

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 issued 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.”

### § 2213a. Treatment of certain benefits and costs

#### (a) In general

In the case of a flood risk management project that incidentally generates seismic safety benefits in regions of moderate or high seismic hazard, for the purpose of a benefit-cost analysis for the project, the Secretary shall not include in that analysis any additional design and construction costs resulting from addressing seismic concerns.

#### (b) Savings provision

Except with respect to the benefit-cost analysis, the additional costs referred to in subsection (a) shall be—

- (1) included in the total project cost; and
- (2) subject to cost-share requirements otherwise applicable to the project.

(Pub. L. 116-260, div. AA, title I, §152, Dec. 27, 2020, 134 Stat. 2658.)

#### Editorial Notes

##### CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, and not as part of the Water

Resources Development Act of 1986 which comprises this chapter.

#### Statutory Notes and Related Subsidiaries

##### “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

### § 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) 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) 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).

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.