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

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

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

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

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

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

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

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

Subpart D—Shore Protection Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Determine total area experiencing significant erosion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Where section 111 projects are to be accomplished in conjunction with other works (§263.15(a)(2)) local interests will be required to furnish assurance of local cooperation similar to those required for regularly authorized projects for their assigned portion of the work.

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

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

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

[1] Project cost may go to $2,000,000 if project is located in a major disaster area designated by the President.
[2] A project exceeding $1 million will be transmitted to Congress for specific authorization.
[3] Federal cost may go to higher amount if project is located in a major disaster area designated by the President.

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

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

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

2. *Plan Formulation Stages*.

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

b. *Stage 2—Development of Alternative Plans*. While the ER 1105–2–200 series of regulations provides for a three-stage development of plans, studies under Continuing Authorities may consolidate these two final stages (intermediate and detailed), into a single stage, if appropriate. This consolidation does not eliminate any of the planning tasks, as discussed in para 3 below, nor does it diminish the concept of screening a full array of alternatives including nonstructural measures, with increasing levels of detail in the assessment of impacts and evaluation as planning progresses to plan selection. The primary emphasis in making the consolidation of these two stages is that the plan selection is normally made on the basis of more limited data and analyses than appropriate for studies conducted under the Level C Survey Program or the Phase I AE&D Program.

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

3. *Planning Tasks*.

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

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

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

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

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

PART 273—AQUATIC PLANT CONTROL

Sec.
273.10 Purpose.
273.11 Applicability.
273.12 References.
273.13 Program policy.
273.14 Planning procedures.
273.15 Work Progress Report.
273.16 Operations.
273.17 Annual budget request.
273.18 Clearinghouse coordination.

APPENDIX A TO PART 273—AQUATIC PLANT CONTROL PROGRAM LEGISLATIVE AUTHORITY

APPENDIX B TO PART 273—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM REPORTS

APPENDIX C TO PART 273—INFORMATION REQUIREMENTS FOR AQUATIC PLANT CONTROL PROGRAM ENVIRONMENTAL IMPACT STATEMENTS

APPENDIX D TO PART 273—WORK PROGRESS REPORT

APPENDIX E TO PART 273—PREVENTIVE SAFETY MEASURES IN HANDLING OF HERBICIDES

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

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

§ 273.10 Purpose.

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

§ 273.11 Applicability.

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

§ 273.12 References.

(a) Section 302, Pub. L. 89–298, (79 Stat. 1092), Rivers and Harbors Act of 1965, (Appendix A).

(b) Pub. L. 92–516, Federal Insecticide, Fungicide and Rodenticide Act of 1972, (86 Stat. 973), 21 October 1972.

(c) 40 CFR 180, Tolerances and exemptions from tolerances for pesticide chemicals, 2,4-D, subpart C (F) 16 December 1975.

(d) Pub. L. 91–596, Occupational Safety and Health Act of 1970, (84 Stat. 1609, 29 U.S.C. 668), 29 December 1970.

(e) 29 CFR 1960, Safety and Health Provisions for Federal Employees, FEDERAL REGISTER, Vol. 39, No. 9, 9 October 1974.

(f) ER 11–2–240, ''Civil Works Activities, Construction and Design.''

(g) ER 70–2–3, ''Civil Works Research and Development Management System.''

(h) ER 1105–2–507, ''Preparation and Coordination of Environmental Statements.'' (33 CFR 209.410)[1]

(i) ER 1105–2–811.

§ 273.13 Program policy.

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

[1] 33 CFR 209.410 was removed at 45 FR 56761, Aug. 25, 1980.