

1986—Pub. L. 99-662 inserted “In any case in which any hazardous conditions are found during an inspection, upon request by the owner, the Secretary, acting through the Chief of Engineers, may perform detailed engineering studies to determine the structural integrity of the dam, subject to reimbursement of such expense by the owner of such dam.”

§ 467c. Determination of danger to human life and property

For the purpose of determining whether a dam (including the waters impounded by such dam) constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the dam might be endangered by overtopping, seepage, settlement, erosion, sediment, cracking, earth movement, earthquakes, failure of bulkheads, flashboard, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam.

(Pub. L. 92-367, § 5, formerly § 4, Aug. 8, 1972, 86 Stat. 507; renumbered § 5 and amended Pub. L. 104-303, title II, § 215(c)(3), (7), Oct. 12, 1996, 110 Stat. 3685, 3687.)

PRIOR PROVISIONS

A prior section 5 of Pub. L. 92-367 was classified to section 467d of this title prior to repeal by Pub. L. 104-303.

AMENDMENTS

1996—Pub. L. 104-303 inserted section catchline.

§ 467d. National dam inventory

The Secretary of the Army shall maintain and update information on the inventory of dams in the United States. Such inventory of dams shall include any available information assessing each dam based on inspections completed by either a Federal agency or a State dam safety agency.

(Pub. L. 92-367, § 6, as added Pub. L. 104-303, title II, § 215(c)(8), Oct. 12, 1996, 110 Stat. 3687; amended Pub. L. 109-460, § 1(b), Dec. 22, 2006, 120 Stat. 3401.)

PRIOR PROVISIONS

A prior section 467d, Pub. L. 92-367, § 5, Aug. 8, 1972, 86 Stat. 507, directed Secretary report to Congress on or before July 1, 1974, on activities under this subchapter, including in report an inventory of dams in the United States, a review of each inspection made, recommendations to State Governors and implementation of those recommendations, recommendations for comprehensive national program for inspection and safety regulation, and recommendations on responsibilities which should be assumed by Federal, State, and local governments and by public and private interests, prior to repeal by Pub. L. 104-303, title II, § 215(c)(2), Oct. 12, 1996, 110 Stat. 3685.

A prior section 6 of Pub. L. 92-367 was classified to section 467e of this title prior to repeal by Pub. L. 104-303.

AMENDMENTS

2006—Pub. L. 109-460 amended section generally. Prior to amendment, section read as follows: “The Secretary of the Army, acting through the Chief of Engineers, may maintain and periodically publish updated information on the inventory of dams in the United States.”

§ 467e. Interagency Committee on Dam Safety

(a) Establishment

There is established an Interagency Committee on Dam Safety—

(1) comprised of a representative of each of the Department of Agriculture, the Department of Defense, the Department of Energy, the Department of the Interior, the Department of Labor, FEMA, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, the Tennessee Valley Authority, and the United States Section of the International Boundary Commission; and

(2) chaired by the Director.

(b) Duties

ICODS shall encourage the establishment and maintenance of effective Federal programs, policies, and guidelines intended to enhance dam safety for the protection of human life and property through coordination and information exchange among Federal agencies concerning implementation of the Federal Guidelines for Dam Safety.

(Pub. L. 92-367, § 7, as added Pub. L. 104-303, title II, § 215(c)(8), Oct. 12, 1996, 110 Stat. 3687; amended Pub. L. 107-310, § 2, Dec. 2, 2002, 116 Stat. 2450.)

PRIOR PROVISIONS

A prior section 467e, Pub. L. 92-367, § 6, Aug. 8, 1972, 86 Stat. 507, directed that existing liabilities and obligations be unaffected, prior to repeal by Pub. L. 104-303, title II, § 215(c)(2), Oct. 12, 1996, 110 Stat. 3685.

A prior section 7 of Pub. L. 92-367 was classified to section 467f of this title prior to repeal by Pub. L. 104-303.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-310 substituted “Federal programs” for “Federal and State programs” and “through coordination and information exchange among Federal agencies concerning implementation of the Federal Guidelines for Dam Safety.” for “through—

“(1) coordination and information exchange among Federal agencies and State dam safety agencies; and

“(2) coordination and information exchange among Federal agencies concerning implementation of the Federal Guidelines for Dam Safety.”

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 467f. National dam safety program

(a) In general

The Director, in consultation with ICODS and State dam safety agencies, and the Board shall establish and maintain, in accordance with this

section, a coordinated national dam safety program. The Program shall—

(1) be administered by FEMA to achieve the objectives set forth in subsection (c) of this section;

(2) involve, to the extent appropriate, each Federal agency; and

(3) include—

(A) each of the components described in subsection (d) of this section;

(B) the strategic plan described in subsection (b) of this section; and

(C) assistance for State dam safety programs described in subsection (e) of this section.

(b) Duties

The Director shall prepare a strategic plan—

(1) to establish goals, priorities, performance measures, and target dates toward effectively administering this subchapter in order to improve the safety of dams in the United States; and

(2) to the extent feasible, to establish cooperation and coordination with, and assistance to, interested governmental entities in all States.

(c) Objectives

The objectives of the Program are to—

(1) ensure that new and existing dams are safe through the development of technologically and economically feasible programs and procedures for national dam safety hazard reduction;

(2) encourage acceptable engineering policies and procedures to be used for dam site investigation, design, construction, operation and maintenance, and emergency preparedness;

(3) encourage the establishment and implementation of effective dam safety programs in each State based on State standards;

(4) develop and encourage public awareness projects to increase public acceptance and support of State dam safety programs;

(5) develop technical assistance materials for Federal and non-Federal dam safety programs;

(6) develop mechanisms with which to provide Federal technical assistance for dam safety to the non-Federal sector; and

(7) develop technical assistance materials, seminars, and guidelines to improve security for dams in the United States.

(d) Components

(1) In general

The Program shall consist of—

(A) a Federal element and a non-Federal element; and

(B) leadership activity, technical assistance activity, and public awareness activity.

(2) Elements

(A) Federal

The Federal element shall incorporate the activities and practices carried out by Federal agencies under section 467e of this title to implement the Federal Guidelines for Dam Safety.

(B) Non-Federal

The non-Federal element shall consist of—

(i) the activities and practices carried out by States, local governments, and the private sector to safely build, regulate, operate, and maintain dams; and

(ii) Federal activities that foster State efforts to develop and implement effective programs for the safety of dams.

(3) Functional activities

(A) Leadership

The leadership activity shall be the responsibility of FEMA and shall be exercised by chairing the Board to coordinate national efforts to improve the safety of the dams in the United States.

(B) Technical assistance

The technical assistance activity shall consist of the transfer of knowledge and technical information among the Federal and non-Federal elements described in paragraph (2).

(C) Public awareness

The public awareness activity shall provide for the education of the public, including State and local officials, in the hazards of dam failure, methods of reducing the adverse consequences of dam failure, and related matters.

(e) Assistance for State dam safety programs

(1) In general

To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs, the Director shall provide assistance with amounts made available under section 467j of this title to assist States in establishing, maintaining, and improving dam safety programs in accordance with the criteria specified in paragraph (2).

(2) Criteria and budgeting requirement

For a State to be eligible for assistance under this subsection, a State dam safety program must be working toward meeting the following criteria and budgeting requirement:

(A) Criteria

A State dam safety program must be authorized by State legislation to include, at a minimum—

(i) the authority to review and approve plans and specifications to construct, enlarge, modify, remove, and abandon dams;

(ii) the authority to perform periodic inspections during dam construction to ensure compliance with approved plans and specifications;

(iii) a requirement that, on completion of dam construction, State approval must be given before operation of the dam;

(iv) the authority to require or perform periodic evaluations of all dams and reservoirs to determine the extent of the threat to human life and property in case of failure;

(v)(I) the authority to require or perform the inspection, at least once every 5 years, of all dams and reservoirs that would pose

a significant threat to human life and property in case of failure to determine the continued safety of the dams and reservoirs; and

(II) a procedure for more detailed and frequent safety inspections;

(vi) a requirement that all inspections be performed under the supervision of a State-registered professional engineer with related experience in dam design and construction;

(vii) the authority to issue notices, when appropriate, to require owners of dams to perform necessary maintenance or remedial work, install and monitor instrumentation, improve security, revise operating procedures, or take other actions, including breaching dams when necessary;

(viii) regulations for carrying out the legislation of the State described in this subparagraph;

(ix) provision for necessary funds—

(I) to ensure timely repairs or other changes to, or removal of, a dam in order to protect human life and property; and

(II) if the owner of the dam does not take action described in subclause (I), to take appropriate action as expeditiously as practicable;

(x) a system of emergency procedures to be used if a dam fails or if the failure of a dam is imminent; and

(xi) an identification of—

(I) each dam the failure of which could be reasonably expected to endanger human life;

(II) the maximum area that could be flooded if the dam failed; and

(III) necessary public facilities that would be affected by the flooding.

(B) Budgeting requirement

For a State to be eligible for assistance under this subsection, State appropriations must be budgeted to carry out the legislation of the State under subparagraph (A).

(3) Work plans

The Director shall enter into a¹ agreement with each State receiving assistance under paragraph (2) to develop a work plan necessary for the State dam safety program to reach a level of program performance specified in the agreement.

(4) Maintenance of effort

Assistance may not be provided to a State under this subsection for a fiscal year unless the State enters into such agreement with the Director as the Director requires to ensure that the State will maintain the aggregate expenditures of the State from all other sources for programs to ensure dam safety for the protection of human life and property at or above a level equal to the average annual level of such expenditures for the 2 fiscal years preceding the fiscal year.

(5) Approval of programs

(A) Submission

For a State to be eligible for assistance under this subsection, a plan for a State dam

safety program shall be submitted to the Director for approval.

(B) Approval

A State dam safety program shall be deemed to be approved 120 days after the date of receipt by the Director unless the Director determines within the 120-day period that the State dam safety program fails to meet the requirements of paragraphs (1) through (3).

(C) Notification of disapproval

If the Director determines that a State dam safety program does not meet the requirements for approval, the Director shall immediately notify the State in writing and provide the reasons for the determination and the changes that are necessary for the plan to be approved.

(6) Review of State dam safety programs

Using the expertise of the Board, the Director shall periodically review State dam safety programs. If the Board finds that a State dam safety program has proven inadequate to reasonably protect human life and property and the Director concurs, the Director shall revoke approval of the State dam safety program, and withhold assistance under this subsection, until the State dam safety program again meets the requirements for approval.

(f) Board

(1) Establishment

The Director shall establish an advisory board to be known as the "National Dam Safety Review Board" to monitor the safety of dams in the United States, to monitor State implementation of this section, and to advise the Director on national dam safety policy.

(2) Authority

The Board may use the expertise of Federal agencies and enter into contracts for necessary studies to carry out this section.

(3) Voting membership

The Board shall consist of 11 voting members selected by the Director for expertise in dam safety, of whom—

(A) 1 member shall represent the Department of Agriculture;

(B) 1 member shall represent the Department of Defense;

(C) 1 member shall represent the Department of the Interior;

(D) 1 member shall represent FEMA;

(E) 1 member shall represent the Federal Energy Regulatory Commission;

(F) 5 members shall be selected by the Director from among State dam safety officials; and

(G) 1 member shall be selected by the Director to represent the private sector.

(4) Nonvoting membership

The Director, in consultation with the Board, may invite a representative of the National Laboratories of the Department of Energy and may invite representatives from Federal or State agencies or dam safety experts, as needed, to participate in meetings of the Board.

¹ So in original. Probably should be "an".

(5) Duties**(A) In general**

The Board shall encourage the establishment and maintenance of effective programs, policies, and guidelines to enhance dam safety for the protection of human life and property throughout the United States.

(B) Coordination and information exchange among agencies

In carrying out subparagraph (A), the Board shall encourage coordination and information exchange among Federal and State dam safety agencies that share common problems and responsibilities for dam safety, including planning, design, construction, operation, emergency action planning, inspections, maintenance, regulation or licensing, technical or financial assistance, research, and data management.

(6) Work groups

The Director may establish work groups under the Board to assist the Board in accomplishing its goals. The work groups shall consist of members of the Board and other individuals selected by the Director.

(7) Compensation of members**(A) Federal employees**

Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to compensation received for the services of the member as an officer or employee of the United States.

(B) Other members

Each member of the Board who is not an officer or employee of the United States shall serve without compensation.

(8) Travel expenses**(A) Representatives of Federal agencies**

To the extent amounts are made available in advance in appropriations Acts, each member of the Board who represents a Federal agency shall be reimbursed of appropriations for travel expenses by his or her agency, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, while away from the home or regular place of business of the member in the performance of services for the Board.

(B) Other individuals

To the extent amounts are made available in advance in appropriations Acts, each member of the Board who represents a State agency, the member of the Board who represents the private sector, and each member of a work group created under paragraph (1) shall be reimbursed for travel expenses by FEMA, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, while away from home or regular place of business of the member in performance of services for the Board.

(9) Applicability of Federal Advisory Committee Act

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(Pub. L. 92-367, § 8, as added Pub. L. 104-303, title II, § 215(c)(8), Oct. 12, 1996, 110 Stat. 3688; amended Pub. L. 107-310, § 3(a)-(e)(1), (f), (g), Dec. 2, 2002, 116 Stat. 2450, 2451; Pub. L. 109-460, § 1(c), Dec. 22, 2006, 120 Stat. 3401.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (f)(9), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 467f, Pub. L. 92-367, § 7, as added Pub. L. 99-662, title XII, § 1201(b), Nov. 17, 1986, 100 Stat. 4260; amended Pub. L. 102-580, title II, § 209(a), Oct. 31, 1992, 106 Stat. 4830, related to funding for State dam safety programs, prior to repeal by Pub. L. 104-303, title II, § 215(c)(2), Oct. 12, 1996, 110 Stat. 3685.

A prior section 8 of Pub. L. 92-367 was classified to section 467g of this title prior to repeal by Pub. L. 104-303.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-460, § 1(c)(1), substituted “performance measures, and target dates toward effectively administering this subchapter in order to” for “and target dates to”.

Subsec. (e)(2)(A). Pub. L. 109-460, § 1(c)(2)(A), struck out “substantially” after “to include” in introductory provisions.

Subsec. (e)(2)(A)(iv) to (vi). Pub. L. 109-460, § 1(c)(2)(B), (C), added cl. (iv) and redesignated former cls. (iv) and (v) as (v) and (vi), respectively. Former cl. (vi) redesignated (vii).

Subsec. (e)(2)(A)(vii). Pub. L. 109-460, § 1(c)(2)(B), (D), redesignated cl. (vi) as (vii) and inserted “install and monitor instrumentation,” after “remedial work.”. Former cl. (vii) redesignated (viii).

Subsec. (e)(2)(A)(viii) to (xi). Pub. L. 109-460, § 1(c)(2)(B), redesignated cls. (vii) to (x) as (viii) to (xi), respectively.

2002—Subsec. (a)(3)(B). Pub. L. 107-310, § 3(a)(1), substituted “strategic plan described in subsection (b)” for “implementation plan described in subsection (e)”.

Subsec. (a)(3)(C). Pub. L. 107-310, § 3(a)(2), substituted “subsection (e)” for “subsection (f)”.

Subsec. (b). Pub. L. 107-310, § 3(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Director shall—

“(1) not later than 270 days after October 12, 1996, develop the implementation plan described in subsection (e) of this section;

“(2) not later than 300 days after October 12, 1996, submit to the appropriate authorizing committees of Congress the implementation plan described in subsection (e) of this section; and

“(3) by regulation, not later than 360 days after October 12, 1996—

“(A) develop and implement the Program;

“(B) establish goals, priorities, and target dates for implementation of the Program; and

“(C) to the extent feasible, provide a method for cooperation and coordination with, and assistance to, interested governmental entities in all States.”

Subsec. (c)(7). Pub. L. 107-310, § 3(c), added par. (7).

Subsec. (d)(3)(A). Pub. L. 107-310, § 3(d), substituted “and shall be exercised by chairing the Board to coordinate national efforts to improve the safety of the dams in the United States” for “and shall be exercised by chairing ICODS to coordinate Federal efforts in cooperation with State dam safety officials”.

Subsec. (e). Pub. L. 107-310, § 3(e)(1), redesignated subsec. (f) as (e) and struck out heading and text of former subsec. (e). Text read as follows: “The Director shall—

“(1) develop an implementation plan for the Program that shall set, through fiscal year 2002, year-by-year targets that demonstrate improvements in dam safety; and

“(2) recommend appropriate roles for Federal agencies and for State and local units of government, individuals, and private organizations in carrying out the implementation plan.”

Subsec. (e)(1). Pub. L. 107-310, §3(f)(1), substituted “the Director shall provide assistance with amounts made available under section 467j of this title to assist States in establishing, maintaining, and improving dam safety programs in accordance with the criteria specified in paragraph (2).” for “the Director shall provide assistance with amounts made available under section 467j of this title to assist States in establishing and maintaining dam safety programs—

“(A) in accordance with the criteria specified in paragraph (2); and

“(B) in accordance with more advanced requirements and standards established by the Board and the Director with the assistance of established criteria such as the Model State Dam Safety Program published by FEMA, numbered 123 and dated April 1987, and amendments to the Model State Dam Safety Program.”

Subsec. (e)(2). Pub. L. 107-310, §3(f)(2)(A), in introductory provisions, struck out “primary” after “For a State to be eligible for” and “, and for a State to be eligible for advanced assistance under this subsection, a State dam safety program must meet the following criteria and budgeting requirement and be working toward meeting the advanced requirements and standards established under paragraph (1)(B)” before colon.

Subsec. (e)(2)(A). Pub. L. 107-310, §3(f)(2)(B)(i), substituted “A State” for “For a State to be eligible for assistance under this subsection, a State” in introductory provisions.

Subsec. (e)(2)(A)(vi). Pub. L. 107-310, §3(f)(2)(B)(ii), inserted “improve security,” before “revise operating procedures.”

Subsec. (e)(3). Pub. L. 107-310, §3(f)(3), substituted “agreement” for “contract” in two places.

Subsec. (f). Pub. L. 107-310, §3(e)(1), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 107-310, §3(g)(1), substituted “The Director shall establish” for “The Director may establish” and “to monitor the safety of dams in the United States, to monitor State implementation of this section, and to advise the Director on national dam safety policy” for “to monitor State implementation of this section”.

Subsec. (f)(3). Pub. L. 107-310, §3(g)(2)(A), (B), substituted “Voting membership” for “Membership” in heading and “11 voting members” for “11 members” in introductory provisions.

Subsec. (f)(3)(F), (G). Pub. L. 107-310, §3(g)(2)(C), added subpars. (F) and (G) and struck out former subpars. (F) and (G) which read as follows:

“(F) 5 members shall be selected by the Director from among dam safety officials of States; and

“(G) 1 member shall be selected by the Director to represent the United States Committee on Large Dams.”

Subsec. (f)(4) to (6). Pub. L. 107-310, §3(g)(3)(B), added pars. (4) to (6). Former pars. (4) to (6) redesignated (7) to (9), respectively.

Subsec. (f)(7). Pub. L. 107-310, §3(g)(3)(A), redesignated par. (4) as (7).

Subsec. (f)(8). Pub. L. 107-310, §3(g)(4), added par. (8) and struck out heading and text of former par. (8). Text read as follows: “Each member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, while away from the home or regular place of business of the member in the performance of services for the Board.”

Pub. L. 107-310, §3(g)(3)(A), redesignated par. (5) as (8).

Subsec. (f)(9). Pub. L. 107-310, §3(g)(3)(A), redesignated par. (6) as (9).

Subsec. (g). Pub. L. 107-310, §3(e)(1), struck out heading and text of subsec. (g). Text read as follows: “At the request of any State that has or intends to develop a State dam safety program, the Director shall provide training for State dam safety staff and inspectors.”

Subsec. (h). Pub. L. 107-310, §3(e)(1), redesignated subsec. (h) as (f).

TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 467f-1. Lock and dam security

(a) Standards

The Secretary, in consultation with the Federal Emergency Management Agency, the Tennessee Valley Authority, and the Coast Guard, shall develop standards for the security of locks and dams, including the testing and certification of vessel exclusion barriers.

(b) Site surveys

At the request of a lock or dam owner, the Secretary shall provide technical assistance, on a reimbursable basis, to improve lock or dam security.

(c) Cooperative agreement

The Secretary may enter into a cooperative agreement with a nonprofit alliance of public and private organizations that has the mission of promoting safe waterways and seaports to carry out testing and certification activities, and to perform site surveys, under this section.

(d) Authorization of appropriations

There is authorized to be appropriated \$3,000,000 to carry out this section.

(Pub. L. 110-114, title V, §5024, Nov. 8, 2007, 121 Stat. 1203.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the National Dam Safety Program Act which comprises this subchapter.

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 467g. Research

(a) In general

The Director, in cooperation with the Board, shall carry out a program of technical and archival research to develop and support—

(1) improved techniques, historical experience, and equipment for rapid and effective dam construction, rehabilitation, and inspection;

(2) devices for the continued monitoring of the safety of dams;