander, Air Proving Ground Center, Eglin AFB, and such agencies as he may designate.

[26 FR 11197, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.710 The Narrows and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Fla.

(a) *The restricted area*. The waters of The Narrows and the Gulf of Mexico easterly of the periphery of a circular area 5 nautical miles in radius, centered at latitude 30°23′10.074″, longitude 86°48′25.433″ (USC&GS Station Tuck 3), within the segment of a circle, 3 nautical miles in radius, centered at latitude 30°24′00″, longitude 86°41′47″.

(b) *The regulations*. (1) The area will be used intermittently during daylight hours. During periods of use the entry into the area will be prohibited to all persons and navigation.

(2) The regulations in this section shall be enforced by the Commander, Air Force Proving Ground Command,

Eglin Air Force Base, Florida, and such agencies as he may designate.

[23 FR 8061, Oct. 18, 1958. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.720 Gulf of Mexico, south from Choctawhatchee Bay; guided missiles test operations area, Headquarters Air Proving Ground Command, U.S. Air Force, Eglin Air Force Base, Fla.

(a) *The danger zone.* The waters of the Gulf of Mexico south from Choctawhatchee Bay within an area described as follows: Beginning at a point five nautical miles southeasterly from USC&GS Station Tuck 3, at latitude 30°23′10.074″, longitude 86°48′25.433″, three nautical miles offshore of Santa Rosa Island; thence easterly three nautical miles offshore and parallel to shore, to a point south of Apalachicola Bay, Florida, latitude 29°32′00″, longitude 85°00′00″; thence southeasterly to latitude 29°17′30″, longitude 84°40′00″; thence southwesterly to latitude 28°40′00″, longitude 84°49′00″; thence southeasterly to latitude 28°10′00″, longitude 84°30′00″; thence 270° true to longitude 86°48′00″; thence due north along longitude 86°48′00″ to the intersection of the line with a circle of five nautical miles radius centered on USC&GS Station Tuck 3, at latitude 30°23′10.074″, longitude 86°48′25.433″, thence northeasterly along the arc of the circle to the point of beginning.

(b) *The regulations.* (1) The area will be used intermittently during daylight hours for a week or 10 days at a time. Firing will take place once or twice a day for periods ordinarily of not more than one hour. Advance notice of such firings will be published in local newspapers and in such other manner as the District Engineer, Corps of Engineers, Mobile, Alabama, may direct.

(2) During periods of firing, passage through the area will not be denied to cargo-carrying or passenger-carrying vessels or tows proceeding on established routes. In case any such vessel is within the danger area, the officer in charge of firing operations will cause the cessation or postponement of fire until the vessel shall have cleared the portion of the danger area involved. The entire area involved will be under constant observation of both surface patrol vessels and air patrol planes prior to and during periods of firing and notice will be given to vessels and tows of intention to fire by buzzing low over the vessel, upon which signal vessels and tows shall proceed on their established course promptly and clear the area as soon as possible.

(3) All person and vessels exclusive of those identified in paragraph (b)(2) of this section will warned to leave the immediate danger area during firing periods by surface patrol craft. Upon being so warned, such persons and vessels shall clear the area immediately. Such periods normally will not exceed two hours.

(4) The regulations in this section shall be enforced by the Commanding Officer, Air Force Proving Ground Command, Eglin Field, Florida, and such agencies as he may designate.

[16 FR 2723, Mar. 29, 1951, as amended at 22 FR 8982, Nov. 8, 1957. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.730 Waters of Santa Rosa Sound and Gulf of Mexico adjacent to Santa Rosa Island, Air Force Proving Ground Command, Eglin Air Force Base, Fla.

(a) *The danger zones*—(1) *Prohibited area.* Waters of Santa Rosa Sound and Gulf of Mexico within a circle one nautical mile in radius, centered at latitude 30°23′10.074″, longitude 86°48′25.433″ (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 209.6 and 211.4 from Harvey Lock, Louisiana.

(2) *Restricted area.* The waters of Santa Rosa Sound and Gulf of Mexico surrounding the prohibited area described in paragraph (a)(1) of this section, within a circle five nautical miles in radius centered at latitude 30°23′10.074″, longitude 86°48′25.433″ (USC&GS Station Tuck 3). The portion of the area in Santa Rosa Sound includes the Gulf Intracoastal Waterway between miles 334.6 and 216.4 from Harvey Lock, Louisiana.

(b) *The regulations.* (1) Experimental test operations will be conducted by the U.S. Air Force within the prohibited area on an intermittent basis.

Such test operations shall not exceed one hour, and shall not occur more than twice weekly.

(2) No person, vessel or other watercraft shall enter the prohibited area, except to navigate the Gulf Intracoastal Waterway. Such vessels and other watercraft shall confine their movements to the waters within the limits of the Intracoastal Waterway and shall make the passage as promptly as possible under normal vessel speed.

(3) During periods when experimental test operations are underway no person, vessel or other watercraft shall enter or navigate the waters of the restricted area.

(4) Warning signs will be erected on the shore lines of Santa Rosa Sound and the Gulf of Mexico to mark the limits of the respective areas.

(5) The regulations in this section shall be enforced by the Commander, Headquarters Air Proving Ground Command, Eglin Air Force Base, Florida, and such agencies as he may designate.

[22 FR 609, Jan. 30, 1957, as amended at 23 FR 8061, Oct. 18, 1958; 23 FR 9031, Nov. 20, 1958. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.740 Weekley Bayou, an arm of Boggy Bayou, Fla., at Eglin Air Force Base; restricted area.

(a) *The area.* All waters of Weekley Bayou west of a line drawn between latitude 30°28′57″, longitude 86°29′03″, and latitude 30°28′58″, longitude 86°29′06″, said line crossing the Bayou approximately 225 yards above its mouth.

(b) *The regulations.* (1) No person or vessel shall enter the area without the permission of the Commander, Eglin Air Force Base, Florida, or his authorized representative.

(2) The regulations in this section shall be enforced by the Commander, Eglin Air Force Base, Florida, or such agencies as he may designate.

[25 FR 8379, Sept. 1, 1960. Redesignated at 30 FR 6161, May 1, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997]

§ 334.750 Ben's Lake, a tributary of Choctawhatchee Bay, Fla., at Eglin Air Force Base; restricted area.

(a) *The area.* All waters of Ben's Lake including the channel connecting it with Choctawhatchee Bay.

(b) *The regulations.* (1) No person or vessel shall enter the area or navigate therein, without the permission of the Commander, Eglin Air Force Base, Florida, or his authorized representative.

(2) These regulations shall be enforced by the Commander, Eglin Air Force Base, Florida, or such agencies as he may designate.

[28 FR 1541, Feb. 19, 1963, as amended at 30 FR 6161, May 1, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.760 Naval Support Activity Panama City and Alligator Bayou, a tributary of St. Andrew Bay, Fla.; naval restricted area.

(a) *The area.* The waters within an area beginning at a point located along the shore at the southern end of the facility designated by latitude 30°09′45.6″ N., longitude 85°44′20.6″ W.; thence proceed 100 feet waterward of the mean high water line directly to a point at latitude 30°09′46.8″ N., longitude 85°44′20.6″ W. From this position the line meanders irregularly, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°10′16.7″ N., longitude 85°45′01.2″ W. located east of the south side of the entrance to Alligator Bayou; thence directly across the entrance to a point at latitude 30°10′23.4″ N., longitude 85°45′05.7″ W. located east of the north side of the entrance to Alligator Bayou; thence continuing the northerly meandering, following the shoreline at a minimum distance of 100 feet from the mean high water line to a point at latitude 30°11′11.3″ N., longitude 85°45′02.8″ W.; thence directly to the shoreline to a point at latitude 30°11′12.3″ N., longitude 85°45′03.2″ W. This encompasses an area reaching from the southern extent described to the northern extent described and extending from the mean high water line waterward a minimum distance of approximately 100 feet.

(b) *The regulations.* (1) No vessel, person, or other craft shall enter, transit, anchor, drift or otherwise navigate within the area described in paragraph (a) of this section for any reason without written permission from the Officer in Charge, Naval Support Activity Panama City, Panama City Beach, Florida, or his/her authorized representative.

(2) The restriction noted in paragraph (b)(1) of this section is in effect 24 hours a day, 7 days a week.

(3) The regulations in this section shall be enforced by the Officer in Charge, Naval Support Activity Panama City, Panama City Beach Florida, and such agencies as he/she may designate.

[70 FR 67372, Nov. 7, 2005]

§ 334.770 Gulf of Mexico and St. Andrew Sound, south of East Bay, Fla., Tyndall Drone Launch Corridor, Tyndall Air Force Base, Fla.; restricted area.

(a) *The area.* The waters of the Gulf of Mexico and St. Andrew Sound within an area described as follows, including Crooked Island: Beginning at a point on shore at latitude 30°01′30″, longitude 85°32′30″, thence to latitude 30°00′58″, longitude 85°33′38″, thence to latitude 29°56′38″, longitude 85°33′38″, thence to latitude 29°55′15″, longitude 85°31′21″, thence to a point on shore at latitude 30°00′58″, longitude 85°31′21″, thence northwest to the point of beginning. This area will be referred to as the ''Tyndall Drone Launch Corridor.''

(b) *The regulations.* (1) Military usage of areas is Monday through Friday between the hours of 7 a.m. and 5 p.m.

(2) Vessels are allowed to enter and remain in this area provided they have operational communication equipment capable of monitoring VHF Marine frequency Channel 16, (156.80 MHz). In the event the Marine radio equipment is not installed on the vessel, CB equipment with Channel 13 (27.115 MHz) will be used as an alternate means of communications. Warnings will be broadcast by the Air Force on Channel 16 (156.80 MHz) and Channel 13 (27.115 MHz) using the following sequence:

(i) Announcement 90 minutes prior to drone launch.

(ii) Announcement 60 minutes prior to drone launch.

(iii) Announcement of drone launch or drone cancelled, and the expected time of the drone launch. Upon receipt of the drone warning on either Channel 16 (156.80 MHz) or Channel 13 (27.115 MHz), vessels will take the necessary action to vacate the drone launch corridor not later than 60 minutes prior to expected drone launch.

(3) Vessels are authorized direct movement without stopping through this area at any time unless warned by helicopter or patrol boat.

(4) The area will be patrolled by helicopter/vessels during periods of hazardous military activity. Verbal warnings or instructions issued by these craft will be strictly adhered to.

(5) The regulations in this section shall be enforced by the Commanding Officer, Tyndall Air Force Base, Florida, and such agencies as he may designate.

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[40 FR 8949, Mar. 4, 1975; 40 FR 10988, Mar. 10, 1975. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.775 Naval Air Station Pensacola, Pensacola Bay, Pensacola and Gulf Breeze, Fla.; naval restricted area.

(a) *The areas.* (1) Bounded by a line drawn in the direction of 180° T from the position latitude 30°20′44″ N., longitude 87°17′18″ W. (near the Naval Air Station, due south of the Officer's Club) to position latitude 30°20′09″ N., longitude 87°17′18″ W. thence 94° T to position latitude 30°20′07″ N., longitude 87°16′41″ W., thence 49° T to position latitude 30°20′37″ N., longitude 87°16′01″ W. (southwest end of Lexington finger pier), thence along the shoreline to point of origin.

(2) The waters within an area enclosed by the following points: Beginning at latitude 30°21.58′ N., longitude 87°12.49′ W.; thence to latitude 30°20.25′ N., longitude 87°11.00′ W.; thence to latitude 30°20.28′ N., longitude 87°14.27′ W.; thence to the point of beginning. This encompasses a large triangular area north of Santa Rosa Island and west of the land area between Fair Point and Deer Point.

(b) *The restrictions.* (1) The area described in paragraph (a)(1) of this section will normally be in use Monday through Wednesday between 8 a.m. and

4 p.m. and one evening from 4 p.m. until 8 p.m., every other week.

(2) The area described in paragraph (a)(2) of this section will normally be utilized Wednesday through Friday between 8 a.m. and 4 p.m. for parasail operations.

(3) During those times that specific missions, exercises, or training operations are being conducted, the U.S. Navy vessels and/or crafts designated as essential to the operation(s) by proper U.S. Navy authority shall have the rights-of-way. All other vessels and crafts are required to keep clear of and remain 300 yards from all naval vessels engaged in said operations. Approaching within 300 yards of vessels and/or crafts while they are engaged in operations and/or training exercises is prohibited.

(4) Vessel traffic through the restricted area will remain open during operations and/or exercises; however, mariners shall exercise extreme caution and be on the lookout for swimmers, small craft and helicopters when transiting the area. It should be presumed by all mariners that Navy operations and/or exercises are being conducted whenever military craft and/or helicopters are operating within the restricted area.

(5) Any problems encountered regarding Navy operations/exercises within the restricted area should be addressed to ''Navy Pensacola Command'' on Channel 16 (156.6 MHz) for resolution and/or clarification.

(6) The regulations in this section shall be enforced by the Commander of the Naval Air Station, Pensacola, Florida, and such agencies as he/she may designate.

[70 FR 67372, Nov. 7, 2005]

§ 334.778 Pensacola Bay and waters contiguous to the Naval Air Station, Pensacola, FL; restricted area.

(a) *The area:* Beginning at a point on the northerly shoreline of Grande (Big Lagoon at Point 1, Latitude 30°19′42″ N., Longitude 87°21′06″ W., proceed southeasterly to Point 2, Latitude 30°19′27″ N., Longitude 87°21′03″ W.; thence, northeasterly, paralleling the shoreline at a minimum distance of 500 feet offshore, to Point 3, Latitude 30°19′48″ N., Longitude 87°19′35″ W.; thence, maintaining a minimum distance of 500 feet offshore or along the northerly edge of the Gulf Intracoastal Waterway Channel (whichever is less), continue to Point 4, Latitude 30°20′00″ N., Longitude 87°19′03″ W.; thence, maintaining a minimum distance of 500 feet offshore for the remainder of the area to: PT 5, Latitude 30°20′31″ N., Longitude 87°16′01″ W; Thence to PT 6, Latitude 30°21′11″ N., Longitude 87°15′29″ W; Thence to PT 7, Latitude 30°22′26″ N., Longitude 87°15′43″ W; Thence to PT 8, Latitude 30°22′39″ N., Longitude 87°16′08″ W; Thence to PT 9, Latitude 30°22′17″ N., Longitude 87°16′09″ W; Thence to PT 10, Latitude 30°22′18″ N., Longitude 87°16′35″ W; Thence to PT 11, Latitude 30°22′09″ N., Longitude 87°17′10″ W; Thence to PT 12, Latitude 30°22′15″ N., Longitude 87°17′19″ W; Thence to PT 13, Latitude 30°22′07″ N., Longitude 87°17′48″ W; Thence to PT 14, Latitude 30°22′25″ N., Longitude 87°17′53″ W; Thence to PT 15, Latitude 30°22′13″ N., Longitude 87°18′54″ W; Thence to PT 16, Latitude 30°21′57″ N., Longitude 87°19′22″ W; Thence to PT 17, Latitude 30°21′57″ N., Longitude 87°19′37″ W; Thence to PT 18, Latitude 30°21′49″ N., Longitude 87°19′49″ W; (a point on the southerly shoreline of Bayou Grande).

(b) *The regulations.* (1) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from transiting, anchoring, or drifting within the above described area, or within 500 feet of any quay, pier, wharf, or levee along the Naval Air Station Pensacola shoreline abutting, nor may such vessels or crafts or persons approach within 500 feet of any United States owned or operated vessel transiting, anchored, or moored within the waters described in paragraph (a) of this section. The Commanding Officer, Naval Air Station Pensacola, or his/her designee, or the Commanding Officer of a vessel of the United States operating

within the said area, may grant special permission to a person, vessel, or craft to enter upon the waters subject to the restrictions aforementioned.

(2) The existing ''Navy Channel'' adjacent to the north shore of Magazine Point, by which vessels enter and egress Bayous Davenport and Grande into Pensacola Bay shall remain open to all craft except in those extraordinary circumstances where the Commanding Officer, N.A.S. or his/her designee determines that risk to the installation, its personnel, or property is so great and so imminent that closing the channel to all but designated military craft is required for security reasons, or as directed by higher authority. This section will not preclude the closure of the channel as part of a security exercise; however, such closures of said channel will be limited in duration and scope to the maximum extent so as not to interfere with the ability of private vessels to use the channel for navigation in public waters adjacent thereto not otherwise limited by this regulation.

(3) The regulations in this section shall be enforced by the Commanding Officer of the Naval Air Station, Pensacola, Florida, and such agencies he/she may designate.

[53 FR 27682, July 22, 1988, as amended at 62 FR 17555, Apr. 10, 1997; 70 FR 67372, Nov. 7, 2005]

§ 334.780 Pensacola Bay, Fla.; seaplane restricted area.

(a) *The area.* Beginning at latitude 30°22′28″, longitude 87°16′00″; thence to latitude 30°21′02″, longitude 87°14′20″; thence to latitude 30°20′02″, longitude 87°15′16″; thence to latitude 30°20′11″; longitude 87°17′58″; and thence to 272° true to the shore.

(b) *The regulations.* (1) The area is established as a Naval Air Station small boat operations and training area.

(2) All persons, vessels, and other craft are prohibited from entering the waters described in paragraph (a) of this section for any reason. All vessels and craft, including pleasure vessels and craft (sailing, motorized, and/or rowed or self-propelled), private and commercial fishing vessels, other commercial vessels, barges, and all other vessels and craft, except vessels owned or operated by the United States and/or a Federal, State, or local law enforcement agency are restricted from entering, transiting, anchoring, drifting or otherwise navigating within the area described in paragraph (a) of this section.

(3) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station Pensacola and/or such persons or agencies he/she may designate.

[13 FR 9561, Dec. 31, 1948, as amended at 25 FR 2666, Mar. 30, 1960; 28 FR 349, Jan. 12, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17555, Apr. 10, 1997; 70 FR 67372, Nov. 7, 2005]

§ 334.783 Arlington Channel, U.S. Coast Guard Base Mobile, Mobile, Alabama, Coast Guard Restricted Area.

(a) *The area.* The waters of Arlington Channel west of a line from latitude 30°–39′—09″N, longitude 088°–03′–24″ W to latitude 30°–38′–54°° N., longitude 088′–03°–17″ W.

(b) *The regulations.* The restricted area is open to U.S. Government vessels and transiting vessels only. U.S. Government vessels include U.S. Coast Guard vessels, Department of Defense vessels, state and local law enforcement and emergency services vessels and vessels under contract with the U.S. Government. Vessels transiting the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Fishing, trawling, net-fishing and other aquatic activities are prohibited in the restricted area without prior approval from the Commanding Officer, U.S. Coast Guard Group Mobile or his designated representative.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, U.S. Coast Guard Group Mobile or his designated representative.

[69 FR 45259, July 29, 2004]

§ 334.786 Pascagoula Naval Station, Pascagoula, Mississippi; restricted area.

(a) *The area.* The waters of Pascagoula Harbor beginning at a point at latitude 30°20′18″ N, longitude

88°34′50.3″ W, thence northerly to latitude 30°20′34.3″ N, longitude 88°34′51.8″ W, thence easterly to latitude 30°20′34.3″ N, longitude 88°34′9.6″ W, thence southerly to latitude 30°20′19.5″ N, longitude 88°34′9.6″ W, thence westerly along the shoreline to the point of beginning.

(b) *The regulations.* (1) All persons are prohibited from entering the waters within the restricted area for any reason. Mooring, anchoring, fishing or recreational boating shall not be allowed within the restricted area when required by the Commanding Officer of the Naval Station Pascagoula to safeguard the installation and its personnel and property in times of an imminent security threat; during special operations; during natural disasters; or as directed by higher authority.

(2) Mooring, anchoring, fishing, recreational boating or any activity involving persons in the water shall not be allowed at any time within 500 feet of any quay, pier, wharf, or levee along the Naval Station northern shoreline.

(3) Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, naval station, Pascagoula and such agencies as he/she shall designate.

[57 FR 46303, Oct. 8, 1992, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.790 Sabine River at Orange, Tex.; restricted area in vicinity of the Naval and Marine Corps Reserve Center.

(a) *The area.* The berthing area of the Naval and Marine Corps Reserve Center and the waters adjacent thereto from the mean high tide shoreline to a line drawn parallel to, and 100 feet channelward from lines connecting the pier head of Pier 10 and from a line drawn parallel to, and 200 feet upstream from, Pier 10 to a line drawn parallel to, and 100 feet downstream from Pier 10.

(b) *The regulations.* (1) No person, vessel or other craft, except personnel and vessels of the U.S. Government or those duly authorized by the Commanding Officer, Naval and Marine Corps Reserve Center, Orange, Texas, shall enter, navigate, anchor or moor in the restricted area.

(2) The regulations of this section shall be enforced by the Commanding Officer, Naval and Marine Corps Reserve Center, Orange, Texas, and such agencies as he may designate.

[44 FR 42968, July 23, 1979. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.800 Corpus Christi Bay, Tex.; seaplane restricted area, U.S. Naval Air Station, Corpus Christi.

(a) *The area.* The waters of Corpus Christi Bay within the area described as follows: Beginning at a point on the south shore of Corpus Christi Bay at the ''North Gate'' of the U.S. Naval Air Station at longitude 97°17′15.0″ W.; thence through points at:

North latitude	West longitude
27°42′34.9″	97°17′09.6″
27°41′46.8″	97°14′23.8″
27°41′15.1″	97°14′35.4″
27°41′27.0″	97°15′16.7″
27°40′41.6″	97°15′33.3″

thence to a point on shore at latitude 27°40′44.9″ N.; thence along the shore to the point of beginning.

(b) *The regulations.* (1) No person, vessel or watercraft shall enter or remain in the area at any time, day or night, except with express written approval of the enforcing agency or as a result of force majeure.

(2) The regulations in this section shall be enforced by the Chief of Naval Air Training, U.S. Naval Air Station, Corpus Christi, Tex., and such agencies as he may designate.

[43 FR 30054, July 13, 1978. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49′15.0″ N, longitude 97°12′6.0″ W, thence southerly to latitude 27°49′7.3″ N, longitude 97°12′5.4″ W, thence south-southwesterly to latitude 27°49′01″ N, longitude 97°12′39.4″ W, thence west-northwesterly to latitude 27°49′02.4″ N, longitude 97°12′48.3″ W, thence north-northeasterly to latitude

27°49′16.5″ N, longitude 97°12′41.5″, thence easterly to latitude 27°49′17.0″ N, longitude 97°12′27.5″ W, thence easterly along the shoreline to the point of beginning.

(b) *The regulations.* Mooring, anchoring, fishing, recreational boating or any activity involving persons in the water shall not be allowed within the restricted area. Commercial vessels at anchor will be permitted to swing into the restricted area while at anchor and during tide changes.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Station, Ingleside and such agencies as he/she shall designate.

[57 FR 46303, Oct. 8, 1992; 58 FR 6718, Feb. 2, 1993, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.810 Holston River at Holston Ordnance Works, Kingsport, Tenn.; restricted area.

(a) *The area.* That portion of Holston River within the boundaries of the Government reservation.

(b) *The regulations.* (1) Except in cases of extreme emergency, all vessels other than those owned or controlled by the U.S. Government and any activity involving persons in the water, are prohibited from entering the area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding Officer of the Holston Ordnance Works, Kingsport, Tennessee, and such agencies as he may designate.

[20 FR 7075, Sept. 30, 1955. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.820 Lake Michigan; naval restricted area, U.S. Naval Training Center, Great Lakes, Ill.

(a) *The area.* An area extending in a north and south direction from the Great Lakes, Illinois, south breakwater to an east-west line projecting eastward from the shore termination of the north fence of the U.S. Naval Training Center, Great Lakes, Illinois, and extending into Lake Michigan for a distance of one mile from the shoreline.

(b) The regulations. No person or vessel of any kind, except those engaged in naval operations, shall enter, navigate, anchor, or moor in the restricted area without first obtaining permission to do so from the Commander, U.S. Naval Training Center, Great Lakes, Illinois, or his authorized representative.

[28 FR 319, Jan. 11, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.830 Lake Michigan; small-arms range adjacent to U.S. Naval Training Center, Great Lakes, Ill.

(a) *The danger zone.* An area bounded on the north by latitude 42°20′30″; on the east by longitude 87°47′30″; on the south by latitude 42°18′45″; and on the west by the shoreline.

(b) *The regulations.* (1) When firing affecting the danger zone is in progress, the enforcing agency will post guards at such locations that the waters in the danger zone may be observed and arrange signals whereby these guards may stop the firing should any person or vessel be seen in the waters of the danger zone. When firing is in progress, the enforcing agency will cause red flags to be displayed on shore near the rifle butts, which may be readily discernible to a person in a vessel within the danger zone.

(2) The enforcing agency is hereby authorized to use such agencies as shall be necessary to prohibit all persons and vessels from entering the area until such time as shall be convenient.

(3) If such flags are displayed it will indicate that firing is in progress, and that the waters in the danger zone are subject to impact by rounds missing or ricocheting off the impact berm and should not be entered until the flags are lowered.

(4) Wherever possible, the enforcing agency will warn the public of the contemplated times of firing and the areas involved two days in advance of the scheduled date, through the public press and the U.S. Coast Guard. The danger zone may, however, be closed without advance notice.

(5) [Reserved]

(6) The regulations in this section shall be enforced by the Commander, U.S. Naval Training Center, Great

Lakes, Illinois, and such agencies as he may designate.

[13 FR 9560, Dec. 31, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 28 FR 319, Jan. 11, 1963; 45 FR 13072, Feb. 28, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.840 Waters of Lake Michigan south of Northerly Island at entrance to Burnham Park Yacht Harbor, Chicago, Ill.; danger zone adjacent to airport on Northerly Island.

(a) *Danger zone*—(1) *Zone A.* Beginning at a point 250 feet west of the center line of the runway at the south end of the air strip on Northerly Island; thence 183°, 500 feet; thence 90°, 600 feet; and thence northerly to a point 250 feet east of the center line of the runway at the south end of said air strip. During the navigation season, the southeast and southwest corners of Zone A will be marked with spar buoys colored and lettered as prescribed by the U.S. Coast Guard.

(2) *Zone B.* Beginning at the southwest corner of Zone A; thence 183°, 500 feet; thence 90°, 700 feet; thence northerly to the southeast corner of Zone A; and thence 270° to the point of beginning. During the navigation season, the southeast and southwest corners of Zone B will be marked with spar buoys colored and lettered as prescribed by the U.S. Coast Guard.

(b) *Regulations.* (1) During daylight hours (from one-half hour before sunrise to one-half hour after sunset), and when the airport on Northerly Island is in operation, no vessel or other watercraft any part of which extends more than 15 feet above the water surface shall enter or remain in Zone A, and no vessel or other watercraft any part of which extends 30 feet or more above the water surface shall enter or remain in Zone B.

(2) When the airport is in operation a red ball, at least three feet in diameter, shall be continuously displayed at the northeast and northwest corners of Zone A. These balls shall not be displayed when the airport is not in operation.

[12 FR 6665, Oct. 9, 1947. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 15 FR 5022, Aug. 4, 1950; 36 FR 5911, Mar. 31, 1971. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.845 Wisconsin Air National Guard, Volk Field military exercise area located in Lake Michigan offshore from Manitowoc and Sheboygan Counties; danger zone.

(a) *The area.* (1) The waters within an area beginning at a point at latitude 43°19′00″ N., longitude 87°41′00″ W.; to latitude 44°05′30″ N., longitude 87°29′45″ W.; to latitude 44°02′00″ N., longitude 87°02′30″ W.; to latitude 43°15′30″ N., longitude 87°14′00″ W.; thence to the point of beginning, as shown on NOAA Chart 14901 (1999) and existing aeronautical charts.

(b) *The regulation.* (1) During specific, infrequent periods when Military exercises will be conducted, as promulgated in the Local Notice to mariners published by the United States Coast Guard (USCG), all vessels entering the danger zone are advised to proceed across the area by the most direct route and without unnecessary delay.

(2) During specific, infrequent periods when Military exercises will be conducted, as promulgated in the Local Notice to mariners published by the USCG, no vessel or craft of any size shall lie-to or anchor in the danger zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this regulation shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, VOLK Field, WI, and/or persons or agencies as he/she may designate.

[69 FR 45591, July 30, 2004]

§ 334.850 Lake Erie, west end, north of Erie Ordnance Depot, Lacarne, Ohio.

(a) The danger zone: Consists of the waters of Lake Erie within:

(1) *Danger Area I.* The sector of a circle with a radius of 6,500 yards centered at latitude 41°32′30″ N., longitude 33°01′00″ W., and intersecting the southwest boundary of Area II at latitude 41°35′00″ N., longitude 83°03′22″ W., and the southeast boundary of Area II at latitude 41°34′20″ N., longitude 82°57′10″ W.

(2) *Danger Area II* (*Includes Area I*). The area bounded as follows: Beginning

at latitude 41°32′30″ N., longitude 83°01′00″ W.; thence to latitude 41°35′00″ N., longitude 83°03′22″ W.; thence to latitude 41°36′00″ N., longitude 83°03′24″ W.; thence to latitude 41°41′30″ N., longitude 83°07′30″ W.; thence to latitude 41°41′30″ N., longitude 83°00′00″ W.; thence to latitude 41°35′40″ N., longitude 82°54′50″ W.; and thence to the point of beginning.

(b) *Types of firing*—(1) *Danger Area I.* Small arms impact area.

(2) *Danger Area II.* Ground-based artillery, antiaircraft artillery and automatic weapons impact area.

(c) Authorized dates and hours of firing:

(1) *Danger Area I.* 6 a.m. to 6 p.m., e.s.t./e.d.t., daily; actual firing dates and hours within the authorized period to be announced in advance in special firing notices.

(2) *Danger Area II.* 8 a.m. to 5 p.m., e.s.t./e.d.t., daily except on Saturdays, Sundays, and holidays; actual firing dates and hours scheduled within authorized period to be announced in advance in special firing notices.

(d) *Restrictions.* (1) No person or vessel shall enter or remain in a danger zone during a scheduled firing period announced in a special firing notice unless specific permission is granted in each instance by a representative of the enforcing officer.

(2) The danger areas within the danger zone shall be open to the public for navigation, fishing and other public use when firing and/or bombing is not scheduled.

(e) *Enforcing agencies.* The regulations in this section shall be enforced for the respective danger areas by the following commanders and such agencies as each may designate for his assigned areas. He will be responsible for proving the prescribed control, signals, and special firing notices.

(1) *Danger Area I.* Adjutant General, State of Ohio.

(2) *Danger Area II.* Adjutant General, State of Ohio.

(f) *Control and signals*—(1) *Danger Area I.* When firing into Area I, red flags will be flown from the safety tower at Camp Perry, and from flag poles in the butts of the ranges being used.

(2) *Danger Area II.* During all types of firing into Area II, red flags will be displayed, one from the safety tower at Camp Perry and one from the safety tower at the Erie Proof Front. During firing into Area II, patrol boats will police and maintain surveillance of the area, and will be in constant radio communication with the shore station controlling the firing.

(3) [Reserved]

(4) The appropriate enforcing officer has authority to suspend any scheduled firing for reasonable periods during regattas and immediately after fishing nets are destroyed or dislocated by severe storms.

(5) The special firing notices which will include schedules of use will be published by the enforcing officer indicated in paragraph (e) of this section, in sufficient time to permit circularization to interested parties and posting on the bulletin boards of post offices in surrounding localities. Special notices will also be furnished the District Engineer, Corps of Engineers, Detroit, Mich.; the Commander, Ninth Coast Guard District, Cleveland, Ohio; the Regional Manager, Federal Aviation Administration, Chicago, Ill.; and each of the enforcing agencies listed in paragraph (e) of this section. Users of the waterway shall familiarize themselves with the current special firing notices. If in doubt, inquiry should be made to the enforcing officer indicated in paragraph (e) of this section.

(6) Agencies desiring to use the areas shall present their requirements to the respective enforcing officer who is responsible for, and is granted authority to, coordinate the firing and established priorities, for the using agencies.

(g) *Fishing permits.* Fishermen desiring to set fixed nets within the danger zone are required in every instance to have written permits. Permits for placing nets within Areas I and II may be obtained by written application to the Adjutant General, State of Ohio. Applicants for permits must state the location at which they desire to set fixed nets and the period of time which they desire the permit to cover.

(h) *Injurious chemicals.* No phosphorus or other poisonous chemicals injurious to wild fowl or fish will be discharged into the waters of the areas.

(i) The regulations in this section shall be reviewed annually by the Department of the Army to determine whether further limitations of the danger zone shall be considered.

[35 FR 17178, Nov. 7, 1970, as amended at 37 FR 20026, Sept. 23, 1972. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.855 Salt River, Rolling Fork River, Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky; danger zone.

(a) *The area.* Salt River from Point A (latitude 37°59′31.72″ N; longitude 85°55′32.98″ W) located approximately 1.2 miles southeast of West Point, Kentucky; southward to its confluence with the Rolling Fork River. Salt River from Point B (latitude 37°57′51.32″ N; longitude 85°45′37.14″ W) located approximately 2.8 miles southwest of Shepherdsville, Kentucky; southward to its confluence with the Rolling Fork River. Rolling Fork River from Point C (latitude 37°49′59.27″ N; longitude 85°45′37.74″ W) located approximately 1.6 miles southwest of Lebanon Junction, Kentucky northward to its confluence with the Salt River. Otter Creek from Point D (latitude 37°51′31.77″ N; longitude 86°00′03.79″ W) located approximately 3.4 miles north of Vine Grove, Kentucky to Point E (latitude 37°55′21.95″ N; longitude 86°01′47.38″ W) located approximately 2.3 miles southwest of Muldraugh.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Army authority, vessels of the United States Coast Guard, and federal, local or state law enforcement vessels, are prohibited from entering the danger zones without permission from the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky and/or other persons or agencies as he/she may designate.

[70 FR 15228, Mar. 25, 2005]

§ 334.860 San Diego Bay, Calif., Naval Amphibious Base; restricted area.

(a) *The Area.* The water of the Pacific Ocean in Middle San Diego Bay in an area extending from the northern and eastern boundary of the Naval Amphibious Base about 0.1 nautical miles and 0.6 nautical miles from the southern shoreline and basically outlined as follows:

Station	Latitude	Longitude
1	32°40′33.0″ N	117°10′02.4″ W
2	32°40′34.7″ N	117°09′54.0″ W
3	32°40′46.0″ N	117°09′44.2″ W
4	32°41′00.0″ N	117°09′24.6″ W
5	32°40′20.0″ N	117°08′36.7″ W
6	32°40′00.0″ N	117°09′00.0″ W
7	32°39′18.0″ N	117°08′45.0″ W
8	32°39′16.0″ N	117°08′48.5″ W

(b) *The regulations.* (1) Swimming, fishing, waterskiing, mooring or anchoring shall not be allowed within the restricted area.

(2) A portion of the restricted area extending 120 feet from pierheads and from the low water mark on shore where piers do not exist is closed to all persons and vessels except those owned by, under hire to, or performing work for, the Naval Amphibious Base.

(3) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay. For vessels under sail, necessary tacking shall constitute a direct route.

(4) The regulations in this section shall be enforced by the Commanding Officer, Naval Amphibious Base, Coronado, California, and such agencies as he/she shall designate. Organized activities (such as sail races and regattas) within the restricted area may be allowed providing that a request has been made to the Commanding Officer, Naval Amphibious Base, Coronado, San Diego, California 92155 or by calling, telephone number (619) 522–4833 at least 10 days prior to the event.

[49 FR 49453, Dec. 20, 1984. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.865 Naval Air Station North Island, San Diego, California, restricted area.

(a) *The area.* The waters within an area beginning at 32°42′55.0″ N, 117°11′30.5″ W; thence running easterly to 32°42′57.0″ N, 117°11′22.5″ W; thence running easterly to 32°42′56.0″ N, 117°11′19.0″ W; thence running southeasterly to 32°42′49.0″ N, 117°11′08.5″ W; thence running southeasterly to 32°42′44.5″ N, 117°11′06.5″ W; thence running southerly to 32°42′40.0″ N, 117°11′06.5″ W.

(b) *The regulation.* (1) The restricted area shall not be open to swimming, fishing, water-skiing, mooring or anchorage.

(2) Dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(3) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(4) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(5) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for components, or other vessels authorized by Commander, Navy Region Southwest, or his/her designee.

(6) When security conditions dictate, Naval security forces may impose strict enforcement of stand-off distances within the restricted area. This enforcement will not prevent utilization of navigable channels, but will serve to control its use in order to protect vital National interests.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commander, Navy Region Southwest, and such agencies or persons as he/she may designate.

[68 FR 37972, June 26, 2003]

§ 334.870 San Diego Harbor, Calif.; restricted area.

(a) *Restricted area at Bravo Pier, Naval Air Station*—(1) *The area.* The water of the Pacific Ocean in North San Diego Bay in an area extending from the western boundary of North Island about 0.2 nautical miles bayward and basically outlined as follows:

Station	Latitude	Longitude
1	32°41′51.3″ N	117°13′34.0″ W
2	32°41′51.3″ N	117°13′46.6″ W
3	32°41′43.3″ N	117°13′50.0″ W
4	32°41′35.8″ N	117°13′48.0″ W
5	32°41′35.8″ N	117°13′35.0″ W

(2) *The regulations.* (i) The restricted area shall not be open to swimming, fishing, mooring or anchorage.

(ii) Transit will be allowed through the restricted area except that no transit will be allowed within 100 feet of the ammunition pier (Bravo Pier). All unauthorized vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Only vessels owned by, under hire to, or performing work for the Naval Air Station or the Naval Weapons Station may operate within 100 feet of the ammunition pier.

(b) *Restricted area at U.S. Naval Degaussing Station*—(1) *The area.* That portion of San Diego Bay near Point Loma, inclosed by lines connecting the following points, which are rectangular coordinates and are referred to U.S. Coast and Geodetic Survey station ''Old Town'' as their origin:

''a'' S. 18,738.80, W. 16,299.50.
''b'' S. 18,817.60, W. 15,791.30.
''c'' S. 19,376.09, W. 14,270.73.
''d'' S. 20,023.15, W. 14,462.94.
''e'' S. 21,080.24, W. 14,333.14.
''f'' S. 22,074.40, W. 16,371.48.

(2) *The regulations.* (i) There shall be no introduction of external magnetic field sources within the area.

(ii) Craft of any size shall not be excluded from transiting the area. However, they shall proceed through the area by the most direct route without delay or loitering. On occasion, access to the bait barges may be delayed for intermittent periods not exceeding 30 minutes.

(iii) No craft of any size shall lay-to or anchor within the area except on prior permission granted by the Officer

in Charge, U.S. Naval Degaussing Station.

(c) *Restricted area between Ballast Point and Zuniga Point*—(1) *The area.* An area in San Diego Bay between Ballast Point and Zuniga Point inclosed by lines connecting the following stations:

Station	Latitude	Longitude
A	32°41′17″	117°13′58″
B	32°41′19″	117°13′36.5″
C	32°41′01″	117°13′34″
D	32°40′59″	117°13′55″
E	32°41′03″	117°13′56″
A	32°41′17″	117°13′58″

(2) *The regulations.* (i) No vessel shall anchor within the restricted area at any time.

(ii) Dredging, dragging, seining, other fishing operations, and other activities not under the direction of the United States, which might foul underwater installations within the restricted area, are prohibited.

(iii) All tows entering the restricted area shall be streamed and shortened to the seaward of the area and towing appendages and catenaries shall not be dragged along the bottom while proceeding through the area.

(iv) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(d) *Restricted area at the Naval Supply Center Pier*—(1) *The area.* The waters of San Diego Bay extending approximately 100 feet out from the north, west and south sides of the Naval Supply Center Pier enclosed by lines connecting the following stations:

Station	Latitude	Longitude
A	32°42′50″ N	117°10′25″ W
B	32°42′50″ N	117°10′38″ W
C	32°42′54″ N	117°10′38″ W
D	32°42′54″ N	117°10′25″ W

(2) *The regulations.* (i) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Navy, U.S. Coast Guard, other authorized military components, or other vessels authorized by Commander Naval Base, San Diego or his designee.

(ii) Loitering, dredging, dragging, seining, fishing and similar activities within the restricted area are prohibited.

(e) *Enforcement.* The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, California, and such agencies as he/she may designate.

[17 FR 5951, July 2, 1952, as amended at 29 FR 9710, July 18, 1964; 35 FR 16370, Oct. 20, 1970; 49 FR 33646, Aug. 24, 1984. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 55 FR 27102, June 29, 1990; 55 FR 31689, Aug. 3, 1990]

§ 334.880 San Diego Harbor, Calif.; naval restricted area adjacent to Point Loma.

(a) *The area.* That portion of San Diego Bay southerly of Ballast Point, exclusive of the southwesterly portion of the restricted area described in § 334.612(b) located westerly of the entrance channel, bounded on the west by the shoreline at Point Loma, on the east by the entrance channel west project line, and on the south by latitude 32°40′.

(b) *The regulations.* (1) The area is reserved for anchorage of vessels of the U.S. Government and authorized harbor pilot and patrol boats. All other craft may navigate and operate through the area, and temporary mooring of vessels (not to exceed 24 hours) is permissible.

(2) No other vessels shall anchor or moor permanently in the area except by special permission obtained in advance from the Commander, Naval Base, San Diego, Calif.

(3) The regulations in this section shall be enforced by the Commandant, 11th Naval District, San Diego, Calif., and such agencies as he may designate.

[30 FR 4756, Apr. 14, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.890 Pacific Ocean off Point Loma, Calif.; naval restricted area.

(a) *The area.* The waters of the Pacific Ocean within an area extending southerly from Point Loma, California, described as follows: Beginning at latitude 32°39′54″, longitude 117°13′18″; thence southeasterly to latitude 32°34′31″, longitude 117°09′41″; thence 270° true to longitude 117°16′40″; thence due north to latitude 32°39′54″; and thence 90° true to the point of beginning.

(b) *The regulations.* (1) No vessel shall anchor within the restricted area at any time without specific permission of the enforcing agency.

(2) Dredging, dragging, seining, and other similar operations within the restricted area are prohibited.

(3) The regulations in this section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[17 FR 4346, May 13, 1952. Redesignated at 30 FR 4756, Apr. 14, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.900 Pacific Ocean, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.

(a) *The area.* Beginning at the shoreline north of the boat basin, latitude 33°13′10″, longitude 117°24′19″; thence westward to latitude 33°12′48″, longitude 117°24′56″; thence southward to latitude 33°12′32″, longitude 117°24′44″; thence eastward to latitude 33°12′47″, longitude 117°24′17″ (a point on the breakwater); thence northeastward along breakwater to latitude 33°12′58″, longitude 117°24′09″; thence northward along shoreline to point of beginning.

(b) *The regulations.* (1) No vessels shall anchor within the restricted area at any time.

(2) Dredging, dragging, seining, fishing operations, and other activities, which might foul underwater installations within the restricted area, are prohibited.

(3) All vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay.

(4) The regulations in this section shall be enforced by the Commanding General, U.S. Marine Corps Base, Camp Pendleton, California, and such agencies as he may designate.

[24 FR 1214, Feb. 17, 1959. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.905 Pacific Ocean, offshore of Camp Pendleton, California; Fallbrook restricted area.

(a) *The area.* The waters of the Gulf of Santa Catalina, offshore of Camp Pendleton in the Pacific Ocean, San Diego County, California. The center of the restricted area is located at 33°18.6′ N. latitude, 117°32.0′ W. longitude, with a radius of 9,000 feet.

(b) *The regulations.* (1) No vessel or craft of any size shall lie-to or anchor in the restricted area at any time other than a vessel operated by or for the U.S. Coast Guard, local, State or Federal law enforcement agencies.

(2) Loitering, dredging, dragging, anchoring, seining, fishing, and similar activities within the restricted area during vertical replenishment operations use is prohibited.

(c) *Enforcement.* The regulations in this section shall be enforced by the U.S. Coast Guard, local, State, or Federal law enforcement agencies.

[58 FR 53427, Oct. 15, 1993]

§ 334.910 Pacific Ocean, Camp Pendleton Boat Basin, U.S. Marine Corps Base, Camp Pendleton, Calif.; restricted area.

(a) *The area.* All of the waters of Camp Pendleton Boat Basin entrance channel lying northerly of a line between a light on the north Camp Pendleton jetty at latitude 33°12′22″, longitude 117°24′07″, and a light on the north Oceanside Harbor groin at latitude 33°12′29″, longitude 117°23′55″.

(b) *The regulations.* (1) The area is reserved exclusively for use by vessels owned or operated by the Federal Government. Permission to enter the area must be obtained from the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding General, U.S. Marine Corps Base, Camp Pendleton, California, or such agencies as he may designate.

[28 FR 13784, Dec. 19, 1963. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.920 Pacific Ocean off the east coast of San Clemente Island, Calif.; naval restricted area.

(a) *The area.* The waters of the Pacific Ocean within an area extending easterly from the east coast of San Clemente Island, California, described as follows: The northerly boundary to be a continuation, to seaward of the existing southerly boundary of the restricted anchorage area, as described in 110.218 of this chapter, to latitude 33°00.3′ N., longitude 118°31.1′ W.; thence to latitude 32°58.6′ N., longitude

118°30.0′ W.; thence to latitude 32°57.9′ N., longitude 118°31.3′ W on the shoreline; thence northerly along the shoreline to the point of beginning.

(b) *The regulations.* (1) No person or vessels, other than Naval Ordnance Test Station craft, and those cleared for entry by the Naval Ordnance Test Station, shall enter the area at any time except in an emergency, proceeding with extreme caution.

(2) Dredging, dragging, seining or other fishing operations within these boundaries are prohibited.

(3) No seaplanes, other than those approved for entry by Naval Ordnance Test Station, may enter the area.

(4) The regulations in this section shall be enforced by security personnel attached to the U.S. Naval Ordnance Test Station, China Lake, California, and by such agencies as may be designated by the Commandant, Eleventh Naval District, San Diego, California.

[23 FR 2098, Mar. 29, 1958, as amended at 48 FR 6708, Feb. 15, 1983; 48 FR 8273, Feb. 28, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.921 Pacific Ocean at San Clemente Island, Calif.; naval restricted area.

(a) *The area.* All waters between the northern and southern boundaries of the area known as West Cove seaward approximately four miles. The northern boundary is defined by the coordinates:

33°00′52″ N. 118°36′18″ W.
32°59′30″ N. 118°37′30″ W.
32°59′20″ N. 118°38′38″ W.

The southern boundary is defined by the coordinates:

33°00′40″ N. 118°35′27″ W.
32°58′30″ N. 118°36′40″ W.
32°57′45″ N. 118°38′38″ W.

(b) *The regulation.* (1) The use of this area for anchorage is prohibited to all craft at all times.

(2) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

[50 FR 50297, Dec. 10, 1985]

§ 334.930 Anaheim Bay Harbor, Calif.; Naval Weapons Station, Seal Beach.

(a) *The restricted area.* The water of Anaheim Bay Harbor between the east and west jetties at the United States Naval Weapons Station, Seal Beach, California, and the contiguous tidal channel and basin as far east as the Anaheim Bay bridge.

(b) *The regulation.* (1) The authority of the Naval Weapons Station Commanding Officer in this area extends to restricting and disallowing the navigating or anchorage of craft during such times as the Commanding Officer determines that considerations of national security or safety warrant such action(s).

(2) All craft authorized transit of this area shall stay within the limits of the entrance channel in the Outer Harbor, and confine their movement to within the limits of the marked small craft channel at the southern portion of the Inner Harbor.

(3) Recreational craft, such as water skis, jet skis (personal water craft), row boats, canoes, kayaks, wind surfers, sail boards, surf boards, etc., and any activity involving persons in the water, are specifically prohibited within the restricted area.

(4) Boats unable to throttle down or to maintain steerage way at 5 miles per hour speed shall proceed at the minimum speed consistent with seamanship in an area regularly subject to waterborne explosive handling operations. In case of doubt, boat operators of inbound boats will remain in the west end of the basin and outbound boats in the east end of the basin until informed by a representative of the Naval Weapons Station or U.S. Coast Guard of the completion of the waterborne explosive handling hazard.

(5) Smoking, open flames and barbecues in boats are prohibited during the transit of this area.

(6) Nothing in the regulations in this section shall be construed as relieving the owner or persons in command of any vessels or plant from the penalties of the law for obstructing navigation or for not complying with the navigation laws in regard to lights or signals or for otherwise violating law.

(7) All vessel operators shall heed and obey all posted signs and/or instructions issued by security personnel of the U.S. Naval Weapons Station.

(8) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Weapons Station, Seal Beach, California, and such agencies as he/she may designate. For clarification or other information, the U.S. Naval Weapons Station Command Duty Officer should be contacted at (213) 594–7101.

[53 FR 6942, Mar. 3, 1988, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.938 Federal Correctional Institution, Terminal Island, San Pedro Bay, California; restricted area.

(a) *The area.* The waters of San Pedro Bay on the east side of Reservation Point extending 150 feet (50 yards), from the Federal Correctional Institution fence along the shore to the following stations:

Station	Latitude	Longitude
1	33°43′45.5″ N	118°16′2.0″ W
2	33°43′37.0″ N	118°15′58.0″ W
3	33°43′27.5″ N	118°15′54.5″ W

The stations will be marked by three special purpose buoys (white with an orange diamond in the center).

(b) *The regulations.* No person or vessel of any kind shall enter, navigate, anchor or moor within the restricted area without first obtaining the permission of the Warden, Federal Correctional Institution, Terminal Island. The regulations in this section shall be enforced by the U.S. Coast Guard, the Warden of the Federal Correctional Institution, Terminal Island, and such agencies and he/she may designate.

[57 FR 58098, Dec. 8, 1992; 58 FR 42237, Aug. 9, 1993, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.940 Pacific Ocean in vicinity of San Pedro, Calif.; practice firing range for U.S. Army Reserve, National Guard, and Coast Guard units.

(a) *The danger zone.* (1) [Reserved]

(2) *Zone B.* An area extending southwest and northwest from Point Vicente, described as follows: Beginning at Point Vicente Light, latitude 33°44′30″, longitude 118°24′36″; thence southwesterly to latitude 33°43′42″, longitude 118°25′24″; thence northwesterly to latitude 33°46′30″, longitude 118°27′06″; thence southeasterly to the shore, latitude 33°44′54″, longitude 118°24′42″; and thence southerly along the shore to the point of beginning.

(b) *The regulations.* (1) Intermittent firing may take place in the danger zone on any day from sunrise to sunset.

(2) Except as otherwise provided in this paragraph, the danger zone will be open to fishing and general navigation. When firing is not scheduled the danger zone may be occupied without restriction. When firing is in progress safety observers will be maintained to warn all vessels. Notice to vacate the area, or to stop at the boundaries, will be given by siren, patrol vessel, or other effective means, and such notice shall be promptly obeyed. All vessels permitted to enter the danger zone during a firing period, other than those owned by and operated by or under the direction of the U.S. Government, shall proceed across the area by the most direct route and clear the area with the greatest possible dispatch. No person shall enter the water and no vessel, fishing boat, or recreational craft shall anchor in the danger zone during an actual firing period.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of a vessel from any penalties for obstructing navigation, or for obstructing or interfering with range lights, or for not complying with the navigation laws in regard to lights and fog signals, or for otherwise violating any law or regulations.

(4) The regulations in this section shall be enforced by the Commanding Officer, Fort MacArthur, California, and such agencies as he may designate.

[19 FR 3795, June 22, 1954, as amended at 27 FR 2465, Mar. 15, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.950 Pacific Ocean at San Clemente Island, California; Navy shore bombardment areas.

(a) *The danger zones.* (1) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 072.5 degrees

true, 5.375 nautical miles; thence 313 degrees true to Pyramid Head Light.

(2) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 303 degrees true, 5.35 nautical miles; thence 040.4 degrees true to the beach.

(3) The waters of the Pacific Ocean within an area beginning at Pyramid Head Light; extending in a direction of 133 degrees true, 2.0 nautical miles; thence 024 degrees true, 2.14 nautical miles, thence 313 degrees true, 7.6 nautical miles; thence 220 degrees true to the beach.

(b) *The regulations.* (1) All persons and all vessels shall promptly vacate the areas when ordered to do so by the Navy or the Coast Guard. Persons and vessels shall not enter the areas during periods scheduled for firing. These areas are used for various surface and air gunnery and aerial bombing exercises by the United States Navy, Coast Guard and Marine Corps. Hazardous conditions exist during shore bombardment by naval ships in the area seaward of that described in paragraphs (a)(1) and (a)(2) of this section between the firing vessel and the shore. The area described in paragraph (a)(3) of this section is hazardous due to the possibility of rounds landing in the waters east of San Clemente Island.

(2) All persons in the area are warned that unexploded ordinance exists within the shore bombardment area on San Clemente Island and in the surrounding waters. All persons should exercise extreme caution when operating in the area.

(3) Information about scheduled exercises will be published in the Local Notice to Mariners and also may be obtained by calling the shore bombardment area scheduler at (619) 437–2231. Vessels in the vicinity of San Clemente Island may obtain information on the status of the range by contacting the Navy Observation Post by marine radio on channel 16. However, the Navy Observation Post is normally manned only during firing exercises. In addition, since the Navy Observation Post may not be able to receive radio transmissions or answer a vessel calling from the area described in paragraph (A)(3) of this section due to interference from the land mass, it is recommended that callers position their craft for line-of-sight transmission with the Navy Observation Posts near Pyramid Cove prior to assuming that the range is not in use.

(4) Except in an emergency, no vessel shall anchor in these areas without first obtaining permission from the Commander, Naval Base, San Diego or from the senior officer present in the area who may grant permission to anchor not exceeding the period of time that he, himself, is authorized to remain there. The senior officer present shall advise the Commander, Naval Base, San Diego when and to whom a berth is assigned.

(5) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

[55 FR 30907, July 30, 1990, as amended at 62 FR 17556, Apr. 10, 1997]

§ 334.960 Pacific Ocean, San Clemente Island, Calif.; naval danger zone off West Cove.

(a) *The danger zone.* The waters of the Pacific Ocean in an area about one-half mile off the west coast of San Clemente Island basically outlined as follows:

Latitude	Longitude
33°00′40″	118°35′45″
32°57′40″	118°34′25″
32°57′10″	118°35′40″
33°00′10″	118°37′00″
33°00′40″	118°35′45″

(b) *The regulations.* (1) Intermittent firing may take place in the danger zone on any day from 8:00 a.m. until 1:00 p.m.

(2) Except as otherwise provided in this section, the danger zone will be open to fishing and general navigation.

(3) The operations officer, Naval Ordnance Test Station, Pasadena Annex, Pasadena, California, will announce firing schedules. Each week, public notices will be issued giving advance firing schedules. Such notices will appear in the local newspapers and in local ''Notice to Mariners'' and ''Notice to

Airmen.'' For the benefit of the fishermen and small-craft operators, announcements will be made on the marine radio.

(4) When a scheduled firing is about to be undertaken, fishing boats and other small craft will be contacted by surface patrol boats or aircraft equipped with a loudspeaker system. When so notified, all persons and vessels shall leave the area immediately by the shortest route. Upon completion of firing or if the scheduled firing is cancelled for any reason, fishermen and small-boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

(5) The regulations in this section shall be enforced by security personnel attached to the Naval Ordnance Test Station, Pasadena Annex, and by such agencies as may be designated by the Commandant, Eleventh Naval District, San Diego.

[27 FR 6829, July 19, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17557, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.961 Pacific Ocean, San Clemente Island, California, naval danger zone off the northwest shore.

(a) *The danger zone:* The waters of the Pacific Ocean adjacent to San Clemente Island, California, bounded by the following coordinates and San Clemente Island:

Point A—33°01′38″ N 118°36′20″ W
Point B—33°01′11″ N 118°37′25″ W
Point C—33°00′11″ N 118°37′00″ W
Point D—33°00′05″ N 118°38′53″ W
Point E—33°02′55″ N 118°39′05″ W
Point F—33°04′25″ N 118°37′41″ W
Point G—33°02′02.5″ N 118°35′53″ W

(b) *The regulations:* (1) No person shall enter this area during closure periods unless authorized to do so by the enforcing agency. No vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the enforcing agency shall enter this area during closure periods.

(2) The regulations in this section shall be enforced by the commander, Naval Base, San Diego, California, and such agencies as he/she shall designate.

[55 FR 41522, Oct. 12, 1990, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.980 Pacific Ocean; around San Nicolas Island, Calif., naval restricted area.

(a) *The area.* The waters of the Pacific Ocean around San Nicolas Island, Calif., extending about 3 miles seaward from the shoreline, described as follows:

	Latitude	Longitude
Point A	33°10′10″	119°24′20″
Point C	33°10′10″	119°31′10″
Point D	33°12′00″	119°35′30″
Point E	33°14′20″	119°37′40″
Point F	33°16′40″	119°38′10″
Point G	33°19′10″	119°37′10″
Point I	33°20′10″	119°31′10″
Point K	33°17′40″	119°24′50″
Point L	33°13′50″	119°21′50″

(b) *Sections of area.* (1) ALPHA section is the northerly section of the area, and is described as follows:

	Latitude	Longitude
Point G	33°19′10″	119°37′10″
Point I	33°20′10″	119°31′10″
Point J	33°18′18″	119°26′29″
Point O	33°15′43″	119°28′40″
Thence northwesterly along shoreline to Point N		
Point N	33°16′30″	119°30′40″
Point G	33°19′10″	119°37′10″

(2) BRAVO section is the westerly section of the area, and is described as follows:

	Latitude	Longitude
Point N	33°16′30″	119°30′40″
Thence westerly, southerly and easterly along the shoreline to Point M		
Point M	33°13′10″	119°29′40″
Point B	33°10′10″	119°29′40″
Point C	33°10′10″	119°31′10″
Point D	33°12′00″	119°35′30″
Point E	33°14′20″	119°37′40″
Point F	33°16′40″	119°38′10″
Point G	33°19′10″	119°37′10″
Point N	33°16′30″	119°30′40″

(3) CHARLIE section is the easterly section of the area, and is described as follows:

	Latitude	Longitude
Point J	33°18′18″	119°26′29″
Point O	33°15′43″	119°28′40″
Thence easterly, southerly and westerly along the shoreline to Point M		
Point M	33°13′10″	119°29′40″
Point B	33°10′10″	119°29′40″

	Latitude	Longitude
Point A	33°10′10″	119°24′20″
Point L	33°13′50″	119°21′50″
Point K	33°17′40″	119°24′50″
Point J	33°18′18″	119°26′29″

(c) *Markers*. Range markers, as delineated below, are installed at Points M, N, and O for navigational purposes to indicate the boundaries between sections ALPHA, BRAVO, and CHARLIE.

(1) At Point M two triangular markers are installed facing southward, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being located on the line of longitude 119°29′40″ W. and near the southerly shoreline at latitude 33°13′10″ N. The southernmost marker is 20 feet below the other.

(2) At Point N two triangular markers are installed facing northwesterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northwesterly shoreline at latitude 33°16′30″ N. and longitude 119°30′40″ W. The northernmost marker is 20 feet below the other.

(3) At Point O two triangular markers are installed facing northeasterly, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, the poles being located near the northeasterly shoreline at latitude 33°15′43″ N. and longitude 119°28′40″ W. The northernmost marker is 20 feet below the other.

(d) *The regulations*. (1) No seaplanes, other than those approved for entry by the Commander, Pacific Missile Range (COMPMR) may enter any section of the area.

(2) Subject to the provisions of paragraph (d)(4) of this section, relating to sections BRAVO and CHARLIE, no vessels other than Pacific Missile Range craft and those cleared for entry by COMPMR, or the Officer-in-Charge, San Nicolas Island shall enter any section of the area at any time except in an emergency, proceeding with extreme caution.

(3) Dredging, dragging, seining, anchoring and other fishing operations within ALPHA section of the area are prohibited at all times.

(4) Dredging, dragging, seining, or other fishing operations are allowed within the boundaries of BRAVO and CHARLIE sections at all times except when declared closed by COMPMR. Notice that sections BRAVO and/or CHARLIE are closed to fishing shall be given by publication of notices to mariners, or may be obtained by monitoring standard Coast Guard radio broadcasts or by contacting the Pacific Missile Range by telephone or radio. Boats must remain at least 300 yards from the shoreline of San Nicolas Island at all times. Nothing in this provision shall be construed as authorization for personnel to land on San Nicolas Island, except in an emergency.

(5) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Range, Point Mugu, Calif., and by such agencies as may be designated by the Commandant, 11th Naval District, San Diego, Calif.

[30 FR 2260, Feb. 19, 1965. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 21226, Apr. 19, 1993]

§ 334.990 Long Beach Harbor, Calif.; naval restricted area.

(a) *The area*. All the waters between the Navy mole and Terminal Island to the westward of longitude 118°13′10″.

(b) *The regulations*. (1) The area is reserved exclusively for use by naval vessels. Permission for any person or vessel to enter the area must be obtained from the enforcing agency.

(2) The regulations in this section shall be enforced by the Commander, U.S. Naval Base Los Angeles, Long Beach, California, and such agencies as he may designate.

[19 FR 891, Feb. 17, 1954, as amended at 27 FR 12368, Dec. 13, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1010 San Francisco Bay in vicinity of Hunters Point; naval restricted area.

(a) *The area*. Bounded by the shore of the San Francisco Naval Shipyard and the following lines: Beginning at a point on the northerly shore of the Shipyard bearing 292°40′, 950 yards,

from Hunters Point Light; thence 35°27′, 730 yards to the U.S. Pierhead Line; thence 142°55′, 1,300 yards, along the Pierhead Line; thence 180°, 2,450 yards, to the San Francisco-San Mateo County Line; thence 270°, 430 yards, along the County Line; thence 305°27′, 1,313 yards, to and along the southwesterly side of South Basin; and thence due north, 413 yards, to the southwesterly shore of the Shipyard.

NOTE: All bearings in this section are referred to true meridian.

(b) *The regulations.* No person may enter the area and no vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commander, San Francisco Naval Shipyard, shall navigate, anchor or moor in this area.

[26 FR 11201, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda.

(a) *The areas.* (1) The waters of San Francisco Bay bounded by the shore of Naval Air Station, Alameda, and a line beginning at a point on the north side of Oakland Inner Harbor Entrance Channel at approximately: 37°47′57″ N, 122°19′43″ W; WSW to 37°47′53″ N, 122°19′57″ W; SE to 37°47′46″ N, 122°20′00″ W; SE to 37°47′41″ N, 122°19′52″ W; S to 37°46′49″ N, 122°19′52″ W; E to 37°46′49″ N, 122°19′28″ W; SE to 37°46′46″ N, 122°19′21″ W; E to 37°46′45″ N, 122°19′05″ W; SE to 37°46′38″ N, 122°18′59″ W; SSW to 37°46′18″ N, 122°19′05″ W; SE to 37°46′00″ N, 122°18′28″ W; E to 37°46′00″ N, 122°18′22″ W; N to 37°46′03″ N, 122°18′22″ W; E to 37°46′00″ N, 122°17′28″ W; NE to 37°46′03″ N, 122°17′26″ W; where it joins the Naval Air Station, Alameda, Breakwater.

(2) The waters of the entrance channel to Oakland Inner Harbor (San Antonio Estuary) between the westerly end of the rock wall on the south side of the channel and the easterly boundary of the Naval Air Station.

(b) *The regulations.* (1) No person shall enter this area and no vessel or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commanding Officer, U.S. Naval Air Station, Alameda, California, shall navigate, anchor or moor in the area described in paragraph (a)(1) of this section.

(2) No person shall enter this area and no vessel without special authorization of the Commander, Twelfth Coast Guard District, shall lie, anchor or moor in the area described in paragraph (a)(2) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

[26 FR 11201, Nov. 28, 1961, as amended at 27 FR 10484, Oct. 27, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 51 FR 25198, July 11, 1986; 55 FR 3056, Jan. 30, 1990; 62 FR 17557, Apr. 10, 1997]

§ 334.1030 Oakland Inner Harbor adjacent to Alameda Facility, Naval Supply Center, Oakland; restricted area.

(a) *The area.* Within 100 feet of the Alameda Facility wharf.

(b) The regulations. No persons and no vessels or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer, Naval Supply Center, Oakland, shall enter this area.

[26 FR 11201, Nov. 28, 1961, as amended at 31 FR 6590, May 3, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1040 Oakland Harbor in vicinity of Naval Supply Center, Oakland; restricted area and navigation.

(a) *The area.* Bounded by the shore of the Naval Supply Center and the following lines: Beginning at a point on the north shore located at about latitude 37°48′26″, longitude 122°19′34″; thence 225°12′, 290 yards; and thence 173°10′, 620 yards to a point on the south shore at about latitude 37°48′02″, longitude 122°19′39″.

(b) *The regulations.* (1) No persons and no vessels or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commanding Officer, Naval Supply Center, Oakland, shall enter this area.

(2) All vessels over 1,000 tons displacement, bound for the Naval Supply Center, Oakland, shall use a qualified

pilot regularly licensed for the waters of Oakland Harbor.

[26 FR 11201, Nov. 28, 1961, as amended at 31 FR 6590, May 3, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1050 Oakland Outer Harbor adjacent to the Military Ocean Terminal, Bay Area, Pier No. 8 (Port of Oakland Berth No. 10); restricted area.

(a) *The area.* Within 100 feet of the pier.

(b) *The regulations.* No persons and no vessels or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commander, Oakland Army Base, shall enter this area.

[26 FR 11201, Nov. 28, 1961, as amended at 31 FR 6590, May 3, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1060 Oakland Outer Harbor adjacent to the Oakland Army Base; restricted area.

(a) *The area.* Within 100 feet of the wharves, piers or shore.

(b) *The regulations.* No persons and no vessels or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commander, Oakland Army Base, shall enter this area.

[26 FR 11201, Nov. 28, 1961, as amended at 31 FR 6590, May 3, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1065 U.S. Coast Guard Station, San Francisco Bay, Yerba Buena Island, San Francisco Bay, California; restricted area.

(a) *The area.* San Francisco Bay on the east side of Yerba Buena Island: From a point along the southeastern shore of Yerba Buena Island at latitude 37°48′27″ North, longitude 122°21′44″ West; east to latitude 37°48′27″ North, longitude 122°21′35″ West; north to latitude 37°48′49″ North, longitude 122°21′35″ West, a point on the northeastern side of Yerba Buena Island.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the Restricted Area for any reason without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(2) Mooring, anchoring, fishing, transit and/or swimming shall not be allowed within the Restricted Area without prior written permission from the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer of the Coast Guard Group San Francisco on Yerba Buena Island, and such agencies and persons as he/she shall designate.

[69 FR 20547, Apr. 16, 2004]

§ 334.1070 San Francisco Bay between Treasure Island and Yerba Buena Island; naval restricted area.

(a) *The area.* All the water of the cove bounded by the south shore of Treasure Island, the north shore of Yerba Buena Island, and the connecting causeway, west of a line extending from the southeast corner of the most southerly of the four finger piers along the east side of Treasure Island, at about latitude 37°49′11″, longitude 122°21′40″, approximately 153°20′ to the northeasterly point of Yerba Buena Island, at about latitude 37°48′55″, longitude 122°21′30″.

(b) *The regulations.* No person and no vessel or other craft, except vessels owned and operated by the U.S. Government or vessels duly authorized by the Commanding Officer, Naval Station, Treasure Island, shall enter the restricted area.

[26 FR 11201, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1080 San Francisco Bay adjacent to northeast corner of Treasure Island; naval restricted area.

(a) *The area.* Beginning at the intersection of Pier 21 and the bulkhead line, thence northwesterly along the bulkhead to the northernmost point of Treasure Island; thence 288° true, 290 yards; thence 26° true, 475 yards; thence 115° 30′ true, 520 yards; thence 152° true, 500 yards to Pier 21; thence along the pier to the point of beginning.

(b) *The regulations.* No person shall enter the restricted area. No vessels, except those engaged in naval operations, shall lie, anchor, moor or unnecessarily delay in the area. Vessels

may pass through the area in the process of ordinary navigation except as directed by patrol boats. The regulations in this paragraph shall be enforced by the Commandant, Twelfth Naval District, and such agencies as he may designate.

[26 FR 11201, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17557, Apr. 10, 1997]

§ 334.1090 San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate restricted area.

(a) *The area.* Bounded by the easterly shore of upper San Francisco Bay and the following lines: Beginning at a point on shore bearing 17° 800 yards, from ''Tree'' at Molate Point thence 270°, 870 yards; thence 189° 1,100 yards; and thence 123° to the shore.

(b) *The regulations.* Persons and vessels not operating under supervision of the local military or naval authority or public vessels of the United States, shall not enter this area except by specific permission of the Commanding Officer, Naval Supply Center.

[26 FR 11201, Nov. 28, 1961, as amended at 42 FR 17120, Mar. 31, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1100 San Pablo Bay, Carquinez Strait, and Mare Island Strait in vicinity of U.S. Naval Shipyard, Mare Island; restricted area.

(a) *The area.* The waters of San Pablo Bay, Carquinez Strait, and Mare Island Strait, within 100 yards of the shore of that part of the Navy Yard, Mare Island, south of the causeway between the City of Vallejo and Mare Island and extending continuously therefrom southeasterly, southwesterly, and northwesterly around the Navy Yard to its northwesterly limit on the waters of San Pablo Bay, and the waters within 50 yards of any part of the berthing piers at the Navy Yard.

(b) *The regulations.* No persons shall enter this area and no vessels or other craft, except vessels of the U.S. Government or vessels duly authorized by the Commander, Mare Island Naval Shipyard, Vallejo, California, shall navigate, anchor or moor in this area.

[26 FR 11201, Nov. 28, 1961, as amended at 27 FR 10484, Oct. 27, 1962. Redesignated at 50 FR 42696, Oct. 22, 1985; 51 FR 25198, July 11, 1986, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1110 Suisun Bay at Naval Weapons Station, Concord; restricted area.

(a) *The area.* Beginning at a point on the shore and on the easterly side of the mouth of a small slough (known as Hastings Slough) bearing 189°, 2,412 yards from Tripon at Preston Point on Roe Island; thence 340°30′, 400 yards, to the shore line of the westerly of the two Seal Islands; thence 60°30′, 940 yards; thence 75°, 1,650 yards; thence 102°, 1,850 yards; thence 99°, 1,880 yards; thence 180°, 435 yards, to the shore line; thence following the high water shore line in a general westerly direction to the point of beginning.

(b) *The regulations.* (1) No person, vessel, watercraft, conveyance or device shall enter or cause to enter or remain in this area. No person shall refuse or fail to remove any person or property in his custody or under his control from this area upon the request of the Commanding Officer of the Naval Weapons Station Concord or his/her authorized representative.

(2) The regulations in this section shall be enforced by the Commanding Officer, Naval Weapons Station Concord, and such agencies as he/she shall designate.

[26 FR 11201, Nov. 28, 1961, as amended at 42 FR 17120, Mar. 31, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 61 FR 43970, Aug. 27, 1996]

§ 334.1120 Pacific Ocean in the vicinity of Point Mugu, Calif.; naval small arms firing range.

(a) *The danger zone.* A triangular area extending westerly into the waters of the Pacific Ocean from a point on the beach north of Point Mugu, California, described as follows: Beginning at latitude 34°05′32″, longitude 119°03′57″; thence southwesterly approximately 4,000 yards to latitude 34°04′22″, longitude 119°05′55″; thence northwesterly approximately 1,500 yards to latitude 34°05′01″, longitude 119°06′17″; thence

northeasterly to the point of beginning.

(b) *The regulations.* (1) Range firing will normally take place between 6 a.m. and 6 p.m., Thursday through Monday, and between 6 a.m. and 11:30 p.m., Tuesday and Wednesday of each week. Within the above periods, firing will be conducted as determined by the Commanding Officer, U.S. Naval Construction Battalion Center, Port Hueneme, Calif.

(2) Except as otherwise provided in this section, the danger zone will be open to fishing and general navigation.

(3) The Commanding Officer, U.S. Naval Construction Battalion Center, Port Hueneme, California, will announce firing schedules. Each week, public notices will be issued giving advance firing schedules. Such notices will appear in the local newspapers and in local ''Notice to Mariners,'' and ''Notice to Airmen.'' For the benefit of fishermen and smallcraft operators, announcements will be made on the marine radio.

(4) When a scheduled firing is about to be undertaken or is in progress, a large red flag will be displayed from the control tower situated at latitude 34°05′32″, longitude 119°03′57″, so as to be clearly visible for a distance of at least three (3) miles offshore. Safety observers will be on duty at all times when the warning flag is being displayed from the tower. Upon completion of firing, or if the scheduled firing is canceled for any reason, fishermen and small-boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

(5) Persons, vessels or other craft shall not enter or remain in the danger zone when the warning flag is being displayed unless authorized to do so by the range officer in the control tower.

(6) The regulations in this section shall be enforced by the Commandant, Eleventh Naval District, San Diego, California, and such agencies as he may designate.

[28 FR 4785, May 14, 1963; 29 FR 1318, Jan. 25, 1964, as amended at 32 FR 5834, Apr. 12, 1967. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1125 Pacific Ocean Naval Air Weapons Station, Point Mugu, Small Arms Range, Ventura County, California; danger zone

(a) *The area.* A triangular area extending southerly into the waters of the Pacific Ocean from a point on the beach north of Point Mugu, California, as follows:

Station	Latitude	Longitude
1	34°05′48″ N	119°07′03″ W.
2	34°03′20″ N	119°08′16″ W.
3	34°03′11″ N	119°07′39″ W.
4	34°05′42″ N	119°06′59″ W.
5	34°05′41″ N	119°06′51″ W.
6	34°05′45″ N	119°06′52″ W.

(b) *The regulations.* (1) Range firing will normally take place between 7 a.m. and 5 p.m. Monday through Friday.

(2) The danger zone may be used at all times for navigation and fishing, except when advance notice of intention to use this area has been given by the enforcing agency by one or more of the following means:

(i) Notice published in Ventura County daily newspaper, at least two days in advance of the date of said use and in the local ''Notice to Mariners.''

(ii) Display of red flag from the tower at 34°05′53″ N., 119°06′59″ W; or display of red flashing beacons in the case of night firing.

(iii) Radio broadcast on VHF-FM channel 16.

(iv) Notice to individual craft by visit of United States vessel.

(v) Telephone advice to such fisherman's organizations as may request, in writing, that such advice be given.

(3) Safety observers will be on duty at all times when the range is in use. Upon completion of firings, or if the scheduled firing is canceled for any reason, fishermen and small boat operators will be notified as far in advance as possible by Marine Radio Broadcast.

(4) Persons, vessels or other craft shall not enter or remain in the danger zone when the warning flag or beacon is being displayed unless authorized to do so by the range officer in the control tower.

(5) The regulations in this section shall be enforced by personnel attached to the Naval Air Weapons Station, Point Mugu, California, and by such

other agencies as the Commandant, Eleventh Naval District, San Diego, California, may designate.

[62 FR 40278, July 28, 1997]

§ 334.1126 Naval Base Ventura County, Point Mugu, California; restricted area.

(a) *The area.* The restricted area at Naval Base Ventura County Point Mugu incorporates its shoreline and connects the following points: latitude 34°7′9.9″, longitude 119°9′35.6″ (up-coast shoreline point); latitude 34°7′0.0″, longitude 119°9′46.7″ latitude 34°6′44.9″, longitude 119°9′22.5″; latitude 34°6′30.2″, longitude 119°8′59.0″; latitude 34°6′20.5″, longitude 119°8′46.7″; latitude 34°6′8.4″, longitude 119°8′25.2″; latitude 34°5′53.7″; longitude 119°7′59.5″; latitude 34°5′45.9″, longitude 119°7′41.5″; latitude 34°5′40.1″, longitude 119°7′21.0″; latitude 34°5′33.6″, longitude 119°6′58.1″; latitude 34°5′31.2″, longitude 119°6′37.9″; latitude 34°5′31.0″, longitude 119°6′22.2″; latitude 34°5′32.9″, longitude 119°6′14.4″; latitude; 34°5′44.7″, longitude 119°5′54.0″; latitude 34°5′45.2″, longitude 119°5′43.5″; latitude 34°5′41.0″, longitude 119°5′21.2″; latitude 34°5′42.2″, longitude 119°5′13.3″; latitude 34°5′27.8″, longitude 119°4′49.5″; latitude 34°5′17.9″, longitude 119°4′27.9″; latitude 34°5′5.7″, longitude 119°3′59.90″; latitude; 34°5′17.9″, longitude 119°3′55.4″ (down-coast shoreline point).

(b) *The regulation.* No vessels may enter the restricted area unless permission is obtained in advance from the Commanding Officer of Naval Base Ventura County. Contact Naval Base Ventura County Security at (805) 989–7907.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of Naval Base Ventura County, and such agencies or persons as he/she may designate.

[69 FR 20546, Apr. 16, 2004]

§ 334.1127 Naval Base Ventura County, Port Hueneme, California; restricted area.

(a) *The area.* The waters within Port Hueneme Harbor, beginning at the seaward ends of the two Port Hueneme Harbor entrance jetties, with the northwestern entrance jetty end occurring at latitude 34°8′37.0″ N., longitude 119°12′58.8″ W. and the southeastern entrance jetty occurring at latitude 34°8′34.8″ N, longitude 119°12′43.2″ W., and extending northeasterly to the shoreline.

(b) *The regulation.* No vessels or persons may enter the restricted area unless permission is obtained in advance from the Commanding Officer of Naval Base Ventura County. Commercial vessels that are required to make Advanced Notifications of Arrival shall continue to do so. All vessels must obtain clearance from ''Control 1'' over marine radio channel 06 VHF-FM prior to crossing the COLREGS (Collision Regulations) demarcation line. Vessels without marine radio capability must obtain clearance in advance by contacting ''Control 1'' via telephone at (805) 982–3938 prior to crossing the COLREGS demarcation line. The COLREGS demarcation line is defined as a line approximately 1,500 feet in length connecting the seaward limits or ends of the two Port Hueneme Harbor entrance jetties, with the northwestern jetty end occurring at latitude 34°8′37.0″ N., longitude 119°12′58.8″ W., and the southeastern entrance jetty occurring at latitude 34°8′34.8″ N., longitude 119°12′43.2″ W. (NAD83).

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer of Naval Base Ventura County, and such agencies or persons as he/she may designate.

[69 FR 20545, Apr. 16, 2004]

§ 334.1130 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, Calif.; danger zones.

(a) *The Area.* (1) The waters of the Pacific Ocean in an area extending seaward from the shoreline a distance of about three nautical miles and basically outlined as follows:

Station	Latitude	Longitude
Point Sal	34°54′08″	120°40′15″
1	34°54′08″	120°44′00″
2	34°52′48″	120°44′00″
3	34°50′00″	120°40′30″
4	34°44′50″	120°42′15″
5	34°41′50″	120°40′12″
6	34°35′12″	120°42′45″
7	34°33′00″	120°41′05″

Station	Latitude	Longitude
8	34°30′40″	120°37′29″
9	34°24′18″	120°30′00″
10	34°23′34″	120°27′05″
11	34°24′21″	120°24′40″
12	34°27′20″	120°24′40″
Point Sal	34°54′08″	120°40′15″

(2) The danger area described in paragraph (a)(1) of this section will be divided into zones in order that certain firing tests and operations, whose characteristics as to range and reliability permit, may be conducted without requiring complete evacuation of the entire area. These zones are described as follows:

(i) *Zone 1.* An area extending seaward about three nautical miles from the shoreline beginning at Point Sal, latitude 34°54′08″, longitude 120°40′15″; thence due west to latitude 34°54′08″, longitude 120°44′00″; thence to latitude 34°52′48″, longitude 120°44′00″; thence to latitude 34°50′00″, longitude 120°40′30″; thence due east to the shoreline at latitude 34°50′00″, longitude 120°36′30″.

(ii) *Zone 2.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°50′00″, longitude 120°36′30″; thence due west to latitude 34°50′00″, longitude 120°40′30″, thence to latitude 34°45′28″, longitude 120°42′05″; thence due east to the shoreline at Purisima Point, latitude 34°45′28″, longitude 120°38′15″.

(iii) *Zone 3.* An area extending seaward about three nautical miles from the shoreline beginning at Purisima Point latitude 34°45′28″, longitude 120°38′15″; thence due west to latitude 34°45′28″, longitude 120°42′05″; thence to latitude 34°44′50″, longitude 120°42′15″; thence to latitude 34°41′50″, longitude 120°40′12″; thence due east to the shoreline at the mouth of the Santa Ynez River, latitude 34°41′50″, longitude 120°36′20″.

(iv) *Zone 4.* An area extending seaward about three nautical miles from the shoreline beginning at the mouth of the Santa Ynez River latitude 34°41′50″, longitude 120°36′20″; thence due west to latitude 34°41′50″, longitude 120°40′12″; thence to latitude 34°35′12″; longitude 120°42′45″; thence latitude 34°34′32″, longitude 120°42′15″, thence due east to the shoreline at Point Arguello, latitude 34°34′32″, longitude 120°39′03″.

(v) *Zone 5.* An area extending seaward about three nautical miles from the shoreline beginning at Point Arguello, latitude 34°34′32″, longitude 120°39′03″; thence due west to latitude 34°34′32″, longitude 120°42′15″; thence to latitude 34°33′00″, longitude 120°41′05″; thence to latitude 34°30′40″, longitude 120°37′29″; thence due north to the shoreline at latitude 34°33′15″, longitude 120°37′29″.

(vi) *Zone 6.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°33′15″, longitude 120°37′29″; thence due south to latitude 34°30′40″, longitude 120°37′29″; thence due east to the shoreline at latitude 34°30′40″, longitude 120°30′10″.

(vii) *Zone 7.* An area extending seaward about three nautical miles from the shoreline beginning at latitude 34°30′40″, longitude 120°30′10″; thence due west to latitude 34°30′40″, longitude 120°37′29″; thence to latitude 34°26′56″, longitude 120°33′06″; thence due east to the shoreline at Point Conception, latitude 34°26′56″, longitude 120°28′10″.

(viii) *Zone 8.* An area extending seaward about three nautical miles from the shoreline beginning at Point Conception, latitude 34°26′56″, longitude 120°28′10″; thence due west to latitude 34°26′56″, longitude 120°33′06″; thence to latitude 34°24′18″, longitude 120°30′00″; thence to latitude 34°23′34″, longitude 120°27′05″; thence shoreward to Point Conception, latitude 34°26′56″, longitude 120°28′10″.

(ix) *Zone 9.* An area extending seaward about three nautical miles from the shoreline beginning at Point Conception, latitude 34°26′56″, longitude 120°28′10″; thence seaward to latitude 34°23′34″, longitude 120°27′05″; thence to latitude 34°24′21″, longitude 120°24′40″; thence due north to the shoreline at latitude 34°27′20″, longitude 120°24′40″.

(b) *The regulations.* (1) Except as prescribed in this section or in other regulations, the danger zone will be open to fishing, location of fixed or movable oil drilling platforms and general navigation without restrictions.

(2) The stopping or loitering by any person or vessel is expressly prohibited within Danger Zone 4, between the mouth of the Santa Ynez River and Point Arguello, unless prior permission is obtained from the Commander,

Western Space and Missile Center (WSMC) at Vandenberg AFB, California.

(3) The impacting of missile debris from launch operations will take place in any one or any group of zones in the danger areas at frequent and irregular intervals throughout the year. The Commander, WSMC, will announce in advance, the closure of zones hazarded by missile debris impact. Such advance announcements will appear in the weekly ''Notice to Mariners.'' For the benefit of fishermen, small craft operators and drilling platform operators, announcements will also be made on radio frequency 2182 kc, 2638 kc, VHF channel 6 (156.30 MHZ), VHF channel 12 (156.60 MHZ), and VHF channel 16 (156.80 MHZ) for daily announcements. Additionally, information will be posted on notice boards located outside Port Control Offices (Harbormasters) at Morro Bay, Port San Luis, Santa Barbara, Ventura, Channel Islands, and Port Hueneme Harbors, and any established harbor of refuge between Santa Barbara and Morro Bay.

(4) All fishing boats, other small craft, drilling platforms and shipping vessels with radios are requested to monitor radio frequency 2182 kc, 2638 kc, VHF channel 6 (156.30 MHZ), VHF channel 12 (156.60 MHZ), or channel 16 (156.80 MHZ) while in these zones for daily announcements of zone closures.

(5) When a scheduled launch operation is about to begin, radio broadcast notifications will be made periodically, starting at least 24 hours in advance. Additional contact may be made by surface patrol boats or aircraft equipped with a loudspeaker system. When so notified, all persons and all vessels shall leave the specified zone or zones immediately by the shortest route.

(6) The Commander, WSMC, will extend full cooperation relating to the public use of the danger area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(7) Where an established harbor of refuge exists, small craft may take shelter for the duration of zone closure.

(8) Fixed or movable oil drilling platforms located in zones identified as hazardous and closed in accordance with this regulation shall cease operations for the duration of the zone closure. The zones shall be closed continuously no longer than 72 hours at any one time. Such notice to evacuate personnel shall be accomplished in accordance with procedures as established by the Commander, WSMC, the U.S. Department of the Interior, Minerals Management Service and the oil industry in the adjacent waters of the outer continental shelf.

(9) No seaplanes, other than those approved by the Commander, WSMC, may enter the danger zones during launch closure periods.

(10) The regulations in this section shall be enforced by personnel attached to WSMC and by such other agencies as may be designated by the Commander, WSMC.

(11) The regulations in this section shall be in effect until further notice. They shall be reviewed again during August 1994.

(33 U.S.C. 1, 3)

[48 FR 19025, Apr. 27, 1983. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 54 FR 31142, July 26, 1989; 62 FR 17558, Apr. 10, 1997]

§ 334.1140 Pacific Ocean at San Miguel Island, Calif.; naval danger zone.

(a) *The area.* The waters around San Miguel Island, extending about 3 miles seaward from the shoreline within the following points:

	Latitude (N)	Longitude (W)
Point A	34°01′32″	120°23′17″
Point B	33°58′48″	120°23′17″
Point C	33°58′48″	120°15′00″
Point D	34°02′50″	120°15′00″
Point E	34°05′45″	120°17′25″
Point F	34°07′00″	120°20′05″
Point G	34°09′18″	120°23′17″
Point H	34°03′09″	120°23′17″

(b) *Markers.* Range markers, as delineated below, are installed at points A and H for navigational purposes for both surface vessels and aircraft:

(1) At point A two triangular markers are installed facing southward, 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being placed on the line of longitude 120°23′17″ W. and near the southerly shoreline at

latitude 34°01′32″ N. The southernmost marker is 20 feet below the other.

(2) At point H two triangular markers are installed facing true north 10 feet in length on each side, with red and white diagonal stripes, each marker mounted atop 80-foot poles spaced 100 yards apart, each pole being placed on the line of longitude 120°23′17″ W. and near the northwesterly shoreline at latitude 34°03′09″ N. The northernmost marker is 20 feet below the other.

(c) *The regulations.* (1) Except as prescribed in this section or in other regulations, the danger zone will be open to fishing and general navigation. Bomb drops between designated hours are expected to be intermittent, and when safe to do so, commercial fishing boats and other small craft will be granted permission to proceed through the danger zone. All vessels permitted to enter the zone during a scheduled bomb drop period, other than those owned or operated by the U.S. Government, shall proceed across the zone by the most direct route and clear the area as soon as possible. When bomb drops are not scheduled, the zone may be occupied without restriction.

(2) The anchoring, stopping or loitering by any person, vessel, fishing boat or recreational craft within the danger zone during scheduled firing/drop hours is expressly prohibited.

(3) The bomb drops will take place in the danger zone at frequent and irregular intervals throughout the year. Danger zone usage demands are identified in the Eleventh Coast Guard District, ''Local Notice of Mariners.'' Announcements will also be made on marine radio channel 16, at 0800 local time, 1200 local time and/or 1 hour prior to bomb drop operations. Status of the zone and/or permission to enter, may be requested by calling ''Plead Control'' on marine channel 16 or by calling the Pacific Missile Test Center (PMTC) on telephone number (805) 982–8280 or 982–8841.

(4) The Commander, PMTC will extend full cooperation relating to the public use of the danger zone area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

(5) No seaplanes, other than those approved for entry by the Commander, PMTC, may enter the danger zone during firing periods.

(6) Landing by any vessel or going ashore by any person on San Miguel Island is specifically prohibited without prior permission of the Superintendent, Channel Islands National Park. Applications for such permission should be made to: Superintendent, Channel Islands National Park, 1699 Anchors Way Drive, Ventura, California 93003.

(7) The regulations in this section shall be enforced by personnel attached to the Pacific Missile Test Center, Point Mugu, California, and by such other agencies as the Commandant, 11th Naval District, San Diego, California, may designate.

(8) The regulations in this section shall be in effect until further notice. They shall be reviewed in 1986.

(Sec. 7, 40 Stat. 266, Chap. XIX, 40 Stat. 892; 33 U.S.C. 1, 3)

[31 FR 816, Jan. 21, 1966, as amended at 47 FR 4990, Feb. 3, 1982. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1150 Monterey Bay, Calif.

(a) *Firing range, Fort Ord, Calif.*—(1) *The danger zone.* (i) A rectangular area in Monterey Bay, the southerly limit of which is an extension seaward of the southerly line of the Fort Ord Military Reservation boundary and bears 307° true, 8,000 yards from a point on the shore at latitude 36°37′47″, longitude 121°50′28″, and the northerly limit of which is a line bearing 307° true, 8,000 yards, from a point on the shore at latitude 36°41′57″, longitude 121°48′30″, opposite Marina, Monterey County, California. The seaward boundary is a straight line joining the outer ends of the southerly and the northerly boundaries at the 8,000 yard range and is approximately parallel to the shore.

(ii) The danger zone is divided into a short range area, extending seaward from the shore a distance of 5,000 yards measured along the southerly and northerly boundaries, and a long range area embracing the entire danger zone.

(2) *The regulations.* (i) The 5,000 yard short range is prohibited to all persons, vessels and craft, except those authorized by the enforcing agency, each

week, between dawn and midnight from Monday through Friday and between dawn and dusk on Saturday and Sunday.

(ii) The area between the 5,000 yard short range and the 8,000 yard seaward boundary of the danger zone may be used at all times for navigation and fishing, except when advance notice of intention to use this area has been given by the enforcing agency by one or more of the following means.

(*a*) Notice published in Monterey County and Santa Cruz County daily newspapers, at least two days in advance of the date of said use.

(*b*) Display of red flags at Indian Head Beach and near the Point Pinos Lighthouse.

(*c*) Radio Broadcast.

(*d*) Notice to individual craft by a visit of a U.S. vessel.

(*e*) Telephone advice to such fishermen's organizations as may request, in writing, that such advice be given.

(iii) The regulations in this paragraph will be enforced by the Commanding General, Fort Ord, California.

(b) *Navy mining operations area*—(1) *The danger zone.* Shoreward of a line beginning at the stack at about latitude 36°58′06″, longitude 121°54′06″; thence 230° true, 6.0 miles; thence 140° true, 7.5 miles; thence 50° true to the shore.

(2) *The regulations.* The danger zone will be used for training in various phases of mine warfare operations. During the period from August 1 to February 15, inclusive, each year, no operations will be carried on which will involve placing any obstructions in the water nor will any operations be carried on at night. During the period from February 16 to July 31, inclusive, each year, operations may be carried on which will involve laying exercise mines and other moored or bottom obstructions. In each case when moored or bottom obstructions are laid a notice to mariners will be issued giving notice of their approximate location within the danger zone and all persons and vessels shall keep clear.

[13 FR 8301, Dec. 24, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 17 FR 4665, May 22, 1952; 19 FR 96, Jan. 7, 1954. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1160 San Pablo Bay, Calif.; target practice area, Mare Island Naval Shipyard, Vallejo.

(a) *The danger zone.* A sector in San Pablo Bay adjacent to the westerly shore of Mare Island with a radius of 4,700 yards, centered at a point bearing 316° true, 3,605 yards, from Mare Island Strait Light 1, with limiting true bearings from that center of 266°30′ and 222°.

(b) *The regulations.* The Commander, Mare Island Naval Shipyard, Vallejo, California, will conduct target practice in the area at intervals of which the public will be duly notified. At such times all persons and vessels shall stay clear.

[13 FR 8302, Dec. 24, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 27 FR 10484, Oct. 27, 1962; 37 FR 9995, May 18, 1972. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1170 San Pablo Bay, Calif.; gunnery range, Naval Inshore Operations Training Center, Mare Island, Vallejo.

(a) *The Danger Zone.* A sector in San Pablo Bay delineated by lines joining the following points:

Latitude	Longitude
38°02′08″	122°25′17″
38°02′21″	122°22′55″
38°05′48″	122°19′34″
38°07′46″	122°23′23″

NOTE: The danger zone shall be used until September 30, 1982, after which it shall be subject to review to determine the further need thereof.

(b) *The regulations.* The Commanding Officer, Coastal River Division Eleven, Department of the Navy, Mare Island, Vallejo, California, will conduct gunnery practice in the area during the period April 1 through September 30, between the hours of 10 a.m. and 3 p.m. on the first Wednesday of each month and the third full weekend (Saturday and Sunday) of June. No persons or vessels shall enter or remain in the danger zone during the above stated periods except those persons and vessels connected with the gunnery practice operations. All firing will be from the southerly portion of the danger zone in a northerly direction, and only during good visibility. The public will be notified prior to each firing by a Notice to

Mariners issued by the U.S. Coast Guard and the area will be patrolled by boat and searched by radar to insure a clear range. A safety officer will always be aboard the firing boat to guarantee that all safety precautions are observed. The regulations in this section will be enforced by the Commandant, 12th Naval District and such agencies as he may designate.

[31 FR 13992, Nov. 2, 1966, as amended at 34 FR 5723, Mar. 27, 1969; 35 FR 9279, June 13, 1970; 42 FR 40196, Aug. 9, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1180 Strait of Juan de Fuca, Wash.; air-to-surface weapon range, restricted area.

(a) *The restricted area.* A circular area immediately west of Smith Island with a radius of 1.25 nautical miles having its center at latitude 48°19′11″ North and longitude 122°54′12″ West. In the center of the area will be located a lighted and radar reflective buoy to serve as a navigational aid to mariners. The area will be used for air-to-surface target practice using non-explosive training devices.

(b) *The regulations.* (1) No person, vessel or other watercraft shall enter or remain within the designated restricted area between 0700 and 1200 hours daily, local time except as authorized by the enforcing agency and as follows: The area will be open to commercial gill net fishing during scheduled fishing periods from June 15 to October 15 annually. The October 15 closure date will be extended by the enforcing agency if determined as advantageous to the commercial gill net fishing by the Washington State Department of Fisheries.

(2) Prior to each target practice operation the restricted area will be patrolled by naval aircraft. Those persons and vessels found within the restricted area will be overflown by the aircraft at an altitude of not less than 300′ in the direction in which the unauthorized person and vessel are to proceed to clear the area.

(c) The regulations in this section shall be enforced by the Commandant, Thirteenth Naval District, Seattle, Washington, and such agencies as he may designate.

(Sec. 7, 40 Stat. 266, Chap. XIX)

[39 FR 44753, Dec. 27, 1974; 40 FR 6502, Feb. 12, 1975. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17558, Apr. 10, 1997]

§ 334.1190 Hood Canal and Dabob Bay, Wash.; naval non-explosive torpedo testing area.

(a) *Hood Canal in vicinity of Bangor*—(1) *The area.* All waters of Hood Canal between latitude 47°46′00″ and latitude 47°42′00″, exclusive of navigation lanes one-fourth nautical mile wide along the west shore and along the east shore south from the town of Bangor (latitude 47°43′28″).

(2) *The regulations.* (i) The area will be used intermittently by the Navy for non-explosive torpedo ranging. Launching will be conducted only between 8:00 a.m., and sunset on days other than Saturdays, Sundays, and holidays. At no time will the navigation lanes generally paralleling the shore be closed to navigation.

(ii) Navigation will be permitted within the area at all times except when naval exercises are in progress. No vessel shall enter or remain in the area when such exercises are in progress. Prior to commencement of an exercise, the Navy will make an aerial or surface reconnaissance of the area. Vessels under way and laying a course through the area will not be interfered with, but they shall not delay their progress. Vessels anchored or cruising in the area and vessels unobserved by the Navy reconnaissance which enter or are about to enter the area while a torpedo is in the water will be contacted by a Navy patrol boat and advised to steer clear. Torpedos will be tested only when all vessels or other craft have cleared the area.

(iii) When operations are in progress, use of the area will be indicated by the presence of Naval vessels flying a ''Baker'' (red) flag.

(iv) Notices of temporary suspension and revival of operations will be published in local newspapers and in Notice to Mariners published by the U.S. Coast Guard.

(b) *Dabob Bay in the vicinity of Quilcene*—(1) *The area.* All waters of Dabob Bay beginning at latitude

47°39′27″, longitude 122°52′22″; thence northeasterly to latitude 47°40′19″, longitude 122°50′10″; thence northeasterly to a point on the mean high water line at Takutsko Pt.; thence northerly along the mean high water line to latitude 47°48′00″; thence west on latitude 47°48′00″ to the mean high water line on the Bolton Peninsula; thence southwesterly along the mean high water line of the Bolton Peninsula to a point on longitude 122°51′06″; thence south on longitude 122°51′06″ to the mean high water line at Whitney Pt.; thence along the mean water line to a point on longitude 122°51′15″; thence southwesterly to the point of beginning.

(2) *The regulations.* (i) Propeller-driven or other noise-generating craft shall not work their screws or otherwise generate other than incidental noise in the area during periods of actual testing, which will be indicated by flashing red beacons at strategic locations, and all craft shall keep well clear of vessels engaged in such testing.

(ii) No vessel shall trawl or drag in the area.

(iii) No vessel shall anchor in the area except between the shore and the 10-fathom depth line.

(iv) Operations will normally be confined to the period from about 9:30 a.m., to 2:30 p.m., on Mondays through Fridays, and will normally consist of intermittent tests of less than 30 minutes duration, with boat passage permitted between tests. Transits of logtows and other slow-moving traffic will be arranged on a mutually satisfactory individual basis as appropriate. Emergencies or high-priority projects may occasionally cause operations outside the periods specified above. No operations will be conducted on Sundays.

(c) The regulations in this section shall be enforced by the Commandant, Thirteenth Naval District, and such agencies as he may designate.

[26 FR 6515, July 20, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1200 Strait of Juan de Fuca, eastern end; off the westerly shore of Whidbey Island; naval restricted areas.

(a) *Area No. 1.* Bounded by a line commencing at latitude 48°20′57″ N., longitude 122°40′39″ W.; thence to latitude 48°20′40″ N., longitude 122°42′59″ W.; thence to latitude 48°21′19″ N., longitude 122°43′02″ W.; thence to latitude 48°21′13″ N., longitude 122°40′26″ W.; and thence along the shore line to the point of beginning.

(b) *Area No. 2.* Bounded by a line commencing at latitude 48°21′53″ N., longitude 122°40′00″ W.; thence to latitude 48°23′12″ N., longitude 122°41′17″ W.; thence to latitude 48°23′29″ N., longitude 122°40′22″ W.; thence to latitude 48°22′21″ N., longitude 122°39′50″ W.; and thence along the shore line to the point of beginning.

(c) *The regulations.* (1) Persons and vessels shall not enter these areas except at their own risk.

(2) All persons and vessels entering these areas shall be obliged to comply with orders received from naval sources pertaining to their movements while in the areas.

(3) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §334.1200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1210 Admiralty Inlet, entrance; naval restricted area.

(a) *Admiralty Inlet, entrance; naval restricted area*—(1) *The area.* Beginning at Point Wilson Light thence southwesterly along the coast line to latitude 48°07′ N.; thence northwesterly to a point at latitude 48°15′ N. longitude 123°00′ W.; thence due east to Whidbey Island; thence southerly along the coast line to latitude 48°12.5′ N.; thence southerly to the point of beginning.

(2) *The regulations.* (i) Use of any equipment such as anchors, fishing gear, grapnels, etc., which may foul underwater installations within the restricted area, is prohibited. Dumping of any non-buoyant objects in this area is prohibited.

(ii) The regulations in this paragraph shall be enforced by the Commander,

Naval Base, Seattle, and such agencies as he/she may designate.

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 334.1210, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1215 Port Gardner, Everett Naval Base, Naval Restricted Area, Everett, Washington.

(a) *The area.* The waters of Port Gardner and East Waterway surrounding Naval Station Everett beginning at Point 1, a point near the northwest corner of Naval Station Everett at latitude 47°59′40″ North, longitude 122°13′23.5″ West and thence to latitude 47°59′40″ North, longitude 122°13′30″ West (Point 2); thence to latitude 47°59′20″ North, longitude 122°13′33″ West (Point 3); thence to latitude 47°59′13″ North, longitude 122°13′38″ West (Point 4); thence to latitude 47°59′05.5″ North, longitude 122°13′48.5″ West (Point 5); thence to latitude 47°58′51″ North, longitude 122°14′04″ West (Point 6); thence to latitude 47°58′45.5″ North, longitude 122°13′53″ West (Point 7); thence to latitude 47°58′45.5″ North, longitude 122°13′44″ West (Point 8); thence to latitude 47°58′48″ North, longitude 122°13′40″ West (Point 9); thence to latitude 47°58′59″ North, longitude 122°13′30″ West (Point 10); thence to latitude 47°59′14″ North, longitude 122°13′18″ West (Point 11); thence to latitude 47°59′13″ North, longitude 122°13′12″ West (Point 12); thence to latitude 47°59′20″ North, longitude 122°13′08″ West (Point 13); thence to latitude 47°59′20″ North, longitude 122°13′02.5″ West (Point 14), a point upon the Naval Station's shore in the northeast corner of East Waterway.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the restricted area for any reason without prior written permission from the Commanding Officer of the Naval Station Everett.

(2) Mooring, anchoring, fishing and/or recreational boating shall not be allowed within the restricted area without prior written permission from the Commanding Officer, Naval Station Everettt.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer, Naval Station Everett and such agencies and persons as he/she shall designate.

[67 FR 36525, May 24, 2002]

§ 334.1220 Hood Canal, Bangor; naval restricted areas.

(a) *Hood Canal, Bangor; Naval restricted areas*—(1) *Area No. 1.* That area bounded by a line commencing on the east shore of Hood Canal at latitude 47 deg.46′18″ N, longitude 122 deg.42′18″ W; thence latitude 47 deg.46′32″ N, longitude 122 deg.42′20″ W; thence to latitude 47 deg.46′38″ N, longitude 122 deg.42′52″ W; thence to latitude 47 deg.44′15″ N, longitude 122 deg.44′50″ W; thence to latitude 47 deg.43′53″ N, longitude 122 deg.44′58″ W; thence to latitude 47 deg.43′17'' N, longitude 122 deg.44′49″ W.

(2) *Area No. 2.* Waters of Hood Canal within a circle of 1,000 yards diameter centered on a point located at latitude 47 deg.46′26″ N, longitude 122 deg.42′49″ W.

(3) *The regulations*—(i) *Area No. 1.* No person or vessel shall enter this area without permission from the Commander, Naval Submarine Base Bangor, or his/her authorized representative.

(ii) *Area No. 2.* (A) The area will be used intermittently by the Navy for magnetic silencing operations.

(B) Use of any equipment such as anchors, grapnels, etc., which may foul underwater installations within the restricted area, is prohibited at all times.

(C) Dumping of any nonbuoyant objects in this area is prohibited.

(D) Navigation will be permitted within that portion of this circular area not lying within Area No. 1 at all times except when magnetic silencing operations are in progress.

(E) When magnetic silencing operations are in progress, use of the area will be indicated by display of quick flashing red beacons on the pier located in the southeast quadrant of the area.

(4) *Enforcement.* The regulations in this subsection shall be enforced by the Commander, Naval Submarine Base

Bangor, or his/her authorized representative.

[69 FR 272, Jan. 5, 2004]

§ 334.1230 Port Orchard; naval restricted area.

(a) *Port Orchard; naval restricted area*—(1) *The area.* Shoreward of a line beginning at a point on the west shoreline of Port Orchard bearing 90° from stack (at latitude 47°42′01″, longitude 122°36′54″); thence 90°, approximately 190 yards, to a point 350 yards from stack; thence 165°, 6,000 yards, to a point bearing 179°, 1,280 yards, from Battle Point Light; thence westerly to the shoreline at latitude 47°39′08″ (approximate location of the Brownsville Pier).

(2) *The regulations.* (i) No vessel shall, at any time, anchor or tow a drag of any kind in this area.

(ii) The regulations in this paragraph shall be enforced by the Commander, Naval base, Seattle, and such agencies as he/she may designate.

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 334.1230, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1240 Sinclair Inlet; naval restricted areas.

(a) *Sinclair Inlet; naval restricted areas*—(1) *Area No. 1.* All the waters of Sinclair Inlet westerly of a line drawn from the Bremerton Ferry Landing at latitude 47°33′48″ N, longitude 122°37′23″ W on the north shore of Sinclair Inlet and latitude 47°32′52″ N, longitude 122°36′58″ W on the south shore of Sinclair Inlet.

(2) *Area No. 2.* That area of Sinclair Inlet to the north and west of an area bounded by a line commencing at latitude 47°33′43″ N, longitude 122°37′31″ W thence south to latitude 47°33′39″ N, longitude 122°37′27″ W thence southwest to latitude 47°33′23″ N, longitude 122°37′45″ W thence southwest to latitude 47°33′19″ N, longitude 122°38′12″ W thence southwest to latitude 47°33′10″ N, longitude 122°38′19″ W thence southwest to latitude 47°33′07″ N, longitude 122°38′29″ W thence west to latitude 47°33′07″ N, longitude 122°38′58″ W thence southwest to latitude 47°33′04″ N, longitude 122°39′07″ W thence west to the north shore of Sinclair Inlet at latitude 47°33′04″ N, longitude 122°39′41″ W.

(3) *The regulations*—(i) *Area No. 1.* No vessel of more than 100 gross tons shall enter this area or navigate therein without permission from the enforcing agency.

(ii) *Area No. 2.* This area is for the exclusive use of the U.S. Navy. No person, vessel, craft, article or thing except those under supervision of military or naval authority except Washington State Ferries or Horluck Transportation Company Ferries on established routes shall enter this area without permission from the enforcing agency.

(iii) The regulations in this section shall be enforced by the Commander, Naval Base, Seattle, Washington, or his/her authorized representative.

(b) [Reserved]

[60 FR 43379, Aug. 21, 1995; 60 FR 57935, Nov. 24, 1995]

§ 334.1250 Carr Inlet, naval restricted areas.

(a) *Carr Inlet, naval restricted areas*—(1) *The area.* The Waters of Carr Inlet bounded on the southeast by a line running from Gibson Point on Fox Island to Hyde Point on McNeil Island, on the northwest by a line running from Green Point (at latitude 47°16′54″ N, longitude 122°41′33″ W) to Penrose Point; plus that portion of Pitt Passage extending from Carr Inlet to Pitt Island, and that portion of Hale Passage extending from Carr Inlet southeasterly to a line drawn perpendicular to the channel 500 yards northwesterly of the Fox Island Bridge.

(2) *The regulations.* (i) The area shall be used as an acoustic range for research studies and special noise trials. No explosive shall be used.

(ii) No marine craft of any type shall at anytime approach or remain within one hundred yards of the hydrophone buoys. The hydrophone buoys will be anchored in Carr Inlet on a line perpendicular to the course line opposite Ketner's Point, and about one mile from the Fox Island shore. The course line, or range, will bear 134°38′21″ (314°38′21″) true, and will be marked by

range beacons erected near the shoreline approximately one mile north-northeast of of Steilacoom and approximately two miles north-northeast of Home.

(iii) *Buoy Testing Area*. No vessel shall, at anytime, anchor or tow a drag of any kind within 1,000 yards of the buoy testing area.

(iv) The remainder of the area shall be open to navigation at all times except when the range is in use or when hydrophones are being calibrated. When the range is in use or hydrophones are being calibrated, quick flashing beacon lights will be displayed on signal towers located at Gibson Point, Green Point, Penrose Point, Pitt Island and Hyde Point. These beacon lights will be either red or green. The beacon lights will show quick flashing every two seconds. The ranging of vessels or calibration of hydrophones requiring retrictions will be conducted 24 hours per day for up to 5 days consecutively, and will total approximately 150 days spread throughout the year. Shutting off of beacon lights will indicate termination of use of the range. Insofar as possible, the schedule of operations giving the days the range will be in use for each forthcoming month will be published in local newspapers and in the local U.S. Coast Guart Notice to Mariners.

(v) When the red beacon lights are displayed, indicating that the range is in use or hydrophones are being calibrated, navigation within the area will be restricted as follows:

(*a*) As used in this section, the words ''operate, power vessel, and non-power vessel'' are defined as follows:

(*1*) ''Operate'': To be physically present in the designated area.

(*2*) ''Power vessel'': A vessel propelled principally by a mechanical propulsion system (*i.e.*, gasoline, diesel, steam or electric drive to a propeller, pump jet, paddle wheel or other device), and being propelled by that means.

(*3*) ''Non-power vessel'': A vessel not equipped with a mechanical propulsion system, such as a rowboat, canoe, or sailboat propelled by oars, paddles, or sails, respectively.

(*b*) Power vessels shall not operate within the area, except that traffic in either direction between Hale Passage and upper Carr Inlet, within 200 yards of the low water mark off Green Point, will be cleared by signal for approximately 15 minutes total time within this area at the termination of individual ranging runs, while the vessel being ranged takes position for the next run. Clearance to traverse the area around Green Point will be indicated by extinguishing the red flashing beacon lights and displaying the green flashing beacon lights on all signal towers.

(*c*) Non-powered marine craft shall not operate within one mile of the course line bearing 134°38′21″ (314°38′21″) true, and within two miles to the southeast and two miles to the northwest of the hydrophone buoys situated in Carr Inlet opposite Ketner's Point; provided, however, non-powered craft may operate within four hundred yards of the low water mark on the northeast side of McNeil Island, within two hundred yards of the low water mark at Green Point, and within two hundred yards of the low water mark on the southwest shore of Fox Island.

(*d*) Towboats shall have free access and egress to designated tow havens within Carr Inlet, as follows: The Navy will establish and maintain suitable mooring buoys for the use of tugs and their tows at the following points: (*1*) approximately 1,500 yards northwest of Gibson Point Light and approximately 400 yards offshore from the low water mark on the Fox Island shore; (*2*) approximately 1,500 yards northwest of Hyde Point, and approximately 400 yards offshore from the low water mark on McNeil Island shore; and (*3*) approximately 1,500 yards east of Wyckoff Shoal. Towboats will signal by radio (Marine Band Channel 14, 13, 12, or 6) or telephone as far in advance as possible of the time they enter the tow haven, such signals to be directed to ''Carr Inlet Range Control'' at the range instrument laboratory building located on Fox Island. The Navy shall promptly suspend operations when necessary to permit the access and egress of such tow traffic, and Carr Inlet Range Control shall signal the tows when the area is clear.

(*e*) Through commercial traffic, including tows, to points within Carr

Inlet, and through Carr Inlet, Pitt Passage, and Hale Passage to adjacent waters will be permitted free access and egress, as follows: Such traffic will signal by radio (Marine Band Channel 14, 13, 12, or 6) or telephone as far in advance as possible of the time they enter the area, such signals to be directed to ''Carr Inlet Range Control'' at the range instrument laboratory located on Fox Island. The Navy shall promptly suspend operations when necessary to permit the passage of such traffic, and Carr Inlet Range Control shall signal when the area is clear for passage.

(*f*) The Warden of the McNeil Island penitentiary and his authorized representatives shall be permitted to operate within the area at any time, as may be necessary, for the patrol and search of escaped convicts.

(*g*) Red or green signal flags will be displayed on the signal towers in case of failure of the red or green beacon lights. The display or the signal flags at the top of the flag masts will have the same significance as the beacon lights.

(3) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, and such agencies as he/she may designate.

(b) [Reserved]

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 334.1250, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1260 Dabob Bay, Whitney Point; naval restricted area.

(a) *Dabob Bay, Whitney Point, naval restricted area*—(1) *The area.* Beginning at the high water line along the westerly shore of Dabob Bay, 100 yards northerly of the Naval control building located at approximately N. latitude 47°45′36″ and W. longitude 122°51′00″, thence S. 89°59′ E. 2000 yards, thence to S. 00°01′ W. 200 yards, thence N. 89°59′ W. approximately 2000 yards to the high water line 100 yards southerly of the control building.

(2) *The regulations.* (i) No vessel shall, at any time, anchor or tow a drag of any kind in this area.

(ii) The regulations in this paragraph shall be enforced by the Commander, Naval Base, Seattle, or his/her authorized representative.

(b) [Reserved]

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 334.1260, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1270 Port Townsend, Indian Island, Walan Point; naval restricted area.

(a) *The area.* The waters of Port Townsend bounded by a line commencing on the north shore of Walan Point at latitude 48°04′41″ N. longitude 122°44′26″ W; thence to latitude 48°04′46″ N, longitude 122°44′53″ W; thence to latitude 48°04′19″ N, longitude 122°45′05″ W; thence to latitude 48°04′15″ N, longitude 122°44′48″ W thence to a point on the Walan Point shore line at latitude 48°04′18″ N, longitude 122°44′48″; and thence along the shoreline to the point of beginning. This line is located approximately 200 yards from the face and ends of the pier.

(b) *The regulations.* No person or vessel shall enter this area without permission from the Commander, Naval Base, Seattle, or his/her authorized representative. This restriction shall apply during periods when ship loading and/or pier operations preclude safe entry. These periods will be identified by flying a red flag from the ship and/or pier. A yellow flag will be displayed 24 hours in advance of the restricted periods.

[26 FR 11203, Nov. 28, 1961. Redesignated at 50 FR 42696, Oct. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 334.1270, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, restricted areas.

(a) *The area—Area No. 1.* The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered on 55°36′ N latitude, 131°49.2′ W longitude.

Area No. 2. The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered at 55°34′ N latitude, 131°48′ W longitude.

Area No. 3. The waters of Behm Canal excluding those areas designated as areas Nos. 1 and 2 above, bounded by an irregular polygon beginning at the shoreline on Back Island near 55°32.63′ N latitude, 131°45.18′ W longitude, then bearing about 350° T to 55°38.06′ N latitude, 131°46.75′ W longitude then bearing about 300° T to 55°38.52′ N latitude, 131°48.15′ W longitude, then bearing about 203° T to 55°33.59′ N latitude, 131°51.54′ W longitude, then bearing about 112° T to the intersection of the shoreline at Back Island near 55°32.53′ N latitude, 131°45.77′ W longitude, then northeast along the shoreline to the point of beginning.

Area No. 4. The waters of Clover Passage bounded by an irregular polygon beginning at the shoreline on Back Island near 55 32.63′ N latitude, 131°45.18′ W longitude, then bearing 150° T. to the intersection of the shoreline on Revillagegedo Island near 55°30.64′ N latitude, 131°43.64′ W longitude, then southwest along the shoreline to near 55°30.51′ N latitude, 131°43.88′W longitude, then bearing 330° T to the intersection of the shoreline on Back Island near 55°32.16′ N. latitude, 131°45.20′ W longitude, and from there northeast along the shoreline to the point of beginning.

Area No. 5. The waters of Behm Canal bounded to the north by a line starting from Point Francis on the Cleveland Peninsula to Escape Point on Revillagegedo Island then south along the shoreline to Indian Point, then south to the Grant Island Light at 55°33.3′ N latitude, 131°43.62′ W longitude then bearing 218° T. to the south end of Back Island and continuing to the intersection of the shoreline on Betton Island at about 55°31.55′ N latitude, 131°45.98′ W longitude, then north along the shoreline of Betton Island to the western side below Betton Head at about 55°30.83′ N latitude, 131°50′ W longitude, then bearing 283° T. across Behm Canal to the intersection of shoreline near the point which forms the southeast entrance of Bond Bay at about 55°31.60′ N latitude, 131°56.58′ W longitude, then northeast to Helm Point on the Cleveland Peninsula, then northeast along the shoreline to the point of beginning at Point Francis.

(b) *The regulations*—(1) *Area No. 1.* Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area.

(2) *Area No. 2.* Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area. Vessels are also prohibited from mooring or tying up to, loitering alongside or in the immediate vicinity of naval equipment and barges in the restricted area.

(3) *Area No. 3.* Vessels are allowed to transit the area at any time. Due to the presence of underwater cables and instrumentation, anchoring is prohibited and the towing of a drag or any object within 100 feet of the bottom is also prohibited. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where electrical and other cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(4) *Area No. 4.* Due to the presence of communication and power cables crossing from Revillagegedo Island to Back Island no anchoring or towing of a drag is allowed. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where the cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(5) *Area No. 5.* (i) The area will be open unless the Navy is actually conducting operations. To ensure safe and timely passage through the restricted area vessel operators are required to notify the Range Operations Officer of their expected time of arrival, speed and intentions. For vessels not equipped with radio equipment, the Navy shall signal with flashing beacon lights whether passage is prohibited and when it is safe to pass through the area. A flashing green beacon indicates that vessels may proceed through the

area. A flashing red beacon means that the area is closed to all vessels and to await a green clear signal. Each closure of the area by the Navy will normally not exceed 20 minutes.

(ii) Small craft may operate within 500 yards of the shoreline at speeds no greater than 5 knots in accordance with the restrictions in effect in area No. 3.

(iii) During the period May 1 through September 15 annually, the Navy will only conduct acoustic measurement tests which will result in transitory restrictions in Area #5 for a total of no more than 15 days.

(iv) Transitory restrictions in Area #5 will not be enforced during daylight hours when Navy testing coincides with pre-scheduled special events in Behm Canal. Special events are defined as summer holidays or celebrations, competitions, or economic endeavors scheduled by an agency or organization, and typically occurring every year for the utilization of natural resources of Behm Canal. Special events include commercial emergency seine fishery openings from July 25 through September 15, historic salmon derbies lasting eight days or less, Memorial Day, Labor Day, Independence Day or any nationally recognized three day weekend to celebrate these holidays.

(v) Public notification that the Navy will be conducting operations in Behm Canal will be given at least 72 hours in advance to the following Ketchikan contacts: U.S. Coast Guard, Ketchikan Gateway Borough Planning Department, Harbor Master, Alaska Department of Fish and Game, KRBD Radio, KTKN Radio, and the Ketchikan Daily News.

(c) Vessels will be allowed to transit Restricted Area #5 within 20 minutes of marine radio or telephone notification to the Navy Range Operations Officer.

(d) *Enforcement*. The regulations in this section shall be enforced by the Commander, David Taylor Research Center and such agencies he/she may designate.

[55 FR 2586, Jan. 25, 1990, as amended at 55 FR 10237, Mar. 20, 1990; 58 FR 6718, Feb. 2, 1993]

§ 334.1280 Bristol Bay, Alaska; air-to-air weapon range, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone*. An area in Bristol Bay beginning at latitude 58°24′ N., longitude 159°10′ W.; thence to latitude 57°58′ N., longitude 158°30′ W.; thence to latitude 57°07′ N., longitude 160°20′ W.; thence to latitude 58°02′ N., longitude 161°40′ W.; and thence to the point of beginning.

(b) *The regulations*. (1) Intermittent firing will be conducted over two to three day periods about 2 hours a day between the hours of 10:00 a.m. and 4:00 p.m. during the months of May through August.

(2) The fact that practice firing is to take place over the designated area shall be advertised to the public 72 hours in advance through the usual media for the dissemination of such information. Notice to the U.S. Coast Guard and NOTAM shall be issued at least 48 hours before firing is to be conducted on the range. Information as to the dates, time, and characteristics of the firing shall be advertised in advance of each session of firing.

(3) Prior to conducting each practice firing, the danger zone shall be patrolled by aircraft to note the location of all vessels within the area. The practice firing exercise shall be conducted in the portion of the danger zone not occupied by surface craft.

(4) This section shall be enforced by the Commander, Alaskan Air Command, U.S. Air Force, Seattle, Washington, or such agencies as he may designate.

[29 FR 5947, May 6, 1964, as amended at 36 FR 6422, Apr. 3, 1971. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1290 In Bering Sea, Shemya Island Area, Alaska; meteorological rocket launching facility, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone*. An arc of a circle with a 45-nautical-mile radius of the launch point centered at latitude 52°43′30″ N., longitude 174°06′05″ E extending clockwise from 110° true bearing to 200° true bearing.

(b) *The regulation*. (1) Rockets will normally be launched one each day Monday through Friday between 9 a.m.

and 3 p.m. Rocket hardware will discharge into the sea 22.5 to 37.5 nautical miles off the launchsite. The instrument package with parachute will impact about 1½ hours later at an undetermined area, depending on weather conditions.

(2) All mariners entering the area will do so at their own risk and are cautioned to take evasive action as necessary.

(3) The regulation in this section shall be enforced by the Department of the Air Force, Headquarters 6th Weather Wing (MAC), Andrews Air Force Base, Washington, D.C. 20331.

(40 Stat. 266 (33 U.S.C. 1))

[36 FR 19079, Sept. 28, 1971, as amended at 42 FR 46520, Sept. 16, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1300 Blying Sound area, Gulf of Alaska, Alaska; air-to-air gunnery practice area, Alaskan Air Command, U.S. Air Force.

(a) *The danger zone.* A rhomboidal area beginning at latitude 59°51′30″ N., longitude 148°42′00″ W.; thence to latitude 59°22′30″ N., longitude 147°00′00″ W.; thence to latitude 58°52′00″ N., longitude 148°03′00″ W.; thence to latitude 59°20′00″ N., longitude 149°45′00″ W., and thence to point of beginning.

(b) *The regulations.* (1) 20-mm. cannon will be fired at towed targets in the air. One firing mission will be conducted every 2 weeks during daylight hours only and weather permitting.

(2) The fact that practice firing is to take place over the designated area shall be advertised to the public 7 days in advance through the usual media for the dissemination of such information. Notice to the U.S. Coast Guard and NOTAM shall be issued at least 48 hours before firing is to be conducted on the range. Information as to the dates, time, and characteristics of the firing shall be advertised in advance of each session of firing.

(3) Prior to conducting each practice firing, the danger zone shall be patrolled by aircraft to note the location of all vessels within the area. The practice firing exercise shall be conducted in the portion of the danger zone not occupied by surface craft.

(4) The regulations in this section shall be enforced by the Commander, Alaskan Air Command, U.S. Air Force, Anchorage, Alaska, or such agencies as he may designate.

(Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

[37 FR 527, Jan. 13, 1972. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1310 Lutak Inlet, Alaska; restricted areas.

(a) *The areas*—(1) *Army POL dock restricted area.* (i) The waters of Lutak Inlet bounded as follows: Beginning at the water's edge 900 feet northwest of the centerline of the landward end of the POL dock; thence 800 feet, 51° true; thence 1,400 feet, 113° true; thence 450 feet, 211° true to the water's edge at a point approximately 720 feet from the most southwest corner of the seaward end of the POL dock; thence along the water's edge to the point of beginning.

(ii) The area will be marked at points approximately 200 feet apart along the shore by white signs containing the word ''Warning.'' The signs will not be lighted.

(2) *Dry Cargo dock mooring area.* (i) The waters within 60 feet off the face of the dock.

(b) *The regulations.* (1) No person, vessel or other watercraft shall enter or remain in the Army POL dock restricted area when tankers are engaged in discharging oil at the dock.

(2) The dropping and dragging of anchors, weights, or other ground tackle within the Dry Cargo dock mooring area is prohibited.

(3) The regulations in this section shall be enforced by the District Engineer, U.S. Army Engineer District, Anchorage, Alaska, and such agencies as he may designate.

[33 FR 7723, May 25, 1968. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1320 Kuluk Bay, Adak, Alaska; naval restricted area.

(a) *The area.* The northwest portion of Kuluk Bay bounded as follows: Beginning on shore at latitude 51°55′00″ N, longitude 176°33′09″ W; thence due east to latitude 51°55′00″ N, longitude 176°33′09″ W; thence due south to latitude 51°51′55″ N longitude 176°31′09″ W; thence due west to the shore at latitude 51°51′00″ N, longitude 176°37′43″ W;

thence along the shoreline to the point of beginning.

(b) *The regulations.* (1) Except in great emergency, no vessel shall anchor in the restricted area described above.

(2) The dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) Fishing and trawling activities in the restricted area are prohibited.

(4) The regulation of this restricted area shall be enforced by the Commander, Patrol Wing, U.S. Pacific Fleet, Naval Air Station Moffett Field, California, and such agencies and he/she may designate.

[58 FR 26046, Apr. 29, 1993]

§ 334.1325 United States Army Restricted Area, Kuluk Bay, Adak, Alaska.

(a) *The area.* The area within a radius 1,000 yards around the Sea Base Radar mooring site in all directions from latitude 51°53′05.4″ N, longitude 176°33′47.4″ W (NAD 83).

(b) *The regulation.* (1) No vessel, person, or other craft shall enter or remain in the restricted area except as may be authorized by the enforcing agency.

(2) A ring of eight lighted and marked navigation buoys marking the perimeter of the mooring anchor system will provide a visible distance reference at a radius of approximately 800 yards from latitude 51°53′05.4″ N, longitude 176°33′47.4″ W (NAD 83). Each buoy has a white light, flashing at 3 second intervals with a 2 nautical mile range. Vessels, persons or other craft must stay at least 200 yards outside the buoys.

(3) The regulation in this section shall be enforced by personnel attached to the Missile Defense Agency and/or by such other agencies as the Director, MDA–AK, Fort Richardson, Alaska, may designate.

[72 FR 65669, Nov. 23, 2007]

§ 334.1330 Bering Strait, Alaska; naval restricted area off Cape Prince of Wales.

(a) *The area.* An area 2,000 feet wide extending from a point on Cape Prince of Wales marked by a triangular cable marker located approximately midway between the village of Wales and Cape Prince of Wales Light to a point four statute miles due west of the cable marker with the axis of the area passing through the two points.

(b) *The regulations.* (1) No vessel shall anchor in the restricted area described in paragraph (a) of this section.

(2) Dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) The regulations in this section shall be enforced by the Commander, Third Fleet, Pearl Harbor, Hawaii and such agencies as he may designate.

[18 FR 8117, Dec. 10, 1953, as amended at 33 FR 5875, Apr. 17, 1968; 42 FR 58519, Nov. 10, 1977. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1340 Pacific Ocean, Hawaii; danger zones.

(a) *Danger zones*—(1) *Aerial bombing and strafing target surrounding Kaula Rock, Hawaii.* The waters within a circular area with a radius of three (3) miles having its center on Kaula Rock at latitude 21°39′30″, longitude 160°32′30″.

(2) *Submerged unexploded ordnance danger zone, Kahoolawe Island, Hawaii.* The waters adjacent to Kahoolawe Island within the area encompassed by the following coordinates beginning at latitude 20°37′30″, longitude 156°32′48″; thence to latitude 20°34′48″, longitude 156°30′24″; thence to latitude 20°28′54″, longitude 156°30′30″; thence to latitude 20°28′06″, longitude 156°41′48″; thence to latitude 20°30′30″, longitude 156°44′12″; thence to latitude 20°33′12″, longitude 156°44′30″; thence to latitude 20°37′30″, longitude 156°36′24″; thence to the beginning coordinates.

(b) *The regulations.* No person, vessel or other craft shall enter or remain in any of the areas at any time except as authorized by the enforcing agency.

(c) *Enforcing agency.* The regulations in this section shall be enforced by Commander, Naval Base, Pearl Harbor, Hawaii 96860–5020, and such agencies as he/she may designated.

[20 FR 4129, June 11, 1955, as amended at 25 FR 4749, May 28, 1960; 31 FR 14255, Nov. 4, 1966; 45 FR 57126, Aug. 27, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 53427, Oct. 15, 1993; 61 FR 34733, July 3, 1996; 62 FR 17559, Apr. 10, 1997]

§ 334.1350 Pacific Ocean, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* Beginning at point of origin at Kaena Point Light in latitude 21°34′42″ N., longitude 158°16′54″ W.; thence on a bearing of 282°30′ True to latitude 21°38′ N., longitude 158°33′ W.; thence along the arc of a circle centered at Kaena Point Light to latitude 21°42′30″ N., longitude 158°03′ W.; thence on a bearing of 228° true to latitude 21°35′33″ N., longitude 158°11′30″ W.; thence to point of origin.

(b) *The regulations.* (1) The area will be closed to the public and all shipping on specific dates to be designated for actual firing and no person, vessel or other craft shall enter or remain in the area during the times designated for firing except as may be authorized by the enforcing agency. Notification to maritime interests of specific dates of firing will be disseminated through the U.S. Coast Guard media of the Local Notice to Mariners and the NOTAMS published by the Corps of Engineers. On dates not specified for firing, the area will be open to normal maritime traffic.

(2) The regulations of this section shall be enforced by the Commanding General, U.S. Army, Hawaii/25th Infantry Division, APO 957, and such agencies as he may designate.

[24 FR 5999, July 28, 1959. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1360 Pacific Ocean at Barber's Point, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* The waters within a rectangular area beginning at a point in latitude 21°17′56″ N., longitude 158°05′21″ W., thence to latitude 21°17′30″ N., longitude 158°05′21″ W.; thence to latitude 21°17′58″ N., longitude 158°02′49″ W., thence to latitude 21°18′24″ N., longitude 158°02′49″ W.; thence along the shoreline at the highwater mark along the southerly boundary of Naval Air Station, Barber's Point, to the point of beginning.

(b) *The regulations.* (1) The area is closed to all surface craft, swimmers, divers and fishermen except to craft and personnel authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Barber's Point, Hawaii, 96862, and such agencies as he/she may designate.

[31 FR 8129, June 9, 1966, as amended at 45 FR 57126, Aug. 27, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1370 Pacific Ocean at Keahi Point, Island of Oahu, Hawaii; danger zone.

(a) *The danger zone.* The waters within an area beginning at a point in latitude 21°18′21.4″ N., longitude 157°59′14.2″ W.; thence to latitude 21°18′11″ N., longitude 158°00′17.5″ W.; thence to latitude 21°17′11.8″ N., longitude 158°00′06.5″ W.; and thence to latitude 21°17′22.5″ N., longitude 157°59′03.1″ W.

(b) *The regulations.* (1) The area is closed to all surface craft, swimmers, divers, and fishermen except to craft and personnel authorized by the enforcing agency.

(2) The regulations in this section shall be enforced by the Commanding Officer, Explosive Ordnance Disposal Training and Evaluation Unit One, Barbers Point, Hawaii 96862–5600.

[31 FR 12437, Sept. 20, 1966, as amended at 45 FR 57126, Aug. 27, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 53427, Oct. 15, 1993]

§ 334.1380 Marine Corps Air Station, (MCAS) Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

(a) *The danger zone.* The waters within a sector extending seaward a distance of 3,900 yards between radial lines bearing 352° true and 61° true, respectively, from a point on Mokapu Peninsula at latitude 21°27′17″ N, longitude 157°43′51″ W, exclusive of the existing 500 yard wide prohibited area. The interface between the existing 500 yard prohibited area and this danger zone is defined by three points having the following coordinates:

Point A: Latitude 21°27′59″ N, Longitude 157°43′56″ W

Point B: Latitude 21°27′52″ N, Longitude 157°43′02″ W

Point C: Latitude 21°27′38″ N, Longitude 157°43′12″ W

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6:00 a.m. and 11:00 p.m., Monday through Friday, and between 6:00 a.m. and 6:00 p.m., Saturday and/or Sunday, when required. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the Officer in Charge of the Range Training Facility, Headquarters and Headquarters Squadron, MCAS (telephone number 257–2067).

(2) Whenever hazardous weapons (machine guns) firing is scheduled and in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at Ulupau Crater.

(3) Whenever tactical weapons (exclusive of machine guns) firing is scheduled and in progress during daylight hours, a single large red rectangular warning flag will be flown at the two separate locations on the shore.

(4) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at Ulupau Crater.

(5) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(6) The danger zone is not considered safe for boaters whenever hazardous weapons (machine guns) firing is in progress. Hazardous weapons firing will usually be scheduled approximately twice per month, on nonconsecutive weekdays, for about eight hours on each occasion. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever hazardous weapons firing is scheduled. Passage of vessels through the danger zone when hazardous weapons firing is in progress will be permitted, but boaters shall proceed directly through the area at best speed. Hazardous weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is scheduled, the boater will be personally requested to expeditiously vacate the danger zone by MCAS Kaneohe Bay military personnel utilizing a bull-horn from either a Marine helicopter or Navy crash boat.

(7) The danger zone may be occupied for extended periods and with caution at individual risk whenever tactical weapons (exclusive of machine guns) firing is scheduled and in progress because of the remote possibility of a rifle round from an accidental discharge impacting outside the limits of the existing prohibited area.

(8) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

(c) *The Enforcing Agency.* The foregoing regulations shall be enforced by the Commanding Officer, MCAS Kaneohe Bay and such agencies as he/she may designate.

[46 FR 43044, Aug. 26, 1981. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1390 Pacific Ocean at Barking Sands, Island of Kauai, Hawaii; missile range facility.

(a) *The danger zone.* The waters within an area beginning at latitude 22°03′15″ N., longitude 159°47′15″ W.; thence southerly along the shoreline to latitude 22°02′45″ N., longitude 159°47′18″ W.; thence westerly to latitude 22°02′30″ N., longitude 159°51′30″ W.; thence northeasterly to latitude 22°06′30″ N., longitude 159°49′30″ W.; and thence southeasterly to point of beginning.

(b) *Markers.* (1) Range markers at the control point at latitude 22°03′17.4″ N., longitude 159°47′12.2″ W., are separated 300 feet (one pole 95.5 feet northwest and the other pole 334.5 feet southeast of this point) along a line bearing 327°10′ True.

(2) Range markers at the control point at latitude 22°02′44.5″ N., longitude 159°47′16.4″ W., are separated 300 feet (one pole 75 feet west and the other

pole 225 feet east of this point) along a line bearing 266°20′ True.

(3) The range marker poles seaward from each control point are 25 feet in height above ground level. The other two poles are 45 feet above ground level.

(4) Each range marker consists of a 10-foot equilateral triangle with alternate red and white diagonal stripes.

(c) *The regulations*. Entry into the area by any person, boat, vessel or other craft is prohibited at all times. Special permission for transit through the area by the most direct route may be obtainable on an individual basis, by prior arrangement with the Commanding Officer, Pacific Missile Range Facility, Hawaiian Area, Barking Sands, Kauai, Hawaii.

[34 FR 7575, May 10, 1969. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1400 Pacific Ocean, at Barbers Point, Island of Oahu, Hawaii; restricted area.

(a) *The area*. That portion of the Pacific Ocean lying offshore of Oahu between Ewa Beach and Barbers Point, basically outlined as follows:

Station	Latitude	Longitude
A (shoreline)	21°18′06″	158°04′24″
B	21°17′00″	158°03′30″
C	21°15′00″	158°03′18″
D	21°15′36″	158°01′06″
E (shoreline)	21°18′30″	158°02′00″

(b) *The regulations*. (1) Vessels shall not anchor within the area at any time.

(2) Dredging, dragging, seining, or other fishing operations which might foul underwater installations within the area are prohibited.

(3) Use of the restricted area for boating, fishing (except as prohibited in paragraph (b)(2) of this section) and other surface activities is authorized.

(4) The regulations in this section shall be enforced by the Officer in Charge, Fleet Area Control and Surveillance Facility, Pearl Harbor, Hawaii 96860–7625, and such agencies as he/she may designate.

(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

[36 FR 14186, July 31, 1971, as amended at 45 FR 57126, Aug. 27, 1980. Redesignated at 50 FR 42696, Oct. 22, 1985, and amended at 58 FR 53427, Oct. 15, 1993]

§ 334.1410 Pacific Ocean, at Makapuu Point, Waimanalo, Island of Oahu, Hawaii, Makai Undersea Test Range.

(a) *The restricted area*. The waters within an area beginning at a point in latitude 21°18′50″ N., longitude 157°39′07″ W.; thence to latitude 21°20′33″ N., longitude 157°38′00″ W.; thence to latitude 21°22′02″ N., longitude 157°39′07″ W.; and thence to latitude 21°19′35″ N., longitude 157°40′46″ W.

(b) *The regulations*. (1) During critical testing phases of surface and submerged units, the operating officials of the Makai Test Range will mark in a conspicuous manner the location of the equipment which might be subject to damage from navigation and fishing activities or might represent a hazard to persons or property in the vicinity. During the display of signals in the restricted area, all persons and surface craft will remain away from the area until such time as the signals are withdrawn. At all other times the area is open to unrestricted fishing, boating and general navigation.

(2) Operating officers and personnel of the Makai Test Range will be responsible for marking in a conspicuous manner the location of surface and underwater equipment which is subject to damage from navigation and fishing activities in the vicinity or represents a hazard to persons or property in the vicinity, and the location of the work area during critical testing phases. Surface communication by boat will be provided by the Makai Test Range during testing phases.

[34 FR 7964, May 21, 1969. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.1420 Pacific Ocean off Orote Point, Apra Harbor, Island of Guam, Marianas Islands; small arms firing range.

(a) *The danger zone*. The waters within an area delineated by a line joining the following positions:

Latitude	Longitude
13°26′03.9″	144°37′38.3″
13°25′26.0″	144°36′14.2″
13°24′51.2″	144°36′31.9″
13°25′28.7″	144°37′59.1″
13°25′43.2″	144°38′09.5″

(b) *The regulations.* (1) The danger zone shall be closed to the public and shipping on specific dates to be designated for actual firing and no person, vessel or other craft shall enter or remain in the danger zone designated for firing except as may be authorized by the enforcing agency. Notification to maritime interests of specific dates of firing will be disseminated by the enforcing agency. On dates not specified for firing, the danger zone shall be open to normal maritime traffic.

(2) The regulations in this section shall be enforced by the Commanding Officer, U.S. Naval Station, Guam, Marianas Islands and such agencies as he may designate.

[28 FR 5377, May 30 1963. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1430 Apra Inner Harbor, Island of Guam; restricted area.

(a) *The restricted area.* The waters within Apra Inner Harbor and adjacent waters of Apra Outer Harbor inclosed by a line beginning at the northeast corner of a pier at latitude 13°26′32.1″ N., longitude 144°39′02.8″ E.; thence to the northern tip of a small island at latitude 13°26′40.2″ N., longitude 144°39′28.1″ E., and thence to the northwest corner of the point of land at latitude 13°26′28.1″ N., longitude 144°39′52.5″ E.

(b) *The regulations.* (1) All swimmers and all vessels and craft except public vessels of the United States are prohibited from entering this area without prior permission of the enforcing agency.

(2) The regulations in this section shall be enforced by Commander Naval Forces Marianas and such agencies as he may designate.

(3) The water areas of the outer boundaries of the restricted area will not be marked but signs will be posted at the designated boundary coordinates to warn against trespassing in the restricted area.

[37 FR 8525, Apr. 28, 1972, as amended at 37 FR 11058, June 2, 1972. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1440 Pacific Ocean at Kwajalein Atoll, Marshall Islands; missile testing area.

(a) *The warning area.* The waters within a circular area with a radius of 200 nautical miles having its center at latitude 8°43′00″ N., longitude 167°43′00″ E. Intermittent hazardous missile operations will be conducted within the area 24 hours daily, on a permanent basis.

(b) *Advisory instructions.* (1) Kwajalein Test Site will coordinate safe passage of surface shipping through the area.

(2) All ships are advised to contact Kwajalein Control (2716 KC for voice, 500 KC for CW initial contact, and 468 KC for CW working) before entering the area.

[31 FR 9850, July 21, 1966. Redesignated at 50 FR 42696, Oct. 22, 1985]

§ 334.1450 Atlantic Ocean off north coast of Puerto Rico; practice firing areas, U.S. Army Forces Antilles.

(a) *The danger zones*—(1) *Westerly small-arms range.* The waters within the sector of a circle bounded by radii of 10,000 yards bearing 279° and 315° respectively, from latitude 18°28′31″, longitude 66°25′37″, and the included arc.

NOTE: All bearings in this section are referred to true meridian.

(2) *Camp Tortuguero artillery range.* The waters within the quadrant of a circle bounded by radii of 20,000 yards bearing 315° and 45°, respectively, from latitude 18°28′31″, longitude 66°25′37″, and the included arc.

(3) *Easterly small-arms range.* The waters within the sector of a circle bounded by radii of 7,210 yards bearing 45° and 70°, respectively, from a point on the southeast boundary of the artillery range 2,790 yards from its southerly end, and the included arc.

NOTE: The outer boundaries of the danger zones will not be marked, but signs will be posted along shore to warn against trespassing in the firing areas.

(b) *The regulations.* (1) The danger zones shall be open to navigation at all times except when practice firing is being conducted. When practice firing is being conducted, no person, vessel or other craft except those engaged in towing targets or patrolling the area shall enter or remain within the danger

zones: Provided, that any vessel propelled by mechanical power at a speed greater than five knots may proceed through the Camp Totuguero artillery range at any time to and from points beyond, but not from one point to another in the danger zone between latitudes 18°31′ and 18°32′, at its regular rate of speed without stopping or altering its course, except when notified to the contrary.

(2) The fact that practice firing is to take place over the designated area will be advertised to the public through the usual media for the dissemination of such information. Factual information as to the dates, time, and characteristics of the firing will be advertised in advance of each session of firing but in no case less than one week nor more than four weeks before such firing is scheduled to take place.

(3) Prior to conducting each practice firing, the entire danger zone will be patrolled by aircraft or surface vessels to insure that no watercraft are within the danger zone. Any watercraft in the vicinity will be warned that practice firing is about to take place. Any such watercraft shall, upon being so warned, leave the danger zone immediately and shall not return until such practice shall have been terminated and notification to that effect shall have been given by the patrol craft, except that vessels proceeding on a regular course through the area will be allowed to proceed out of the area without warning, and firing will not commence until such vessels are clear of the area.

(4) This section shall be enforced by the Commanding General, U.S. Army Forces Antilles, and such agencies as he may designate.

[14 FR 4552, July 21, 1949. Redesignated at 14 FR 5593, Sept. 13, 1949, and amended at 15 FR 6758, Oct. 6, 1950. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997; 62 FR 24034, May 2, 1997]

§ 334.1460 Atlantic Ocean and Vieques Sound, in vicinity of Culebra Island; bombing and gunnery target area.

(a) *The danger zone.* From Punta Resaca on the north coast of Culebra at latitude 18°20′12″, longitude 65°17′29″ to latitude 18°25′07″, longitude 65°12′07″; thence to latitude 18°26′31″, longitude 65°16′45″; thence to latitude 18°23′00″, longitude 65°24′30″; thence to the charted position of nun buoy ''2'' at latitude 18°20′19″, longitude 65°24′51″; thence to latitude 18°18′47″, longitude 65°24′35″; thence to latitude 18°15′30″, longitude 65°21′30″; thence to a point on the southeast coast of Cayo de Luis Pena at latitude 18°17′51″, longitude 65°19′41″; and thence to Punta Tamarindo on the west coast of Culebra at latitude 18°19′12″ longitude 65°19′22″.

(b) *The regulations.* (1) The danger zone is subject to use as a target area for bombing and gunnery practice. It will be open to navigation at all times except when firing is being conducted. At such times, no person or surface vessels, except those patrolling the area, shall enter or remain within the danger area. Prior to conducting each firing or dropping of ordnance the danger area will be patrolled to insure that no watercraft are within the danger area. Any watercraft in the vicinity will be warned that practice firing is about to take place and advised to vacate the area.

(2) The regulations in this section shall be enforced by the Commander, Caribbean Sea Frontier, San Juan, Puerto Rico, and such agencies as he may designate.

(Sec. 7, 40 Stat. 266, (33 U.S.C. 1))

[13 FR 9530, Dec. 31, 1948. Redesignated at 14 FR 4904, Aug. 9, 1949, and amended at 28 FR 349, Jan. 12, 1963; 39 FR 27133, July 25, 1974; 44 FR 69298, Dec. 3, 1979. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1470 Caribbean Sea and Vieques Sound, in vicinity of Eastern Vieques; bombing and gunnery target area.

(a) *The danger zone.* From Punta Conejo on the south coast of Vieques at latitude 18°06′30″, longitude 65°22′33″; thence to latitude 18°03′00″, longitude 65°21′00″; thence to latitude 18°03′00″, longitude 65°15′30″; thence to latitude 18°11′30″, longitude 65°14′30″; thence to latitude 18°12′00″, longitude 65°20′00″; and thence to Cabellos Colorados on the north coast of Vieques at latitude 18°09′49″, longitude 65°23′27″.

(b) *Regulations.* (1) It will be open to navigation at all times except when firing is being conducted. At such

times, no persons or surface vessels, except those patrolling the area, shall enter or remain within the danger area. Prior to conducting each firing or dropping of ordnance the danger area will be patrolled to insure that no watercraft are within the danger area. Any watercraft in the vicinity will be warned that practice firing is about to take place and advised to vacate the area.

(2) The regulations will be enforced by the Commander, U.S. Naval Forces Caribbean, U.S. Naval Station, Roosevelt Roads, Puerto Rico, and such agencies and subordinate commands as he/she may designate.

(Sec. 7, 40 Stat. 266, (33 U.S.C. 1))

[39 FR 27133, July 25, 1974, as amended at 46 FR 29935, June 4, 1981. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1480 Vieques Passage and Atlantic Ocean, off east coast of Puerto Rico and coast of Vieques Island; naval restricted areas.

(a) *The restricted areas.* (1) A strip, 1,500 yards wide, off the naval reservation shoreline along the east coast of Puerto Rico extending from Point Figuera south to Point Puerca, and thence west to Point Cascajo and the mouth of the Daguada River.

(2) A strip, 1,500 yards wide, off the naval reservation shoreline along the west end of Vieques Island extending from Caballo Point on the north shore, west around the breakwater to Point Arenas, and thence south and east to a point on the shoreline one mile east of the site of the abandoned central at Playa Grande.

(3) A strip, 1,500 yards wide, off the south coast of Vieques Island extending from the entrance to Port Mosquito east to Conejo Point.

(4) An area inclosed by an arc with a radius of 3,000 yards centered on Cabras Island Lighthouse and extending from Point Puerca to Point Cascajo.

(b) *The regulations.* No person or vessel shall enter or remain within the restricted areas at any time unless on official business. Fishing vessels are permitted to anchor in Playa Blanca, passing through the restricted area described in paragraph (a)(1) of this section, to and from anchorage on as near a north-south course as sailing conditions permit. Under no conditions will swimming, diving, snorkeling, other water related activities or fishing, be permitted in the restricted area.

[13 FR 9564, Dec. 31, 1948. Redesignated at 50 FR 42696, Oct. 22, 1985, as amended at 62 FR 17559, Apr. 10, 1997]

§ 334.1490 Caribbean Sea, at St. Croix, V.I.; restricted areas.

(a) *The areas*—(1) *Area ''A''.* A triangular area bounded by the following coordinates:

Latitude	Longitude
17°44′42″ N.	64°54′18″ W.
17°43′06″ N.	64°54′18″ W.
17°44′30″ N.	64°53′30″ W.

(2) *Area ''B''.* A rectangular area bounded by the following coordinates:

Latitude	Longitude
17°41′42″ N.	64°54′00″ W.
17°41′42″ N.	64°54′18″ W.
17°41′18″ N.	64°54′00″ W.
17°41′18″ N.	64°54′18″ W.

(b) *The regulations.* (1) Anchoring in the restricted areas is prohibited with the exception of U.S. Government owned vessels and private vessels that have been specifically authorized to do so by the Commanding Officer, Atlantic Fleet Range Support Facility.

(2) The regulations in this paragraph shall be enforced by the Commanding Officer, Atlantic Fleet Range Support Facility, Roosevelt Roads, P.R., and such agencies as he may designate.

[34 FR 19030, Nov. 29, 1969. Redesignated at 50 FR 42696, Oct. 22, 1985]

PART 335—OPERATION AND MAINTENANCE OF ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS INVOLVING THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE U.S. OR OCEAN WATERS

Sec.
335.1 Purpose.
335.2 Authority.
335.3 Applicability.
335.4 Policy.
335.5 Applicable laws.
335.6 Related laws and Executive Orders.
335.7 Definitions.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14911, Apr. 26, 1988, unless otherwise noted.

§ 335.1 Purpose.

This regulation prescribes the practices and procedures to be followed by the Corps of Engineers to ensure compliance with the specific statutes governing Army Civil Works operations and maintenance projects involving the discharge of dredged or fill material into waters of the U.S. or the transportation of dredged material for the purpose of disposal into ocean waters. These practices and procedures should be employed throughout the decision/management process concerning methodologies and alternatives to be used to ensure prudent operation and maintenance activities.

§ 335.2 Authority.

Under authority delegated from the Secretary of the Army and in accordance with section 404 of the Clean Water Act of 1977 (CWA) and section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, hereinafter referred to as the Ocean Dumping Act (ODA), the Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States and the transportation of dredged material for the purpose of disposal into ocean waters. Section 404 of the CWA requires public notice with opportunity for public hearing for discharges of dredged or fill material into waters of the U.S. and that discharge sites can be specified through the application of guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. Section 103 of the ODA requires public notice with opportunity for public hearing for the transportation for disposal of dredged material for disposal in ocean waters. Ocean disposal of dredged material must be evaluated using the criteria developed by the Administrator of EPA in consultation with the Secretary of the Army. Section 103(e) of the ODA provides that the Secretary of the Army may, in lieu of permit procedures, issue regulations for Federal projects involving the transportation of dredged material for ocean disposal which require the application of the same criteria, procedures, and requirements which apply to the issuance of permits. Similarly, the Corps does not issue itself a CWA permit to authorize Corps discharges of dredged material or fill material into U.S. waters, but does apply the 404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws.

§ 335.3 Applicability.

This regulation (33 CFR parts 335 through 338) is applicable to the Corps of Engineers when undertaking operation and maintenance activities at Army Civil Works projects.

§ 335.4 Policy.

The Corps of Engineers undertakes operations and maintenance activities where appropriate and environmentally acceptable. All practicable and reasonable alternatives are fully considered on an equal basis. This includes the discharge of dredged or fill material into waters of the U.S. or ocean waters in the least costly manner, at the least costly and most practicable location, and consistent with engineering and environmental requirements.

§ 335.5 Applicable laws.

(a) The Clean Water Act (33 U.S.C. 1251 *et seq.*) (also known as the Federal Water Pollution Control Act Amendments of 1972, 1977, and 1987).

(b) The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*) (commonly referred to as the Ocean Dumping Act (ODA)).

§ 335.6 Related laws and Executive Orders.

(a) The National Historic Preservation Act of 1966 (16 U.S.C. 470a *et seq.*), as amended.

(b) The Reservoir Salvage Act of 1960 (16 U.S.C. 469), as amended.

(c) The Endangered Species Act (16 U.S.C. 1531 *et seq.*), as amended.

(d) The Estuary Protection Act (16 U.S.C. 1221).

(e) The Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), as amended.

(f) The National Environmental Policy Act (42 U.S.C. 4341 *et seq.*), as amended.

(g) The Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*) as amended.

(h) Section 307(c) of the Coastal Zone Management Act of 1976 (16 U.S.C. 1456 (c)), as amended.

(i) The Water Resources Development Act of 1976 (Pub. L. 94–587).

(j) Executive Order 11593, *Protection and Enhancement of the Cultural Environment,* May 13, 1971, (36 FR 8921, May 15, 1971).

(k) Executive Order 11988, *Floodplain Management,* May 24, 1977, (42 FR 26951, May 25, 1977).

(l) Executive Order 11990, *Protection of Wetlands,* May 24, 1977, (42 FR 26961, May 25, 1977).

(m) Executive Order 12372, *Intergovernmental Review of Federal Programs,* July 14, 1982, (47 FR 3959, July 16, 1982).

(n) Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions,* January 4, 1979.

§ 335.7 Definitions.

The definitions of 33 CFR parts 323, 324, 327, and 329 are hereby incorporated. The following terms are defined or interpreted from parts 320 through 330 for purposes of 33 CFR parts 335 through 338.

Beach nourishment means the discharge of dredged or fill material for the purpose of replenishing an eroded beach or placing sediments in the littoral transport process.

Emergency means a situation which would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate and unforeseen significant economic hardship if corrective action is not taken within a time period less than the normal time needed under standard procedures.

Federal standard means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound engineering practices and meeting the environmental standards established by the 404(b)(1) evaluation process or ocean dumping criteria.

Navigable waters of the U.S. means those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, have been used in the past, or may be susceptible to use with or without reasonable improvement to transport interstate or foreign commerce. A more complete definition is provided in 33 CFR part 329. For the purpose of this regulation, the term also includes the confines of Federal navigation approach channels extending into ocean waters beyond the territorial sea which are used for interstate or foreign commerce.

Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Statement of Findings (SOF) means a comprehensive summary compliance document signed by the district engineer after completion of appropriate environmental documentation and public involvement.

Territorial sea means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, extending seaward a distance of three miles as described in the convention on the territorial sea and contiguous zone, 15 U.S.T. 1606.

PART 336—FACTORS TO BE CONSIDERED IN THE EVALUATION OF ARMY CORPS OF ENGINEERS DREDGING PROJECTS INVOLVING THE DISCHARGE OF DREDGED MATERIAL INTO WATERS OF THE U.S. AND OCEAN WATERS

Sec.
336.0 General.
336.1 Discharges of dredged or fill material into waters of the U.S.
336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14912, Apr. 26, 1988, unless otherwise noted.

§ 336.0 General.

Since the jurisdiction of the CWA extends to all waters of the U.S., including the territorial sea, and the jurisdiction of the ODA extends over ocean waters including the territorial sea, the following rules are established to assure appropriate regulation of discharges of dredged or fill material into waters of the U.S. and ocean waters.

(a) The disposal into ocean waters, including the territorial sea, of dredged material excavated or dredged from navigable waters of the U.S. will be evaluated by the Corps in accordance with the ODA.

(b) In those cases where the district engineer determines that the discharge of dredged material into the territorial sea would be for the primary purpose of fill, such as the use of dredged material for beach nourishment, island creation, or construction of underwater berms, the discharge will be evaluated under section 404 of the CWA.

(c) For those cases where the district engineer determines that the materials proposed for discharge in the territorial sea would not be adequately evaluated under the section 404(b)(1) guidelines of the CWA, he may evaluate that material under the ODA.

§ 336.1 Discharges of dredged or fill material into waters of the U.S.

(a) *Applicable laws.* Section 404 of the CWA governs the discharge of dredged or fill material into waters of the U.S. Although the Corps does not process and issue permits for its own activities, the Corps authorizes its own discharges of dredged or fill material by applying all applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines.

(1) The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.

(2) Section 307 of the Coastal Zone Management Act (CZMA) requires that certain activities that a Federal agency conducts or supports be consistent with the Federally-approved state management plan to the maximum extent practicable.

(b) *Procedures.* If changes in a previously approved disposal plan for a Corps navigation project warrant reevaluation under the CWA, the following procedures should be followed by district enginers prior to discharging dredged material into waters of the U.S. except where emergency action as described in § 337.7 of this chapter is required.

(1) A public notice providing opportunity for a public hearing should be issued at the earliest practicable time. The public notification procedures of § 337.1 of this chapter should be followed.

(2) The public hearing procedures of 33 CFR part 327 should be followed.

(3) As soon as practicable, the district engineer will request from the state a 401 water quality certification and, if applicable, provide a coastal zone consistency determination for the Corps activity using the procedures of § 336.1(b) (8) and (9), respectively, of this part.

(4) Discharges of dredged material will be evaluated using the guidelines authorized under section 404(b)(1) of the CWA, or using the ODA regulations, where appropriate. If the guidelines alone would prohibit the designation of a proposed discharge site, the economic impact on navigation and anchorage of the failure to use the proposed discharge site will also be considered in evaluating whether the proposed discharge is to be authorized under CWA section 404(b)(2).

(5) The EPA Administrator can prohibit or restrict the use of any defined area as a discharge site under 404(c) whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreation areas. Upon notification of the prohibition of a discharge site by the Administrator the district engineer will complete the administrative processing of the proposed project up to the point of signing the Statement of Findings (SOF) or Record of Decision (ROD). The unsigned SOF or ROD along with a report described in § 337.8 of this chapter

will be forwarded through the appropriate Division office to the Dredging Division, Office of the Chief of Engineers.

(6) In accordance with the National Environmental Policy Act (NEPA), and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), an Environmental Impact Statement (EIS) or Environmental Assessment (EA) will be prepared for all Corps of Engineers projects involving the discharge of dredged or fill material, unless such projects are included within a categorical exclusion found at 33 CFR part 230 or addressed within an existing EA or EIS. If a proposed maintenance activity will result in a deviation in the operation and maintenance plan as described in the EA or EIS, the district engineer will determine the need to prepare a new EA, EIS, or supplement. If a new EA, EIS, or supplement is required, the procedures of 33 CFR part 230 will be followed.

(7) If it can be anticipated that related work by other Federal or non-Federal interests will occur in the same area as Corps projects, the district engineer should use all reasonable means to include it in the planning, processing, and review of Corps projects. Related work normally includes, but is not necessarily limited to, maintenance dredging of approach channels and berthing areas connected to Federal navigation channels. The district engineer should coordinate the related work with interested Federal, state, regional, and local agencies and the general public at the same time he does so for the Corps project. The district engineer should ensure that related work meets all substantive and procedural requirements of 33 CFR parts 320 through 330. Documents covering Corps maintenance activities normally should also include an appropriate discussion of ancillary maintenance work. District engineers should assist local interests to obtain from the state any necessary section 401 water quality certification and, if required, the section 307 coastal zone consistency concurrence. The absence of such certification or concurrence by the state or the denial of a Corps permit for related work shall not be cause for delay of the Federal project. Local sponsors will be responsible for funding any related work. If permitting of the related work complies with all legal requirements and is not contrary to the public interest, section 10, 404, and 103 permits normally will be issued by the district engineer in a separate SOF or ROD. Authorization by nationwide or regional general permit may be appropriate. If the related work does not receive a necessary state water quality certification and/or CZMA consistency concurrence, or are determined to be contrary to the public interest the district engineer should re-examine the project viability to ensure that continued maintenance is warranted.

(8) *State water quality certification:* Section 401 of the CWA requires the Corps to seek state water quality certification for dredged material disposal into waters of the U.S. The state certification request must be processed to a conclusion by the state within a reasonable period of time. Otherwise, the certification requirements of section 401 are deemed waived. The district engineer will request water quality certification from the state at the earliest practicable time using the following procedures:

(i) In addition to the Corps section 404 public notice, information and data demonstrating compliance with state water quality standards will be provided to the state water quality certifying agency along with the request for water quality certification. The information and data may be included within the 404(b)(1) evaluation. The district engineer will request water quality certification to be consistent with the maintenance dredging schedule for the project. Submission of the public notice, including information and data demonstrating compliance with the state water quality standards, will constitute a valid water quality certification request pursuant to section 401 of the CWA.

(ii) If the proposed disposal activity may violate state water quality standards, after consideration of disposal site dilution and dispersion, the district engineer will work with the state to acquire data to satisfy compliance with the state water quality standards.

The district engineer will use the technical manual ''Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls'' or its appropriate updated version as a guide for developing the appropriate tests to be conducted on such dredged material.

(iii) If the state does not take final action on a request for water quality certification within two months from the date of the initial request, the district engineer will notify the state of his intention to presume a waiver as provided by section 401 of the CWA. If the state agency, within the two-month period, requests an extension of time, the district engineer may approve one 30-day extension unless, in his opinion, the magnitude and complexity of the information contained in the request warrants a longer or additional extension period. The total period of time in which the state must act should not exceed six months from the date of the initial request. Waiver of water quality certification can be conclusively presumed after six months from the date of the initial request.

(iv) The procedures of § 337.2 will be followed if the district engineer determines that the state data acquisition requirements exceed those necessary in establishment of the Federal standard.

(9) *State coastal zone consistency:* Section 307 of the CZMA requires that activities subject to the CZMA which a Federal agency conducts or supports be consistent with the Federally approved state management program to the maximum extent practicable. The state is provided a reasonable period of time as defined in § 336.1(b)(9)(iv) to take final action on Federal consistency determinations; otherwise state concurrence can be presumed. The district engineer will provide the state a consistency determination at the earliest practicable time using the following procedures:

(i) The Corps section 404 public notice and any additional information that the district engineer determines to be appropriate will be provided the state coastal zone management agency along with the consistency determination. The consistency determination will consider the maintenance dredging schedule for the project. Submission of the public notice and, as appropriate, any additional information as determined by the district engineer will constitute a valid coastal zone consistency determination pursuant to section 307 of the CZMA.

(ii) If the district engineer decides that a consistency determination is not required for a Corps activity, he may provide the state agency a written determination that the CZMA does not apply.

(iii) The district engineer may provide the state agency a general consistency determination for routine or repetitive activities.

(iv) If the state fails to provide a response within 45 days from receipt of the initial consistency determination, the district engineer will presume state agency concurrence. If the state agency, within the 45-day period, requests an extension of time, the district engineer will approve one 15-day extension unless, in his opinion, the magnitude and complexity of the information contained in the consistency determination warrants a longer or additional extension period. The longer or additional extension period shall not exceed six months from the date of the initial consistency determination.

(v) If the district engineer determines that the state recommendations to achieve consistency to the maximum degree practicable exceed either his authority or funding for a proposed dredging or disposal activity, he will so notify the state coastal zone management agency indicating that the Corps has complied to the maximum extent practicable with the state's coastal zone management program. If the district engineer determines that state recommendations to achieve consistency to the maximum degree practicable do not exceed his authority or funding but, nonetheless, are excessive, he will follow the procedures of § 337.2.

(c) *Evaluation factors.* The following factors will be used, as appropriate, to evaluate the discharge of dredged material into waters of the U.S. Other relevant factors may also be evaluated, as needed.

(1) *Navigation and Federal standard.* The maintenance of a reliable Federal navigation system is essential to the

economic well-being and national defense of the country. The district engineer will give full consideration to the impact of the failure to maintain navigation channels on the national and, as appropriate, regional economy. It is the Corps' policy to regulate the discharge of dredged material from its projects to assure that dredged material disposal occurs in the least costly, environmentally acceptable manner, consistent with engineering requirements established for the project. The environmental assessment or environmental impact statement, in conjunction with the section 404(b)(1) guidelines and public notice coordination process, can be used as a guide in formulating environmentally acceptable alternatives. The least costly alternative, consistent with sound engineering practices and selected through the 404(b)(1) guidelines or ocean disposal criteria, will be designated the Federal standard for the proposed project.

(2) *Water quality*. The 404(b)(1) guidelines at 40 CFR part 230 and ocean dumping criteria at 40 CFR part 220 implement the environmental protection provisions of the CWA and ODA, respectively. These guidelines and criteria provide general regulatory guidance and objectives, but not a specific technical framework for evaluating or managing contaminated sediment that must be dredged. Through the section 404(b)(1) evaluation process (or ocean disposal criteria for the territorial sea), the district engineer will evaluate the water quality impacts of the proposed project. The evaluation will include consideration of state water quality standards. If the district engineer determines the dredged material to be contaminated, he will follow the guidance provided in the most current published version of the technical manual for contaminant testing and controls. This manual is currently cited as: Francingues, N.R., Jr., et al. 1985. ''Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls,'' Miscellaneous Paper D–85–1, U.S. Army Waterways Experiment Station, Vicksburg, Mississippi. The procedures of § 336.1(b)(8) will be followed for state water quality certification requests.

(3) *Coastal zone consistency*. As appropriate, the district engineer will determine whether the proposed project is consistent with the state coastal zone management program to the maximum extent practicable. The procedures of § 336.1(b)(9) will be followed for coastal zone consistency determinations.

(4) *Wetlands*. Most wetland areas constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. The district engineer will, therefore, follow the guidance in 33 CFR 320.4(b) and EO 11990, dated May 24, 1977, when evaluating Corps operations and maintenance activities in wetlands.

(5) *Endangered species*. All Corps operations and maintenance activities will be reviewed for the potential impact on threatened or endangered species, pursuant to the Endangered Species Act of 1973. If the district engineer determines that the proposed activity will not affect listed species or their critical habitat, a statement to this effect should be included in the public notice. If the proposed activity may affect listed species or their critical habitat, appropriate discussions will be initiated with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, and a statement to this effect should be included in the public notice. (See 50 CFR part 402).

(6) *Historic resources*. Archeological, historical, or architectural resource surveys may be required to locate and identify previously unrecorded historic properties in navigation channels and at dredged or fill material disposal sites. If properties that may be historic are known or found to exist within the navigation channel or proposed disposal area, field testing and analysis may sometimes be necessary in order to evaluate the properties against the criteria of the National Register of Historic Places. Such testing should be limited to the amount and kind needed to determine eligibility for the National Register; more detailed and extensive work on a property may be prescribed later, as the outcome of review

under section 106 of the National Historic Preservation Act. Historic properties are not normally found in previously constructed navigation channels or previously used disposal areas. Therefore, surveys to identify historic properties should not be conducted for maintenance dredging and disposal activities proposed within the boundaries of previously constructed navigation channels or previously used disposal areas unless there is good reason to believe that historic properties exist there.

(i) The district engineer will establish whether historic properties located in navigation channels or at disposal sites are eligible for inclusion in the National Register of Historic Places in accordance with applicable regulations of the Advisory Council on Historic Preservation and the Department of the Interior.

(ii) The district engineer will take into account the effects of any proposed actions on properties included in or eligible for inclusion in the National Register of Historic Places, and will request the comments of the Advisory Council on Historic Preservation, in accordance with applicable regulations of the Advisory Council on Historic Preservation.

(7) *Scenic and recreational values.* (i) Maintenance dredging and disposal activities may involve areas which possess recognized scenic, recreational, or similar values. Full evaluation requires that due consideration be given to the effect which dredging and disposal of the dredged or fill material may have on the enhancement, preservation, or development of such values. Recognition of these values is often reflected by state, regional, or local land use classification or by similar Federal controls or policies. Operations and maintenance activities should, insofar as possible, be consistent with and avoid adverse effects on the values or purposes for which such resources have been recognized or set aside, and for which those classifications, controls, or policies were established. Special consideration must be given to rivers named in section 3 of the Wild and Scenic Rivers Act and those proposed for inclusion as provided by section 4 and 5 of the Act, or by later legislation.

(ii) Any other areas named in Acts of Congress or Presidential Proclamations, such as National Rivers, National Wilderness Areas, National Seashores, National Parks, and National Monuments, should be given full consideration when evaluating Corps operations and maintenance activities.

(8) *Fish and wildlife.* (i) In those cases where the Fish and Wildlife Coordination Act (FWCA) applies, district engineers will consult, through the public notification process, with the Regional Directors of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of fish and wildlife resources by considering ways to prevent their direct and indirect loss and damage due to the proposed operation and maintenance activity. The district engineer will give full consideration to these views on fish and wildlife conservation in evaluating the activity. The proposed operations may be modified in order to lessen the damage to such resources. The district engineer should include such justifiable means and measures for fish and wildlife resources that are found to be appropriate. Corps funding of Fish and Wildlife Service activities under the Transfer of Funds Agreement between the Fish and Wildlife Service and the Corps is not applicable for Corps operation and maintenance projects.

(ii) District engineers should consider ways of reducing unavoidable adverse environmental impacts of dredging and disposal activities. The determination as to the extent of implementation of such measures will be done by the district engineer after weighing the benefits and detriments of the maintenance work and considering applicable environmental laws, regulations, and other relevant factors.

(9) *Marine sanctuaries.* Operations and maintenance activities involving the discharge of dredged or fill material in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the ODA should be evaluated for the impact on the marine sanctuary. In such a case, certification should be obtained from the Secretary

of Commerce that the proposed project is consistent with the purposes of Title III of the ODA and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(10) *Other state requirements.* District engineers will make all reasonable efforts to comply with state water quality standards and Federally approved coastal zone programs using the procedures of §§ 336.1(b) (8), (9), and 337.2. District engineers should not seek state permits or licenses unless authorized to do so by a clear, explicit, and unambiguous Congressional waiver of Federal sovereign immunity, giving the state authority to impose that requirement on Federal activities (e.g., CWA sections 401 and 404(t), and CZMA section 307 (c)(1) and (c)(2)).

(11) *Additional factors.* In addition to the factors described in paragraphs (c)(1) through (9) of this section, the following factors should also be considered.

(i) The evaluation of Corps operations and maintenance activities involving the discharge of dredged or fill material into waters of the U.S. is a continuing process and should proceed concurrently with the processing of state water quality certification and, if required, the provision of a coastal zone consistency determination to the state. If a local agency having jurisdiction over or concern with the particular activity comments on the project through the public notice coordination, due consideration should be given to those official views as a reflection of local factors.

(ii) Where officially adopted state, regional, or local land use classifications, determinations, or policies are applicable, they normally will be presumed to reflect local views and will be considered in addition to other national factors.

§ 336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

(a) *Applicable law.* Section 103(a) of the ODA provides that the Corps of Engineers may issue permits, after notice and opportunity for public hearing, for the transportation of dredged material for disposal into ocean waters.

(b) *Procedures.* The following procedures will be followed by district engineers for dredged material disposal into ocean waters except where emergency action as described in § 337.7 of this chapter is required.

(1) In accordance with the provisions of section 103 of the ODA, the district engineer should issue a public notice giving opportunity for public hearing, following the procedures described in § 337.1 of this chapter for Corps operation and maintenance activities involving disposal of dredged material in ocean waters, as well as dredged material transported through the territorial sea for ocean disposal.

(2) The public hearing procedures of 33 CFR part 327 should be followed.

(c) *State permits and licenses.* The terms and legislative history of the ODA leave some doubt regarding whether a state has legal authority to exert control over ocean dumping activities of the Corps in the territorial sea covered under the Act (see section 106(d)). Notwithstanding this legal question, the Corps will voluntarily as a matter of comity apply for state section 401 water quality certification and determine consistency with a Federally-approved coastal zone management plan for Corps ocean disposal of dredged material within the three-mile extent of the territorial sea. Moreover, the Corps will attempt to comply with any reasonable requirement imposed by a state in the course of the 401 certification process or the CZMA consistency determination process. Nevertheless, the Corps reserves its legal rights regarding any case where a state unreasonably denies or conditions a 401 water quality certification for proposed Corps ocean disposal of dredged material within the limits of the territorial sea, or asserts that such disposal would not be consistent with an approved state CZMA plan. If such a circumstance arises, the district engineer shall so notify the division engineer who then decides on consultation with CECW-D, CECW-Z, and CECC-E for purposes of determining the Corps of Engineers' appropriate response and course of action.

(d) *Evaluation factors.* (1) In addition to the appropriate evaluation factors of

§ 336.1(c), activities involving the transportation of dredged material for the purpose of disposal in ocean waters will be evaluated by the Corps to determine whether the proposed disposal will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, the district engineer, in addition to considering the criteria developed by EPA on the effects of the dumping, will also consider navigation, economic and industrial development, and foreign and domestic commerce, as well as the availability of alternatives to ocean disposal, in determining the need for ocean disposal of dredged material. Where ocean disposal is determined to be appropriate, the district engineer will, to the extent feasible, specify disposal sites which have been designated by the Administrator pursuant to section 102(c) of the ODA.

(2) As provided by the EPA regulations at 40 CFR 225.2(b–e) for implementing the procedures of section 102 of the ODA, the regional administrator of EPA may make an independent evaluation of dredged material disposal activities regulated under section 103 of the ODA related to the effects of dumping. The EPA regulations provide that the regional administrator make said evaluation within 15 days after receipt of all requested information. The regional administrator may request from the district engineer an additional 15-day period for a total of to 30 days. The EPA regulations provide that the regional administrator notify the district engineer of non-compliance with the environmental impact criteria or with any restriction relating to critical areas on the use of an EPA recommended disposal site designated pursuant to section 102(c) of the ODA. In cases where the regional administrator has notified the district engineer in writing that the proposed disposal will not comply with the criteria related to the effects of dumping or related to critical area restriction, no dredged material disposal may occur unless and until the provisions of 40 CFR 225.3 are followed and the Administrator grants a waiver of the criteria pursuant to section 103(d) of the ODA.

(3) If the regional administrator advises the district engineer that the proposed disposal will comply with the criteria, the district engineer will complete the administrative record and sign the SOF.

(4) In situations where an EPA-designated site is not feasible for use or where no site has been designated by the EPA, the district engineer, in accordance with the ODA and in consultation with EPA, may select a site pursuant to section 103. Appropriate NEPA documentation should be used to support site selections. District engineers should address site selection factors in the NEPA document. District engineers will consider the criteria of 40 CFR parts 227 and 228 when selecting ocean disposal sites, as well as other technical and economic considerations. Emphasis will be placed on evaluation to determine the need for ocean disposal and other available alternatives. Each alternative should be fully considered on an equal basis, including the no dredging option.

(5) If the regional administrator advises the district engineer that a proposed ocean disposal site or activity will not comply with the criteria, the district engineer should proceed as follows.

(i) The district engineer should determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer will evaluate the engineering and economic feasibility and environmental acceptability of the alternative sites.

(ii) If the district engineer makes a determination that there is no economically feasible alternative method or site available, he will so advise the regional administrator of his intent to proceed with the proposed action setting forth his reasons for such determination.

(iii) If the regional administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by section 103(c) of the ODA to prohibit use of a proposed disposal site, the case will be

forwarded through the respective Division office and CECW-D to the Secretary of the Army or his designee for further coordination with the Administrator of EPA and final resolution. The report forwarding the case should be in the format described in § 337.8 of this chapter.

(iv) The Secretary of the Army or his designee will evaluate the proposed project and make a final determination on the proposed disposal. If the decision of the Secretary of the Army or his designee is that ocean disposal at the proposed site is required because of the unavailability of economically feasible alternatives, he will seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with section 103(d) of the ODA.

PART 337—PRACTICE AND PROCEDURE

Sec.
337.0 Purpose.
337.1 Public notice.
337.2 State requirements.
337.3 Transfer of the section 404 program to the States.
337.4 Memoranda of Agreement (MOA).
337.5 General authorizations.
337.6 Statement of Findings (SOF).
337.7 Emergency actions.
337.8 Reports to higher echelons.
337.9 Identification and use of disposal areas.
337.10 Supervision of Federal projects.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14916, Apr. 26, 1988, unless otherwise noted.

§ 337.0 Purpose.

The practices and procedures part of this regulation apply to all Corps operations and maintenance activities involving the discharge of dredged or fill material in waters of the U.S. and ocean waters and related activities of local interests accomplished to ensure continued functions of constructed Corps projects.

§ 337.1 Public notice.

Presently, public notification of proposed discharges of dredged or fill material is required by the provisions of section 103 of the ODA and sections 401 and 404 of the CWA. District engineers are encouraged to develop procedures to avoid unnecessary duplication of state agency procedures. Joint public notification procedures should be a primary factor in the development of Memoranda of Agreement with the states as described in § 337.4.

(a) With the possible exception of emergency actions as discussed in § 337.7, the district engineer should issue a public notice for projects involving the discharge of dredged or fill material into waters of the U.S. or ocean waters unless the project is authorized by a general permit. Public notices for Corps operation and maintenance activities are normally issued for an indefinite period of time and are not reissued unless changes in the disposal plan warrant re-evaluation under section 404 of the CWA or section 103 of the ODA. The public notice is the primary method of advising all interested parties of Federal projects and of soliciting comments and information necessary to evaluate the probable impact of the discharge of dredged or fill material into waters of the U.S. or ocean waters. The notice should, therefore, include sufficient information to provide a clear understanding of the nature of the activity and related activities of local interests in order to generate meaningful comments. A single public notice may be used for more than one project in appropriate cases. The notice normally should include the following items:

(1) The name and location of the project and proposed disposal site.

(2) A general description of the project and a description of the estimated type, composition, and quantity of materials to be discharged, the proposed time schedule for the dredging activity, and the types of equipment and methods of dredging and conveyance proposed to be used.

(3) A sketch showing the location of the project, including depth of water in the area and all proposed discharge sites.

(4) The nature, estimated amount, and frequency of known and anticipated related dredging and discharge to be conducted by others.

(5) A list of Federal, state, and local environmental agencies with whom the activity is being coordinated.

(6) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(7) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any.

(8) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing except in emergency situations where the procedures of § 337.7 will be followed, within which interested parties may express their views concerning the proposed project.

(9) If the proposed Federal project would occur in the territorial seas or ocean waters, a description of the project's relationship to the baseline from which the territorial sea is measured.

(10) A statement on the status of state water quality certification under section 401 of the CWA.

(11) For activities requiring a determination of consistency with an approved state coastal zone management plan, the following information will be included in the notice:

(i) A statement on whether or not the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the state management program.

(ii) Sufficient information to support the consistency determination to include associated facilities and their coastal zone effect.

(iii) Data and supporting information commensurate with the expected effects of the activity on the coastal zone.

(12) A statement on historic resources, state of present knowledge, likelihood of damage or other adverse effect on such resources, etc.

(13) A statement on endangered species.

(14) A statement on evaluation factors to be considered, adapted from that presented at 33 CFR 325.3(b).

(15) The name, address, and telephone number of the Corps employee from whom additional information concerning the project may be obtained.

(16) The signature of the district engineer or his designee on all maintenance dredged material disposal public notices.

(17) For activities regulated under section 103 of the ODA, the following additional information should be integrated into the public notice:

(i) A statement on the designation status of the disposal site.

(ii) If the proposed disposal site is not a designated site, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible.

(iii) A brief description of known dredged material discharges at the proposed disposal site.

(iv) Existence and documented effects of other authorized disposals that have been made at the disposal area.

(v) An estimated length of time during which disposal would continue at the proposed site.

(vi) Information on the characteristics and composition of the dredged material, and the following paragraph:

The proposed transportation of this dredged material for disposing of it in ocean waters is being evaluated to determine that the proposed disposal will not unreasonably degrade or endanger human health, welfare, or amenities or the marine environment, ecological systems, or economic potentialities. In making this determination, the criteria established by the Administrator, EPA pursuant to section 102(a) of the ODA, will be applied. In addition, based upon an evaluation of the potential effect which the failure to utilize this ocean disposal site will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, an independent determination will be made of the need to dispose of the dredged material in ocean waters, other possible methods of disposal, and other appropriate locations.

(b) The following statement should be included in the public notices:

Any person who has an interest which may be affected by the disposal of this dredged material may request a public hearing. The request must be submitted in writing to the district engineer within the comment period of this notice and must clearly set forth the interest which may be affected and the manner in which the interest may be affected by this activity.

(c) Public notices should be distributed as described in 33 CFR 325.3(c). In addition, public notices should be sent

to CECW-D, Office of the Chief of Engineers, Washington, DC 20314, if the project involves the discharge of dredged material in waters of the U.S. or ocean waters. District engineers should also develop, as appropriate, regional mailing lists for Corps maintenance dredging and disposal activities to the extent that property owners adjacent to the navigation channel and disposal area are notified of the proposed activity. In order to effect compliance with Executive Order 12372, district engineers should provide copies of public notices to concerned state and local elected officials.

(d) The district engineer should consider all comments received in response to the public notice in his subsequent actions. All comments expressing objections to or raising questions about the project should be acknowledged. Comments received as form letters or petitions, however, may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments are received which relate to matters within the special expertise of another agency, the district engineer may seek the advice of that agency. The receipt of comments as a result of the public notice normally should not extend beyond the stated comment period; however, at his discretion, the district engineer may provide an extension.

(e) Notices sent to several agencies within the same state may result in conflicting comments from those agencies. Many states have designated a state agency or individual to provide a single and coordinated state position regarding Federal activities. Where a state has not so designated a single source, the district engineer, as appropriate, may seek from the Governor an expression of his views and desires concerning the proposed and subsequent similar projects.

(f) All comments received from the public notice coordination should be considered in the public interest review process. Comments received from Federal or state agencies which are within the area of expertise of another agency will be communicated with that other agency if the district engineer needs the information to make a final determination on the proposed project.

§ 337.2 State requirements.

The procedures of this section should be followed in implementing state requirements.

(a) District engineers should cooperate to the maximum extent practicable with state agencies to prevent violation of Federally approved state water quality standards and to achieve consistency to the maximum degree practicable with an approved coastal zone management program.

(b) If the state agency imposes conditions or requirements which exceed those needed to meet the Federal standard, the district engineer should determine and consider the state's rationale and provide to the state information addressing why the alternative which represents the Federal standard is environmentally acceptable. The district engineer will accommodate the state's concerns to the extent practicable. However, if a state agency attempts to impose conditions or controls which, in the district engineers opinion, cannot reasonably be accommodated, the following procedures will be followed.

(1) In situations where an agency requires monitoring or testing, the district engineer will strive to reach an agreement with the agency on a data acquisition program. The district engineer will use the technical manual ''Management Strategy for Disposal of Dredged Material: Contaminant Testing and Controls'' or its appropriate updated version as a guide for developing the appropriate tests to be conducted. If the agency insists on requirements which, in the opinion of the district engineer, exceed those required in establishment of the Federal standard, the agency will be asked to fund the difference in cost. If the agency agrees to fund the difference in cost, the district engineer will comply with the request. If the agency does not fund the additional cost, the district engineer will follow the guidance in paragraph (b) (3) of this section.

(2) When an agency requires special conditions or implementation of an alternative which the Federal standard does not, district engineers will proceed as follows: In those cases where the project authorization requires a

local sponsor to provide suitable disposal areas, disposal areas must be made available by a sponsor before dredging proceeds. In other cases where there are no local sponsor requirements to provide disposal areas, the state or the prospective local sponsor will be advised that, unless the state or the sponsor provides suitable disposal areas, the added Federal cost of providing these disposal areas will affect the priority of performing dredging on that project. In either case, states will be made aware that additional costs to meet state standards or the requirements of the coastal zone management program which exceed those necessary in establishment of the Federal standard may cause the project to become economically unjustified.

(3) If the state denies or notifies the district engineer of its intent to deny water quality certification or does not concur regarding coastal zone consistency, the project dredging may be deferred. A report pursuant to § 337.8 of this section will be forwarded to CECW-D, Office of the Chief of Engineers, Washington, DC 20314–1000 for resolution.

§ 337.3 Transfer of the section 404 program to the states.

Section 404(g–1) of the CWA allows the Administrator of the EPA to transfer to qualified states administration of the section 404 permit program for discharges into certain waters of the U.S. Once a state's 404 program is approved, the district engineer will follow state procedures developed in accordance with section 404(g–1) of the CWA for all on-going Corps projects involving the discharge of fill material in transferred waters to the state agency responsible for administering the program. Corps projects involving the discharge of dredged or fill material in waters not transferred to the state will be processed in accordance with this regulation.

§ 337.4 Memoranda of Agreement (MOA).

The establishment of joint notification procedures for Corps projects involving disposal of dredged or fill material should be actively pursued through the development of MOAs with the state. The MOAs may be used to define responsibilities between the state and the Corps district involved. The primary purpose of MOAs will be to avoid or eliminate administrative duplication, when such duplication does not contribute to the overall decision-making process. MOAs for purposes of this regulation will not be used to implement provisions not related to the maintenance or enforcement of Federally-approved state water quality standards or coastal zone management programs. District engineers are authorized and encouraged to develop MOAs with states and other Federal agencies for Corps projects involving the discharge of dredged or fill material. Copies of all MOAs will be forwarded to CECW-D, Office of the Chief of Engineers, Washington, DC 20314–1000 for approval.

§ 337.5 General authorizations.

Under the provisions of sections 404(e) of the CWA and 104(c) of the ODA certain categories of activities may be authorized on a regional, statewide, or nationwide basis. General authorizations can be a useful mechanism for implementation of the procedural provisions of the CWA, CZMA, and ODA while avoiding unnecessary duplication and paperwork. Through the general authorization process, compliance with all environmental laws and regulations including coastal zone consistency, if applicable, and water quality certification can be accomplished in a single process for a category of activities. Since the emphasis of particular environmental issues for most Corps projects is more regional than nationwide, district engineers are encouraged to develop general authorizations for routine Civil Works activities involving the discharge of dredged or fill material to address the specific requirements of a particular geographic region. When evaluating general categories of activities, the district engineer should follow the same procedure as outlined for individual Federal activities including the water quality certification and/or coastal zone consistency requirements of part 336 of this chapter. General authorizations should include related activities of local interests. Additionally, district

engineers should use existing general permits authorized on a statewide or regional basis and the nationwide permits at 33 CFR part 330 for Federal projects involving the disposal of dredged material. The development of new statewide or regional general authorizations for Federal activities should be in accordance with the requirements of §§ 336.1 and 336.2 of this chapter. General permits for related activities of local interests should be developed using the procedures of 33 CFR parts 320 through 330.

§ 337.6 Statement of Findings (SOF).

Upon completion of the evaluation process including required coordination, receipt or waiver of required state certifications, and completion of the appropriate environmental documents, an SOF will be prepared. In cases involving an EIS, a ROD will be prepared in accordance with 33 CFR part 230 and should be used in lieu of the SOF, providing the substantive parts of this section are included in the ROD. The SOF need not duplicate information contained in supporting environmental documents but rather may incorporate it by reference. The SOF should include a comprehensive summary and record of compliance and should be prepared in the following format except that the procedures of 33 CFR 325.2 should be followed for related activities of local interests.

(a) The SOF should identify the name of the preparer, date (which may not necessarily correspond to the date signed), and name of waterway.

(b) The proposed action for which the findings are made should be described.

(c) A coordination section should be provided. The coordination section should reference the public notice number and date. The letters of comment and appropriate responses should be summarized. Any coordination undertaken by local or state agencies should also be discussed.

(d) An environmental effects and impacts section should be used to document compliance with the applicable environmental laws. This section should include the views and/or conditions of the state concerning water quality certification and, if required, the results of the coastal zone consistency process.

(e) A determinations section should reference the results of the EA and/or EIS and any conditions necessary to meet the state's water quality standards or coastal zone management program. Appropriate conditions or modifications should be included in the project specifications. This section should also contain a subsection on consideration of alternatives and cumulative impacts.

(f) A section on the district engineer's findings and conclusions concerning the proposed project should be included.

(g) The SOF should be dated and signed by the district engineer or his designee except in those cases requiring referral to higher authority.

(h) In accordance with the provisions of section 104(g) of the ODA, the district engineer will forward a copy of the SOF to the District Commander, U.S. Coast Guard, if the activity involves the ocean disposal of dredged material.

(i) The Findings of No Significant Impact or ROD, as appropriate, required by 33 CFR part 230 may be incorporated into the SOF, as appropriate.

§ 337.7 Emergency actions.

After obtaining approval from the division engineer, the district engineer will respond to emergency situations on an expedited basis, complying with the procedures of this regulation to the maximum degree practicable. The district engineer will issue a public notice describing the emergency in accordance with § 337.1, if such a notice is practicable in view of the emergency situation; such a public notice should be forwarded to all appropriate Federal and state agencies. The district engineer should prepare a section 404(b)(1) evaluation report and, as necessary, an environmental assessment, if this is practicable in view of the emergency situation. If comments are received from the public notice which, in the judgment of the district engineer, reveal the necessity of modifying the emergency operation, the district engineer should take appropriate measures to modify the emergency operation to

reduce, avoid, or minimize adverse environmental impacts. If the district engineer, after receiving comments from the public notice, determines that the emergency action would constitute a major Federal action significantly affecting the quality of the human environment, he should, after consultation with the division engineer, coordinate with the Council on Environmental Quality about alternative arrangements for compliance with the NEPA in accordance with 40 CFR 1506.11 to the extent that it is practicable in view of the emergency situation. District engineers should consult with the appropriate state officials to seek water quality certification or waiver of certification, and should certify that the Federal action is consistent to the maximum extent practicable with an approved coastal zone management plan for emergency activities, to the extent that is practicable in view of the emergency.

§ 337.8 Reports to higher echelons.

(a) *Certain activities involving the discharge of dredged or fill material require action by the division engineer or Chief of Engineers.* Such reports should be prepared in the format described in paragraph (b) of this section. Reports may be necessary in the following situations:

(1) When there is substantial doubt as to the authority, law, regulations, or policies applicable to the Federal project;

(2) When higher authority requests the case be forwarded for decision;

(3) When the state does not concur in a coastal zone consistency determination or attempts to concur with conditions or controls;

(4) When the state denies or unreasonably delays a water quality certification or issues the certification with conditions or controls not related to maintenance or enforcement of state water quality standards or significantly exceeding the Federal standard;

(5) When the regional administrator has advised the district engineer, pursuant to section 404(c) of the CWA, of his intent to prohibit or restrict the use of a specified discharge site; or notifies the district engineer that the discharge of dredged material in ocean waters or territorial seas will not comply with the criteria and restrictions on the use of the site established under the ODA; and the district engineer determines that the proposed disposal cannot be reasonably modified to alleviate the regional administrator's objections; and

(6) When the state fails to grant water quality certification or a waiver of certification or concurrence or waiver of coastal zone consistency for emergency actions.

(b) *Reports.* The report of the district engineer on a project requiring action by higher authority should be in letter form and contain the following information:

(1) Justification showing the economic need for dredging.

(2) The impact on states outside the project area if the project is not dredged.

(3) The estimated cost of agency requirements which exceed those necessary in establishment of the Federal standard.

(4) The relative urgency of dredging based on threat to national security, life or property.

(5) Any other facts which will aid in determining whether to further defer the dredging and seek Congressional appropriations for the added expense or the need to exercise the authority of the Secretary of the Army to maintain navigation as provided by sections 511(a) and 404(t) of the CWA if the disagreement concerns water quality certification or other state permits.

(6) If the disagreement concerns coastal zone consistency, the district engineer will follow the reporting requirement of this section and § 336.1(b)(9) of this chapter.

§ 337.9 Identification and use of disposal areas.

(a) District engineers should identify and develop dredged material disposal management strategies that satisfy the long-term (greater than 10 years) needs for Corps projects. Full consideration should be given to all practicable alternatives including upland, open water, beach nourishment, within banks disposal, ocean disposal, etc. Within existing policy, district engineers should also explore beneficial uses of dredged

material, such as marsh establishment and dewatering techniques, in order to extend the useful life of existing disposal areas. Requests for water quality certification and/or coastal zone consistency concurrence for projects with identified long-term disposal sites should include the length of time for which the certification and/or consistency concurrence is sought. The section 404(b)(1) evaluation and environmental assessment or environmental impact statement should also address long-term maintenance dredging and disposal. District engineers should use the guidance at 40 CFR 230.80 to shorten environmental compliance processing time. The Corps of Engineers will be responsible for accomplishing or assuring environmental compliance requirements for all disposal areas. This does not preclude the adoption of other agencies NEPA documents in accordance with 40 CFR parts 1500 through 1508.

(b) The identification of disposal sites should include consideration of dredged material disposal needs by project beneficiaries. District engineers are encouraged to require local interests, where the project has a local sponsor, to designate long-term disposal areas.

§ 337.10 Supervision of Federal projects.

District engineers should assure that dredged or fill material disposal activities are conducted in conformance with current plans and description of the project as expressed in the SOF or ROD. Conditions and/or limitations required by a state (e.g., water quality certification), as identified through the coordination process, should be included in the project specifications. Contracting officers should assure that contractors are aware of their responsibilities for compliance with the terms and conditions of state certifications and other conditions expressed in the SOF or ROD.

PART 338—OTHER CORPS ACTIVITIES INVOLVING THE DISCHARGE OF DREDGED MATERIAL OR FILL INTO WATERS OF THE U.S.

Sec.
338.1 Purpose.
338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

AUTHORITY: 33 U.S.C. 1344.

§ 338.1 Purpose.

(a) The procedures of this part, in addition to the provisions of 33 CFR parts 335 through 337, should be followed when undertaking Corps operations and maintenance activities involving the discharge of fill material into waters of the U.S., except that the procedures of part 336 of this chapter will be used in those cases where the discharge of fill material is also the discharge of dredged material, *i.e.*, beach nourishment, within banks disposal for erosion control, etc.

(b) After construction of Corps Civil Works water resource projects, certain operations and maintenance activities involving the discharge of fill material require evaluation under the CWA. These activities generally include lakeshore management, installation of boat ramps, erosion protection along the banks of navigation channels, jetty maintenance, remedial erosion control, etc. While these activities are normally addressed in the existing environmental impact statement for the project, new technology or unexpected events such as storms or high waters may require maintenance or remedial work not fully addressed in existing environmental documents or state permits. In determining compliance with the applicable environmental laws and regulations the district engineer should use the CWA exemptions at 404(f) and NEPA categorical exclusions to the maximum extent practicable. If the district engineer decides that the changes have not been adequately addressed in existing environmental documentation, the procedures of this part should be followed.

[53 FR 14920, Apr. 26, 1988]

§ 338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

(a) Generally, fill activities conducted by the Corps for operations and maintenance of existing Civil Works water resource and navigation projects are routine and have little, if any, potential for significant degradation of the environment. District engineers are encouraged to develop general authorizations in accordance with section 404 of the CWA and 104 of the ODA following the procedures of § 337.5 of this chapter for categories of such routine activities. The general authorization should satisfy all compliance requirements including water quality certifications and, if applicable, coastal zone consistency determinations. For activities which are not conducive to the development of general authorizations or are more appropriately evaluated on an individual basis, the following procedures should be followed.

(b) A public notice should be issued using the procedures § 337.1 of this chapter.

(c) Water quality certifications should be requested and, if applicable, coastal zone consistency determinations should be provided using the procedures of § 336.1(b) (8) and (9) of this chapter.

(d) The discharge site should be specified through the application of the section 404(b)(1) guidelines.

(e) The procedures of 40 CFR part 230 should be used to determine the NEPA compliance requirements.

(f) The factors of § 336.1(c) of this chapter should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with § 337.6.

[53 FR 14920, Apr. 26, 1988]

PART 384—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PROGRAMS AND ACTIVITIES

Sec.

384.1 What is the purpose of these regulations?
384.2 What definitions apply to these regulations?
384.3 What programs and activities of the Corps of Engineers are subject to these regulations?
384.4 [Reserved]
384.5 What is the Corps of Engineers' obligation with respect to federal interagency coordination?
384.6 What procedures apply to the selection of programs and activities under these regulations?
384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?
384.8 How does the Corps of Engineers provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
384.9 How does the Corps of Engineers receive and respond to comments?
384.10 How does the Corps of Engineers make efforts to accommodate intergovernmental concerns?
384.11 What are the Corps of Engineers obligations in interstate situations?
384.12 [Reserved]
384.13 May the Corps of Engineers waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29153, June 24, 1983, unless otherwise noted.

§ 384.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Corps of Engineers, and are not intended to create any right or benefit enforceable at law by a party against the Corps of Engineers or its officers.

§ 384.2 What definitions apply to these regulations?

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled ''Intergovernmental Review of Federal Programs.''

Responsible Corps official means a District Engineer, Division Engineer, or the Chief of Engineers, or a designated representative, who is considering a decision or recommendation on a proposed Federal action and is responsible for coordinating such action with the state process under the provisions of this regulation.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 384.3 What programs and activities of the Corps of Engineers are subject to these regulations?

The Chief of Engineers publishes in the FEDERAL REGISTER a list of the Corps of Engineers Civil Works programs and activities that are subject to these regulations.

§ 384.4 [Reserved]

§ 384.5 What is the Corps of Engineers' obligation with respect to Federal interagency coordination?

Responsible Corps officials, to the extent practicable, consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Corps of Engineers regarding programs and activities covered under these regulations.

§ 384.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 384.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the appropriate Division Engineer of the programs and activities selected for that process.

(c) A state may notify the appropriate Division Engineer of changes in its selections at any time. For each change, the state shall submit to the Division Engineer an assurance that the state has consulted with local elected officials regarding the change. The Division Engineer may establish deadlines by which states are required to inform the Corps of Engineers of changes in their program selections.

(d) The Corps of Engineers uses a state's process as soon as feasible, depending on individual programs and activities, after the Division Engineer is notified of its selections.

§ 384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?

(a) For those programs and activities covered by a state process under § 384.6, the responsible Corps official, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, throught the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The District Engineer provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the District Engineer in his discretion deems appropriate.

§ 384.8 How does the Corps of Engineers provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the responsible Corps official gives state processes or directly affected state, areawide, regional and local officials and entities at least 60 days from the date established by such official to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Corps of Engineers have been delegated.

§ 384.9 How does the Corps of Engineers receive and respond to comments?

(a) The responsible Corps official follows the procedures in § 384.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 384.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the responsible Corps official by the single point of contact, such official follows the procedures of § 384.10 of this part.

(e) The responsible Corps official considers comments which do not constitute a state process recommendation submitted under these regulations and for which such official is not required to apply the procedures of § 384.10 of this part, when such comments are provided by a single point of contact or directly to such official by a commenting party.

§ 384.10 How does the Corps of Engineers make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Corps of Engineers through its single point of contact, the responsible Corps official either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as such Corps official in his or her discretion deems appropriate. The Corps official may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the responsible Corps official informs the single point of contact that:

(1) The Corps of Engineers will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) The Assistant Secretary of the Army (Civil Works), or the next higher level responsible Corps official, has reviewed the case and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 384.11 What are the Corps of Engineers obligations in interstate situations?

(a) The responsible Corps official is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Corps of Engineers program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Corps of Engineers program or activity;

(4) Responding pursuant to § 384.10 of this part if the responsible Corps official receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Corps of Engineers has been delegated.

(b) The responsible Corps official uses the procedures in § 384.10 if a state process provides a state process recommendation to such official through a single point of contact.

§ 384.12 [Reserved]

§ 384.13 May the Corps of Engineers waive any provision of these regulations?

(a) Emergency and disaster recovery actions performed under Pub. L. 99, 84th Congress, are excluded from the requirements of the Order and this regulation.

(b) In other emergencies, the Division Engineer may waive any provision of these regulations.

PART 385—PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Subpart A—General Provisions

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385.35 Achievement of the benefits of the Plan.

385.36 Elimination or transfer of existing legal sources of water.
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385.38 Interim goals.
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385.40 Reports to Congress.

APPENDIX A TO PART 385—ILLUSTRATIONS TO PART 385

AUTHORITY: Section 601, Pub. L. 106–541, 114 Stat. 2680; 10 U.S.C. 3013(g)(3); 33 U.S.C. 1 and 701; and 5 U.S.C. 301.

SOURCE: 68 FR 64220, Nov. 12, 2003, unless otherwise noted.

Subpart A—General Provisions

§ 385.1 Purpose of the programmatic regulations.

(a) The programmatic regulations of this part implement the provisions of section 601(h)(3) of the Water Resources Development Act of 2000, Public Law 106–541, 114 Stat. 2688 (hereinafter ''WRDA 2000''), which was enacted on December 11, 2000.

(b) The purpose of the programmatic regulations of this part is to ensure that the goals and purposes of the Comprehensive Everglades Restoration Plan (the Plan) are achieved and to establish the processes necessary for implementing the Plan. Some of these processes are project specific, including, but not limited to, development of Project Implementation Reports, Project Cooperation Agreements, plans and specifications, Pilot Project Technical Data Reports, and Operating Manuals. Other processes are of more general applicability, including, but not limited to, development of program-wide guidance memoranda, interim goals, interim targets, and the Master Implementation Sequencing Plan. Taken together, these processes will ensure that the restoration purposes and other goals of the Plan are achieved. The regulations of this part also describe the relationship among the various entities responsible for implementation of the Plan.

(c) Section 601(h) of WRDA 2000 establishes an integrated framework for assuring that the goals and purposes of the Plan are achieved. This framework includes tools for planning, implementation, and evaluation; a process for developing these tools in an open public process, with input from other Federal, State, and local agencies; and an enforcement mechanism to ensure that the requirements of the statute are carried out.

(1) *Tools.* (i) The specific planning tool established by section 601(h) is the Project Implementation Report.

(ii) The specific implementation tools established by section 601(h) are Project Cooperation Agreements and Operating Manuals.

(iii) The specific evaluation tool established by section 601(h) is the interim goals for evaluating the restoration success of the Plan.

(iv) In addition to the specific planning, implementation, and evaluation tools established by section 601(h), the regulations of this part establish additional tools, including but not limited to, Project Management Plans, Program Management Plans, Comprehensive Plan Modification Reports, the Master Implementation Sequencing Plan, and interim targets for evaluating progress towards achieving the other water related needs of the region.

(2) *Processes.* The regulations of this part establish the processes for developing these tools. Consistent with section 601(h), these regulations have been developed, after notice and opportunity for public content, with the concurrence of the Secretary of the Interior and the Governor, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(3) *Enforcement mechanism.* The specific enforcement mechanism established by Section 601(h) is the ''Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,'' dated January 9, 2002, between the President and the Governor, under which the State shall ensure, by regulation or other appropriate means, that water made available by each project in the Plan shall not be permitted for a consumptive use or otherwise made unavailable by the State until such time as sufficient reservations of water for the restoration of the

natural system are made under State law in accordance with the project implementation report and consistent with the Plan.

(4) *Public information*. The Secretary of the Army shall ensure that the public understands the linkage between the processes, tools, and enforcement mechanism and can monitor the effectiveness of this integrated framework in assuring that the goals and purposes of the Plan are achieved, as provided for in the regulations of this part, by:

(i) Providing for public notice and comment in the development of planning, implementation, and evaluation tools;

(ii) Providing notice of final action on planning, evaluation, and implementation tools;

(iii) Making available to the public on a web site or by other appropriate means final, and where appropriate draft, copies of all planning, evaluation, and implementation tools; and

(iv) Explaining through the regulations of this part and by other appropriate means the process for developing the tools, the linkage between the process, tools, and enforcement mechanism, and the means by which these elements constitute an integrated framework for assuring that the goals and purposes of the Plan are achieved.

§ 385.2 Applicability of the programmatic regulations.

(a) This part applies to all activities conducted to implement the Comprehensive Everglades Restoration Plan.

(b) As used in this part, the Secretary of the Army acts through the Assistant Secretary of the Army for Civil Works with respect to the Army's civil works program pursuant to 10 U.S.C. 3016.

(c) Nothing in this part shall be interpreted to amend, alter, diminish, or otherwise affect:

(1) The rights, powers and duties provided under the ''Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,'' dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000; or

(2) Any existing legal water rights of the United States, the State of Florida, the Miccosukee Tribe of Indians of Florida, or the Seminole Tribe of Florida, including rights under the compact among the Seminole Tribe of Florida, the State, and the South Florida Water Management District, defining the scope and use of water rights of the Seminole Tribe of Florida, as codified by section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e).

(d) This part is intended to aid the internal management of the implementing agencies and is not intended to create any right or benefit enforceable at law by a party against the implementing agencies or their officers. Nothing in this part shall create a right or expectation to benefits or enhancements, temporary or permanent, in third parties that are not specifically authorized by Congress in section 601 of WRDA 2000.

(e) Nothing in this part is intended to, or shall be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nor is this part intended to, nor shall it be interpreted to, prescribe any process of Florida law.

§ 385.3 Definitions.

For the purposes of this part, the following terms are defined:

Adaptive management means the continuous process of seeking a better understanding of the natural system and human environment in the South Florida ecosystem, and seeking continuous refinements in and improvements to the Plan to respond to new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan in order to ensure that the goals and purposes of the Plan are fulfilled.

Alternative plan means a plan that consists of a system of structural and/or nonstructural measures, strategies, or programs formulated to achieve, fully or partially, the goals and purposes of the Plan, as further defined in section 1.6.1 of the Water Resources Council's ''*Economic and Environmental Guidelines for Water and Related Land*

Resources Implementation Studies,'' dated March 10, 1983.

Assessment means the process whereby the actual performance of implemented projects is measured and interpreted based on analyses of information obtained from research, monitoring, modeling, or other relevant sources.

Central and Southern Florida (C&SF) Project means the project for Central and Southern Florida authorized under the heading ''CENTRAL AND SOUTHERN FLORIDA'' in section 203 of the Flood Control Act of 1948 (62 Stat. 1176) and any modification authorized by any other provision of law, including section 601 of WRDA 2000.

Component means features of the Plan that include, but are not limited to, storage reservoirs, aquifer storage and recovery facilities, stormwater treatment areas, water reuse facilities, canals, levees, pumps, water control structures, and seepage management facilities; the removal of canals, levees, pumps, and water control structures; and operational changes.

Comprehensive Everglades Restoration Plan (CERP) means the plan contained in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999, as modified by section 601 of WRDA 2000, and any subsequent modification authorized in law.

Comprehensive Plan Modification Report means the report prepared for approval by Congress of major changes to the Plan that are necessary to ensure that the goals and purposes of the Plan are achieved. The Comprehensive Plan Modification Report describes the formulation and evaluation of alternatives, recommended modifications to the Plan, and other economic, environmental, and engineering information, and includes the appropriate NEPA document.

Concurrence means the issuance of a written statement of concurrence or the failure to provide such a written statement within a time frame prescribed by law or this part.

Consultation means a process to ensure meaningful and timely input in the development of program and project activities, reports, manuals, plans, and other documents from Federal, State, and local agencies, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Florida.

Coordination means the formal exchange of information and views, by letter, report, or other prescribed means, between the Corps of Engineers and the non-Federal sponsor and another agency or tribe, including but not limited to, the exchange of information and views regarding the development of Project Implementation Reports, Operating Manuals, and Comprehensive Plan Modification Reports. Coordination activities are required by and in accordance with purposes and procedures established by Federal policy (public law, executive order, agency regulation, memorandum of agreement, and other documents that memorialize policy of the Corps of Engineers).

Cost-effective means the least costly way of attaining a given level of output or performance, consistent with the goals and purposes of the Plan and applicable laws.

Design Agreement means the agreement between the Corps of Engineers and a non-Federal sponsor concerning cost sharing for activities related to planning, engineering, design, and other activities needed to implement the Plan.

Dispute means any disagreement between the agencies or tribes associated with implementation of the Plan that cannot be resolved by the members of a Project Delivery Team or RECOVER and that is elevated to decision makers at the respective agencies or tribes.

District Engineer means the District Engineer of the Corps of Engineers, Jacksonville District.

Division Engineer means the Division Engineer of the Corps of Engineers, South Atlantic Division.

Drought contingency plan means the plan required by § 222.5(i)(5) of this chapter and described in implementing Engineer Regulation ER 1110–2–1941 ''Drought Contingency Plans,'' and means a plan contained within an Operating Manual that describes procedures for dealing with drought situations that affect management decisions for operating projects.

Environmental and economic equity means the fair treatment of all persons

regardless of race, color, creed, national origin, or economic status, including environmental justice, and the provision of economic opportunities for small business concerns controlled by socially and economically disadvantaged individuals, including individuals with limited English proficiency, in the implementation of the Plan.

Environmental justice means identifying and addressing, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations, in accordance with applicable laws, regulations, and Executive Orders.

Evaluation means the process whereby the performance of plans and designs relative to desired objectives is forecast through predictive modeling and other tools.

Expected performance level means the projected level of benefits to the natural system and human environment described in the Plan.

External peer review means a process to review and validate the scientific and technical processes and information developed for implementation of the Plan that is independent of the agencies involved in the implementation of the Plan.

Goals and purposes of the Plan means the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.

Governor means the Governor of the State of Florida.

Guidance memorandum means the specific procedure, process, or other guidance specified in § 385.5(b) that is developed and approved by the Secretary of the Army with the concurrence of the Secretary of the Interior and the Governor.

Improved or new flood protection benefits means increased or new levels of service for flood protection that are identified in a Project Implementation Report and approved as a purpose of the project.

Independent scientific review means the process established pursuant to section 601(j) of WRDA 2000 to review the Plan's progress toward achieving the natural system restoration goals of the Plan.

Individual feature of the Plan means a component or group of components of the Plan related to and limited to one specific project of the Plan.

Interim goal is a means by which restoration success of the Plan may be evaluated throughout the implementation process. Interim goals provide a means of tracking restoration performance, as well as a basis for reporting on the progress made at specified intervals of time towards restoration of the South Florida ecosystem, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

Interim target is a means by which the success of the Plan in providing for other water-related needs of the region, including water supply and flood protection, may be evaluated throughout the implementation process. Interim targets provide a means of tracking Plan performance, as well as a basis for reporting on progress made at specified intervals of time towards providing for other water-related needs of the region, and for periodically evaluating the accuracy of predictions of system responses to the effects of the Plan.

Justified has the same meaning as in section 601(f)(2) of WRDA 2000 which states that the Secretary of the Army, in carrying out any activity to restore, preserve, or protect the South Florida ecosystem, may determine that an activity is justified by the environmental benefits derived by the South Florida ecosystem and no further economic justification for the activity is required, if the Secretary determines that the activity is cost-effective.

Levels of service for flood protection means the expected performance of the Central and Southern Project and other water management systems in the South Florida ecosystem, consistent with applicable law, for a specific area or region.

Master Implementation Sequencing Plan means the document that describes the sequencing and scheduling for the projects of the Plan.

Mediation means a non-binding dispute resolution process designed to assist the disputing parties to resolve a

disagreement. In mediation, the parties mutually select a neutral and impartial third party to facilitate the negotiations.

Monitoring means the systematic process of collecting data designed to show the status, trends, and relationships of elements of the natural system and human environment at specific locations and times.

Natural system means all land and water managed by the Federal government or the State within the South Florida ecosystem including, but not limited to, water conservation areas; sovereign submerged land; Everglades National Park; Biscayne National Park; Big Cypress National Preserve; other Federal or State (including a political subdivision of a State) land that is designated and managed for conservation purposes; the contiguous near-shore coastal water of South Florida; and, any tribal land that is designated and managed for conservation purposes, as approved by the tribe.

Next-added increment means the evaluation of an alternative as the next project to be added to a system of projects already implemented. For the purposes of this part, this means analyzing an alternative as the next project to be added to a system of projects that includes only those projects that have been approved according to general provision of law or specific authorization of Congress and are likely to have been implemented by the time the project being evaluated is completed.

Non-Federal sponsor means a legally constituted public body that has full authority and capability to perform the terms of the Project Cooperation Agreement and the ability to pay damages, if necessary, in the event of failure to perform, pursuant to section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d–5b).

Operating Manuals means the set of documents that describe how the projects of the Plan and the Central and Southern Florida Project are to be operated to ensure that the goals and purposes of the Plan are achieved. Operating Manuals include the System Operating Manual and Project Operating Manuals. Operating Manuals contain water control plans, regulation schedules, and operating criteria for project and/or system regulations as well as additional information necessary to operate projects to ensure that the goals and purposes of the Plan are achieved.

Optimize means to follow a reasonable and practical process for developing a plan that returns the greatest excess of benefits, both monetary and non-monetary, over costs.

Outreach means activities undertaken to inform the public about the Plan and activities associated with implementation of the Plan, and to involve the public in the decision-making process for implementing the Plan.

Performance measure means an element or component of the natural system or human environment that is expected to be influenced by the Plan that has been selected to be evaluated or monitored as representative of a class of responses to implementation of the Plan and compared with a level of output that is expected and desired during or following the implementation of the Plan.

Periodic CERP update means the evaluation of the Plan that is conducted periodically with new or updated modeling that includes the latest available scientific, technical, and planning information.

Pilot project means a project undertaken to address uncertainties associated with certain components of the Plan such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of pilot projects is to develop information necessary to better determine the technical feasibility of these components prior to development of a Project Implementation Report.

Pilot Project Design Report means the report that contains the technical information necessary to implement a pilot project.

Pilot Project Technical Data Report means the report that documents the findings and conclusions from the implementation and testing phases of a pilot project.

Plan means the Comprehensive Everglades Restoration Plan contained in the ''Final Integrated Feasibility Report and Programmatic Environmental

Impact Statement,'' dated April 1, 1999, as modified by section 601 of WRDA 2000, and any subsequent modification authorized in law.

Plans and specifications means the information required to bid and construct the recommended project described in the Project Implementation Report.

Pre-CERP baseline means the hydrologic conditions in the South Florida ecosystem on the date of enactment of WRDA 2000, as modeled by using a multi-year period of record based on assumptions such as land use, population, water demand, water quality, and assumed operations of the Central and Southern Florida Project.

Program-level activity means those tasks, activities, or products that support more than one project or that are system-wide in scope.

Program Management Plan means the document that describes the activities, tasks, and responsibilities that will be used to produce and deliver the products that comprise a program-level activity.

Project means a component or group of components of the Plan that are implemented together to provide functional benefits towards achieving the goals and purposes of the Plan.

Project Cooperation Agreement (PCA) means the legal agreement between the Department of the Army and a non-Federal sponsor that is executed prior to project construction. The Project Cooperation Agreement describes the financial, legal, and other responsibilities for construction, operation, maintenance, repair, rehabilitation, and replacement of a project.

Project Delivery Team means the inter-agency, interdisciplinary team led by the Corps of Engineers and the non-Federal sponsor that develops the technical products necessary to implement a project.

Project Implementation Report (PIR) means the report prepared by the Corps of Engineers and the non-Federal sponsor pursuant to section 601(h)(4)(A) of WRDA 2000 and described in section 10.3 of the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999.

Project Management Plan means the document that describes the activities, tasks, and responsibilities that will be used to produce and deliver the products necessary to implement a project.

Project Operating Manual means the manual that describes the operating criteria for a project or group of projects of the Plan. The Project Operating Manual is considered a supplement to the System Operating Manual and presents more detailed information on the operation of a specific project or group of projects.

Public means any individuals, organizations, or non-Federal unit of government that might be affected by or interested in the implementation of the Plan. The public includes regional, State, and local government entities and officials, public and private organizations, including community-based organizations, Native American (Indian) tribes, and individuals.

Quality control plan means the plan prepared in accordance with applicable regulations and policies of the Corps of Engineers that describes the procedures that will be employed to insure compliance with all technical and policy requirements of the Corps of Engineers and the non-Federal sponsor.

Reservation of water for the natural system means the actions taken by the South Florida Water Management District or the Florida Department of Environmental Protection, pursuant to Florida law, to legally reserve water from allocation for consumptive use for the protection of fish and wildlife.

Restoration means the recovery and protection of the South Florida ecosystem so that it once again achieves and sustains those essential hydrological and biological characteristics that defined the undisturbed South Florida ecosystem. As authorized by Congress, the restored South Florida ecosystem will be significantly healthier than the current system; however it will not completely replicate the undisturbed South Florida ecosystem.

Restoration Coordination and Verification (RECOVER) means the interagency and interdisciplinary scientific and technical team described in the ''Final Integrated Feasibility Report and Programmatic Environmental

Impact Statement,'' dated April 1, 1999 and established by the Corps of Engineers and the South Florida Water Management District to: ensure that a system-wide perspective is maintained; ensure the highest quality scientific and technical information is applied throughout the implementation process; and to assess, evaluate, and integrate the projects of the Plan with the overall goal of ensuring that the goals and purposes of the Plan are achieved.

South Florida ecosystem means the area consisting of the land and water within the boundary of the South Florida Water Management District in effect on July 1, 1999, including but not limited to, the Everglades, the Florida Keys, and the contiguous near-shore coastal water of South Florida.

South Florida Ecosystem Restoration Task Force (Task Force) means the task force established pursuant to section 528(f) of WRDA 1996 (110 Stat. 3770).

South Florida Water Management District (SFWMD) means the public body constituted by the State of Florida pursuant to Chapter 373.069 of the Florida Statutes.

State means the State of Florida.

System Operating Manual means the Operating Manual that provides an integrated system-wide framework for operating all of the implemented projects of the Plan and the Central and Southern Florida Project.

System-wide means pertaining to the Central and Southern Florida Project or the South Florida ecosystem, as a whole.

Technical review means the process that confirms that the engineering, economic, environmental, and other aspects of project formulation and design are in accord with appropriate Federal, State, and Corps of Engineers established standards and criteria, regulations, laws, codes, principles, and professional procedures that are necessary to ensure a quality product. Technical review also confirms the constructability and effectiveness of the product and the use of clearly justified and valid assumptions and methodologies.

Technical Review Team means the team established by the Corps of Engineers and the non-Federal sponsor to ensure quality control of documents and products produced by the Project Delivery Team through periodic technical reviews of the technical aspects of projects.

Water budget means an account of all water inflows, outflows, and changes in storage over a period of time.

Water dedicated and managed for the natural system means the water to be reserved or allocated for the natural system under State law as identified in a Project Implementation Report.

Water made available means the water expected to be generated pursuant to the implementation of a project of the Plan in accordance with the Project Implementation Report for that project.

Without CERP condition means the conditions predicted (forecast) in the South Florida ecosystem without implementation of any of the projects of the Plan.

WRDA 1996 means the Water Resources Development Act of 1996, Public Law 104–303, which was enacted on October 12, 1996.

WRDA 2000 means the Water Resources Development Act of 2000, Public Law 106–541, which was enacted on December 11, 2000.

§ 385.4 Limitation on applicability of programmatic regulations.

In accordance with section 601(h)(3)(c)(ii) of WRDA 2000, this part expressly prohibits ''the requirement for concurrence by the Secretary of the Interior or the Governor on Project Implementation Reports, Project Cooperation Agreements, Operating Manuals for individual projects undertaken in the Plan, and any other documents relating to the development, implementation, and management of individual features of the Plan, unless such concurrence is provided for in other Federal or State laws.''

§ 385.5 Guidance memoranda.

(a) *General.* (1) Technical guidance for internal management of Corps of Engineers personnel during Plan implementation will be normally issued in the form of Engineer Regulations, Circulars, Manuals, or Pamphlets, or other appropriate form of guidance.

(2) Guidance on the following six program-wide subjects shall be promulgated in accordance with paragraphs (b) and (c) of this section:

(i) General format and content of Project Implementation Reports (§ 385.26(a));

(ii) Instructions for formulation and evaluation of alternatives developed for Project Implementation Reports, their cost effectiveness and impacts (§ 385.26(b));

(iii) General content of operating manuals (§ 385.28(a));

(iv) General directions for the conduct of the assessment activities of RECOVER (§ 385.31(b));

(v) Instructions relevant to Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system (§ 385.35(b)); and

(vi) Instructions relevant to Project Implementation Reports for identifying if an elimination or transfer of existing legal sources of water will occur as a result of implementation of the Plan (§ 385.36(b)).

(b) *Special processes for development of six program-wide guidance memoranda.* The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop the six guidance memoranda described in paragraph (a) of this section for approval by the Secretary of the Army. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in the development of these guidance memoranda. The following procedures shall apply to the specific guidance memoranda described in paragraph (a) of this section:

(1) Guidance memoranda shall be consistent with this part, applicable law, and achieving the goals and purposes of the Plan.

(2) The Secretary of the Army shall afford the public an opportunity to comment on each guidance memorandum prior to approval through the issuance of a notice of availability in the FEDERAL REGISTER.

(3) Approved guidance memoranda shall be made available to the public.

(4) The guidance memoranda specifically referenced in this part shall be developed by December 13, 2004.

(5) The six guidance memoranda described in paragraph (a) of this section shall be developed with the concurrence of the Secretary of the Interior and the Governor. Within 180 days after being provided with the final guidance memorandum, or such shorter period that the Secretary of the Interior and the Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or non-concurrence with the proposed guidance memorandum. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency requirements of this section. A copy of any concurrency or nonconcurrency statements shall be made a part of the administrative record and referenced in the final guidance memorandum. Any nonconcurrency statement shall specifically detail the reason or reasons for the non-concurrence. If the six guidance memoranda described in paragraph (a) of this section create a special procedure for any individual Project Implementation Report, a specific Project Cooperation Agreement, an Operating Manual for a specific project component, or any other document relating to the development, implementation, and management of one specific individual feature of the Plan, this section does not require concurrence or non-concurrence on that special procedure. In lieu of concurrence or non-concurrence on such a special procedure, the Secretary of the Army shall consult with the Secretary of the Interior and the Governor.

(6) The Secretary of the Army shall consider incorporating into the regulations of this part the guidance memoranda specifically referenced in this section during future reviews and revisions of the regulations of this part.

(c) *Revisions to six Program-wide guidance memoranda.* The Secretary of the Army may, whenever the Secretary believes it is necessary, and in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the South Florida Water Management District, the Florida Department of Environmental Protection, other Federal, State, and local agencies, and the public, revise guidance memoranda that have been completed. Such revisions shall be developed and approved consistent with the provisions of paragraph (b) of this section. Revisions to the six guidance memoranda described in paragraph (a) of this section shall be made following the same concurrence process as in paragraph (b)(5) of this section.

(d) *Other guidance.* Nothing in this part shall be considered or construed to preclude the ability of the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors from issuing other guidance or policy to assist in implementing the Plan. Any such guidance or policy shall be consistent with applicable law, policy, and regulations.

§ 385.6 Review of programmatic regulations.

(a) The Secretary of the Army shall review, and if necessary revise, the regulations of this part at least every five years. In addition, the Secretary of the Army may review and revise the regulations of this part whenever the Secretary believes that such review and revision is necessary to attain the goals and purposes of the Plan. The Secretary of the Army shall place appropriate notice in the FEDERAL REGISTER upon initiating review of the regulations of this part.

(b) Upon completing the review of the regulations of this part, the Secretary shall promulgate any revisions to the regulations after notice and opportunity for public comment in accordance with applicable law, with the concurrence of the Secretary of the Interior and the Governor, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.

(c) Within 180 days after being provided with the final revisions to the programmatic regulations of this part, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or nonconcurrence with the revisions. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency process of paragraph (b) of this section. A copy of any concurrency or nonconcurrency statements shall be made a part of the administrative record and referenced in the final revised programmatic regulations. Any non-concurrency statement shall specifically detail the reason or reasons for the non-concurrence.

§ 385.7 Concurrency statements.

The administrative record of the programmatic regulations in this part contains a copy of the concurrency statements by the Secretary of the Interior and the Governor to the Secretary of the Army. The concurrency statements can be obtained from the Army Corps of Engineers, Jacksonville District, 701 San Marco Blvd., Jacksonville, Florida 32207, or by accessing the programmatic regulations Web page at: *http://www.evergladesplan.org/pm/progr_regs_final_rule.cfm.*

Subpart B—Program Goals and Responsibilities

§ 385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.

(a) The Comprehensive Everglades Restoration Plan (CERP) is a framework for modifications and operational changes to the Central and Southern Florida Project. The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.

(b) The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, implement the Plan, as authorized by Congress, to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida ecosystem and to achieve and maintain the benefits to the natural system and human environment described in the Plan, and required pursuant to section 601 of WRDA 2000, for as long as the project is authorized.

(c) The goal of the Plan is to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region. The Plan is designed to accomplish this by providing the quantity, quality, timing, and distribution of water necessary to achieve and sustain those essential hydrological and biological characteristics that defined the undisturbed South Florida ecosystem. As authorized by Congress, the restored South Florida ecosystem will be significantly healthier than the current system; however it will not completely replicate the undisturbed South Florida ecosystem and some areas may more closely replicate the undisturbed ecosystem than others. Initial modeling showed that most of the water generated by the Plan would go to the natural system in order to attain restoration goals, and the remainder of the water would go for use in the human environment. The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall ensure that Project Implementation Reports identify the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system that is necessary to meet the restoration goals of the Plan. In accordance with the ''Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,'' dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000, the South Florida Water Management District or the Florida Department of Environmental Protection shall make sufficient reservations of water for the natural system under State law in accordance with the Project Implementation Report for that project and consistent with the Plan before water made available by a project is permitted for a consumptive use or otherwise made unavailable.

(d) The Corps of Engineers and non-Federal sponsors shall implement the Plan in a manner to continuously improve the expected performance level of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the adaptive assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan.

§ 385.9 Implementation principles.

The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, conduct activities, including program-level activities, necessary to implement the Plan. Such activities shall be conducted as part of an integrated implementation program, in accordance with this part, and based on the following principles:

(a) Individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the Plan and on their ability to provide benefits that justify costs on a next-added increment basis.

(b) Interim goals shall be established in accordance with § 385.38 to provide a means for evaluating restoration success of the Plan at specific time intervals during implementation. Interim

targets to evaluate progress on providing for other water-related needs of the region provided for in the Plan shall be established in accordance with § 385.39. Interim goals and interim targets shall be consistent with each other.

(c) Endorsement of the Plan as a restoration framework is not intended as a constraint on innovation during implementation through the adaptive management process. Continuous improvement of the Plan shall be sought to ensure that new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan are integrated into the implementation of the Plan. The adaptive management process provides a means for analyzing the performance of the Plan and assessing progress towards meeting the goals and purposes of the Plan as well as a basis for improving the performance of the Plan. Improving the performance of the Plan means enhancing the benefits of the Plan in terms of restoration of the natural system while providing for other water-related needs of the region, including water supply and flood protection.

§ 385.10 Implementation responsibilities, consultation, and coordination.

(a) *Implementing agencies.* Implementation of the Plan shall be the responsibility of the Corps of Engineers and the non-Federal sponsors.

(b) *Consultation*—(1) *Consultation with tribes.* (i) In addition to any other applicable provision for consultation with Native American Tribes, including but not limited to, laws, regulations, executive orders, and policies the Corps of Engineers and non-Federal sponsors shall consult with and seek advice from the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida throughout the implementation process to ensure meaningful and timely input by tribal officials regarding programs and activities covered by this part. Consultation with the tribes shall be conducted on a government-to-government basis.

(ii) In carrying out their responsibilities under section 601 of WRDA 2000 with respect to the restoration of the South Florida ecosystem, the Secretary of the Army and the Secretary of the Interior shall fulfill any obligations to the Indian tribes in South Florida under the Indian trust doctrine as well as other applicable legal obligations.

(2) *Consultation with agencies.* The Corps of Engineers and non-Federal sponsors shall consult with and seek advice from the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies throughout the implementation process to ensure meaningful and timely input by those agencies regarding programs and activities covered under this part. The time for, and extent of, consultation shall be appropriate for, and limited by, the activity involved.

(c) *Coordination.* The Corps of Engineers and the non-Federal sponsor shall coordinate implementation activities and the preparation of documents with other Federal, State, and local agencies and the tribes to fulfill the requirements of all applicable Federal and State laws, including but not limited to, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation Act, the Coastal Zone Management Act, the Marine Mammal Protection Act, and the Endangered Species Act.

(d) *Timeliness obligations of consultation.* Consultation involves reciprocal obligations: on the part of the Corps of Engineers and the non-Federal sponsor to involve agencies, tribes, and the public at an early stage and in such a way to ensure meaningful consultation, and on the part of the parties consulted to respond in a timely and meaningful fashion so that the implementation of the Plan is not jeopardized and so that delays do not result in other adverse consequences to restoration of the natural system, to the other goals and purposes of the Plan, or to

the public interest generally. Prescribed time limits set by regulation are too inflexible for the entire consultation process. It is expected that the Corps of Engineers and the non-Federal sponsor will set reasonable time limits for consultation on specific decisions consistent with the purposes of this part and that the parties will consult in a timely and meaningful way. The Corps of Engineers and the non-Federal sponsor recognize that the time limits established for each specific decision will be proportionate to the complexity of the decision and will take into account the resources of the entity with whom the consultation is occurring in order to allow consultation to occur in a meaningful way. This part does not intend for a delay in consultation to be used as a de facto veto power. This part authorizes the Corps of Engineers and the non-Federal sponsor to set reasonable limits on the amount of time for consultation. In setting reasonable time limits, the agencies and tribes may consider relevant considerations such as sequencing of projects, planning, contracting and funding, and any factor listed for setting time limits for consulting under the National Environmental Policy Act (NEPA) (40 CFR 1501.8), including but not limited to, the nature and size of the proposed action, the degree to which relevant information is known or obtainable, the degree to which the action is controversial, the state of the art of analytical techniques, the number of persons affected, and the consequences of delay. In engaging in consultation, the Corps of Engineers and non-Federal sponsor shall inform the agencies, tribes, and public of the ending date for consultation. In addition, the agencies and tribes should adhere to all time limits imposed by law, regulations or executive order. In appropriate circumstances, the Corps of Engineers and the non-Federal sponsor may extend the time for consultation upon a showing that delays will not result in adverse consequences to the implementation of the Plan, to the restoration of the natural system, to the other goals and purposes of the Plan, or to the public interest and that relevant considerations justify a longer time. Failure of an agency, tribe or the public to engage in consultation with the Corps of Engineers and the non-Federal sponsor, or file comments in, a timely and meaningful way shall not be a sufficient reason for extending a consultation or comment period. Nothing in this part is intended to alter existing time limits established by statute or other regulations.

(e) *South Florida Ecosystem Restoration Task Force.* The Department of the Army recognizes the valuable role that the South Florida Ecosystem Restoration Task Force (Task Force), its working group, and its other advisory bodies play in the discussion and resolution of issues related to the South Florida ecosystem. The Corps of Engineers and the South Florida Water Management District regularly brief the Task Force on the Plan and regularly serve on the working group and other advisory bodies. The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall continue to provide information to, and consult with, the South Florida Ecosystem Restoration Task Force, the Florida-based working group, and advisory bodies to the Task Force as appropriate throughout the implementation process for the Plan. In addition to consultation with the Task Force specified elsewhere in this part, the Corps of Engineers and the South Florida Water Management District shall consult with the South Florida Ecosystem Restoration Task Force, its working group, and its advisory bodies, on other matters related to the implementation of the Plan, as the Task Force from time to time may request. Pursuant to the provisions of WRDA 1996, the Task Force shall provide general input concerning the implementation of the Plan. The Task Force shall provide recommendations to the Secretary of the Army regarding the implementation of the Plan, as provided in this part. The Secretary of the Army shall notify the Task Force to ensure it is afforded an opportunity to review and provide recommendations on reports and products, including but not limited to, interim goals and interim targets, Project Implementation Reports, Pilot Project Design Reports, Pilot Project Technical Data Reports,

the pre-CERP baseline, assessment reports, guidance memoranda, Master Implementation Sequencing Plan, Comprehensive Plan Modification Reports, periodic CERP updates, and reports to Congress prepared pursuant to § 385.40.

Subpart C—CERP Implementation Processes

§ 385.11 Implementation process for projects.

Generally, the Corps of Engineers and non-Federal sponsors shall develop and implement projects in accordance with the process that is shown in figure 1 in Appendix A of this part. Typical steps in this process involve:

(a) *Project Management Plan*. The Project Management Plan describes the activities, tasks, and responsibilities that will be used to produce and deliver the products necessary to implement the project.

(b) *Project Implementation Report*. The Project Implementation Report provides information on plan formulation and evaluation, engineering and design, estimated benefits and costs, and environmental effects to bridge the gap between the conceptual design included in the Plan and the detailed design necessary to proceed to construction. The Project Implementation Reports will also set forth additional information and analyses necessary for the Secretary of the Army or Congress to approve the project for implementation.

(c) *Plans and specifications*. During this phase, final design of the project is completed and plans and specifications are prepared. Plans and specifications contain the information necessary to bid and construct the project.

(d) *Real estate acquisition*. The lands, easements, and rights-of way, and relocations necessary for the project are acquired prior to construction.

(e) *Construction*. This phase is the actual construction of a project's components and includes an interim operation and monitoring period to ensure that the project operates as designed.

(f) *Operation*. After construction of the project has been completed, it is operated in accordance with the System Operating Manual and the Project Operating Manual.

(g) *Monitoring and assessment*. After the project has been constructed, monitoring is conducted as necessary to assess the effectiveness of the project and to provide information that will be used for the adaptive management program.

§ 385.12 Pilot projects.

(a) The Plan includes pilot projects to address uncertainties associated with certain components such as aquifer storage and recovery, in-ground reservoir technology, seepage management, and wastewater reuse. The purpose of the pilot projects is to develop information necessary to better determine the technical feasibility of these components prior to development of a Project Implementation Report.

(b) Prior to initiating activities on a pilot project, the Corps of Engineers and the non-Federal sponsor shall develop a Project Management Plan as described in § 385.24.

(c) Project Implementation Reports shall not be necessary for pilot projects. Prior to implementing a pilot project, the Corps of Engineers and the non-Federal sponsor shall prepare a Pilot Project Design Report.

(1) The Pilot Project Design Report shall contain the technical information necessary to construct the pilot project including engineering and design, cost estimates, real estate analyses, and appropriate NEPA documentation.

(2) The Pilot Project Design Report shall include a detailed operational testing and monitoring plan necessary to develop information to assist in better determining the technical feasibility of certain components prior to development of a Project Implementation Report.

(3) In accordance with § 385.18, the Corps of Engineers and the non-Federal sponsor shall provide the public with opportunities to review and comment on the draft Pilot Project Design Report.

(4) The Corps of Engineers and the non-Federal sponsor shall approve the final Pilot Project Design Report in accordance with applicable law.

(d) Upon completion of operational testing and monitoring, the Corps of Engineers and the non-Federal sponsor

shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Pilot Project Technical Data Report, documenting the findings and conclusions from the operational testing and monitoring of the pilot project. The purpose of the Pilot Project Technical Data Report is to help assess the viability of technology and to assist in the development of the full-scale project. The Corps of Engineers and the non-Federal sponsor shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the report.

(1) In accordance with § 385.22(b), the draft Pilot Project Technical Data Report shall be externally peer reviewed.

(2) In accordance with § 385.18, the public shall be provided with opportunities to review and comment on the draft Pilot Project Technical Data Report.

(3) The final Pilot Project Technical Data Report shall be made available to the public.

§ 385.13 Projects implemented under additional program authority.

(a) To expedite implementation of the Plan, the Corps of Engineers and non-Federal sponsors may implement projects under the authority of section 601(c) of WRDA 2000 that are described in the Plan and that will produce a substantial benefit to the restoration, preservation, and protection of the South Florida ecosystem.

(b) Each project implemented under the authority of section 601(c) of WRDA 2000 shall:

(1) In general, follow the process described in § 385.11;

(2) Not be implemented until a Project Implementation Report is prepared and approved in accordance with § 385.26; and

(3) Not exceed a total cost of $25,000,000.

(c) The total aggregate cost of all projects implemented under the additional program authority shall not exceed $206,000,000.

§ 385.14 Incorporation of NEPA and related considerations into the implementation process.

(a) *General.* (1) In implementing the Plan, the Corps of Engineers shall comply with the requirements of NEPA (42 U.S.C. 4371, *et seq.*) and applicable implementing regulations, including determining whether a specific action, when considered individually and cumulatively, will have a significant impact on the human environment.

(2) As appropriate, other agencies shall be invited to be cooperating agencies in the preparation of NEPA documentation pursuant to § 230.16 of this chapter.

(3) The District Engineer is the NEPA official responsible for compliance with NEPA for actions conducted to implement the Plan. Unless otherwise provided for by this part, NEPA coordination for implementation of the plan shall follow the NEPA procedures established in part 230 of this chapter.

(b) *Actions normally requiring an Environmental Impact Statement (EIS).* (1) In addition to the actions listed in § 230.6 of this chapter, actions normally requiring an EIS are:

(i) Comprehensive Plan Modification Reports;

(ii) System Operating Manual or significant changes to the System Operating Manual;

(iii) Project Implementation Reports, including the draft Project Operating Manual when included in the Project Implementation Report;

(iv) Pilot Project Design Reports, including the detailed operational testing and monitoring plan; and

(v) Project Operating Manuals for any project where a Project Implementation Report is not prepared, or significant changes to Project Operating Manuals.

(2) The District Engineer may consider the use of an environmental assessment (EA) on the types of actions described in this paragraph if early studies and coordination show that a particular action, considered individually and cumulatively, is not likely to have a significant impact on the quality of the human environment.

(c) *Actions normally requiring an EA, but not necessarily an EIS.* In addition to the actions listed in § 230.7 of this

chapter, actions normally requiring an EA, but not necessarily an EIS, are modifications to Project Operating Manuals or the System Operating Manual, that do not provide for significant change in operation and/or maintenance.

(d) *Categorical exclusions.* In addition to the activities listed in § 230.9 of this chapter, the following actions do not require separate NEPA documentation, either because, when considered individually and cumulatively, they do not have significant effects on the quality of the human environment or because any such effects will already have been considered in NEPA documentation prepared in accordance with paragraphs (b) and (c) of this section. However, the District Engineer should be alert for extraordinary circumstances that may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a ''categorical exclusion,'' that fact does not exempt the action from compliance with any other applicable Federal, State, or Tribal law, including but not limited to, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, the Coastal Zone Management Act, and the Marine Mammal Protection Act.

(1) Project Cooperation Agreements;

(2) Project Management Plans;

(3) Program Management Plans;

(4) Plans and specifications for projects;

(5) Pilot Project Technical Data Reports;

(6) Assessment reports prepared for the adaptive management program;

(7) Interim goals and interim targets;

(8) Development or revision of guidance memoranda or methods such as adaptive management, monitoring, plan formulation and evaluation, quantification of water needed for the natural system or protection of existing uses, methods of determining levels of flood protection, and similar guidance memoranda or methods; and

(9) Deviations from Operating Manuals for emergencies and unplanned minor deviations when, considered individually and cumulatively, they do not have significant effects on the quality of the human environment, as described in applicable Corps of Engineers regulations, including § 222.5(f)(4) and § 222.5(i)(5) of this chapter, and Engineer Regulation ER 1110–2–8156 ''Preparation of Water Control Manuals.''

§ 385.15 Consistency with requirements of the State of Florida.

The State of Florida has established procedures, requirements, and approvals that are needed before the State or the South Florida Water Management District can participate as the non-Federal sponsor for projects of the Plan. Project Implementation Reports shall include such information and analyses, consistent with this part, as are necessary to facilitate review and approval of projects by the South Florida Water Management District and the State pursuant to the requirements of Florida law.

§ 385.16 Design agreements.

(a) The Corps of Engineers shall execute a design agreement with each non-Federal sponsor for the projects of the Plan prior to initiation of design activities with that non-Federal sponsor.

(b) Any procedures, guidance, or documents developed by the Corps of Engineers and the non-Federal sponsor pursuant to a design agreement shall be consistent with this part.

§ 385.17 Project Delivery Team.

(a) In accordance with the procedures of the Corps of Engineers business process described in Engineer Regulation ER 5–1–11 ''US Army Corps of Engineers Business process,'' the Corps of Engineers and the non-Federal sponsor shall form a Project Delivery Team to develop the products necessary to implement each project.

(b) The Corps of Engineers shall assign, and the non-Federal sponsor may assign, a project manager to lead the Project Delivery Team.

(c) The Corps of Engineers and the South Florida Water Management District shall encourage the participation of other Federal, State, and local agencies and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida on Project Delivery Teams, and use their expertise to ensure that

information developed by the Project Delivery Team is shared with agencies, tribes, and the public at the earliest possible time in the implementation process. In forming the Project Delivery Team, the Corps of Engineers and the non-Federal sponsor shall request that the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies participate on the Project Delivery Team.

(1) In general, participation on the Project Delivery Team shall be the financial responsibility of the participating agency or tribe. However, the Corps of Engineers shall provide funding for the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to prepare Fish and Wildlife Coordination Act Reports, as required by applicable law, regulation, or agency procedures.

(2) Participation by an agency or tribe on the Project Delivery Team shall not be considered or construed to be a substitute for consultation, coordination, or other activities required by applicable law or this part.

(d) Documents and work products prepared or developed by the Project Delivery Team shall not be self-executing, but shall be provided as information for consideration by the Corps of Engineers and the non-Federal sponsor, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

§ 385.18 Public outreach.

(a) *Goals.* (1) The goal of public outreach is to open and maintain channels of communication with the public throughout the implementation process for the Plan in order to:

(i) Provide information about proposed activities;

(ii) Make the public's desires, needs, and concerns known to decision-makers before decisions are reached; and

(iii) Consider and respond to the public's views in reaching decisions.

(2) In carrying out implementation activities for the Plan, the Corps of Engineers and non-Federal sponsors shall undertake outreach activities to:

(i) Increase general public awareness for the Plan;

(ii) Involve interested groups and interested communities in the decision-making process and incorporate public values into decisions;

(iii) Better serve and involve minority communities and traditionally under served communities, persons with limited English proficiency, and socially and economically disadvantaged individuals;

(iv) Improve the substantive quality of decisions as a result of public participation; and

(v) Reduce conflict among interested and affected parties by building agreement or consensus on solutions to emerging issues.

(b) *General requirements.* (1) The Corps of Engineers and non-Federal sponsors shall provide a transparent, publicly accessible process through which scientific and technical information is used in the development of policy decisions throughout the implementation process for the Plan.

(2) The Corps of Engineers and non-Federal sponsors shall develop and conduct outreach activities for project or program-level activities in order to provide information to the public and to provide opportunities for involvement by the public.

(3) The Corps of Engineers and non-Federal sponsors shall monitor the effectiveness of outreach activities throughout the implementation process.

(4) Project Management Plans and Program Management Plans shall include information concerning any outreach activities to be undertaken during the implementation of the project or activity.

(5) Project Delivery Team meetings and RECOVER meetings shall be open to attendance by the public. The public shall be notified in advance of these meetings through e-mail, posting on a

web site, or other appropriate means. The public shall be provided with an opportunity to comment at such meetings.

(6) Public meetings and workshops shall be held at such times and locations as to facilitate participation by the public.

(7) The Corps of Engineers and non-Federal sponsors shall provide opportunities for the public to review and comment on draft documents.

(c) *Outreach to socially and economically disadvantaged individuals and communities.* (1) The Corps of Engineers and non-Federal sponsors shall develop and conduct public outreach activities to ensure that socially and economically disadvantaged individuals, including individuals with limited English proficiency, and communities are provided opportunities to review and comment during implementation of the Plan.

(2) The Corps of Engineers and non-Federal sponsors shall monitor the effectiveness of outreach activities conducted to ensure that socially and economically disadvantaged individuals and communities, including individuals with limited English proficiency, are provided opportunities to review and comment during implementation of the Plan.

(3) Project Management Plans and Program Management Plans shall include information, concerning any outreach activities to be undertaken during the implementation of the project or activity, to socially and economically disadvantaged individuals and communities, including individuals of limited English proficiency.

(4) The Corps of Engineers and non-Federal sponsors shall make project and program information available in languages other than English where a significant number of individuals in the area affected by the project or program activity are expected to have limited English proficiency.

(5) The Corps of Engineers and non-Federal sponsors shall provide translators or similar services at public meetings where a significant number of participants are expected to have limited English proficiency.

§ 385.19 Environmental and economic equity.

(a) Project Management Plans and Program Management Plans shall include information concerning any environmental and economic equity activities to be undertaken during the implementation of the project or activity.

(b) As required by applicable laws and policies, the Corps of Engineers and non-Federal sponsors shall consider and evaluate environmental justice issues and concerns in the implementation of projects.

(c) During the implementation of the Plan, through appropriate means, consistent with section 601(k) of WRDA 2000 and other provisions of Federal law, the Corps of Engineers and non-Federal sponsors shall provide information to socially and economically disadvantaged individuals and communities, including individuals with limited English proficiency, about potential or anticipated contracting opportunities that are expected to result from implementation of the Plan.

(d) The District Engineer shall ensure that small business concerns owned and controlled by socially and economically disadvantaged individuals are provided opportunities to participate under section 15(g) of the Small Business Act (15 U.S.C. 644(g)) throughout the implementation process. The District Engineer shall track the amount of contracts awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals in order to ensure that they are provided such opportunities.

§ 385.20 Restoration Coordination and Verification (RECOVER).

(a) RECOVER (Restoration Coordination and Verification) is an interagency and interdisciplinary scientific and technical team described in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999. RECOVER was established by the Corps of Engineers and the South Florida Water Management District to conduct assessment, evaluation, and planning and integration activities using the best available science that support implementation of the Plan with the

overall goal of ensuring that the goals and purposes of the Plan are achieved. RECOVER has been organized into a Leadership Group that provides management and coordination for the activities of RECOVER and teams that accomplish activities such as: developing system-wide performance measures; developing and implementing the monitoring and assessment program; evaluating alternatives developed by Project Delivery Teams to achieve the goals and purposes of the Plan; conducting system-wide water quality analyses; developing, refining, and applying system-wide models and tools; and evaluating modifications to the Plan. RECOVER is not a policy making body, but has technical and scientific responsibilities that support implementation of the Plan.

(b) Documents or work products prepared or developed by RECOVER shall not be self-executing, but shall be provided as information for consideration by the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies. Technical information developed by RECOVER shall be available to the public.

(c) The Corps of Engineers and the South Florida Water Management District shall encourage the participation of other Federal, State, and local agencies and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida on RECOVER, to use their expertise, to ensure that information developed by RECOVER is shared at the earliest possible time with agencies, tribes, and the public, and to ensure that matters of concern are addressed as early as possible. The Corps of Engineers and the South Florida Water Management District recognize the special role of the National Oceanic and Atmospheric Administration of the Department of Commerce, the Florida Fish and Wildlife Conservation Commission, the Department of the Interior and the Florida Fish and Wildlife Conservation Commission as stewards of the natural system and for their technical and scientific activities in support of restoration. The Corps of Engineers and the South Florida Water Management District recognize the special role of the Environmental Protection Agency and the Florida Department of Environmental Protection in water quality issues. Accordingly, the Corps of Engineers and the South Florida Water Management District have used and will continue to use the Department of the Interior, the Department of Commerce, the Florida Fish and Wildlife Conservation Commission, the Environmental Protection Agency, and the Florida Department of Environmental Protection as co-chairs along with the Corps of Engineers and the South Florida Water Management District on the appropriate technical teams that have been established to date as part of RECOVER.

(1) In general, participation on RECOVER shall be the financial responsibility of the participating agency or tribe.

(2) Participation by an agency or tribe on RECOVER shall not be considered or construed to be a substitute for consultation, coordination, or other activities required by applicable law, policy, or regulation.

(d) The Corps of Engineers and the South Florida Water Management District shall:

(1) Assign program managers from the Corps of Engineers and the South Florida Water Management District to be responsible for carrying out the activities of RECOVER; and

(2) Establish a RECOVER Leadership Group to assist the program managers in coordinating and managing the activities of RECOVER, including the establishment of sub-teams or other entities, and in reporting on the activities of RECOVER. In addition to the program managers, the RECOVER Leadership Group shall, consist of one member appointed by each of the following:

(i) Environmental Protection Agency;

(ii) National Oceanic and Atmospheric Administration;

(iii) U.S. Fish and Wildlife Service;

(iv) U.S. Geological Survey;

(v) National Park Service;

(vi) Miccosukee Tribe of Indians of Florida;

(vii) Seminole Tribe of Florida;

(viii) Florida Department of Agriculture and Consumer Services;

(ix) Florida Department of Environmental Protection; and

(x) Florida Fish and Wildlife Conservation Commission.

(3) As necessary to assist the program managers, the Corps of Engineers and the South Florida Water Management District may add additional members to the RECOVER Leadership Group.

(e) RECOVER shall perform assessment, evaluation, and planning and integration activities as described in this paragraph.

(1) *Assessment activities*. In accordance with § 385.31, RECOVER shall conduct credible scientific assessments of hydrological, water quality, biological, ecological, water supply, and other responses to the Plan. The Corps of Engineers and the South Florida Water Management District will ensure that these assessments incorporate the best available science and that the results are provided for external peer review, as appropriate, and are made fully available for public review and comment. RECOVER shall conduct assessment activities, including, but not limited to:

(i) Developing proposed assessment performance measures for assessing progress towards the goals and purposes of the Plan;

(ii) Developing a proposed monitoring plan to support the adaptive management program;

(iii) Conducting monitoring and assessment activities as part of the adaptive management program to assess the actual performance of the Plan;

(iv) Developing recommendations for interim goals in accordance with § 385.38;

(v) Assessing progress towards achieving the interim goals established pursuant to § 385.38;

(vi) Developing recommendations for interim targets in accordance with § 385.39;

(vii) Assessing progress towards achieving the interim targets established pursuant to § 385.39; and

(viii) Cooperating with the independent scientific review panel and external peer review in accordance with § 385.22.

(2) *Evaluation activities*. In accordance with § 385.26(c) and § 385.32, RECOVER shall assist Project Delivery Teams in ensuring that project design and performance is fully linked to the goals and purposes of the Plan and incorporating, as appropriate, information developed for Project Implementation Reports into the Plan. RECOVER shall conduct evaluation activities, including, but not limited to:

(i) Developing proposed evaluation performance measures for evaluating alternative plans developed for the Project Implementation Report;

(ii) Conducting evaluations of alternative plans developed for Project Implementation Reports and Comprehensive Plan Modification Reports; and

(iii) Supporting development and refinement of predictive models and tools used in the evaluation of alternate plans developed by the Project Delivery Teams.

(3) *Planning and integration activities*. RECOVER shall conduct planning and integration activities, in accordance with § 385.31, in support of the adaptive management program as a basis for identifying opportunities for improving the performance of the Plan and other appropriate planning and integration activities associated with implementation of the Plan. RECOVER shall conduct planning and integration activities, including, but not limited to:

(i) Developing and refining conceptual and predictive models and tools in support of the integration of new science into the adaptive management program;

(ii) Reviewing and synthesizing new information and science that could have an effect on the Plan;

(iii) Developing proposed refinements and improvements in the design or operation of the Plan during all phases of implementation;

(iv) Preparing technical information to be used in the development of the periodic reports to Congress prepared pursuant to § 385.40; and

(v) Analyzing proposed revisions to the Master Implementation Sequencing Plan.

(f) In carrying out the functions described in this section, RECOVER shall consider the effects of activities and projects that are not part of the Plan, but which could affect the ability of the Plan to achieve its goals and purposes.

(g) As appropriate, the Corps of Engineers and the South Florida Water Management District shall seek external peer review of RECOVER activities in accordance with § 385.22(b).

§ 385.21 Quality control.

(a) The Corps of Engineers and the non-Federal sponsor shall prepare a quality control plan, in accordance with applicable Corps of Engineers regulations, for each product that will be produced by a Project Delivery Team. The quality control plan shall be included in the Project Management Plan and shall describe the procedures to be used to ensure compliance with technical and policy requirements during implementation.

(b) During development of the Project Management Plan for each project, the Corps of Engineers and the non-Federal sponsor shall establish a Technical Review Team to conduct reviews to ensure that products are consistent with established criteria, guidance, procedures, and policy. The members of the Technical Review Team shall be independent of the Project Delivery Team and the project being reviewed, and should be knowledgeable of design criteria established for the Plan.

(c) Technical review is intended to be a continuous process throughout project implementation. The Technical Review Team shall document its actions and recommendations and provide reports to the Project Delivery Team at designated points during the implementation process that shall be described in the quality control plan.

§ 385.22 Independent scientific review and external peer review.

(a) *The independent scientific review panel required by section 601(j).* (1) Section 601(j) of WRDA 2000 requires that the Secretary of the Army, the Secretary of the Interior, and the Governor, in consultation with the South Florida Ecosystem Restoration Task Force, establish an independent scientific review panel, convened by a body, such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system restoration goals of the Plan. Section 601(j) also directs that this panel produce a biennial report to Congress, the Secretary of the Army, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

(2) To carry out section 601(j), the Department of the Army, the Department of the Interior, and the State shall establish an independent scientific review panel to conduct on-going review of the progress achieved by the implementation of the Plan in achieving the restoration goals of the Plan and shall provide the panel with the resources and cooperation necessary to ensure that the panel is able to function effectively.

(3) Not later than June 14, 2004, the Secretary of the Army, the Secretary of the Interior, and the Governor, in consultation with the South Florida Ecosystem Restoration Task Force, shall enter into a five-year agreement, with options for extensions in five-year increments, with the National Academy of Sciences to convene this panel.

(4) The Department of the Army, the Department of the Interior, and the State expect that the National Academy of Sciences will use established practices for assuring the independence of members and that the review panel will include members reflecting a balance of the knowledge, training, and experience suitable to comprehensively review and assess progress towards achieving natural system restoration goals of the Plan.

(5) To ensure the independence of the section 601(j) panel, its sole mission shall be to review the Plan's progress toward achieving the natural system restoration goals of the Plan and to produce a biennial report to Congress, the Secretary of the Army, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the

Plan. The Secretary of the Army, the Secretary of the Interior, the Governor, and the South Florida Ecosystem Restoration Task Force and its members, shall not attempt to influence the panel's review or assign this panel any other tasks, nor request any advice on any other matter, nor shall this panel accept any other tasks nor provide advice on any other matter, to any entity, whether Federal, State or local, whether public or private.

(6) Before final establishment of the panel, the Department of the Army, the Department of the Interior, and the State, in consultation with the South Florida Ecosystem Restoration Task Force, shall be afforded the opportunity to review the list of panel members convened by the National Academy of Sciences.

(7) The agreement shall recognize that the Department of the Army, the Department of the Interior, and the State retain the right and ability to establish other independent scientific review panels or external peer reviews when deemed necessary by those agencies for conducting specific scientific and technical reviews.

(8) The Department of the Army, the Department of the Interior, and the State of Florida shall share the panel's costs. The Department of the Army and the Department of the Interior shall enter into a separate Memorandum of Agreement that will specify how the Federal agencies will pay the Federal share of these costs. The State's fifty percent share shall be accounted for in the design agreement between the Corps of Engineers and the South Florida Water Management District.

(9) The panel shall produce a biennial report to Congress, the Secretary of the Army, the Secretary of the Interior, and the Governor, pursuant to section 601(j) of WRDA 2000, that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

(10) The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall cooperate with the independent scientific review panel, including responding to reasonable requests for information concerning the implementation of the Plan.

(11) The Secretary of the Army, the Secretary of the Interior, and the Governor shall consult with the South Florida Ecosystem Restoration Task Force in their decision to exercise each five-year option to extend the agreement with the National Academy of Sciences. Upon expiration of the agreement, the Secretary of the Army, the Secretary of the Interior, and the Governor shall consult the South Florida Ecosystem Restoration Task Force in selection of another body to convene the independent scientific review panel required by section 601(j) of WRDA 2000.

(b) *External peer review*. (1) The Department of the Army, the Department of the Interior, the South Florida Water Management District, and other Federal, State, and local agencies, the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida may initiate an external peer review process to review documents, reports, procedures, or to address specific scientific or technical questions or issues relating to their jurisdiction.

(2) In accordance with § 385.12(d), draft Pilot Project Technical Reports shall be externally peer reviewed.

(3) In accordance with § 385.31(b), draft assessment reports prepared for the adaptive management program shall be externally peer reviewed.

§ 385.23 Dispute resolution.

(a) Disputes with the non-Federal sponsor concerning a Project Cooperation Agreement shall be resolved under the specific dispute resolution procedures of that Project Cooperation Agreement.

(b) Disputes with the non-Federal sponsor concerning design activities shall be resolved under the specific dispute resolution procedures of the design agreement.

(c) All other unresolved issues with the non-Federal sponsor and disputes with the State associated with the implementation of the Plan shall be resolved according to the terms of the Dispute Resolution Agreement executed on September 9, 2002 pursuant to section 601(i) of WRDA 2000.

(d) For disputes with parties not covered by the provisions of paragraphs (a), (b), or (c) of this section, the Corps of Engineers shall attempt to resolve the dispute in accordance with applicable statutory requirements and/or the following procedures:

(1) The parties will attempt to resolve disputes at the lowest organizational level before seeking to elevate a dispute.

(2) Any disputed matter shall first be elevated to the District Engineer and the equivalent official of the other agency, or their designees. The parties may decide to continue to elevate the dispute to higher levels within each agency.

(3) The parties to a dispute may agree to participate in mediation.

(4) When a dispute is resolved the parties shall memorialize the resolution in writing.

§ 385.24 Project Management Plans.

(a) *General requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Project Management Plan prior to initiating activities on a project.

(2) The Project Management Plan shall define the activities, and where appropriate, the subordinate tasks, as well as the assignment of responsibility for completing products and activities such as Project Implementation Reports, Pilot Project Design Reports, plans and specifications, real estate acquisition, construction contracts and construction, Comprehensive Plan Modification Reports, and other activities necessary to support implementation of the Plan.

(3) The Project Management Plan shall include a quality control plan, as described in § 385.21.

(4) As appropriate, the Project Management Plan shall include activities to be conducted to meet the requirements of the Fish and Wildlife Coordination Act, as described in § 385.26(e).

(5) The Project Management Plan shall provide schedule and funding information for the project.

(6) In accordance with § 385.18, Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the Project Management Plan.

(b) *Revisions to Project Management Plans.* The Corps of Engineers and the non-Federal sponsor may, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, revise the Project Management Plan whenever necessary, including after completion of the Project Implementation Report, or Plans and Specifications. In accordance with § 385.18, the Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on revisions to the Project Management Plan.

§ 385.25 Program Management Plans.

(a) *General requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Program Management Plan prior to initiating a program-level activity.

(2) The Program Management Plan shall define the activities, and where appropriate, the subordinate tasks, as well as the assignment of responsibility for completing products developed in support to program-level activities.

(3) In accordance with § 385.18, Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the Program Management Plan.

(b) *Revisions to Program Management Plans.* The Corps of Engineers and the

non-Federal sponsor may, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, revise the Program Management Plan whenever necessary to incorporate new or changed information that affects the scope, schedule, or budget of the activities described in the Program Management Plan. In accordance with § 385.18, the Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on revisions to the Program Management Plan.

§ 385.26 Project Implementation Reports.

(a) *General requirements.* (1) The Project Implementation Report is a document that provides information on plan formulation and evaluation, engineering and design, estimated benefits and costs, environmental effects, and the additional information and analysis necessary for the Secretary of the Army to approve the project for implementation, or for Congress to authorize the project for implementation. The Project Implementation Report bridges the gap between the conceptual level of detail contained in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999 and the detailed design necessary to prepare plans and specifications required to proceed to construction. Prior to requesting approval or authorization for the implementation of a project, the Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, complete a Project Implementation Report addressing the project's justification in accordance with section 601(f)(2) of WRDA 2000, and other factors required by section 601(h)(4)(A) of WRDA 2000. To eliminate duplication with State and local procedures, the Project Implementation Report shall also address the factors of relevant State laws, including sections 373.1501 and 373.470 of the Florida Statutes.

(2) Before completion of the draft Project Implementation Report, the Corps of Engineers and the non-Federal sponsor shall provide the South Florida Ecosystem Restoration Task Force with information about the alternative plans developed and evaluated for the Project Implementation Report.

(3) The Project Implementation Report shall:

(i) Be consistent with the Plan and applicable law, policy, and regulation, including the Principles and Guidelines of the Water Resources Council, as modified by section 601(f)(2)(A) of WRDA 2000;

(ii) Be based on the best available science;

(iii) Comply with all applicable Federal, State, and Tribal laws;

(iv) Contain sufficient information for proceeding to final design of the project, such as: additional plan formulation and evaluation, environmental and/or economic benefits, engineering and design, costs, environmental impacts, real estate requirements, and the preparation of the appropriate National Environmental Policy Act documentation;

(v) Contain the information necessary to determine that the activity is justified by the environmental benefits derived by the South Florida ecosystem in accordance with section 601(f)(2)(A) and/or that the benefits of the project are commensurate with costs, and that the project is cost-effective;

(vi) Comply, in accordance with section 601(b)(2)(A)(ii) of WRDA 2000, with applicable water quality standards and applicable water quality permitting requirements;

(vii) Identify, in accordance with § 385.35, the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;

(viii) Identify, in accordance with § 385.35, the amount of water to be reserved or allocated for the natural system under State law necessary to implement the provisions in paragraphs (a)(3)(vi) and (vii) of this section;

(ix) Identify the quantity, timing, and distribution of water made available for other water-related needs of the region;

(x) Determine, in accordance with § 385.36, if existing legal sources of water are to be eliminated or transferred;

(xi) Determine, in accordance with § 385.37(b) that implementation of the selected alternative will not reduce levels of service for flood protection that:

(A) Were in existence on the date of enactment of section 601 of WRDA 2000; and

(B) Are in accordance with applicable law; and consider, as appropriate, in accordance with § 385.37(c), opportunities to provide additional flood protection;

(xii) Include an assessment of the monetary and non-monetary benefits and costs, optimization and justification, cost-effectiveness, and engineering feasibility of the project;

(xiii) Include a discussion of any significant changes in cost or scope of the project from that presented in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999;

(xiv) Include an analysis, prepared by RECOVER as described in paragraph (c) of this section, of the project's contributions towards achieving the goals and purposes of the Plan, including, as appropriate, suggestions for improving the performance of the alternative plans;

(xv) Describe how the project contributes to the achievement of interim goals established pursuant to § 385.38 and the interim targets established pursuant to § 385.39;

(xvi) Include, in accordance with § 385.28(c), a draft Project Operating Manual as an appendix; and

(xvii) Include, as appropriate, information necessary for the non-Federal sponsor to address the requirements of Chapter 373 of the Florida Statutes, and other applicable planning and reporting requirements of Florida law.

(4) The Corps of Engineers and the non-Federal sponsor shall develop the Project Implementation Report generally in accordance with the process shown in figure 2 in Appendix A of this part.

(5) The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the major tasks that are generally needed to prepare a Project Implementation Report and the format and content of a Project Implementation Report.

(b) *Formulation and evaluation*. In preparing a Project Implementation Report, the Corps of Engineers and the non-Federal sponsor shall formulate and evaluate alternative plans to optimize the project's contributions towards achieving the goals and purposes of the Plan, and to develop justified and cost-effective ways to achieve the benefits of the Plan.

(1) *General*. The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the processes to be used to formulate and evaluate alternative plans and their associated monetary and non-monetary benefits and costs, determine cost-effectiveness and optimize the project's contribution towards achieving the goals and purposes of the Plan, and the basis for justifying and selecting an alternative to be recommended for implementation. The guidance memorandum shall also provide a process for evaluating projects that are outside the boundary of regional computer models or projects whose effects cannot be captured in regional computer models. Project Implementation Reports approved by the Secretary of the Army before December 12, 2003 or before the development of the guidance memorandum may use whatever method that, in the Secretary of the Army's

discretion, is deemed appropriate and is consistent with applicable law, policy, and regulations.

(2) *Project formulation and evaluation.* The guidance memorandum shall describe the process for formulating and evaluating alternative plans for their ability to optimize contributions for achieving the goals and purposes of the Plan. The guidance memorandum shall describe the process for including each alternative plan with all of the other components of the Plan and evaluating the total monetary and non-monetary benefits and costs of the resulting comprehensive plan when compared to the without CERP condition. In formulating alternative plans to be evaluated, the project as described in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999 shall be included as one of the alternative plans that is evaluated. For the selected plan, the guidance memorandum shall also describe the process for evaluating that plan as the next-added increment of the Plan.

(3) *Identification of selected alternative plan.* The guidance memorandum shall also include a process for identification of a selected alternative plan, based on the analyses conducted in paragraph (b)(2) of this section. The alternative plan to be selected should be the plan that maximizes net benefits, both monetary and non-monetary, on a system-wide basis, provided that this plan is justified on a next-added increment basis. Alternative plans that are not justified on a next-added increment basis shall not be selected. The guidance memorandum shall describe an iterative process for evaluating and/or combining alternative options until an alternative is identified that maximizes net benefits while still providing benefits that justify costs on a next-added increment basis.

(c) *RECOVER performance evaluation of alternative plans.* (1) Prior to the identification of a selected alternative plan, RECOVER shall evaluate the performance of alternative plans towards achieving the goals and purposes of the Plan.

(2) RECOVER shall prepare information for the Project Delivery Team describing the results of the evaluations of alternative plans developed for the Project Implementation Report towards achieving the goals and purposes of the Plan, including, as appropriate, suggestions for improving the performance of the alternative plans.

(d) *NEPA documentation for Project Implementation Reports.* (1) The Corps of Engineers and the non-Federal sponsor shall prepare the appropriate NEPA document to accompany the Project Implementation Report. The NEPA document shall contain an analysis of the effects of the alternatives formulated for the Project Implementation Report. The NEPA document for the Project Implementation Report shall use the Programmatic Environmental Impact Statement included in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999, as appropriate, for the purpose of tiering as described in § 230.14(c) of this chapter.

(2) The District Engineer shall prepare the Record of Decision for Project Implementation Reports. Review and signature of the Record of Decision shall follow the same procedures as for review and approval of feasibility reports in § 230.14 of this chapter and other applicable Corps of Engineers regulations.

(e) *Fish and Wildlife Coordination Act Requirements.* (1) The Corps of Engineers and the non-Federal sponsor shall coordinate with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Conservation Commission, and other appropriate agencies in the preparation of a Project Implementation Report, as required by applicable law.

(2) The Project Management Plan shall include a discussion of activities to be conducted for compliance with the Fish and Wildlife Coordination Act and other applicable laws.

(3) Consistent with applicable law, policy, and regulations, coordination shall include preparation of the following documents as shown in figure 2 in Appendix A of this part:

(i) Planning Aid Letter that describes issues and opportunities related to the conservation and enhancement of fish and wildlife resources; and

(ii) Draft and final Fish and Wildlife Coordination Act Reports that provide the formal views and recommendations of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, and the Florida Fish and Wildlife Conservation Commission on alternative plans.

(f) *Project Implementation Report review and approval process.* (1) The Corps of Engineers and the non-Federal sponsor shall provide opportunities for the public to review and comment on the draft Project Implementation Report and NEPA document, in accordance with § 385.18 and applicable law and Corps of Engineers policy.

(2) The Project Implementation Report shall contain an appropriate letter of intent from the non-Federal sponsor indicating concurrence with the recommendations of the Project Implementation Report.

(3) Upon the completion of the Project Implementation Report and NEPA document, the District Engineer shall submit the report and NEPA document to the Division Engineer.

(4) Upon receipt and approval of the Project Implementation Report the Division Engineer shall issue a public notice announcing completion of the Project Implementation Report based upon:

(i) The Division Engineer's endorsement of the findings and recommendations of the District Engineer; and

(ii) The Division Engineer's assessment that the project has been developed and the report prepared in accordance with current law and policy. The notice shall indicate that the report has been submitted to Corps of Engineers Headquarters for review.

(5) Headquarters, U.S. Army Corps of Engineers shall conduct a review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, U.S. Army Corps of Engineers shall administer the 30-day state and agency review of the Project Implementation Report, and as appropriate, file the Environmental Impact Statement with the Environmental Protection Agency.

(6) After completion of the review and other requirements of law and policy, the Chief of Engineers shall submit the Project Implementation Report and the Chief of Engineers' recommendations on the project to the Assistant Secretary of the Army for Civil Works.

(7) The Assistant Secretary of the Army for Civil Works shall review all Project Implementation Reports, and shall, prior to either approving them or submitting the Assistant Secretary's recommendations to Congress, coordinate the project and proposed recommendations with the Office of Management and Budget.

(i) For projects authorized by section 601(c) of WRDA 2000, the Assistant Secretary of the Army for Civil Works shall review and approve the Project Implementation Report prior to implementation of the project.

(ii) For projects authorized by section 601(b)(2)(C) of WRDA 2000, the Assistant Secretary of the Army for Civil Works shall review the Project Implementation Report prior to submitting the Assistant Secretary's recommendations to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate for approval.

(iii) For all other projects, the Assistant Secretary of the Army for Civil Works shall review the Project Implementation Report prior to submitting the Assistant Secretary's recommendations regarding authorization to Congress.

§ 385.27 Project Cooperation Agreements.

(a) *General.* Prior to initiating construction or implementation of a project, the Corps of Engineers shall execute a Project Cooperation Agreement with the non-Federal sponsor in accordance with applicable law.

(b) *Verification of water reservations.* The Project Cooperation Agreement shall include a finding that the South Florida Water Management District or the Florida Department of Environmental Protection has executed under State law the reservation or allocation of water for the natural system as identified in the Project Implementation Report. Prior to execution of the Project Cooperation Agreement, the

District Engineer shall verify in writing that the South Florida Water Management District or the Florida Department of Environmental Protection has executed under State law the reservation or allocation of water for the natural system as identified in the Project Implementation Report. The District Engineer's verification shall provide the basis for the finding in the Project Cooperation Agreement and be made available to the public.

(c) *Changes to water reservations.* Reservations or allocations of water are a State responsibility. Any change to the reservation or allocation of water for the natural system made under State law shall require an amendment to the Project Cooperation Agreement.

(1) The District Engineer shall, in consultation with the South Florida Water Management District, the Florida Department of Environmental Protection, the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and other Federal, State, and local agencies, verify in writing that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the Project Implementation Report. In accordance with applicable State law, the non-Federal sponsor shall provide opportunities for the public to review and comment on any proposed changes in the water reservation made by the State.

(2) The Secretary of the Army shall notify the appropriate committees of Congress whenever a change to the reservation or allocation of water for the natural system executed under State law as described in the Project Implementation Report has been made. Such notification shall include the Secretary's and the State's reasons for determining that the revised reservation or allocation continues to provide for an appropriate quantity, timing, and distribution of water dedicated and managed for the natural system after considering any changed circumstances or new information since completion of the Project Implementation Report. The Secretary of the Army's notification to the appropriate committees of Congress shall be made available to the public.

(d) *Savings clause provisions.* The Project Cooperation Agreement shall ensure that the Corps of Engineers and the non-Federal sponsor not:

(1) Eliminate or transfer existing legal sources of water until a new source of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan; and

(2) Reduce levels of service for flood protection that are:

(i) In existence on the date of enactment of WRDA 2000; and

(ii) In accordance with applicable law.

§ 385.28 Operating Manuals.

(a) *General provisions.* (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop Operating Manuals to ensure that the goals and purposes of the Plan are achieved.

(2) Operating Manuals shall consist of a System Operating Manual and Project Operating Manuals. In general, the System Operating Manual provides a system-wide operating plan for the operation of the projects of the Plan and other C&SF Project features and the Project Operating Manuals provide the details necessary for integrating the operation of the individual projects with the system operation described in the System Operating Manual.

(3) In accordance with § 385.18, the public shall have the opportunity to review and comment on draft Operating Manuals.

(4) The Division Engineer and the non-Federal sponsor shall approve completed Operating Manuals.

(5) The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the content of Operating Manuals and the tasks necessary to develop Operating Manuals.

(6) Operating Manuals shall:

(i) Be consistent with the goals and purposes of the Plan;

(ii) Comply with NEPA, in accordance with § 385.14.

(iii) Describe regulation schedules, water control, and operating criteria for a project, group of projects, or the entire system;

(iv) Make provisions for the natural fluctuation of water made available in any given year and fluctuations necessary for the natural system as described in the Plan;

(v) Be consistent with applicable water quality standards and applicable water quality permitting requirements;

(vi) Be consistent with the reservation or allocation of water for the natural system and the savings clause provisions described in the Project Implementation Report and the Project Cooperation Agreement and the provisions of § 385.35(b), § 385.36, and § 385.37 and reflect the operational criteria used in the identification of the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system;

(vii) Include a drought contingency plan as required by § 222.5(i)(5) of this chapter and Engineer Regulation ER 1110–2–1941 ''Drought Contingency Plans'' that is consistent with the Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District and Florida Administrative Code Section 40E–21 (Water Shortage Plan) and Florida Administrative Code Section 40E–22 (Regional Water Shortage Plan); and

(viii) Include provisions authorizing temporary short-term deviations from the Operating Manual for emergencies and unplanned circumstances, as described in applicable Corps of Engineers regulations, including § 222.5(f)(4) and § 222.5(i)(5) of this chapter, and Engineer Regulation ER 1110–2–8156 ''Preparation of Water Control Manuals.'' However, deviations shall be minimized by including planning for flooding events caused by rainfall and hurricane events, as well as by including a drought contingency plan.

(A) *Emergency deviations*. Examples of some emergencies that can be expected to occur at a project are: drowning and other accidents, failure of the operation facilities, chemical spills, treatment plant failures and other temporary pollution problems. Water control actions necessary to abate the problem are taken immediately unless such action would create equal or worse conditions.

(B) *Unplanned circumstances*. There are unplanned circumstances that create a temporary need for minor deviations from the Operating Manual, although they are not considered emergencies. Deviations are sometimes necessary to carry out maintenance and inspection of facilities. Requests for deviations for unplanned circumstances generally involve time periods ranging from a few hours to a few days. Approval of these changes shall be obtained from the Division Engineer.

(7) Except as provided in this part, operating manuals generally shall follow the procedures for water control plans in § 222.5 of this chapter and applicable Corps of Engineers regulations for preparation of water control manuals and regulation schedules, including Engineer Regulation ER 1110–2–8156.

(b) *System Operating Manual*. (1) Not later than December 31, 2005, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a System Operating Manual that provides a system-wide operating plan for the operation of implemented projects of the Plan and other Central and Southern Florida Project features to ensure that the goals and purposes of the Plan are achieved.

(2) The System Operating Manual shall initially be based on the existing completed Central and Southern Florida Project features and shall be developed by the Corps of Engineers as provided in § 222.5(g) of this chapter and by the South Florida Water Management District as its laws and regulations require. Existing water control plans, regulation schedules, and Master Water Control Plans for the Central and Southern Florida Project shall remain in effect until approval of the System Operating Manual.

(3) The System Operating Manual shall be revised whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, believe it is necessary to ensure that the goals and purposes of the Plan are achieved.

(4) Except as provided in this part, the System Operating Manual shall follow the procedures for preparation of water control manuals, regulation schedules and Master Water Control Manuals in § 222.5 of this chapter and applicable Corps of Engineers regulations.

(5) The Corps of Engineers and the South Florida Water Management District shall provide notice and opportunity for public comment for any significant modification to the System Operating Manual.

(c) *Project Operating Manuals*. (1) The Corps of Engineers and the non-Federal sponsor shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Project Operating Manual for each project of the Plan that is implemented.

(2) Project Operating Manuals shall be considered supplements to the System Operating Manual, and present aspects of the projects not common to the system as a whole.

(3) Each Project Implementation Report shall, as appropriate, include a draft Project Operating Manual as an appendix to the Project Implementation Report.

(4) As appropriate, the draft Project Operating Manual shall be revised for the project construction phase and the operational monitoring and testing phase after completion of project construction.

(5) The final Project Operating Manual shall be completed as soon as practicable after completion of the operational testing and monitoring phase of the project. The completed project shall continue to be operated in accordance with the approved draft Project Operating Manual until the final Project Operating Manual is approved.

(6) The Corps of Engineers and the non-Federal sponsor shall provide notice and opportunity for public comment for any significant modification to the Project Operating Manual.

§ 385.29 Other project documents.

(a) As appropriate, the Corps of Engineers and the non-Federal sponsor may prepare design documents to provide additional design information needed for projects. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

(b) The Corps of Engineers and the non-Federal sponsor shall prepare plans and specifications necessary for construction of projects. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

(c) The Corps of Engineers and the non-Federal sponsor may prepare other documents as appropriate during the real estate acquisition and construction phases for projects. Such documents shall be approved in accordance with applicable policies of the Corps of Engineers and the non-Federal sponsor.

Subpart D—Incorporating New Information Into the Plan

§ 385.30 Master Implementation Sequencing Plan.

(a) Not later than December 13, 2004 the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop a Master Implementation Sequencing Plan that includes the sequencing and scheduling for implementation of all of the projects of the Plan, including pilot projects and operational elements, based on the best scientific, technical, funding, contracting, and other information available. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the Master Implementation Sequencing Plan.

(1) Projects shall be sequenced and scheduled to maximize the achievement of the goals and purposes of the Plan at the earliest possible time and in the most cost-effective way, consistent with the requirement that each project be justified on a next-added increment basis, including the achievement of the interim goals established pursuant to § 385.38 and the interim targets established pursuant § 385.39, consistent with § 385.36 and § 385.37(b), and to the extent practical given funding, engineering, and other constraints. The sequencing and scheduling of projects shall be based on considering factors, including, but not limited to:

(i) Technical dependencies and constraints;

(ii) Benefits to be provided by the project;

(iii) Availability of lands required for the project; and

(iv) Avoiding elimination or transfers of existing legal sources of water until an alternate source of comparable quantity and quality is available, in accordance with § 385.36.

(2) The Master Implementation Sequencing Plan shall include appropriate discussion of the logic, constraints, and other parameters used in developing the sequencing and scheduling of projects.

(3) In accordance with § 385.18, the Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on the Master Implementation Sequencing Plan.

(b) Whenever necessary to ensure that the goals and purposes of the Plan are achieved, but at least every five years, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, review the Master Implementation Sequencing Plan.

(1) The Master Implementation Sequencing Plan may be revised as appropriate, consistent with the goals and purposes of the Plan, and consistent with § 385.36 and § 385.37(b), to incorporate new information including, but not limited to:

(i) Updated schedules from Project Management Plans;

(ii) Information obtained from pilot projects;

(iii) Updated funding information;

(iv) Approved revisions to the Plan;

(v) Congressional or other authorization or direction;

(vi) Information resulting from the adaptive management program, including new information on costs and benefits; or

(vii) Information regarding progress towards achieving the interim goals established pursuant to § 385.38 and the interim targets established pursuant to § 385.39.

(2) Proposed revisions to the Master Implementation Sequencing Plan shall be analyzed by RECOVER for effects on achieving the goals and purposes of the Plan and the interim goals and targets.

(3) The revised Master Implementation Sequencing Plan shall include information about the reasons for the

changes to the sequencing and scheduling of individual projects.

(4) In accordance with § 385.18, the Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on revisions to the Master Implementation Sequencing Plan.

§ 385.31 Adaptive management program.

(a) *General*. The Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, establish an adaptive management program to assess responses of the South Florida ecosystem to implementation of the Plan; to determine whether or not these responses match expectations, including the achievement of the expected performance level of the Plan, the interim goals established pursuant to § 385.38, and the interim targets established pursuant § 385.39; to determine if the Plan, system or project operations, or the sequence and schedule of projects should be modified to achieve the goals and purposes of the Plan, or to increase net benefits, or to improve cost effectiveness; and to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan. Endorsement of the Plan as a restoration framework is not intended as an artificial constraint on innovation in its implementation.

(b) *Assessment activities*. (1) RECOVER shall develop an assessment program to assess responses of the system to implementation of the Plan. The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the processes to be used to conduct these assessments.

(2) RECOVER shall develop a monitoring program that is designed to measure status and trends towards achieving the goals and purposes of the Plan throughout the South Florida ecosystem.

(3) RECOVER shall conduct monitoring activities and use the information collected and analyzed through the monitoring program as a basis for conducting assessment tasks, which may include, but are not limited to, the following:

(i) Determining if measured responses are desirable and are achieving the interim goals and the interim targets or the expected performance level of the Plan;

(ii) Evaluating if corrective actions to improve performance or improve cost-effectiveness should be considered; and

(iii) Preparing reports on the monitoring program.

(4) Whenever it is deemed necessary, but at least every five years, RECOVER shall prepare a technical report that presents an assessment of whether the goals and purposes of the Plan are being achieved, including whether the interim goals and interim targets are being achieved or are likely to be achieved. The technical report shall be provided to the Corps of Engineers and the South Florida Water Management District for use in preparing the assessment report. The technical report prepared by RECOVER shall also be made available to the public.

(i) The Corps of Engineers and the South Florida Water Management District shall consult with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies in the development of the assessment report. The Corps of Engineers

and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in developing the assessment report.

(ii) In accordance with § 385.22(b), the draft assessment report shall be externally peer reviewed.

(iii) In accordance with § 385.18, Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on the draft assessment report.

(iv) The Corps of Engineers and the South Florida Water Management District shall transmit the final assessment report to the Secretary of the Army, the Secretary of the Interior, and the Governor.

(v) The Secretary of the Army shall make the final assessment report available to the public.

(c) *Periodic CERP updates.* Not later than June 14, 2004 and whenever necessary to ensure that the goals and purposes of the Plan are achieved, but not any less often than every five years, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, conduct an evaluation of the Plan using new or updated modeling that includes the latest scientific, technical, and planning information. As part of the evaluation of the Plan, the Corps of Engineers and the South Florida Water Management District shall determine the total quantity of water that is expected to be generated by implementation of the Plan, including the quantity expected to be generated for the natural system to attain restoration goals as well as the quantity expected to be generated for use in the human environment. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in conducting the evaluation of the Plan. As appropriate, the results of the evaluation of the Plan may be used to initiate management actions in accordance with paragraph (d) of this section that are necessary to seek continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan. In addition, and as appropriate, the results of the evaluation of the Plan may be used to consider changes to the interim goals in accordance with § 385.38 and changes to the interim targets in accordance with § 385.39.

(d) *Management actions.* (1) In seeking continuous improvement of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan, the Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, use the assessment report prepared in accordance with paragraph (b) of this section, information resulting from independent scientific review and external peer review in accordance with § 385.22, or other appropriate information including progress towards achievement of the interim goals established pursuant to § 385.38 and the interim targets established pursuant to § 385.39 to determine if the activities described in paragraph (d)(2) of this section should be undertaken to ensure that the goals and purposes of the Plan are achieved. The Corps of Engineers and the South Florida Water Management District

shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, consider the following actions:

(i) Modifying current operations of the Plan;

(ii) Modifying the design or operational plan for a project of the Plan not yet implemented;

(iii) Modifying the sequence or schedule for implementation of the Plan;

(iv) Adding new components to the Plan or deleting components not yet implemented;

(v) Removing or modifying a component of the Plan already in place; or

(vi) A combination of these.

(2) Such actions should be implemented through revisions to Operating Manuals in accordance with § 385.28, revisions to the Master Implementation Sequencing Plan in accordance with § 385.30, a Comprehensive Plan Modification Report in accordance with § 385.32, or other appropriate mechanisms.

§ 385.32 Comprehensive Plan Modification Report

Whenever the Corps of Engineers and the South Florida Water Management District, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, determine that changes to the Plan are necessary to ensure that the goals and purposes of the Plan are achieved or that they are achieved cost-effectively, or to ensure that each project of the Plan is justified on a next-added increment basis, the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Comprehensive Plan Modification Report using a process that is consistent with the provisions of § 385.10, § 385.14, § 385.18, and § 385.19. The Corps of Engineers and the South Florida Water Management District shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the Comprehensive Plan Modification Report.

(a) *General requirements*. The Comprehensive Plan Modification Report shall:

(1) Be initiated at the discretion of the Corps of Engineers and the South Florida Water Management District in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, after consideration of the assessment report prepared in accordance with § 385.31(b), requests from the Department of the Interior or the State, or other appropriate information;

(2) Comply with all applicable Federal and State laws, including the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Coastal Zone Management Act, the Marine Mammal Protection Act, and any other applicable law;

(3) Contain information such as: Plan formulation and evaluation, engineering and design, estimated benefits and costs, and environmental effects,;

(4) Include appropriate analyses of alternatives evaluated by RECOVER;

(5) Include updated water budget information for the Plan, including the total quantity of water that is expected to be generated by implementation of the Plan, and the quantity expected to be generated for the natural system to attain restoration goals as well as the quantity expected to be generated for use in the human environment;

(6) Contain appropriate NEPA documentation to supplement the Programmatic Environmental Impact Statement included in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999; and

(7) Include coordination with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the Florida Fish and Wildlife Coordination Commission, and other appropriate agencies in the preparation of the Comprehensive Plan Modification Report, as required by applicable law.

(b) *Review and approval of Comprehensive Plan Modification Report.* (1) The Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on the draft Comprehensive Plan Modification Report and NEPA document, in accordance with § 385.18 and applicable law and Corps of Engineers policy.

(2) The Comprehensive Plan Modification Report shall contain an appropriate letter of intent from the South Florida Water Management District indicating concurrence with the recommendations of the Comprehensive Plan Modification Report.

(3) Upon the completion of the Comprehensive Plan Modification Report and NEPA document, the District Engineer shall submit the report and NEPA document to the Division Engineer.

(4) Upon receipt and approval of the Comprehensive Plan Modification Report, the Division Engineer shall issue a public notice announcing completion of the Comprehensive Plan Modification Report based upon:

(i) The Division Engineer's endorsement of the findings and recommendations of the District Engineer; and

(ii) The Division Engineer's assessment that the report has been prepared in accordance with current law and policy. The notice shall indicate that the report has been submitted to Corps of Engineers Headquarters for review.

(5) Headquarters, U.S. Army Corps of Engineers shall conduct a review in accordance with applicable policies and regulations of the Corps of Engineers. Headquarters, U.S. Army Corps of Engineers shall administer the 30-day state and agency review of the Comprehensive Plan Modification Report, and, as appropriate, file the Environmental Impact Statement with the Environmental Protection Agency.

(6) After completion of the policy review and other requirements of law and policy, the Chief of Engineers shall submit the Comprehensive Plan Modification Report and the Chief of Engineers' recommendations to the Assistant Secretary of the Army for Civil Works.

(7) The Assistant Secretary of the Army for Civil Works shall review the Comprehensive Plan Modification Report and shall, prior to submitting the Assistant Secretary's recommendations to Congress, coordinate the proposed recommendations with the Office of Management and Budget.

(c) *Minor changes to the Plan.* The Plan requires a process for adaptive management and incorporation of new information. As a result of this process, minor adjustments in the Plan may be made through Project Implementation Reports. It is not the intent of this section to require a continual cycle of report writing for minor changes. Instead, the intent of this section is to develop a Comprehensive Plan Modification Report for changes to the Plan that would require a supplement to the programmatic Environmental Impact Statement. The Corps of Engineers and the South Florida Water Management District may, in their discretion, elect to prepare a Comprehensive Plan Modification Report for other changes.

§ 385.33 Revisions to models and analytical tools.

(a) In carrying out their responsibilities for implementing the Plan, the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall rely on the best available science including models and other analytical tools for conducting analyses for the planning, design, construction, operation, and assessment of projects. The selection of models and analytical tools shall be done in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee

Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies.

(b) The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors may, in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, periodically revise models and analytical tools or develop new models and analytical tools as needed. As appropriate, RECOVER shall review the adequacy of system-wide simulation models and analytical tools used in the evaluation and assessment of projects, and shall propose improvements in system-wide models and analytical tools required for the evaluation and assessment tasks.

(c) The Corps of Engineers and the South Florida Water Management District shall determine on a case-by-case basis what documentation is appropriate for revisions to models and analytic tools, depending on the significance of the changes and their impacts to the Plan. Such changes may be treated as Minor Changes to the Plan, in accordance with § 385.32(c) where appropriate.

§ 385.34 Changes to the Plan.

(a) The Plan shall be updated to incorporate approved changes to the Plan resulting from:

(1) Approval by the Secretary of the Army of a project to be implemented pursuant to § 385.13;

(2) Authorization of projects by Congress;

(3) Comprehensive Plan Modification Reports approved by Congress; or

(4) Other changes authorized by Congress.

(b) The Corps of Engineers and the South Florida Water Management District shall annually prepare a document for dissemination to the public that describes:

(1) The components of the Plan, including any approved changes to the Plan;

(2) The estimated cost of the Plan, including any approved changes to the Plan;

(3) A water budget for the Plan; and

(4) The water that has been reserved or allocated for the natural system under State law for the Plan.

(c) The Corps of Engineers shall annually provide to the Office of Management and Budget an updated estimate of total cost of the Plan, the costs of individual project components, and an explanation of any changes in these estimates from the initial estimates contained in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999.

Subpart E—Ensuring Protection of the Natural System and Water Availability Consistent With the Goals and Purpose of the Plan

§ 385.35 Achievement of the benefits of the Plan.

(a) *Pre-CERP baseline water availability and quality.* (1) Not later than June 14, 2004 the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of Commerce, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, develop for approval by the Secretary of the Army, the pre-CERP baseline to be used to aid the Corps of Engineers and the South Florida Water Management District in determining if existing legal sources of water will be eliminated or transferred as a result of project implementation as described in § 385.36 and memorialize the pre-CERP baseline in an appropriate document. The Corps of Engineers and the South Florida Water Management District shall consult with the South Florida Ecosystem Restoration Task Force in the development of the pre-CERP baseline.

(i) The pre-CERP baseline may express the quantity, timing, and distribution of water in stage duration curves; exceedance frequency curves; quantities available in average, wet, and dry years; or any other method which is based on the best available science.

(ii) The pre-CERP baseline shall include appropriate documentation that includes a description of the assumptions used to develop the pre-CERP baseline.

(iii) In addition to the development of the pre-CERP baseline, the Corps of Engineers and the South Florida Water Management District shall conduct other analyses that they deem necessary to determine if an existing legal source of water has been eliminated or transferred or if a new source of water is of comparable quality to that which has been eliminated or transferred in accordance with § 385.36.

(2) In accordance with § 385.18, the Corps of Engineers and the South Florida Water Management District shall provide opportunities for the public to review and comment on the pre-CERP baseline.

(3) The pre-CERP baseline shall be developed with the concurrence of the Secretary of the Interior and the Governor. Within 180 days of being provided the pre-CERP baseline, or such shorter period that the Secretary of the Interior and the Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or non-concurrence with the pre-CERP baseline. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency process of this section. A copy of any concurrency or non-concurrency statements shall be made a part of the administrative record and referenced in the final determination of the pre-CERP baseline. Any non-concurrency statement shall specifically detail the reason or reasons for the non-concurrence.

(4) Nothing in this paragraph is intended to, or shall it be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nothing in this section is intended to, nor shall it be interpreted to, prescribe any process of Florida law.

(b) *Identification of water made available and water to be reserved or allocated for the natural system.* (1) Initial modeling showed that most of the water generated by the Plan would go to the natural system in order to attain restoration goals, and the remainder of the water would go for use in the human environment. The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall ensure that Project Implementation Reports identify the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system that is necessary to meet the restoration goals of the Plan. In accordance with the ''Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,'' dated January 9, 2002 pursuant to section 601(h)(2) of WRDA 2000, the South Florida Water Management District or the Florida Department of Environmental Protection shall make sufficient reservations of water for the natural system under State law in accordance with the Project Implementation Report for that project and consistent with the Plan before water made available by a project is permitted for a consumptive use or otherwise made unavailable. In accordance with § 385.31(c), the Corps of Engineers and the South Florida Water Management District shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, determine the total quantity of water that is expected to be generated by implementation of the Plan, including the quantity expected to be generated for the natural system to attain restoration goals as well as the quantity expected to be generated for use in the human environment, and shall periodically update that estimate, as appropriate, based on new information resulting from changed or

unforeseen circumstances, new scientific or technical information, new or updated models, or information developed through the adaptive assessment principles contained in the Plan, or future authorized changes to the Plan integrated into the implementation of the Plan.

(2) Each Project Implementation Report shall take into account the availability of pre-CERP baseline water and previously reserved water as well as the estimated total quantity of water that is necessary for restoration for the natural system and the quantity of water anticipated to be made available from future projects in identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system, determining whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards; and identifying the amount of water for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii)(V) of WRDA 2000.

(3) Section 601(h)(3)(C)(i)(I) of WRDA 2000 requires the regulations of this part to establish a process for development of Project Implementation Reports, Project Cooperation Agreements, and Operating Manuals that ensure that the goals and objectives of the Plan are achieved. Section 601(h)(4)(A)(iii)(IV) of WRDA 2000 provides that Project Implementation Reports shall identify the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system. Section 601(h)(4)(A)(iii)(V) of WRDA 2000 provides that Project Implementation Reports shall identify the amount of water to be reserved or allocated for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii)(IV) and (VI) of WRDA 2000. To implement these provisions and § 385.5, the Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor. The guidance memorandum shall provide a process to be used in the preparation of Project Implementation Reports for identifying the appropriate quantity, timing, and distribution of water dedicated and managed for the natural system; determining the quantity, timing and distribution of water made available for other water-related needs of the region; determining whether improvements in water quality are necessary to ensure that water delivered by the Plan meets applicable water quality standards; and identifying the amount of water for the natural system necessary to implement, under State law, the provisions of section 601(h)(4)(A)(iii) of WRDA 2000.

(i) The guidance memorandum shall generally be based on using a systemwide analysis of the water made available and may express the quantity, timing and distribution of water in stage duration curves; exceedance frequency curves; quantities available in average, wet, and dry years; or any other method which is based on the best available science. The guidance memorandum shall also provide for projects that are hydrologically separate from the rest of the system. The guidance memorandum also shall address procedures for determining whether improvements in water quality are necessary to ensure that water delivered to the natural system meets applicable water quality standards. These procedures shall ensure that any features to improve water quality are implemented in a manner consistent with the cost sharing provisions of WRDA 1996 and WRDA 2000.

(ii) The guidance memorandum shall generally take into account the natural fluctuation of water made available in any given year based on an appropriate period of record; the objective of restoration of the natural system; the need for protection of existing uses transferred to new sources; contingencies for drought protection; the need to identify the additional quantity, timing, and distribution of water made available by a new project component while maintaining a systemwide perspective on the amount of water made available by the Plan; and

the need to determine whether improvements in water quality are necessary to ensure that water delivered by the Plan meets applicable water quality standards.

(iii) Project Implementation Reports approved before December 12, 2003 or before the development of the guidance memorandum may use whatever method that the Corps of Engineers and the non-Federal sponsor deem is reasonable and consistent with the provisions of section 601 of WRDA 2000.

(iv) Nothing in this paragraph is intended to, or shall it be interpreted to, reserve or allocate water or to prescribe the process for reserving or allocating water or for water management under Florida law. Nothing in this section is intended to, nor shall it be interpreted to, prescribe any process of Florida law.

(c) *Procedures in event that the project does not perform as expected.* The Project Implementation Report shall include a plan for operations of the project in the event that the project fails to provide the quantity, timing, or distribution of water described in the Project Implementation Report. Such plan shall take into account the specific authorized purposes of the project and the goals and purposes of the Plan and shall also provide for undertaking management actions in accordance with § 385.31(d).

§ 385.36 Elimination or transfer of existing legal sources of water.

(a) Pursuant to the provisions of section 601(h)(5)(A) of WRDA 2000, Project Implementation Reports shall include analyses to determine if existing legal sources of water are to be eliminated or transferred as a result of project implementation. If implementation of the project shall cause an elimination or transfer of existing legal sources of water, then the Project Implementation Report shall include an implementation plan that ensures that such elimination or transfer shall not occur until a new source of water of comparable quantity and quality is available to replace the water to be lost as a result of implementation of the Plan. The Corps of Engineers and the non-Federal sponsor shall determine if implementation of the project will cause an elimination or transfer of existing legal sources of water by comparing the availability of water with the recommended project with the pre-CERP baseline developed in accordance with § 385.35(a), by using the water quality and other analyses developed in § 385.35(a)(1)(iii), and by using other appropriate information.

(b) The Corps of Engineers and the South Florida Water Management District shall develop a guidance memorandum in accordance with § 385.5 for approval by the Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, that describes the process for determining if existing legal sources of water are to be eliminated or transferred and for determining how and when a new source of water of comparable quantity and quality as that available on the date of enactment of WRDA 2000 is available to replace the water to be lost as a result of implementation of the Plan. The guidance memorandum shall also describe the process for comparing the recommended project with the pre-CERP baseline to determine if existing legal sources of water are to be transferred or eliminated as a result of project implementation. The guidance memorandum shall include a definition for existing legal sources of water for the purposes of determining if existing legal sources of water are to be eliminated or transferred. Existing legal sources of water shall include those for:

(1) An agricultural or urban water supply;

(2) Allocation or entitlement to the Seminole Indian Tribe of Florida under section 7 of the Seminole Indian Land Claims Settlement Act of 1987 (25 U.S.C. 1772e);

(3) The Miccosukee Tribe of Indians of Florida;

(4) Water supply for Everglades National Park; and

(5) Water supply for fish and wildlife.

(c) Until guidance is issued, issues involving existing legal sources of water should be resolved on a case-by-case basis considering all factors that can be identified as relevant to decisions under the savings clause.

§ 385.37 Flood protection.

(a) *General.* In accordance with section 601 of WRDA 2000, flood protection, consistent with restoration, preservation, and protection of the natural system, is a purpose of the Plan.

(b) *Existing flood protection.* Each Project Implementation Report shall include appropriate analyses, and consider the operational conditions included in the pre-CERP baseline developed pursuant to § 385.35(a), to demonstrate that the levels of service for flood protection that:

(1) Were in existence on the date of enactment of section 601 of WRDA 2000; and

(2) Are in accordance with applicable law, will not be reduced by implementation of the project.

(c) *Improved and new flood protection.* The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida Ecosystem while providing for other water-related needs of the region, including water supply and flood protection. As appropriate, the Corps of Engineers and the non-Federal sponsor shall consider opportunities to provide additional flood protection, consistent with restoration of the natural system, and the provisions of section 601(f)(2)(B) of WRDA 2000 and other applicable laws.

§ 385.38 Interim goals.

(a) *Agreement.* (1) The Secretary of the Army, the Secretary of the Interior, and the Governor shall, not later than December 13, 2004, and in consultation with the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, and other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force, execute an Interim Goals Agreement establishing interim goals to facilitate inter-agency planning, monitoring, and assessment so as to achieve the overarching objectives of the Plan and to provide a means by which the restoration success of the Plan may be evaluated, and ultimately reported to Congress in accordance with § 385.40 throughout the implementation process.

(2) After execution of the Interim Goals Agreement, the Department of the Army shall memorialize the agreement in appropriate Corps of Engineers guidance.

(b) *Purpose.* (1) Interim goals are a means by which the restoration success of the Plan may be evaluated at specific points by agency managers, the State, and Congress throughout the overall planning and implementation process. In addition, interim goals will facilitate adaptive management and allow the Corps of Engineers and its non-Federal sponsors opportunities to make adjustments if actual project performance is less than anticipated, including recommending changes to the Plan. Interim goals are not standards or schedules enforceable in court.

(2) The interim goals shall:

(i) Facilitate inter-agency planning, monitoring and assessment;

(ii) Be provided to the independent scientific review panel established in accordance with § 385.22(a);

(iii) Be considered in developing the Master Implementation Sequencing Plan, Project Implementation Reports, and Comprehensive Plan Modification Reports; and

(iv) Be considered in making budgetary decisions concerning implementation of the Plan.

(3) To ensure flexibility in implementing the Plan over the next several decades, and to ensure that interim goals may reflect changed circumstances or new information resulting from adaptive management, the interim goals may be modified, consistent with the processes set forth in paragraph (d) of this section, to reflect new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan.

(4) The Corps of Engineers and the South Florida Water Management District shall sequence and schedule projects as appropriate to achieve the interim goals and the interim targets established pursuant to § 385.39 to the

extent practical given funding, technical, or other constraints.

(5) If the interim goals have not been met or are unlikely to be met, then the Corps of Engineers and the South Florida Water Management District shall determine why the interim goals have not been met or are unlikely to be met and either:

(i) Initiate adaptive management actions pursuant to § 385.31(d) to achieve the interim goals as soon as practical, consistent with the purposes of the Plan and consistent with the interim targets established pursuant to § 385.39; or

(ii) Recommend changes to the interim goals in accordance with paragraph (b)(3) of this section.

(c) *Principles for developing interim goals.* (1) RECOVER, using best available science and information, shall recommend a set of interim goals for implementation of the Plan, consisting of regional hydrologic performance targets, improvements in water quality, and anticipated ecological responses for areas such as, Lake Okeechobee, the Kissimmee River Region, the Water Conservation Areas, the Lower East Coast, the Upper East Coast, the Everglades Agricultural Area, and the Caloosahatchee River, Everglades National Park, Big Cypress National Preserve, Biscayne Bay, Florida Bay, and other estuaries and nearshore areas. These interim goals shall reflect the incremental accomplishment of the expected performance level of the Plan, and will identify improvements in quantity, quality, timing, and distribution of water for the natural system provided by the Plan in five-year increments that begin in 2005, with the goals reflecting the results expected to be achieved by 2010 and for each five-year increment thereafter. The interim goals shall be developed through the use of appropriate models and tools and shall provide a quantitative basis for evaluating the restoration success of the Plan during the period of implementation. In developing the interim goals for the five-year increments, RECOVER shall use the Master Implementation Sequencing Plan as the basis for predicting performance at a given time. RECOVER may recommend additional interim goals in addition to those initially developed and may propose revisions to the initial set of interim goals as new information is gained through adaptive management. Interim goals shall include incremental improvements in the quantity, quality, timing, and distribution of water anticipated to be required to meet long-term hydrological and ecological restoration goals, based on best available science. These goals may be modified, based on best available science and the adaptive assessment principles contained in the Plan, in accordance with paragraph (d) of this section.

(2) In developing its recommendations for interim goals, RECOVER shall consider indicators including, but not limited to:

(i) Hydrologic indicators, including:

(A) The amount of water, in addition to the pre-CERP baseline and assumptions regarding without project conditions, which will be available to the natural system;

(B) Hydroperiod targets in designated sample areas throughout the Everglades;

(C) The changes in the seasonal and annual overland flow volumes in the Everglades that will be available to the natural system;

(D) The frequency of extreme high and low water levels in Lake Okeechobee; and

(E) The frequency of meeting salinity envelopes in estuaries such as the St. Lucie, Caloosahatchee, Biscayne Bay, and Florida Bay and nearshore areas.

(ii) Improvement in water quality; including:

(A) Total phosphorus concentrations in the Everglades; and

(B) Lake Okeechobee phosphorus concentrations.

(iii) Ecological responses, including:

(A) Increases in total spatial extent of restored wetlands;

(B) Improvement in habitat quality; and

(C) Improvement in native plant and animal abundance.

(3) In developing the interim goals based upon water quality and expected ecological responses, the Corps of Engineers, The Department of the Interior,

and the South Florida Water Management District shall take into consideration the extent to which actions undertaken by Federal, State, tribal, and other entities under programs not within the scope of this part may affect achievement of the goals.

(d) *Process for establishing interim goals.* (1) The recommendations of RECOVER shall be provided to the Corps of Engineers, the Department of the Interior, and the South Florida Water Management District. These recommendations shall be provided no later than June 14, 2004. The proposed Interim Goals Agreement shall be developed by the Secretary of the Army, the Secretary of the Interior and the Governor in consultation with the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Environmental Protection Agency, the Department of the Commerce, other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force. In considering the interim goals to be included in the Interim Goals Agreement, the Secretary of the Army, the Secretary of the Interior, and the Governor, shall be provided with, and consider, the technical recommendations of RECOVER and any modifications to those recommendations by the Corps of Engineers, the Department of Interior, or the South Florida Water Management District. The Secretary of the Army shall provide a notice of availability of the proposed agreement to the public in the FEDERAL REGISTER and seek public comments. After considering comments of the public on the proposed agreement, and incorporating any suggestions that are appropriate and consistent with the goals and purposes of the Plan, the Secretary of the Army, the Secretary of the Interior, and the Governor, shall execute the final agreement, and the Secretary of the Army shall provide a notice of availability to the public in the FEDERAL REGISTER by no later than December 13 2004.

(2) In developing its recommendations for interim goals, RECOVER shall use the principles in paragraph (c) of this section.

(3) The Secretary of the Army, the Secretary of the Interior, and the Governor shall review the Interim Goals Agreement at a minimum of every five years after the date of the Interim Goals Agreement, to determine if the interim goals should be revised. Thereafter, the Secretary of the Army, the Secretary of the Interior, and the Governor shall revise the interim goals and execute a new agreement as appropriate. However, the Secretary of the Army, the Secretary of the Interior, and the Governor may review and revise the interim goals whenever appropriate as new information becomes available. Any revisions to the interim goals shall be consistent with the process established in this section.

§ 385.39 Evaluating progress towards other water-related needs of the region provided for in the Plan.

(a) *Purpose.* (1) The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection. Progress towards providing for these other water-related needs shall also be evaluated.

(2) As provided for in paragraph (c) of this section, the Secretary of the Army and the Governor shall establish interim targets for evaluating progress towards other water-related needs of the region provided for in the Plan throughout the implementation process. The interim targets and interim goals shall be consistent with each other.

(3) The Department of the Army shall include these interim targets in appropriate Corps of Engineers guidance.

(4) To ensure flexibility in implementing the Plan over the next several decades, and to ensure that interim targets may reflect changed circumstances or new information resulting from adaptive management, the interim targets may be modified, consistent with the processes set forth in paragraph (c) of this section, to reflect new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the assessment principles contained in the Plan; and future authorized changes to the

Plan integrated into the implementation of the Plan.

(5) The Corps of Engineers and the South Florida Water Management District shall sequence and schedule projects as appropriate to achieve the interim goals and interim targets for other water-related needs of the region provided for in the Plan, to the extent practical given funding, technical, or other constraints.

(6) If the interim targets have not been met or are unlikely to be met, then the Corps of Engineers and the South Florida Water Management District shall determine why the interim targets have not been met or are unlikely to be met and either:

(i) Initiate adaptive management actions pursuant to § 385.31(d) to achieve the interim targets as soon as practicable, consistent with the purposes of the Plan and consistent with the interim goals established pursuant to § 385.38; or

(ii) Recommend changes to the interim targets in accordance with paragraph (a)(4) of this section.

(b) *Principles for developing interim targets.* (1) RECOVER, using best available science and information, shall recommend a set of interim targets for evaluating progress towards other water-related needs of the region provided for in the Plan. These interim targets shall reflect the incremental accomplishment of the expected performance level of the Plan, and will identify improvements in quantity, quality, timing and distribution of water in five-year increments that begin in 2005, with the targets reflecting the results expected to be achieved by 2010 and for each five-year increment thereafter. The interim targets shall be developed through the use of appropriate models and tools and shall provide a quantitative basis for evaluating progress towards other water-related needs of the region provided for in the Plan during the period of implementation. In developing the interim targets for the five-year increments, RECOVER shall use the Master Implementation Sequencing Plan as the basis for predicting the performance at a given time. RECOVER may recommend additional interim targets for implementation of CERP in addition to those initially developed and may propose revisions to the initial set of interim targets as new information is gained through adaptive management.

(2) In developing its recommendations for interim targets, RECOVER shall consider indicators including, but not limited to:

(i) The frequency of water restrictions in the Lower East Coast Service Areas at each time increment;

(ii) The frequency of water restrictions in the Lake Okeechobee Service Areas at each time increment;

(iii) The frequency of meeting saltwater intrusion protection criteria for the Lower East Coast Service Area at each time increment; and

(iv) The frequency of water shortage restrictions on lands covered under the Water Rights Compact Among the Seminole Tribe of Florida, the State of Florida, and the South Florida Water Management District at each time increment.

(c) *Process for establishing interim targets.* (1) The recommendations of RECOVER shall be provided to the Corps of Engineers and the South Florida Water Management District. These recommendations shall be provided no later than June 14, 2004. The proposed interim targets shall be developed by the Secretary of the Army and the Governor, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, and the South Florida Ecosystem Restoration Task Force. In considering the interim targets, the Secretary of the Army and the Governor, shall be provided with, and consider, the technical recommendations of RECOVER and any modifications to those recommendations by the Corps of Engineers or the South Florida Water Management District. The Secretary of the Army shall provide a notice of availability of the proposed interim targets to the public in the FEDERAL REGISTER and seek public comments. After considering comments of the public on the proposed interim targets, and incorporating any suggestions that

are appropriate and consistent with the goals and purposes of the Plan, the Secretary of the Army and the Governor, shall establish the final interim targets, and the Secretary of the Army shall provide a notice of availability to the public in the FEDERAL REGISTER by no later than December 13, 2004, but not prior to the execution of the Interim Goals Agreement pursuant to § 385.38. Interim targets are intended to facilitate inter-agency planning, monitoring, and assessment throughout the implementation process and are not standards or schedules enforceable in court.

(2) In developing its recommendations for interim targets, RECOVER shall use the principles in paragraph (b) of this section.

(3) The Secretary of the Army and the Governor shall review the interim targets at a minimum every five years beginning five years after the establishment of the interim targets to determine if they should be revised and to determine what those revisions should be. The public shall also be provided with an opportunity to comment on the proposed revisions. The Secretary of the Army and the Governor may also revise the interim targets whenever appropriate as new information becomes available. Any revisions to the interim targets shall be established consistent with the process described in this section.

§ 385.40 Reports to Congress.

(a) Beginning on October 1, 2005 and periodically thereafter until October 1, 2036, the Secretary of the Army and the Secretary of the Interior shall jointly submit to Congress a report on the implementation of the Plan as required by section 601(l) of WRDA 2000. Such reports shall be completed not less often than every five years.

(b) This report shall be prepared in consultation with the Environmental Protection Agency, the Department of Commerce, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, the Florida Department of Environmental Protection, the South Florida Water Management District, and other Federal, State, and local agencies and the South Florida Ecosystem Restoration Task Force.

(c) Such reports shall include a description of planning, design, and construction work completed, the amount of funds expended during the period covered by the report, including a detailed analysis of the funds expended for adaptive management, and the work anticipated over the next five-year period and updated estimates of total cost of the Plan and individual component costs and an explanation of any changes from the initial estimates contained in the ''Final Integrated Feasibility Report and Programmatic Environmental Impact Statement,'' dated April 1, 1999.

(d) In addition, each report shall include:

(1) The determination of each Secretary, and the Administrator of the Environmental Protection Agency, concerning the benefits to the natural system and the human environment achieved as of the date of the report and whether the completed projects of the Plan are being operated in a manner that is consistent with the requirements of section 601(h) of WRDA 2000;

(2) Progress towards the interim goals established in accordance with § 385.38 for assessing progress towards achieving the benefits to the natural system;

(3) Progress towards interim targets for other water-related needs of the region provided for in the Plan established pursuant § 385.39 for assessing progress towards achieving the benefits to the human environment; and

(4) A review of the activities performed by the Secretary pursuant to section 601(k) of WRDA 2000 and § 385.18 and § 385.19 as they relate to socially and economically disadvantaged individuals and individuals with limited English proficiency.

(e) The discussion on interim goals in the periodic reports shall include:

(1) A discussion of the performance that was projected to be achieved in the last periodic report to Congress;

(2) A discussion of the steps taken to achieve the interim goals since the last periodic Report to Congress and the actual performance of the Plan during this period;

(3) If performance did not meet the interim goals, a discussion of the reasons for such shortfall;

(4) Recommendations for improving performance; and

(5) The interim goals to be achieved in the next five years, including any revisions to the interim goals, reflecting the work to be accomplished during the next five years, along with a discussion of steps to be undertaken to achieve the interim goals.

(f) The discussion on interim targets in the periodic reports shall include:

(1) A discussion of the expected and actual performance of the Plan in achieving interim targets since the last periodic Report to Congress, including the reasons for any deviations from expected performance; and

(2) A discussion of the interim targets expected to be achieved during the next five years, including specific activities to achieve them and any recommendations for improving performance.

(g) In preparing the report to Congress required pursuant to this section, the Corps of Engineers and the Department of the Interior shall provide an opportunity for public review and comment, in accordance with § 385.18.

APPENDIX A TO PART 385—ILLUSTRATIONS TO PART 385

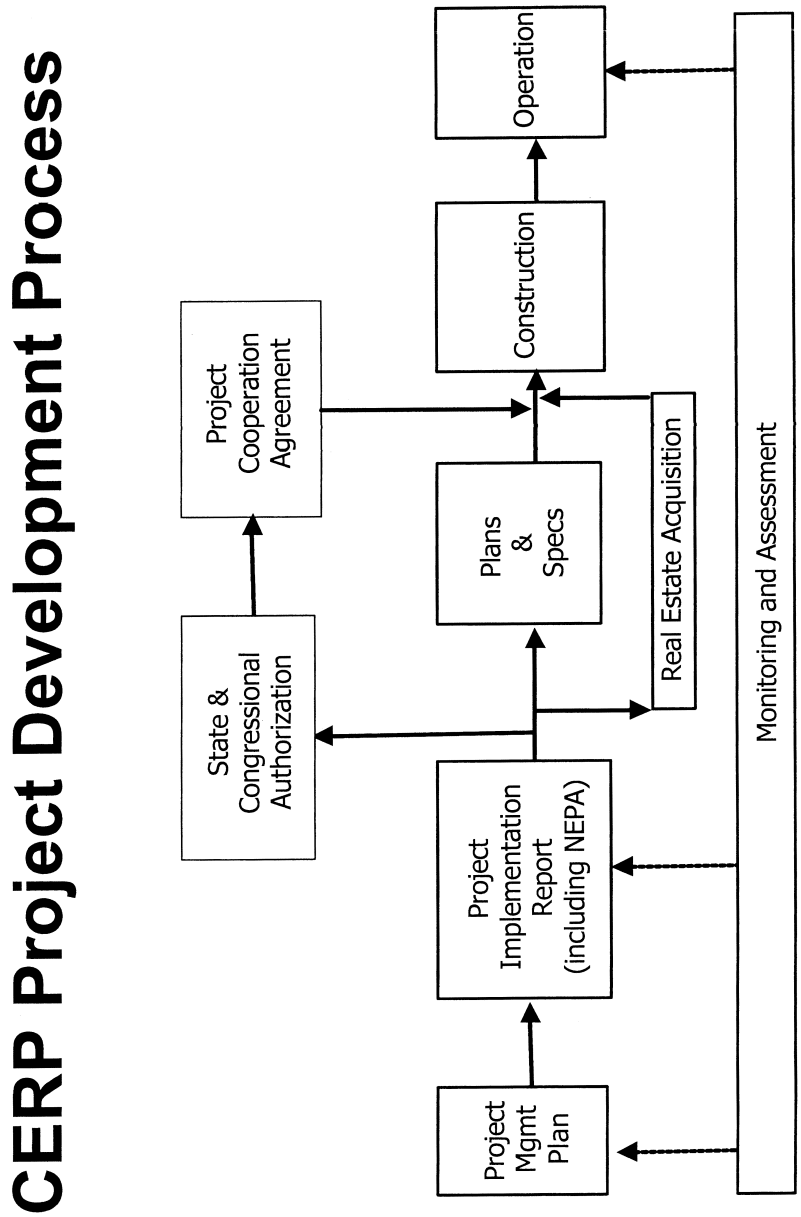

Figure 1

Appendix A

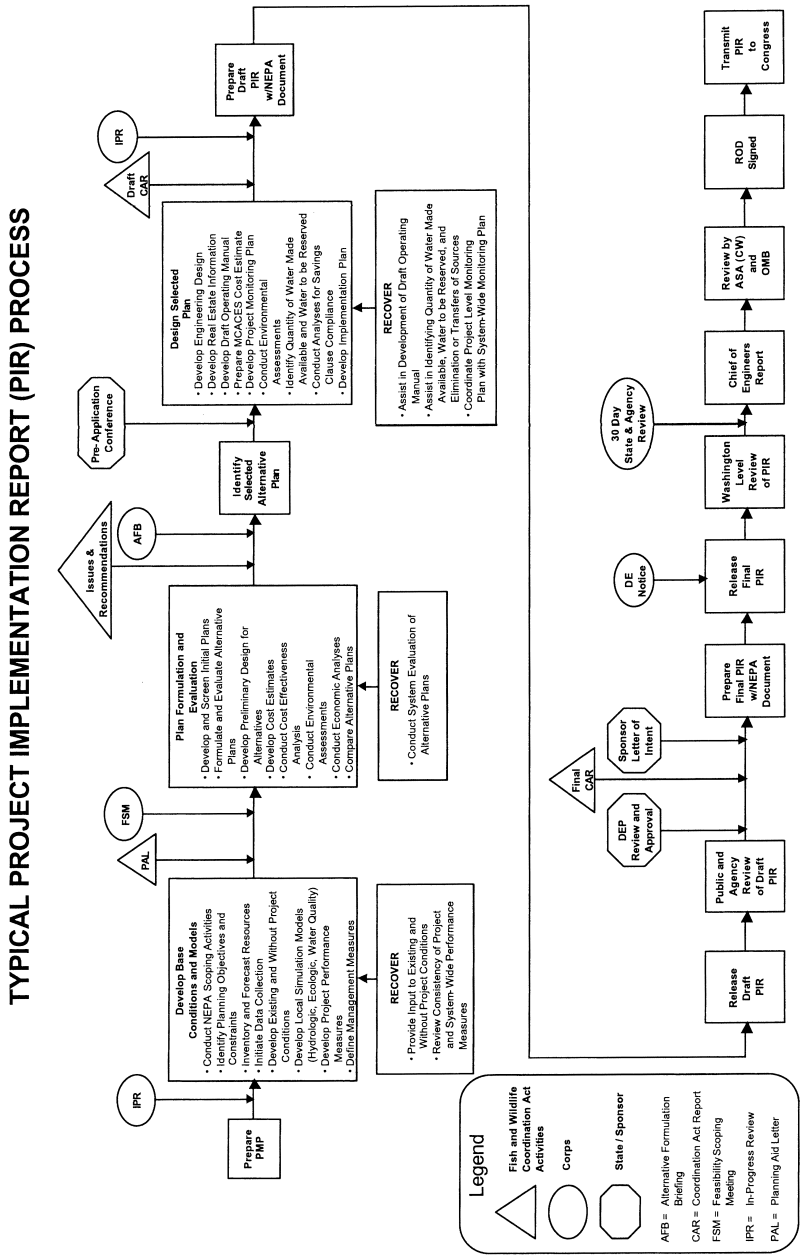

Figure 2

Appendix A