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PART II



DEPARTMENT OF DEFENSE

Corps of Engineers,
Department of the Army

■

CONTINUING
AUTHORITIES PROGRAM;
PUBLIC INVOLVEMENT;
A-95 CLEARINGHOUSE
COORDINATION

Proposed Policies and Procedures

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

[33 CFR Part 263]

[ER 1105-2-81]

CONTINUING AUTHORITIES PROGRAM

Proposed Policies and Procedures

Notice is hereby given that the Secretary of the Army, acting through the Chief of Engineers, is proposing a regulation prescribing policies and procedures to implement 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 resources improvements without specific Congressional authorization. These authorities have been established by Congress to enable the Chief of Engineers to respond on a timely basis to small-scale problems involving flooding, obstructions to navigation, and beach erosion.

Prior to adoption of the proposed regulation, consideration will be given to any comments submitted to the Chief of Engineers, Office of the Chief of Engineers, ATTN: DAEN-CWP-A, Washington, D.C. 20314, on or before February 24, 1975.

Until the final regulation is published in the FEDERAL REGISTER, elements of the Office of the Chief of Engineers and field operating agencies having Civil Works responsibilities will utilize the policies and procedures contained in the proposed regulation to the fullest extent practicable. The regulation will become fully effective when published in final form in the FEDERAL REGISTER.

Dated: December 24, 1974.

J. W. MORRIS,
Major General, USA,
Director of Civil Works.

PART 263—CONTINUING AUTHORITIES PROGRAM

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AUTHORITY: See § 23.13.

§ 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 re-

sources improvements without specific Congressional authorization.

§ 263.11 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 263.12 References.

- (a) ER 11-2-240, Civil Works Activities, Construction and Design.
(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.
(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 Impact Statements, (33 CFR 209-410).
(h) ER 1105-2-xxx, Public Involvement: General Policies. (33 CFR 380) (Proposed)
(i) ER 1105-2-xxx, A-95 Clearing-house Coordination, (33 CFR 384) (Proposed).
(j) ER 1110-2-1150, Post-Authorization Studies.
(k) ER 1165-2-18, Reimbursement for Advance Non-Federal Participation in Civil Works Activities.

§ 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 Appendix A:

- (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 stream-bank 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. 4261).

§ 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 para. 4. 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 under 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 post authorization 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 Federal adoption of non-Federal responsibilities for operation and maintenance. Such adoption would require authorization by Congress.

§ 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 local cooperation requirements. 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 (App A), 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) *Federal costs.* First costs include all Corps of Engineers' costs for investigations, planning, design and construction (including costs of supervision and administration). Expenditures of other Federal agencies under their own authorities are not to be included under

the Corps cost limitation, but should be shown as part of the total cost of the project. 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 used for purchase of such lands, easements or rights-of-way, must be reimbursed.

(2) *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 accomplished by a feasibility study which will determine the best solution to selected water resources problems and needs and will determine the appropriate Federal participation in implementing the selected plan. Planning will be conducted in accordance with the Water Resources Council *Principles and Standards for Water and Related Land Resources (P&S)*, 38 FR 24778, 10 September 1973. The three stages of planning under this Program are:

(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. 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 § 263.15(c) (2).

(2) *Stage 2—plan formulation.* The Division Engineer is delegated the authority to direct the reporting officer to proceed further with the feasibility study, subject to availability of funds from OCE. The criteria for Division Engineer approval for continuing a feasibility study past the Recon stage are: there is a Federal interest in the problem identified in the Recon, that there exist solutions for which Federal participation and Corps implementation are justified under one of the Program authorities, and there are existing entities which are capable and willing to satisfy the typical local cooperation requirements for such solutions. The continuation of the feasibility study should then 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 substantial public opposition, or in the case of obtaining local assurances, that a reasonable length

of time has passed without adequate assurances from local interests. (See also § 263.17(f)).

(3) *Stage 3—detailed project design.* Upon completion of plan formulation, the third stage of the planning process, that of detailed project design, should be completed. This stage corresponds to Phase II AE&D for projects specifically authorized by Congress. Continuation of the feasibility study from plan formulation to detailed project design will be at the discretion of the reporting officer, unless otherwise provided by implementing instructions issued by the Division Engineer in accordance with delegated responsibilities for intensive management (§ 263.16(b)). Recommended projects will be approved by the Chief of Engineers on the basis of a Detailed Project Report (DPR) at the completion of the feasibility study. Division Engineers (with the exception of Pacific Ocean and New England) are responsible for conducting a thorough review of the DPR prior to its transmittal to OCE and are delegated the authority to approve the detailed project design of recommended plans.

(d) *Public involvement.* General policy and guidance on public involvement is contained in 33 CFR 380. 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 somewhat 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.

(e) *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 33 CFR 384. For section 205, 107, 103 and 111 authorities. Division Engineers will obtain the views of Governors of affected States, or their designated representative, and regional offices of appropriate Federal agencies prior to submittal of the Detailed Project Report to OCE. In the case of section 208, 14, and 3 authorities such States and agencies may be notified by the Division Engineer of his recommendations concurrently with submittal of the DPR to OCE. The Chief of Engineers will not normally coordinate reports submitted under this Program with Governors or Federal department heads.

(f) *Project approval.* The Chief of Engineers is the approving authority for the Secretary of the Army for projects under this Program. Prior to approving a project for construction by approval of the DPR, requirements for filing an EIS with CEQ must be satisfied (33 CFR 209.410), satisfactory assurances for local

cooperation must be obtained from non-Federal interests and views received from affected States and regional offices of Federal agencies must be considered.

(g) *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 Detail Project Report (DPR). Procedures for constructing approved projects, including the preparation of plans and specifications are generally the same as employed for Congressionally authorized projects.

(h) *Hold and save provision.* As provided by Sec 9, PL 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.

§ 263.16 Program management responsibilities.

(a) *Office, Chief of Engineers.* Two OCE elements will have primary responsibility for program management: DAEN-CWP (Section 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 § 263.16(b) below, evaluating the performance of the Program, and on a semi-annual basis, submitting an evaluation report to the Director of Civil Works. Such reports will be coordinated by DAEN-CWP-A and will address, as a minimum, the accomplishment of completion-time objectives set forth in § 263.18 and the utilization of Program funds.

(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 regulation. Division Engineers are to specifically designate an individual, or individuals, within the Division office, to manage and coordinate activities under the Continuing Authorities Program.

§ 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-M) WASH DC 20314, depending on the study authority, as provided for in § 263.16(a).

(a) *Initiation of reconnaissance stage of the feasibility study.* As outlined in § 263.15(c), a short Recon stage is designed to provide the Division Engineer with sufficient justification for authorizing a continuation of the feasibility study. Reporting officers are to notify the Division Engineer and either DAEN-CWP-A or DAEN-CWO-M by letter or teletype 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 funds in amounts not to exceed \$5,000. Exceptions to this limitation will require approval from DAEN-CWP or DAEN-CWO, depending on the study authority.

(b) *Approval for continuation of feasibility study.* The Division Engineer is the approving authority for continuation of a feasibility study, and as such, will provide reporting officers with appropriate guidance on submission of a Recon letter report in accordance with the general policy stated in § 263.15(c). The results of a Recon may be released by reporting officers to interested parties after action has been taken by the Division Engineer on the Recon Report. In the case of emergencies under Section 14 or 3 Authorities, the Division Engineer may approve a Recon Report for immediate transmittal to OCE for approval and funding of recommended work. In such cases, the Chief of Engineers may approve exceptions to the requirements stated in §§ 263.17(e)(1)-263.17(e)(5) as deemed advisable in the public interest.

(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-M 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 Recon stage). Requests for reimbursement for Recon expenditures when further study has not been approved will be made in a similar manner. (Note § 263.20 concerning annual budgetary submissions).

(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.

(e) *Completion of feasibility study.* Studies will be conducted in accordance with the policies given in § 263.15. Division Engineers may request guidance from OCE, or schedule a Plan Formulation Review Conference with OCE, as they deem appropriate. There are no reporting requirements to OCE imposed by this regulation during the conduct of the feasibility study.

(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 33 CFR 209.405. In certain instances, particularly with regard to studies conducted under Section 208, 3, or 14 Authorities, 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 Division Engineers for studies conducted under Section 208, 14 and 3 Authorities, from DAEN-CWP-E, C or W for studies under Section 205, 107 and 103 Authorities or from DAEN-CWO-M for studies under Section 111 Authority.

(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, particularly with regard to the assessment of impacts of alternative plans, evaluation of alternative plans, criteria for plan selection and display of the results of the assessment and evaluation. 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 33 CFR 209.410, including special provisions for studies conducted under Section 14 Authority.

(4) *Assurances of local cooperation.* In addition to involvement of local interests throughout the planning process, a letter of assurances will be requested for specific items of local cooperation during the Detailed Project Design Stage. The letter of assurances must be received from the non-Federal entities which will be responsible for providing the local cooperation and will be transmitted with the DPR to the Division Engineer and OCE.

(5) *Public notice on completion of feasibility study.* Upon submittal of a Detailed Project Report to OCE, as discussed in §§ 263.17(f) and 263.19, the Division Engineer will release a public notice informing the public of the proposed action. The notice need not invite comments but will include the address of both the District and Division Engineers 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. (See § 263.17(f)(1)).

(f) *Submittal of feasibility study report 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.

(2) If the feasibility study results in a DPR, ten (10) copies of the report and related documentation 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 § 263.17(e) 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.

(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 DPR by the Chief of Engineers, provided a satisfactory letter of assurances 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 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.* As indicated in § 263.16(a), designated OCE elements are responsible for staffing and coordination of the DPR. Maximum reliance will be placed on the review of the DPR by the Division Engineer. Comments will be solicited from DAEN-CWP, DAEN-CWR, DAEN-CWE, DAEN-GC, and DAEN-REA, only as required for approval of as appropriate to the recommended project. In all cases, an information copy of the DPR will be forwarded to DAEN-CW5-B for information upon receipt from the Division Engineer. Review of DPR's by the Board of Engineers for Rivers and Harbors (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. Approval of the DPR normally will be accomplished by the Director of Civil Works for the Chief of Engineers in accordance with Sec. 263.15(f).

(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.* Immediately following receipt of DPR approval from OCE, reporting officers will 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 spec-

ifications for the first construction contract will be completed. (See also § 263.20 concerning inclusion of these requests in budget submissions).

(k) *Issuance of construction work allowance.* Prior to issuance of a work allowance by OCE for construction funds, a signed written agreement for local cooperation must be obtained and approved in accordance with ER 405-2-680. Upon notification that this requirement has been satisfied, a work allowance will be issued by DAEN-CWP or DAEN-CWO depending on the Program authority, based on availability of funds, approved Program budgets, and approval of the DPR (§ 263.15(g)).

(l) *Completion of project construction (RCS DAEN-CWB-16).* There are no special requirements for this program during project construction; policies and procedures for projects constructed under specific Congressional authority, with the exception of budgetary submissions and funding matters are applicable to projects constructed under this Pro-

gram. At the completion of project construction, reporting officers will notify DAEN-CWO-M or 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.

§ 263.18 Program completion-time objectives.

Following are target (maximum) completion time of objectives which should be used, to the extent feasible without sacrificing high standards of planning, design and construction, in scheduling work and programming funds under the Continuing Authorities Program. Shortening of these objectives is encouraged when appropriate. 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 (Months)		
	205, 107, 103, and 111	208, 14, and 3	Emergency ¹ 14 and 3
(a) Completion of recon stage of feasibility study and submission of funding request or negative report to OCE.....	2	1	1
(b) Completion of remainder of feasibility study by reporting officer and preparation of DPR.....	16	6	NA
(c) Review of DPR by Division Engineer (including provisions of par. (e)).....	2	1	.5
(d) Review of DPR by OCE.....	2	1	.5
(e) Completion of project construction (including plans and specifications) after approval of DPR.....	18	12	3
(f) Total completion-time objective.....	40	21	5

¹ See § 263.17(b).

§ 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, Sec. 263.17(b)). The report should be divided into two parts to reflect these two purposes, the first part dealing with plan formulation, ending in the selection of a plan and subsequent sections in accordance with ER 1105-2-402 and ER 1105-2-403, and the second part dealing with detailed project design of the plan, or elements of the selected plan, recommended for implementation as a Federal project by the Corps of Engineers. The second part 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.

(b) It is anticipated that reports submitted for projects under Section 208 and 3 Authorities will be less extensive than reports submitted under 205, 107, 103 and 111 Authorities, and that reports submitted for projects under Section 14 Authority will often be further abbreviated due to the urgency of the situation. 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 study reflected in the detailed project design portion of the report must be sufficient to proceed directly to plans and specifications. In the event that the need arises for feature design memoranda on selected aspects of the project, such requirements should be identified in the letter of transmittal accompanying the DPR when submitted to OCE.

§ 263.20 Program funding.

(a) *Program budget.* Due to the delegated authority for initiation of Recon studies, the objective of the Program to proceed directly from a Recon to complete a detailed feasibility study, and the short completion-time objectives of feasibility studies, Program budget submissions from field operating agencies will not require listings of specific studies. 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.

(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 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-M, 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 above OCE elements will further be notified by letter of all transfers made under the discretionary authority provided in ER 11-2-240.

APPENDIX A

PROJECT PURPOSE POLICY

Appendix A is provided as a supplement to the basic regulation and is organized in nine parts, each of which pertains to policies and legislative interpretation relevant to a specific project purpose for the Continuing Authorities Program. At this time, only Parts One, Two, and Three are required; the

other parts are reserved for future use. General policies for all project purposes, generally applicable to this and other Corps planning programs, are contained in the other Corps regulations.

PART ONE-----	Flood control.
PART TWO-----	Navigation.
PART THREE-----	Hurricane and shore protection.
PART FOUR-----	Water supply (reserved).
PART FIVE-----	Water quality (reserved).
PART SIX-----	Recreation, fish and wildlife (reserved).
PART SEVEN-----	Hydroelectric power (reserved).
PART EIGHT-----	Wastewater collection and treatment (reserved).
PART NINE-----	Other project purposes (reserved).

PART ONE—FLOOD CONTROL POLICY

1. *Small flood control project authority.* (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, and as further amended by Section 61 of the Water Resources Development Act approved 7 March 1974, 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 \$1,000,000 shall be allotted under this section for a project at any single locality, except that not more than \$2,000,000 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. *Policy on non-Federal responsibilities for dam and reservoir projects.* 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.

2. *Authority for snagging and clearing for flood control.* 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 7 March 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.

3. *Authority for emergency streambank and shoreline protection of public works and non-profit public services.* a. *Legislative authority.* Section 14 of the Flood Control Act approved 24 July 1946, as amended by Section 27 of the Water Resources Development Act approved 7 March 1974, states:

"The Secretary of the Army is authorized to allot from any appropriations heretofore or hereafter 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.* (1) Work under the Section 14 authority shall serve to prevent flood damages to endangered highways, highway bridge approaches, public works, and nonprofit public facilities by the construction or repair of existing emergency streambank and shoreline protection works. Eligible highways consist of major highway systems of national importance, and principal highways, streets, and roads of special and 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.

(2) 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.

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 government, 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 shorelines are not eligible for protection.

PART TWO—NAVIGATION POLICY

1. *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 and by section 112 of the River and Harbor Act of 1970, states as follows:

(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 \$1,000,000 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 applying 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, Public Law 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.

2. *Authority for snagging and clearing for navigation.* 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, 1946, 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, the following work is also ineligible under this authority:

(a) *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.

(b) *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.

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

PART THREE—HURRICANE AND SHORE PROTECTION POLICY

1. *Small beach erosion control project authority.* 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 Public Law 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. *Cost sharing.* The provision of ER 1120-2-110 are applicable.

2. *Authority for mitigation of shore damage attributable to navigation works.* a. *Legislative authority.* Section 111 of the River and Harbor Act of 1968 (PL 90-483, approved 13 August 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 of 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:

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

(b) 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.

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

(d) 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,

(a) 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

(b) 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

(c) 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 para 6c(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

PROPOSED RULES

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:

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

(b) Analysis based on sound engineering and economic principles clearly demonstrates the feasibility of the proposed work.

h. *Cost Sharing.* (1) *Construction.* (a) 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.

(b) 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.

(c) 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.* (a) If the initial work is confined to mitigation under Section 111,

all maintenance costs are 100 percent Federal.

(b) 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.

(c) 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.

1. *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 not 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 (para 6a(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 B.—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 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 Cong., 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	1,000,000	30,000,000
			2,000,000	
(2) Authority for snagging and clearing for flood control				
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 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

Section/Law	Date	Public Law No.	Federal cost limitation per project	Annual program limit
(4) Small navigation project authority				
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
(5) Authority for snagging and clearing for navigation				
Sec. 3 of 1945 R. & H. Act.....	Mar. 2, 1945	79-14	None	300,000
(6) Small beach erosion control project authority				
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 of 1968 R. & H. Act.....	Aug. 13, 1968	90-483	\$ 1,000,000	None

¹ Project cost may go to \$2 million 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.

[FR Doc.75-474 Filed 1-7-75;8:45 am]

**[33 CFR Part 380]
 PUBLIC INVOLVEMENT—GENERAL
 POLICIES**

Proposed Policies and Procedures

Notice is hereby given that the Secretary of the Army, acting through the Chief of Engineers, is proposing a regulation to provide general policies for public involvement in Corps of Engineers planning activities. Several additional regulations will be issued at a later date to provide more detailed procedures to implement the general policies and guidelines contained in this regulation. An existing regulation on the subject of public meetings may be found in 33 CFR 209.405.

Prior to adoption of the proposed regulation, consideration will be given to any comments submitted to the Chief of Engineers, Office of the Chief of Engineers, ATTN: DAEN-CWP-A, Washington, D.C. 20314, on or before February 24, 1975.

Until the final regulation is published in the FEDERAL REGISTER, elements of the Office of the Chief of Engineers and field operating agencies having Civil Works responsibilities will utilize this proposed regulation as interim guidance on public involvement policy.

Dated: December 24, 1974.

**J. W. MORRIS,
 Major General, USA,
 Director of Civil Works.**

Sec. 380.10	Purpose.
380.11	Applicability.
380.12	References.
380.13	Definition.
380.14	Basic authorities.
380.15	Policy and objective of public involvement.
380.16	Public involvement programs.
380.17	Documentation of public involvement.
380.18	Public involvement and agency coordination regulations.
380.19	Responsibilities.

AUTHORITY: Water Resources Council, Principles and Standards for Planning Water and Related Land Resources, 38 FR 24778-24869, 10 September 1973.

§ 380.10 Purpose.

This regulation provides general policies for public involvement in Civil Works planning programs.

§ 380.11 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 380.12 References.

(a) Section 1, Public Law 534, 78th Congress, Flood Control Act of 1944 (58 Stat. 887), December 22, 1944.

(b) Section 1, Public Law 18, 79th Congress, River and Harbor Act of 1945 (59 Stat. 10), March 2, 1945.

(c) Section 2, Public Law 89-80, Water Resources Planning Act (79 Stat. 244), July 22, 1965.

(d) Section 101(b), Public Law 91-190, National Environmental Policy Act of 1969 (83 Stat. 852), January 1, 1970.

(e) Water Resources Council, Principles and Standards for Planning Water and Related Land Resources, 38 FR 24778-24869, 10 September 1973.

(f) AR 340-17.

§ 380.13 Definition.

"Public" is defined as any affected or interested non-Corps of Engineers entity. This includes other Federal, regional, state, and local government entities and officials; public and private organizations; and individuals.

§ 380.14 Basic authorities.

(a) In the referenced authorities, both the Congress and the Water Resources Council have stressed the importance of broad public involvement in Federal water resource planning. The Flood Control Act of 1944 and the River and Har-

bor Act of 1945 directed the Corps of Engineers to provide to affected States information developed during the course of planning investigations and to consult with the States throughout such studies. In the Water Resources Planning Act of 1965, the Congress encouraged utilization and development of water and related land resources on a coordinated basis by Federal, State and local interests, and established the Water Resources Council as the responsible Federal agency to assist such coordination at the Federal level. More recent legislative and administrative direction on public involvement is embodied in the National Environmental Policy Act of 1969 and the Water Resources Council Principles and Standards. These authorities require Federal planning procedures to be more responsive to increased demands of the public to become more informed and actively involved in water resources management planning and decisions. In essence, these more recent public involvement policies and requirements complement previously established policies and requirements for intergovernmental coordination.

(b) The provisions of 5 U.S.C. 552, commonly referred to as the "Freedom of Information Act", are implemented for the Department of the Army by AR 340-17. Pending issuance of further clarifying instructions by OCE to 5 U.S.C. 552, reporting and reviewing officers are to utilize the guidance provided in the Army Regulation. Questions concerning this Army Regulation should be referred to HQDA (DAEN-GCK) WASH DC 20314.

§ 380.15 Policy and objective of public involvement.

(a) *Policy.* In consonance with the intent of Congress, it is the policy of the Chief of Engineers that the Civil Works program be conducted in an atmosphere of public understanding, trust and mutual cooperation.

(b) *Objective.* The objective of public involvement is to actively involve the public in water resources studies in order to insure that these studies respond to public needs and preferences to the maximum extent possible within the bounds of local, state and federal programs, responsibilities and authorities. To accomplish this objective, the Corps of Engineers in its planning programs will:

(1) Open and maintain channels of communication with the public,

(2) Promote public understanding of federal, state, regional, and local responsibilities, authorities and procedures in conducting water resources planning studies and implementing water resources programs,

(3) Present information which will assist the public in defining its water resources problems, needs, and objectives,

(4) Solicit the public's comments, views and perceptions of problems, needs, alternative solutions and related impacts, and

any recommendation for Federal action, and

(5) Give full consideration to public needs and preferences in the planning process.

(c) *Accomplishment of objective.* The accomplishment of the objective of public involvement is the recognition by the public that study conclusions and selected implementation plans of reporting and reviewing officers adequately considered public views and preferences. The test of public acceptance and other evaluation criteria used to select a plan will be discussed in the 1105-2-200 series of regulations.

§ 380.16 Public involvement programs.

If Corps planning is to be responsive to public needs and preferences, a continuous dialogue between the Corps and the public is required during the planning process. The means to establish this dialogue must be identified early in the planning process, formalized as a specific public involvement program, and implemented by the reporting officer in each planning study. Further explanation of such programs will be included in other 1105-2-800 series regulations as discussed in § 380.18 below. The task of achieving the public involvement objective is not easy. A considerable effort to elicit public views is required, as well as integration of diverse public inputs in the planning and decision-making process. There is no single best approach to achieving the Corps public involvement objective. All affected Corps elements should be committed to ongoing training, monitoring and evaluation in order to develop and employ techniques which will achieve the public involvement objective.

§ 380.17 Documentation of public involvement.

Public involvement programs developed by reporting officers to meet the specific needs of a planning study will be described in the Plan of Study, or other first stage planning document. A summary of public involvement program implementation, including a discussion of how the results of such programs influenced the study conclusions and selected plans, will be incorporated in subsequent planning reports and statements of findings.

§ 380.18 Public involvement and agency coordination regulations.

Other regulations will be developed in the 1105-2-800 series to further refine and implement the policies and objective prescribed in this regulation. These regulations will address the following areas:

- (a) Coordination established by legislative and executive authorities, and interagency agreements,
- (b) Requirements and suggested approaches for developing public involvement programs,
- (c) Policies and procedures for public meetings and workshops; and
- (d) Standards for public information brochures, public opinion surveys and public notices.

Several Engineer Pamphlets will be also developed to provide field planners with related information and case studies on conducting effective public involvement programs, with emphasis on communication skills.

§ 380.19 Responsibilities.

Public involvement programs for planning studies will be the responsibility of the reporting officer. These programs should be developed, conducted and evaluated jointly by personnel from planning and public affairs elements.

[FR Doc.75-475 Filed 1-7-75;8:45 am]

[33 CFR Part 384]

A-95 CLEARINGHOUSE COORDINATION

Proposed Policies and Procedures

Notice is hereby given that the Secretary of the Army, acting through the Chief of Engineers, is proposing a regulation prescribing the procedures to implement Office of Management and Budget (OMB) Circular A-95 (Revised), dated 13 November 1973. This regulation is one of several to be issued dealing with public involvement and coordination in Corps of Engineers Civil Works planning studies.

Prior to adoption of the proposed regulation, consideration will be given to any comments submitted to the Chief of Engineers, Office of the Chief of Engineers, ATTN: DAEN-CWP-A, Washington, D.C. 20314, on or before February 24, 1975.

Until the final regulation is published in the FEDERAL REGISTER, elements of the Office of the Chief of Engineers and field operating agencies having Civil Works responsibilities will utilize this proposed regulation as interim guidance on A-95 Clearinghouse Coordination.

Dated: December 24, 1974.

J. W. MORRIS,
Major General, USA,
Director of Civil Works.

Sec.	
384.10	Purpose.
384.11	Applicability.
384.12	References.
384.13	General.
384.14	Continuing authority studies and reports.
384.15	Other civil works planning studies and reports.
384.16	Environmental impact statements (EIS).
384.17	A-95 Liaison officer.
384.18	Directory of A-95 clearinghouses.

AUTHORITY: Office of Management and Budget Circular A-95 (revised), dated 13 November 1973 (Part II, FR Col. 38, No. 228, November 28, 1973).

§ 384.10 Purpose.

This regulation provides guidelines for coordination of investigations and reports with clearinghouses pursuant to the requirements of the Office of Management and Budget (OMB) Circular No. A-95.

§ 384.11 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities.

§ 384.12 References.

(a) OMB Circular No. A-95 (Revised), 13 November 1973 (FEDERAL REGISTER, Vol. 38, Number 228, 28 November 1973).

(b) DA Pamphlet No. 210-4.

(c) ER 1105-2-XX, "Continuing Authorities Program" (33 CFR Part 263 proposed).

(d) ER 1105-2-507, "Preparation and Coordination of Environmental Impact Statements" (33 CFR 209.410).

(e) ER 1165-2-22, "Federal Regional Council Coordination."

§ 384.13 General.

A-95 clearinghouses are comprehensive planning agencies, and as such, will probably have done land use, transportation, water and sewer, air and water pollution, natural resources and other developmental plans and studies. Thus, they represent a prime resource for planning intelligence in a study area, and their involvement in Corps planning studies from the very beginning could possibly serve to eliminate duplication of effort and could provide valuable leads as to local sources of data and area plans. Inasmuch as most clearinghouses are COG's (Councils of Governments), they provide a direct link to local governments in the area and can assist the reporting officer with intergovernmental contacts.

§ 384.14 Continuing authority studies and reports.

(a) Attachment D of Circular No. A-95 lists, by reference to the Catalog of Federal Domestic Assistance numbers and titles, the programs under which requests for assistance are subject to the requirements of the Project Notification and Review System (Part I of A-95). The following Corps of Engineers programs under special continuing authorities are included:

- (1) Small beach erosion control projects (33 U.S.C. 426g).
- (2) Small flood control projects (33 U.S.C. 701s).
- (3) Small navigation projects (33 U.S.C. 577).
- (4) Snagging and clearing for flood control (33 U.S.C. 701g).

(b) Certain specialized actions can be provided by the Corps under the above four special continuing authorities to states or their political subdivisions that are able to furnish evidence of legal authorization, financial ability, and necessary local participation. These entities make letter requests to the appropriate division or district engineer regarding problems and the possibility of consideration under the existing authorities. The sponsor will concurrently furnish a copy of the request to the appropriate State and areawide planning and development clearinghouses. If the Corps receives an expression of specific clearinghouse interest in the request within 30 days after submission, appropriate coordination between the Corps, the clearinghouse and the sponsor should be established by the Corps during the feasibility study. Otherwise, coordination with clearinghouses will follow the same procedures established for coordination

with the states and other concerned political subdivisions. Program guidance for these authorities is contained in 33 CFR Part 263.

(c) A copy of any notification of Corps action to the sponsor of a request will also be furnished to interested clearinghouses by the Corps.

§ 384.15 Other civil works planning studies and reports.

(a) The provisions of Parts II and IV of OMB Circular No. A-95 will not supersede other required and established procedures for communication and coordination between the Corps of Engineers and states, local interests and individuals. In the interest of sound, efficient planning and effective coordination, notices of study initiations, notices of public meetings, notices of report completion, reports and related documents will be furnished the appropriate clearinghouses. In addition, division and district engineers, or their designated representatives will be the contact with the State and areawide clearinghouses and will explore with them other general arrangements for coordination and review.

(b) Final reports will include the review comments of A-95 clearinghouses

together with discussion of the consideration given the comments in reaching conclusions. Any departures from state or areawide plans as identified by the clearinghouse comments should be justified in this discussion. If no comments are received from the clearinghouses by the end of the review period, it should be so noted and report processing should continue in accordance with prescribed procedures.

§ 384.16 Environmental impact statements (EIS).

The EIS, submitted to the Council on Environmental Quality (CEQ) pursuant to section 102(2)(C) of the National Environmental Policy Act, requires the views and comments of those State and local agencies authorized to develop and enforce environmental quality standards. Guidelines published by the CEQ designate the clearinghouses as an appropriate channel through which to secure the required State and local environmental agency views and comments. Letters transmitting the EIS to the Governor or his designated representatives for review and comment will request that the views and comments of the State clearinghouse be ascertained in accord-

ance with OMB Circular No. A-95, if the state clearinghouse is not also the governor's designated representative. Environmental impact statements for projects under the special continuing authority programs listed in paragraph 4 will be submitted to appropriate clearinghouses for review and comment as well as to the Governor or his representative. Other guidance on coordination of the EIS is contained in ER 1105-2-507 (33 CFR 209.410).

§ 384.17 A-95 liaison officer.

The Corps regional representatives to the Federal regional councils, as designated by ER 1165-2-22, will also serve as A-95 Liaison Officers to the appropriate council. The liaison officers will be the central contact point with the Council on A-95 matters as they affect the Corps civil works mission in the region, pursuant to the procedures set forth in ER 1165-2-22.

§ 384.18 Directory of A-95 clearinghouses.

The directory of clearinghouses may be found in DA Pamphlet 210-4.

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