

§ 239.9 Effective date.

These regulations are applicable to all projects not approved by OCE prior to the date of this regulation.

PART 240—GENERAL CREDIT FOR FLOOD CONTROL

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APPENDIX A TO PART 240 [RESERVED]

APPENDIX B TO PART 240—FORMULAS FOR DETERMINING AMOUNT OF ALLOWABLE CREDIT

AUTHORITY: Section 104, Water Resources Development Act of 1986 (Pub. L. 99-662); 33 U.S.C. 2214.

SOURCE: 52 FR 44113, Nov. 18, 1987, unless otherwise noted.

§ 240.1 Purpose.

This establishes guidelines and procedures for Department of the Army application of the provisions of section 104 of Pub. L. 99-662.

§ 240.2 Applicability.

Policies and procedures contained herein apply to all HQUSACE elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 240.3 Reference.

Section 104 of Pub. L. 99-662.

§ 240.4 Legislative provisions.

Section 104 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a project for flood control. Compatible work which was carried out prior to project authorization, before 17 November 1986 but after 17 November 1981, may be considered part of the project and credited against the non-Federal share of the cost of project, if the local sponsor applied for consideration of such work not later

than 31 March 1987. Local work to be carried out after 17 November 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project. (Such approval can only be given on the basis of the guidelines required to be issued pursuant to section 104(a); hence, the law is silent with respect to work performed between 17 November 1986 and the effective date of the guidelines.) The credit will not relieve the non-Federal sponsor of the requirement to pay 5 percent of the project costs in cash during construction of the remainder of the project. This legislative authority also provides that benefits and costs of compatible work will be considered in the economic evaluation of the Federal project. This includes the costs and benefits of compatible local work which was carried out after 17 November 1981 or within the 5 years prior to the initial obligation of reconnaissance study funds if that should establish a later date.

§ 240.5 Discussion.

Discussion of this legislation is contained in the Conference Report, H.R. Rpt. No. 99-1013, which accompanies H.R. 6. The House passed version of the bill contained a number of project-specific provisions that authorized credit against the non-Federal share for compatible work completed by local interests. The Senate passed version authorized crediting of compatible flood control works for projects under study. Both general provisions would enable local interests to proceed with compatible work on the understanding that the local improvements would be considered a part of the Federal project for the purpose of benefit-to-cost analysis, as well as subsequent cost sharing. The Conference Committee deleted virtually all of the crediting provisions applicable to individual projects and expanded the general provision allowing the Secretary to credit the cost of certain work undertaken by local interests prior to project authorization against the non-Federal share of project costs and to consider the benefits and costs in the economic evaluation of a more comprehensive project.