

share of project design and construction costs. The non-Federal share of project design and construction costs shall be 25 percent.

(d) Wetlands restoration and enhancement demonstration program

(1) Establishment and implementation

The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for the purpose of determining the feasibility of wetlands restoration, enhancement, and creation as a means of contributing to the goals established by subsection (a) of this section.

(2) Goal

The goal of the program under this subsection shall be to establish a limited number of demonstration wetlands restoration, enhancement, and creation areas in districts of the Corps of Engineers for the purpose of evaluating the technical and scientific long-term feasibility of such areas as a means of contributing to the attainment of the goals established by subsection (a) of this section. Federal and State land-owning agencies and private parties may contribute to such areas.

(3) Factors to consider

In establishing the demonstration program under this subsection, the Secretary shall consider—

(A) past experience with wetlands restoration, enhancement, and creation;

(B) the appropriate means of measuring benefits of compensatory mitigation activities, including enhancement or restoration of existing wetlands or creation of wetlands;

(C) the appropriate geographic scope for which wetlands loss may be offset by restoration, enhancement, and creation efforts;

(D) the technical feasibility and scientific likelihood that wetlands can be successfully restored, enhanced, and created;

(E) means of establishing liability for, and long-term ownership of, wetlands restoration, enhancement, and creation areas; and

(F) responsibilities for short- and long-term project monitoring.

(4) Reporting

(A) To the Chief of Engineers

The district engineer for each district of the Corps of Engineers in which a wetlands restoration, enhancement, and creation area is established under this subsection shall transmit annual reports to the Chief of Engineers describing the amount and value of wetlands restored, enhanced, and created for the area and a summary of whether the area is contributing to the goal established in paragraph (2).

(B) To Congress

Not later than 3 years after November 28, 1990, the Secretary shall transmit to Congress a report evaluating the use of wetlands restoration, enhancement, and creation areas in fulfilling the goal established by paragraph (2), together with recommendations on whether or not to continue use of such areas as a means of meeting the goals established by subsection (a) of this section.

(5) Effect on other laws

Nothing in this subsection affects any requirements under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 403 of this title.

(e) Training and certification of delineators

(1) In general

The Secretary is authorized to establish a program for the training and certification of individuals as wetlands delineators. As part of such program, the Secretary shall carry out demonstration projects in districts of the Corps of Engineers. The program shall include training and certification of delineators and procedures for expediting consideration and acceptance of delineations performed by certified delineators.

(2) Reports

The Secretary shall transmit to Congress periodic reports concerning the status of the program and any recommendations on improving the content and implementation of the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

(Pub. L. 101-640, title III, § 307, Nov. 28, 1990, 104 Stat. 4635.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (b)(2)(A), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which a report required under subsec. (e)(2) of this section is listed on page 70), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

WETLANDS ENHANCEMENT OPPORTUNITIES

Pub. L. 101-640, title IV, § 409, Nov. 28, 1990, 104 Stat. 4648, provided that: "Not later than January 20, 1992, the Secretary shall transmit to Congress a list which specifically identifies opportunities of enhancing wetlands in connection with construction and operation of water resource projects."

"SECRETARY" DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 101-640, set out as a note under section 2201 of this title.

§ 2317a. Cooperative agreements

(a) In general

For the purpose of expediting the cost-effective design and construction of wetlands restoration that is part of an authorized water resources project, the Secretary may enter into

cooperative agreements under section 6305 of title 31 with nonprofit organizations with expertise in wetlands restoration to carry out such design and construction on behalf of the Secretary.

(b) Limitations

(1) Per project limit

A cooperative agreement under this section may not obligate the Secretary to pay the nonprofit organization more than \$1,000,000 for any single wetlands restoration project.

(2) Annual limit

The total value of work carried out under cooperative agreements under this section may not exceed \$5,000,000 in any fiscal year.

(Pub. L. 110–114, title II, §2015, Nov. 8, 2007, 121 Stat. 1076.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

“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.

§ 2317b. Wetlands mitigation

(1) In general

In carrying out a water resources project that involves wetlands mitigation and that has impacts that occur within the service area of a mitigation bank, the Secretary, where appropriate, shall first consider the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605) or other applicable Federal law (including regulations).

(2) Service area

To the maximum extent practicable, the service area of the mitigation bank under paragraph (1) shall be in the same watershed as the affected habitat.

(3) Responsibility for monitoring

(A) In general

Purchase of credits from a mitigation bank for a water resources project relieves the Secretary and the non-Federal interest from responsibility for monitoring or demonstrating mitigation success.

(B) Applicability

The relief of responsibility under subparagraph (A) applies only in any case in which the Secretary determines that monitoring of mitigation success is being conducted by the Secretary or by the owner or operator of the mitigation bank.

(Pub. L. 110–114, title II, §2036(c), Nov. 8, 2007, 121 Stat. 1094.)

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water

Resources Development Act of 1986 which comprises this chapter.

“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.

§ 2318. Flood plain management

(a) Exclusion of elements from benefit-cost analysis

The Secretary shall not include in the benefit base for justifying Federal flood damage reduction projects—

(1)(A) any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation after July 1, 1991; or

(B) in the case of a county substantially located within the 100-year flood plain, any new or substantially improved structure (other than a structure necessary for conducting a water-dependent activity) built in the 10-year flood plain after July 1, 1991; and

(2) any structure which becomes located in the 100-year flood plain with a first floor elevation less than the 100-year flood elevation or in the 10-year flood plain, as the case may be, by virtue of constrictions placed in the flood plain after July 1, 1991.

(b) Flood damage reduction benefits

(1) In general

In calculating the benefits of a proposed project for nonstructural flood damage reduction, the Secretary shall calculate the benefits of the nonstructural project using methods similar to those used for calculating the benefits of structural projects, including similar treatment in calculating the benefits from losses avoided.

(2) Avoidance of double counting

In carrying out paragraph (1), the Secretary should avoid double counting of benefits.

(c) Counties substantially located within 100-year flood plain

For the purposes of subsection (a) of this section, a county is substantially located within the 100-year flood plain—

(1) if the county is comprised of lands of which 50 percent or more are located in the 100-year flood plain; and

(2) if the Secretary determines that application of the requirement contained in subsection (a)(1)(A) of this section with respect to the county would unreasonably restrain continued economic development or unreasonably limit the availability of needed flood control measures.

(d) Cost sharing

Not later than January 1, 1992, the Secretary shall transmit to Congress a report on the feasibility and advisability of increasing the non-Federal share of costs for new projects in areas where new or substantially improved structures and other constrictions are built or placed in the 100-year flood plain or the 10-year flood