

## § 276.8

### § 276.8 Cessation.

The legislation specifies that this authority shall cease to be in effect after December 31, 1977. No requests for certification will be processed after that date. To be eligible for credit, proposals for local work must have been certified by the District Engineer no later than December 31, 1977. There is no requirement that the local improvement be initiated or accomplished by that date.

## PART 277—WATER RESOURCES POLICIES AND AUTHORITIES: NAVIGATION POLICY: COST APPORTIONMENT OF BRIDGE ALTERATIONS

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APPENDIX A TO PART 277—SEC. 6, PUB. L. 647, AS AMENDED (33 U.S.C. 516)

APPENDIX B TO PART 277—HYPOTHETICAL EXAMPLE OF COST APPORTIONMENT

AUTHORITY: Sec. 2, River and Harbor Act of 1920, 41 Stat. 1009, June 5, 1920; 33 U.S.C. 547.

SOURCE: 44 FR 31129, May 30, 1979, unless otherwise noted.

### § 277.1 Purpose.

This regulation provides policies and guidelines for the apportionment of bridge alteration costs required in connection with navigation improvements recommended in reports transmitted to the Chief of Engineers for approval or submitted to Congress for authorization.

### § 277.2 Applicability.

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

### § 277.3 References.

(a) Section 6, Pub. L. 647, 67th Congress, 21 June 1940, as amended (33 U.S.C. 516). (Appendix A).

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(b) Section 6, Pub. L. 89-670, Department of Transportation Act, 15 October 1966 (49 U.S.C. 1655).

(c) Coast Guard reference: G-ECV-1, Truman-Hobbs Act.

(d) ER 1105-2-50.

(e) EP 1165-2-2 Appendix E.

### § 277.4 Definitions.

The following definitions are applicable to this regulation:

(a) *Bridge*. The term bridge means a lawful bridge over navigable waters of the United States, including approaches, fenders, and appurtenances thereto, which is used and operated for the purpose of carrying railroad traffic, or both railroad and highway traffic, or if a State, county, municipality, or other political subdivision is the owner or joint owner thereof, which is used and operated for the purpose of carrying highway traffic.

(b) *Bridge owner*. Bridge owner means any State, county, municipality, or other political subdivision, or any corporation, association, partnership, or individual owning, or jointly owning, any bridge, and, when any bridge shall be in the possession or under the control of any trustee, receiver, trustee in bankruptcy, or lessee, such term shall include both the owner of the legal title and the person or the entity in possession or control of such bridge.

(c) *Navigable waters*. Navigable waters of the United States means those waterbodies, except the territorial seas, which are subject to the ebb and flow of the tide, or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce.

(d) *Alteration*. The term alteration includes changes of any kind, reconstruction, or removal in whole or in part.

### § 277.5 General.

Pub. L. 647 as amended, (33 U.S.C. 511-523) commonly referred to as the "Truman-Hobbs Act" provides for the alteration of railroad and highway bridges when found unreasonably obstructive to navigation. Section 6 of that Act establishes policies for the apportionment of such bridge alteration costs. Public Law 89-670, transferred to the Secretary of Transportation from

the Secretary of the Army the responsibility for administration of the Act. Pursuant to this responsibility, the Secretary of Transportation has established implementing procedures based on those previously adopted and utilized by the Chief of Engineers prior to 15 October 1966. This regulation adapts these cost apportionment procedures, found in reference §277.3(c), to Corps of Engineers planning.

**§ 277.6 Basic policies.**

(a) The cost apportionment principles of 33 U.S.C. 516, are applicable to the costs of bridge alterations recommended by reporting officers in the interest of navigation during preauthorization planning, including studies conducted under the Continuing Authorities Program (ER 1105-2-50).

(b) The bridge owner shall bear such part of the cost as is attributable to the direct and special benefits which will accrue to the bridge owner as a result of the alteration, including the expected savings in repair or maintenance costs. That part of the cost attributable to the requirements of railroad or highway traffic shall also be borne by the bridge owner, to include any expenditure for increased carrying capacity of the bridge, and such proportion of the actual capital cost of the old bridge as the used service life bears to the total estimated service life.

(c) In general, the Federal government's participation in the cost of a bridge alteration shall be limited to providing a functional facility equal in every respect, as near as possible, to the existing facility, while also providing navigational clearances required to meet the anticipated and reasonable needs of navigation.

(d) If the bridge owner or other local interests desire improvements or modifications in the new bridge design for reasons other than that required by the navigation improvement project, the reporting officer may recommend such improvements if such local interests provide necessary assurances to pay the costs apportioned to them.

(e) In the case of small boat harbors and channels, the costs of bridge alterations, strictly for recreation navigation shall be apportioned in accordance

with the procedures provided in this regulation. Bridge alteration costs associated with small boat harbors and channels and not apportioned to the bridge owner by the procedures in this regulation, shall be cost shared on the basis of 50 percent Federal and 50 percent non-Federal, the same as the costs of other general navigation facilities.

(f) Reporting officers shall obtain letters of intent from local interests for non-Federal costs apportioned under the provisions of this regulation, in accordance with established procedures for preauthorization feasibility studies. If such letters cannot be obtained from the bridge owner, the reporting officers shall then include in their report a statement that the cost of such alterations shall be borne by the bridge owner or, in the alternative, be apportioned between the bridge owner and the Government as provided under the principles of Section 6 of the Truman-Hobbs Act (33 USC 516).

**§ 277.7 Coordination with the U.S. Coast Guard.**

In accordance with an agreement signed by the Chief of Engineers on 18 April 1973, (EP 1165-2-2 for a copy of the agreement), reporting officers shall consult with the Coast Guard on contemplated and recommended navigation improvements which involve the consideration of bridge alterations. Determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters is a responsibility of the Coast Guard. The Chief of Engineers shall coordinate preauthorization feasibility reports, which include recommended bridge alterations, with the Commandant, U.S. Coast Guard.

**§ 277.8 Procedures for apportionment of costs.**

This paragraph provides the procedures for apportionment of costs of bridge alterations, as established by the U.S. Coast Guard (reference §277.3(c)) and adapted for use in Corps planning and construction programs. A sample apportionment of the cost of a hypothetical bridge alteration is provided in Appendix B.

(a) Calculate the total estimated cost of bridge alteration. The total estimated