

**(e) Development of guidance**

When developing implementation guidance for a covered water resources development law, the Secretary shall take into consideration the input and recommendations received from non-Federal stakeholders, and make the final guidance available to the public on the publicly accessible website described in subsection (b)(2).

**(f) Definitions**

In this section:

**(1) Covered provision of law**

The term “covered provision of law” means a provision of law under the jurisdiction of the Secretary contained in, or amended by, a covered water resources development law, with respect to which—

(A) the Secretary determines guidance is necessary in order to implement the provision; and

(B) no such guidance has been issued as of October 23, 2018.

**(2) Covered water resources development law**

The term “covered water resources development law” means—

(A) the Water Resources Reform and Development Act of 2014;

(B) the Water Resources Development Act of 2016;

(C) this Act; and

(D) any Federal water resources development law enacted after October 23, 2018.

(Pub. L. 115–270, title I, § 1105, Oct. 23, 2018, 132 Stat. 3772.)

**Editorial Notes**

## REFERENCES IN TEXT

The Water Resources Reform and Development Act of 2014, referred to in subsec. (f)(2)(A), is Pub. L. 113–121, June 10, 2014, 128 Stat. 1193. For complete classification of this Act to the Code, see Short Title of 2014 Amendment note set out under section 2201 of this title and Tables.

The Water Resources Development Act of 2016, referred to in subsec. (f)(2)(B), is title I of Pub. L. 114–322, Dec. 16, 2016, 130 Stat. 1632. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 2201 of this title and Tables.

This Act, referred to in subsec. (f)(2)(C), probably means title I of Pub. L. 115–270, Oct. 23, 2018, 132 Stat. 3768, known as the Water Resources Development Act of 2018. For complete classification of this Act to the Code, see Short Title of 2018 Amendment note set out under section 2201 of this title and Tables.

## CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2018, and also as part of the America’s Water Infrastructure Act of 2018, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

**Statutory Notes and Related Subsidiaries**

## IMPLEMENTATION GUIDANCE

Pub. L. 116–260, div. AA, title II, § 223(d), Dec. 27, 2020, 134 Stat. 2696, provided that: “The Secretary [of the Army] shall expeditiously issue any guidance necessary to implement any provision of this Act [div. AA of Pub. L. 116–260, see Tables for classification], including any

amendments made by this Act, in accordance with section 1105 of the Water Resources Development Act of 2018 (33 U.S.C. 2202).”

## “SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 102 of Pub. L. 115–270, set out as a note under section 2201 of this title.

**§ 2203. Review of contracting policies****(a) Review of contractual agreements****(1) In general**

Not later than 180 days after December 27, 2020, the Secretary shall complete a review of the policies, guidelines, and regulations of the Corps of Engineers for the development of contractual agreements between the Secretary and non-Federal interests and utilities associated with the construction of water resources development projects.

**(2) Report**

Not later than 90 days after completing the review under subsection (a)(1), the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, and make publicly available, a report that includes—

(A) a summary of the results of the review; and

(B) public guidance on best practices for a non-Federal interest to use when writing or developing contractual agreements with the Secretary and utilities.

**(3) Provision of guidance**

The Secretary shall provide the best practices guidance included under paragraph (2)(A) to non-Federal interests prior to the development of contractual agreements with such non-Federal interests.

**(b) Sense of Congress**

It is the sense of Congress that the Secretary should maximize use of nonprice tradeoff procedures in competitive acquisitions for carrying out emergency work in an area with respect to which the President has declared a major disaster under section 5170 of title 42.

(Pub. L. 116–260, div. AA, title I, § 136, Dec. 27, 2020, 134 Stat. 2649.)

**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.

## SUBCHAPTER I—COST SHARING

## § 2211. Harbors

**(a) Construction****(1) Payments during construction**

The non-Federal interests for a navigation project for a harbor or inland harbor, or any separable element thereof, on which a contract for physical construction has not been awarded before June 10, 2014, shall pay, during the period of construction of the project, the following costs associated with general navigation features:

(A) 10 percent of the cost of construction of the portion of the project which has a depth not in excess of 20 feet; plus

(B) 25 percent of the cost of construction of the portion of the project which has a depth in excess of 20 feet but not in excess of 50 feet; plus

(C) 50 percent of the cost of construction of the portion of the project which has a depth in excess of 50 feet.

**(2) Additional 10 percent payment over 30 years**

The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 2216 of this title. The value of lands, easements, rights-of-way, and relocations provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.

**(3) Lands, easements, and rights-of-way**

Except as provided under section 2283(c) of this title, the non-Federal interests for a project to which paragraph (1) applies shall provide the lands, easements, rights-of-way, and relocations (other than utility relocations under paragraph (4)) necessary for the project, including any lands, easements, rights-of-way, and relocations (other than utility relocations accomplished under paragraph (4)) that are necessary for dredged material disposal facilities.

**(4) Utility relocations**

The non-Federal interests for a project to which paragraph (1) applies shall perform or assure the performance of all relocations of utilities necessary to carry out the project, except that in the case of a project for a deep-draft harbor and in the case of a project constructed by non-Federal interests under section 2232 of this title, one-half of the cost of each such relocation shall be borne by the owner of the facility being relocated and one-half of the cost of each such relocation shall be borne by the non-Federal interests.

**(5) Dredged material disposal facilities for project construction**

In this subsection, the term “general navigation features” includes constructed land-based and aquatic dredged material disposal

facilities that are necessary for the disposal of dredged material required for project construction and for which a contract for construction has not been awarded on or before October 12, 1996.

**(b) Operation and maintenance****(1) In general**

The Federal share of the cost of operation and maintenance of each navigation project for a harbor or inland harbor constructed by the Secretary pursuant to this Act or any other law approved after November 17, 1986, shall be 100 percent, except that in the case of a deep-draft harbor, the non-Federal interests shall be responsible for an amount equal to 50 percent of the excess of the cost of the operation and maintenance of such project over the cost which the Secretary determines would be incurred for operation and maintenance of such project if such project had a depth of 50 feet.

**(2) Dredged material disposal facilities**

The Federal share of the cost of constructing land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for the operation and maintenance of a project and for which a contract for construction has not been awarded on or before October 12, 1996, shall be determined in accordance with subsection (a). The Federal share of operating and maintaining such facilities shall be determined in accordance with paragraph (1).

**(c) Erosion or shoaling attributable to Federal navigation works**

Costs of constructing projects or measures for the prevention or mitigation of erosion or shoaling damages attributable to Federal navigation works shall be shared in the same proportion as the cost sharing provisions applicable to the project causing such erosion or shoaling. The non-Federal interests for the project causing the erosion or shoaling shall agree to operate and maintain such measures.

**(d) Non-Federal payments during construction**

The amount of any non-Federal share of the cost of any navigation project for a harbor or inland harbor shall be paid to the Secretary. Amounts required to be paid during construction shall be paid on an annual basis during the period of construction, beginning not later than one year after construction is initiated.

**(e) Agreement**

Before initiation of construction of a project to which this section applies, the Secretary and the non-Federal interests shall enter into a cooperative agreement according to the provisions of section 1962d-5b of title 42. The non-Federal interests shall agree to—

(1) provide to the Federal Government lands, easements, and rights-of-way, including those necessary for dredged material disposal facilities, and perform the necessary relocations required for construction, operation, and maintenance of such project;

(2) hold and save the United States free from damages due to the construction or operation