(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