

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
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Regulation
No. 11-2-201

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Army Programs
CIVIL WORKS ACTIVITIES - FUNDING,
WORK ALLOWANCES, AND REPROGRAMMING
(RCS: CECW-B-11)

1. Purpose. This regulation sets forth procedures and policies on funding, work allowances and reprogramming for Corps of Engineers Civil Works activities under General Investigations; Construction, General; Operation and Maintenance, General; Flood Control, Mississippi River and Tributaries; Regulatory Program; Flood Control and Coastal Emergencies; and General Expenses appropriation titles, and under the Inland Waterways Trust Fund.

2. Applicability. This regulation applies to HQUSACE elements, major subordinate commands (MSC), districts, laboratories, and field operating activities (FOA) having Civil Works responsibilities.

3. References.

- a. PL 84-99
- b. PL 93-344
- c. PL 94-587
- d. PL 99-177
- e. PL 99-662, Sections 923 and 1135
- f. 31 U.S.C. 1301
- g. 31 U.S.C. 1341
- h. 31 U.S.C. 1513(a)
- i. 31 U.S.C. 1517(a)
- j. H. Rept. 2181, 84th Cong., 2nd Sess., 21 May 1956*
- k. S. Rept. 2169, 84th Cong., 2nd Sess., 8 June 1956*

This regulation supersedes ER 11-2-201, dated 30 June 1992.

* House and Senate Reports are included in the microfiche collections of the Congressional Information Service which are available in the HQUSACE Library.

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- l. S. Rept. 100-159, 16 Sep 1987*
- m. S. Rept. 101-89, 24 Jul 1989*
- n. S. Rept. 102-80, 12 Jun 1991*
- o. ER 5-7-1(FR)
- p. ER 37-2-10
- q. ER 37-2-16
- r. ER 1105-2-100

4. Funding. Civil Works funds are appropriated, apportioned, and allotted at the appropriation title level.

a. Appropriations. Civil Works funds are appropriated by acts of Congress. An appropriations act provides the authority for the Corps to enter into obligations and make payments out of the Treasury for specified purposes. In the absence of an appropriations act, continuing resolutions provide limited new obligational authority at the beginning of a fiscal year pending passage of an appropriations act. Such continuing resolution obligational authority typically precludes funding any study, project or activity that was not funded in the prior fiscal year.

b. Apportionment. Civil Works funds are apportioned by the Office of Management and Budget (OMB). Apportionment restricts, by appropriation, the quarterly amounts available for obligation to ensure an orderly distribution of funds throughout the fiscal year. OMB is required by the Antideficiency Act, 31 U.S.C. 1513(a), to apportion funds within 30 days after they are appropriated or 20 days before the fiscal year for which the funds are appropriated, whichever is later. Included in the apportionment are newly appropriated funds, anticipated reimbursable activity, and unobligated balances carried over from prior year appropriations. OMB may use apportionment to restrict the use of funds when the work intended by Congress is contrary to Administration policy or not legislatively authorized. The Antideficiency Act is violated when obligations at the appropriation level exceed total obligational authority or available apportionment at the organizational level at which the obligation is incurred, 31 U.S.C. 1341 and 1517(a), respectively. It is also violated when the amount specifically earmarked in law for a study or project is exceeded or reduced. Quarterly subapportionments are issued by HQUSACE to MSCs, laboratories, and other USACE commands receiving Civil Works funds. MSC Commanders, in turn, issue quarterly subapportionments to their District Commanders. The MSC Commander may reallocate subapportionments among districts as needed, or request an increased apportionment from HQUSACE. Similarly, HQUSACE may reallocate apportionment among MSCs or submit a request to OMB for an increased apportionment. Apportionments are subject to adjustment in the event of

substantially increased allotments or major revocations, a Supplemental Appropriations Act, or if appropriations are deferred or rescinded in accordance with the Congressional Budget and Impoundment Control Act of 1974 (PL 93-344).

c. Treasury Warrants and Fund Allocations. Treasury warrants are based on appropriations and authorize funds to be withdrawn from the U.S. Treasury. HQUSACE allocates this budget authority in the form of fund advices at the appropriation level to USACE Commands, based on the work allowances (see below), issued by program managers, for individual studies, projects or activities. Unless precluded by appropriations act language, statute or policy, all funds remaining unobligated at the end of one fiscal year automatically become carry over budget authority in the next fiscal year without issuance of fund advices.

d. Trust Funds for Inland Waterways and Harbor Maintenance. Construction, General and Operation and Maintenance, General funds appropriated by Congress include authorizations to utilize Inland Waterways and Harbor Maintenance Trust Funds, respectively.

e. Special Recreation User Fees (SRUF). Appropriation language for Operations and Maintenance, General includes authorization to utilize such sums as become available from the special account, established by the Land and Water Conservation Act of 1965 for construction, operation and maintenance of outdoor recreation facilities

5. Work Allowances.

a. General. Work allowances are issued at the study, project and activity level to insure that the funds appropriated by Congress are used for the purposes intended by Congress (31 U.S.C 1301). Work allowances specify funds available for obligation and expenditure on specific studies, projects or activities.

b. Initial work allowances. Initial work allowances, tabulated by district, are provided to MSC Commanders and to the Directors of laboratories and field operating activities at the start of the fiscal year upon apportionment by OMB. These initial work allowances reflect the intent of Congress as expressed in the Act and/or in the accompanying House, Senate, and Conference Reports as modified by Administration policy where appropriate; and every effort should be made to execute the program in accordance with these work allowances and accompanying instructions. However, it is recognized that legal constraints, scheduling considerations, unanticipated or changed site conditions, unforeseen emergency requirements, favorable or higher than anticipated bids, and other circumstances may make it impossible to execute a program which exactly reflects the initial work allowances. For this reason, Congress has permitted the Corps to reprogram funds between studies, projects and other activities within certain limits as described below. The total work allowance available for each study, project, or other activity is the sum of the unobligated funds carried over from the prior year and any work allowances

issued by HQUSACE in the current year. In the event initial work allowances cannot be made on 1 October because of late appropriations, HQUSACE will issue authority for interim obligations on continuing studies, projects, or activities, based on Joint Resolutions of the Congress making continuing appropriations. Lacking such appropriation actions, special guidance will be issued in accordance with instructions from OMB.

c. Adjustments to initial work allowances.

(1) Savings and Slippage. The Corps budget request, the President's Budget, and Congressional appropriation acts may contain a reduction for savings and slippage in one or more appropriations recognizing that all work will not be accomplished as planned. HQUSACE, in turn, will assign a reduction for anticipated savings and slippage to the Conference allowance for affected studies, projects and activities. Normally, the total savings and slippage is pro-rated against all line items within an appropriation except those amounts specifically set forth in act language.

(2). Sequestration. The Balanced Budget and Emergency Deficit Control Act of 1985 (PL 99-177), as amended, was designed to incrementally reduce the annual budget deficit to zero. This act, as amended, may require a pro-rata reduction to the Conference allowance for individual studies, projects and activities based on a reduced warrant and apportionment.

(3) Deferrals and Rescissions. Work allowances are also withheld when the funds appropriated by Congress are proposed by the Administration for deferral or rescission at the beginning of the fiscal year. A deferral is a postponement of budget authority for up to one year. A rescission, which must be approved by Congress, is a cancellation of previously approved budget authority. In the event that a rescission or deferral is proposed later in the fiscal year, work allowances are reduced accordingly along with reductions in allotments and apportionments.

(4) Work Allowances Withheld. Work allowances may be withheld by HQUSACE when the work should not proceed because of unresolved policy issues, unmet procedural requirements, lack of approved local cost sharing agreement, insufficient monetary authorization limit, or inadequate authorization for the work. Operation and Maintenance, General work allowances for all contracts in excess of \$500,000 are withheld pending bid opening in order to ensure a well balanced national program and the most efficient and effective use of available resources throughout the Corps.

(5) Other Adjustments. In the case of studies, projects, or activities which are not in accord with Administration policy and are not directed to be undertaken in appropriations act language or when it has been determined that no local interest is willing to comply with required cost sharing, the entire Conference allowance may be revoked via an adjustment to the initial work allowance.

6. Reprogramming.

a. General.

(1) Reprogramming involves the reallocation of funds from one study, project or activity to another within the same appropriation to assure the most effective and economical application of available funds and optimum progress under changing conditions. These actions are accomplished via adjustments to the work allowances for the affected studies, projects or activities. Reprogramming is different from transfer which involves moving funds between appropriations and is prohibited without specific statutory authority. There is statutory authority, PL 84-99, to augment the Flood Control and Coastal Emergency account in the event of a shortfall to meet emergency requirements.

(2) There are no general statutory provisions permitting or prohibiting reprogramming; however, the Congress has provided specific guidance with regard to reprogramming within the Construction, General appropriation via report language accompanying several appropriations acts. References 3.j. and 3.k. provided guidance concerning Construction, General reprogramming limitations. Reference 3.l. reaffirmed the earlier guidance and modified the limitations on a temporary basis. These revised limitations were permanently established in reference 3.m.

(3) HQUSACE has informal agreements with the Congressional Appropriations Committees regarding reprogramming within the General Investigations and Operation and Maintenance, General appropriations. From time to time, Appropriations Committees reports provide further guidance on these appropriations. For example, reference 3.n. recognized the need for flexibility in the execution of the Operation and Maintenance, General program so that occasionally work scheduled for the budget year could be accomplished in the current year and so that budgeted Operation and Maintenance, General funds could be diverted to unscheduled work to meet emergency requirements. These reports and agreements are also applicable to analogous funding categories within the Flood Control, Mississippi River and Tributaries appropriation. No guidance has been provided by the Congress regarding reprogramming within other appropriations.

(4) As a general rule, only funds which are surplus to the current year requirements should be considered as a source for reprogramming to other studies, projects or activities. The temporary borrowing or loaning of work allowances is strongly discouraged as is the use of reprogramming as a substitute for sound programming practices. However, Congress has permitted the Corps to utilize Construction, General funds from projects experiencing nonfunding delays as a source of reprogramming for projects proceeding on or ahead of schedule. Such funds may be restored once the problem causing the delay has been resolved.

(5) Reprogrammings may only be made to those studies, projects, or activities which previously received an allocation of funds in a Conference

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report accompanying an appropriations act and which subsequently received a work allowance; or to studies, projects, or activities which the Congress directed the Corps to accomplish with available funds in an appropriations act.

(6) Studies, projects or activities funded by Congress at an amount less than the budget request will be increased above the conference allowance by reprogramming only after coordination with the Appropriations Committees.

(7) Reprogrammings beyond the limits permitted by Congress are coordinated with the Appropriations Committees.

b. USACE reprogramming limits permitted by Congress through formal and informal guidance.

(1) Construction, General.

(a) The Appropriations Committees have permitted USACE to reprogram funds not to exceed 15 percent of the amount available for obligation to the project for any fiscal year. This amount, called the "base amount", normally represents the Conference allowance plus the unobligated balance at the beginning of the fiscal year, adjusted for funds sequestered, deferred, or rescinded, or released from deferral. There are two exceptions to the 15% limitation: 1) the reprogramming of up to \$300,000, without regard to percentage, for projects on which the amount available for the fiscal year is \$2,000,000 or less; 2) up to \$5,000,000 per project without regard to percentage limitation when the increased requirement results from a settled contractor claim, increased contractor earnings due to accelerated rate of operations, or a real estate deficiency judgment. As alluded to in paragraph 6.a.(2), Congress recognized the value of reprogramming work allowances from projects experiencing non-funding delays and providing such work allowances to projects proceeding ahead of schedule or to projects requiring additional work allowances. Such work allowances, may be restored, also without regard to percentage limitations, via reprogramming, when the problem causing the delay has been resolved. Similarly, restoration of savings and slippages and current year revocations via reprogramming are also permitted.

(b) Available reprogramming authorities should be utilized in the following order: 1) restoration of current year savings and slippage and current year revocations; 2) up to 15% of the base (up to \$300,000 for projects with a base of \$2,000,000 or less); and 3) up to \$5,000,000 for settled contractor claims, real estate deficiency judgments, or increased contractor earning due to an accelerated rate of operations, if applicable, or restoration of prior year savings and slippage or revocations.

(2) General Investigations.

(a) The Appropriations Committees permit USACE to reprogram up to \$25,000 for surveys and projects when the base, as defined above in Paragraph 6.b.(1), is \$25,000 or less. When the base exceeds \$25,000, the reprogramming

authority is 100% of the base up to \$50,000 and 25 percent of the increment over \$50,000, not to exceed a total reprogramming of \$150,000. Current year saving and slippage or other current year revocations may also be restored via reprogramming. However, unlike Construction, General, restoration of prior year General Investigations savings and slippage or revocations is not authorized.

(b) Reallocation of General Investigations funds between phases, e.g., reallocation of preconstruction, engineering and design funding to complete the feasibility phase of a study, is not a reprogramming and is not subject to reprogramming limits within the General Investigations appropriation. However, in such cases, when more than one phase is funded, the available reprogramming authority is based on the entire General Investigations funding available to the study/project, not on the funding provided to each phase, except in those instances when Congress has separately funded both phases.

(3) Operation and Maintenance, General. Consistent with language in Appropriations Committees reports, judicious use of reprogrammings has permitted the execution of a complex operation and maintenance program providing rapid response to emergency conditions and changing priorities. However, these actions are highly visible to the Administration and the Congress, and the Corps must continue to use them judiciously and be able to report confidently that Operation and Maintenance, General funds have been used wisely and efficiently. Accordingly, reprogrammings must be consistent with the following criteria which will be used in executing the program:

- (a) Work in the President's budget and approved Congressional adds.
- (b) Emergencies.
- (c) Work in prior year appropriations which slipped.
- (d) Acceleration of work in the next year's budget.
- (e) Project allocations based on Congressional testimony must be adhered to as closely as practicable.
- (f) Specific Congressional funding increases may not be used as a source for reprogramming without HQUSACE approval.
- (g) Work to be initiated with reprogrammed funds must be authorized and fully justified, and must be of higher priority than all other unfunded work, as evidenced in the last program and budget submission and subsequent review action, or must be unexpected and urgent.
- (h) Work to be deleted, from which funds are to be reprogrammed, must be of lower priority than all other funded work.
- (i) Unusual or controversial studies or studies costing over \$50,000 may not be initiated by reprogramming without HQUSACE approval.

(j) A balanced program of competing needs must be maintained consistent with the program and budget justifications which were presented to OMB and Congress. Thus, the different program categories such as dredging, structural maintenance, and various functional operations must not be distorted.

(4) Flood Control, Mississippi River and Tributaries. USACE reprogramming authorities applicable to the General Investigations, and Construction, General appropriations apply to the corresponding components of the Flood Control, Mississippi River and Tributaries program. Reprogramming among maintenance features is unrestricted.

c. District and MSC Commanders authority. MSC and District Commanders are authorized to adjust work allowances in their commands within the limits set forth in Appendices A - F. Except as otherwise indicated, limitations restrict the amount that can be reprogrammed into a study, project or activity, not the amount than can be revoked from a study, project or activity. MSC and District Commanders are also authorized to restore, by reprogramming, any current year savings and slippage reduction, current year revocations, and, in the case of Construction, General, prior year savings and slippage and revocations. MSC Commanders, unlike District Commanders, are authorized to reprogram between Districts under their respective jurisdictions.

(1) Limitations.

(a) No reprogramming to a specific study, project, or activity may be made by a District or MSC Commander while final action is still pending on a recommendation to higher authority for a reprogramming to the same specific study, project, or activity. (This is to insure that reprogramming authorities are not exceeded.)

(b) District and MSC Commanders have no authority to reprogram funds to studies, projects, or activities in order to restore work allowances which were withheld pending signing of a cost sharing agreement with a local sponsor, resolution of policy issues, or other similar cause. Nor may they restore the savings and slippage associated with such withheld funds. Furthermore, the District and MSC Commanders' reprogramming base does not include such withheld funds or the savings and slippage associated with them.

(c) District and MSC Commanders may only reprogram work allowances between studies, projects, or activities within the same group, as groups are defined for each appropriation in Appendices A-F.

(d) District and MSC Commanders have no authority to reprogram funds either into or out of projects funded from the Inland Waterways Trust Fund. This limitation on District and Division reprogramming authorities is required to guarantee that funding for such projects will be provided equally from the Inland Waterways Trust Fund and the Construction, General appropriation.

(e) District and MSC Commanders have no authority to reprogram funds

so as to increase or decrease amounts earmarked in law for specific studies, projects, or activities. As indicated above in 4.b., the Antideficiency Act is violated when the amount specifically earmarked in law for a study or project is exceeded or reduced.

(f) A Schedule and Cost Change Request (SACCR), when required, must be approved in accordance with ER 5-7-1(FR) prior to the reprogramming of funds.

(g) MSC Commanders have no authority to reprogram General Expenses funds.

(2) Divided work allowances. The MSC Commander may shift funds allotted to a single study or project on an unlimited basis within the Division without regard to percentage limitations. This authority does not apply to general programs or activities.

(3) Minor Reprogrammings. Except as provided for below, or in unusual circumstances, District and MSC Commanders will only reprogram work allowances which have been rounded to the nearest \$1,000 in the case of specifically authorized studies or projects, or to the nearest \$100 in the case of continuing authorities projects or other activities. Minor reprogrammings cause additional accounting and paperwork efforts at all levels and increase the risk of errors. Instead, such funds should be expended for overhead or similar activities. However, when necessary to close out accounts in the case of cost shared studies or projects, funds which have not been rounded may be reprogrammed or offered for revocation.

(4) Reporting Requirements. Reporting requirements on District and Division Commander approved reprogrammings are set forth in Appendix G.

d. Requests to HQUSACE. The District and MSC Commander should fully utilize their delegated authorities, taking into consideration MSC-wide needs and surpluses, before recommending a reprogramming by HQUSACE. Requests to HQUSACE should not be unnecessarily combined, so that rapid review and action can be accomplished. In addition, to eliminate the possibility that USACE reprogramming authorities will be exceeded, the requestor must ensure that all MSC and District reprogramming actions involving the studies, projects or activities in the request have been properly reported to HQUSACE (see Appendix G for specific reporting requirements). Reprogramming requests which exceed HQUSACE authority also must include information on the basis, amount, and timing of the needs and must be accompanied, in the case of requests involving the Construction, General appropriation, by draft letters to the Appropriations Committees, justifying the reprogramming needs and explaining why the funds identified as sources for reprogramming are surplus. General Investigations requests which exceed USACE authority should be accompanied by a draft fact sheet which explains the additional requirement and surplus. Requests which exceed USACE authority should be submitted sufficiently in advance, at least 30 days, to allow time for Assistant Secretary of the Army (Civil Works), Office of Management and Budget, and Committee notification and action, where appropriate.

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f. Surplus Work Allowances. Surplus work allowances, including funds earmarked in law, which the MSC or District Commander cannot reprogram for effective application to other studies, projects or activities, should be reported promptly as available for revocation, through the MSC Commander, to the HQUSACE element which issued the work allowance. Such requests for revocation should indicate why the funds are surplus.

g. Transfer or Reprogramming of Civil Works Funds During War or National Emergency. Under provisions of Section 923 of the Water Resources Development Act of 1986 (PL 99-662), the authority to transfer Civil Works funds to other Civil Works, Military Construction, and Civil Defense projects that are essential to the national defense has been delegated to the Secretary of the Army in the event of a Declaration of War or a Declaration by the President of a National Emergency. The decision to make such transfers may be based on the recommendation of the Director of Civil Works using information provided by the MSC Commanders. However, MSC Commanders have no authority to divert civil funds to military uses unless and until they have been notified by HQUSACE that such transfers are approved.

FOR THE COMMANDER:



ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

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APPENDIX A

GENERAL INVESTIGATIONS REPROGRAMMINGS