

“(2) PROCEDURES.—

“(A) IN GENERAL.—The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

“(B) LIMITATIONS.—The procedures established pursuant to this subsection shall provide for a reduction in any non-Federal cash contribution required under subsection (a)(2) of this section. In addition, such procedures shall provide for determination of the eligibility of the non-Federal interest for a reduction in the required cash contribution on the basis of local, not statewide, economic and financial data.

“(C) REGULATIONS.—Not later than 1 year after November 28, 1990, the Secretary shall issue regulations establishing the procedures required by this paragraph.”

1990—Subsec. (m). Pub. L. 101-640 amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: “Any cost-sharing agreement under this section for flood control or agricultural water supply shall be subject to the ability of a non-Federal interest to pay. The ability of any non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-303, title II, § 202(a)(1)(B), Oct. 12, 1996, 110 Stat. 3673, provided that: “The amendments made by subparagraph (A) [amending this section] shall apply to any project authorized after the date of the enactment of this Act [Oct. 12, 1996] and to any flood control project that is not specifically authorized by Congress for which a Detailed Project Report is approved after such date of enactment or, in the case of a project for which no Detailed Project Report is prepared, construction is initiated after such date of enactment.”

Pub. L. 104-303, title II, § 202(b)(2), Oct. 12, 1996, 110 Stat. 3674, provided that:

“(A) GENERALLY.—Subject to subparagraph (C), the amendment made by paragraph (1) [amending this section] shall apply to any project, or separable element thereof, with respect to which the Secretary and the non-Federal interest enter into a project cooperation agreement after December 31, 1997.

“(B) AMENDMENT OF COOPERATION AGREEMENT.—If requested by the non-Federal interest, the Secretary shall amend a project cooperation agreement executed on or before the date of the enactment of this Act [Oct. 12, 1996] to reflect the application of the amendment made by paragraph (1) to any project for which a contract for construction has not been awarded on or before such date of enactment.

“(C) NON-FEDERAL OPTION.—If requested by the non-Federal interest, the Secretary shall apply the criteria and procedures established pursuant to section 103(m) of the Water Resources Development Act of 1986 [subsec. (m) of this section] as in effect on the day before the date of the enactment of this Act for projects that are authorized before the date of the enactment of this Act.”

[Reference to “project cooperation agreement” deemed to be reference to “project partnership agreement”, see section 2003(f)(2) of Pub. L. 110-114, set out as a note under section 1962d-5b of Title 42, The Public Health and Welfare.]

Pub. L. 104-303, title II, § 210(b), Oct. 12, 1996, 110 Stat. 3681, provided that: “The amendments made by subsection (a) [amending this section] apply only to projects authorized after the date of the enactment of this Act [Oct. 12, 1996].”

CONTINUATION OF EXISTING REGULATIONS

Pub. L. 101-640, title III, § 305(b), Nov. 28, 1990, 104 Stat. 4635, provided that: “Regulations issued to carry out section 103(m) of the Water Resources Development Act of 1986 [33 U.S.C. 2213(m)] before the date of the enactment of this Act [Nov. 28, 1990] and in effect on such date shall continue in effect until regulations are is-

sued pursuant to paragraph (2)(C) of such section, as added by subsection (a) of this section.”

REPORTS TO CONGRESS

Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 401, provided that: “The Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after a written request is made pursuant to the provisions of subsection (m) of section 103 of Public Law 99-662 [33 U.S.C. 2213(m)] indicating the action taken on the request. In addition, the Secretary of the Army shall file a report with the appropriate committees of the House of Representatives and the Senate within ninety days after enactment of this Act [July 11, 1987] listing any project or study falling under the provisions of subsection (e)(1) of section 103 of Public Law 99-662.”

§ 2214. General credit for flood control

(a) Guidelines

Within one year after November 17, 1986, the Secretary shall issue guidelines to carry out this section, consistent with the principles and guidelines on project formulation. The guidelines shall include criteria for determining whether work carried out by non-Federal interests is compatible with a project for flood control and procedures for making such determinations. The guidelines under this section shall be promulgated after notice in the Federal Register and opportunity for comment.

(b) Analysis of costs and benefits

The guidelines established under subsection (a) of this section shall provide for the Secretary to consider, in analyzing the costs and benefits of a proposed project for flood control, the costs and benefits produced by any flood control work carried out by non-Federal interests that the Secretary determines to be compatible with the project. For purposes of the preceding sentence the Secretary may consider only work carried out after the date which is 5 years before the first obligation of funds for the reconnaissance study for such project. In no case may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(c) Crediting of non-Federal share

The guidelines established under subsection (a) of this section shall provide for crediting the cost of work carried out by the non-Federal interests against the non-Federal share of the cost of an authorized project for flood control as follows:

(1) Work which is carried out after the end of the reconnaissance study and before the submission to Congress of the final report of the Chief of Engineers on the project and which is determined by the Secretary to be compatible with the project shall be included as part of the project and shall be recommended by the Secretary in the final report for credit against the non-Federal share of the cost of the project.

(2) Work which is carried out after submission of the final report of the Chief of Engineers to Congress and which is determined by the Secretary to be compatible with the project shall be considered as part of the project and shall be credited by the Secretary against the non-Federal share of the cost of

the project in accordance with the guidelines promulgated pursuant to subsection (a) of this section.

In no event may work which was carried out more than 5 years before November 17, 1986, be considered under this subsection, unless otherwise provided in this Act.

(d) Procedure for work done before November 17, 1986

The Secretary shall consider, under subsections (b) and (c) of this section, work carried out before November 17, 1986, by non-Federal interests on a project for flood control, if the non-Federal interests apply to the Secretary for consideration of such work not later than March 31, 1987. The Secretary shall make determinations under subsections (b) and (c) of this section with respect to such work not later than 6 months after guidelines are issued under subsection (a) of this section.

(e) Procedure for work done after November 17, 1986

The Secretary shall consider work carried out after November 17, 1986, by non-Federal interests on a project for flood control under subsections (b) and (c) of this section in accordance with the guidelines issued under subsection (a) of this section. The guidelines shall require prior approval by the Secretary of any flood control work carried out after November 17, 1986, in order to be considered under this section, taking into account the economic and environmental feasibility of the project.

(f) Limitation not applicable

Any flood control work included as part of the non-Federal share of the cost of a project under this section shall not be subject to the limitation contained in the last sentence of section 1962d-5a(a) of title 42.

(g) Cash contribution not affected

Nothing in this section affects the requirement of section 2213(a)(1)(A) of this title.

(Pub. L. 99-662, title I, §104, Nov. 17, 1986, 100 Stat. 4087.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (b) and (c), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, as amended, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

§ 2215. Feasibility studies; planning, engineering, and design

(a) Feasibility studies

(1) Cost sharing

(A) In general

The Secretary shall not initiate any feasibility study for a water resources project after November 17, 1986, until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost of the study.

(B) Payment of cost share during period of study

During the period of the study, the non-Federal share of the cost of the study pay-

able under subparagraph (A) shall be 50 percent of the sum of—

(i) the cost estimate for the study as contained in the feasibility cost-sharing agreement; and

(ii) any excess of the cost of the study over the cost estimate if the excess results from—

(I) a change in Federal law; or

(II) a change in the scope of the study requested by the non-Federal interests.

(C) Payment of cost share on authorization of project or termination of study

(i) Project timely authorized

Except as otherwise agreed to by the Secretary and the non-Federal interests and subject to clause (ii), the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable on the date on which the Secretary and the non-Federal interests enter into an agreement pursuant to section 2211(e) or 2213(j) of this title with respect to the project.

(ii) Project not timely authorized

If the project that is the subject of the study is not authorized by the date that is 5 years after the completion of the final report of the Chief of Engineers concerning the study or the date that is 2 years after the termination of the study, the non-Federal share of any excess of the cost of the study over the cost estimate (excluding any excess cost described in subparagraph (B)(ii)) shall be payable to the United States on that date.

(D) Amendment of cost estimate

The cost estimate referred to in subparagraph (B)(i) may be amended only by agreement of the Secretary and the non-Federal interests.

(E) In-kind contributions

The non-Federal share required under this paragraph may be satisfied by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report.

(2) Applicability

This subsection shall not apply to any water resources study primarily designed for the purposes of navigational improvements in the nature of dams, locks, and channels on the Nation's system of inland waterways.

(3) Detailed project reports

The requirements of this subsection that apply to a feasibility study also shall apply to a study that results in a detailed project report, except that—

(A) the first \$100,000 of the costs of a study that results in a detailed project report shall be a Federal expense; and

(B) paragraph (1)(C)(ii) shall not apply to such a study.

(b) Planning and engineering

The Secretary shall not initiate any planning or engineering for a water resources project