

## § 263.24

improvement to insure its successful operation, except as may result from the normal procedure applying to projects authorized after submission of preliminary examination and survey reports.

(b) *Non-Federal responsibilities for dam and reservoir project.* All new projects under this authority, including dams and reservoirs, are considered local protection projects. Non-Federal responsibilities for such dams and reservoirs will thus include the usual lands, easements, right-of-way, and other requirements of local protection projects. Similarly, non-Federal interests must operate the flood control features of any dam or reservoir in accordance with regulations prescribed under the authority contained in section 7 of the Flood Control Act of December 1944.

(c) *Major disaster area.* Determination of a "major disaster area" can be made only by the President, pursuant to the Disaster Relief Acts cited above.

(d) *Local cooperation.* As stated in para 1a of this part, the provisions of section 3, Flood Control Act of 1936, as amended (33 U.S.C. 701c), are applicable. Other requirements shall be recommended by reporting officers to insure the long-term viability of the plan and the attainment of benefits from the plan. Consideration of land enhancement shall be in accordance with EM 1120-2-109.

(e) *Limitation on erosion protection.* This authority shall not be used for protecting against bank erosion. However, bank stabilization may be included as an integral part of a plan for preventing flood damage.

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

## § 263.24 Authority for snagging and clearing for flood control (Section 208).

(a) *Legislative authority.* Section 208 of the Flood Control Act approved 3 September 1954 and as further amended by Section 26 of the Water Resources Development Act approved March 7, 1974 states:

The Secretary of the Army is authorized to allot not to exceed \$5,000,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris,

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and clearing and straightening of the channels in navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than \$250,000 shall be expended for this purpose for any single tributary from the appropriations for any one fiscal year.

(b) *Policy.* Work under this authority is limited to clearing and snagging or channel excavation and improvement with limited embankment construction by use of materials from the channel excavation. If investigation indicates that placement of revetment is needed to provide a complete and fully effective project, the local interests should provide for the item of construction either by work or by cash contribution.

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

## § 263.25 Authority for emergency streambank and shoreline protection of public works and nonprofit public services (Section 14).

(a) *Legislative authority.* Section 14 of the Flood Control Act approved July 24, 1946, as amended by section 27 of the Water Resources Development Act approved March 7, 1974, states:

The Secretary of the Army is authorized to allot from any appropriations heretofore or hereinafter made for flood control, not to exceed \$10,000,000 per year, for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damage to highways, bridge approaches, public works, churches, hospitals, schools, and other nonprofit public services, when in the opinion of the Chief of Engineers such work is advisable: *Provided*, That not more than \$250,000 shall be allotted for this purpose at any single locality from the appropriations for any one fiscal year.

(b) *Policy.* Work under the Section 14 authority shall serve to prevent flood or erosion damages to endangered highways, highway bridge approaches, public works, and nonprofit public facilities by the construction or repair of emergency streambank and shoreline protection works. Eligible highways consist of major highway systems of national importance, and principal highways, streets, and roads of importance to the local community, such as arterial streets, important access

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

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

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

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

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

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

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

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

#### Subpart D—Shore Protection Policy

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

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

The Secretary of the Army is authorized to undertake construction of small shore and

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

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

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

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

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

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

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