

funds, during the emergency period, from a non-Federal interest or private entity to repair, restore, or rehabilitate a federally authorized water resources development project, and to provide reimbursement to such non-Federal interest or private entity for such materials, services, and funds, in the Secretary's sole discretion, and subject to the availability of appropriations, if the Secretary determines that reimbursement is in the public interest.

(c) Additional requirement

The Secretary may only reimburse for the use of materials or services accepted under this section if such materials or services meet the Secretary's specifications and comply with all applicable laws and regulations that would apply if such materials and services were acquired by the Secretary, including sections 3141 through 3148 and 3701 through 3708 of title 40, section 8302 of title 41, and the National Environmental Policy Act of 1969.

(d) Agreements

(1) In general

Prior to the acceptance of materials, services, or funds under this section, the Secretary and the non-Federal interest or private entity shall enter into an agreement that specifies—

(A) the non-Federal interest or private entity shall hold and save the United States free from any and all damages that arise from use of materials or services of the non-Federal interest or private entity, except for damages due to the fault or negligence of the United States or its contractors;

(B) the non-Federal interest or private entity shall certify that the materials or services comply with all applicable laws and regulations under subsection (c); and

(C) any other term or condition required by the Secretary.

(2) Exception

If an agreement under paragraph (1) was not entered prior to materials or services being contributed, a non-Federal interest or private entity shall enter into an agreement with the Secretary that—

(A) specifies the value, as determined by the Secretary, of those materials or services contributed and eligible for reimbursement; and

(B) ensures that the materials or services comply with subsection (c) and paragraph (1).

(Pub. L. 116-260, div. AA, title I, §130, Dec. 27, 2020, 134 Stat. 2642.)

Editorial Notes

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1)(B), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55

(§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

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.

§ 2326. Regional sediment management

(a) In general

(1) Sediment use

(A) Sediment from Federal water resources projects

For sediment obtained through or used in the construction, operation, or maintenance of an authorized Federal water resources project, including a project authorized for flood control, the Secretary shall develop, at Federal expense, regional sediment management plans and carry out projects at locations identified in plans developed under this section, or identified jointly by the non-Federal interest and the Secretary, for use in the construction, repair, modification, or rehabilitation of projects associated with Federal water resources projects for purposes listed in paragraph (3).

(B) Sediment from other Federal sources and non-Federal sources

For purposes of projects carried out under this section, the Secretary may include sediment from other Federal sources and non-Federal sources, subject to the requirement that any sediment obtained from a non-Federal source shall not be obtained at Federal expense.

(2) Cooperation

The Secretary shall develop plans under this subsection in cooperation with the appropriate Federal, State, regional, and local agencies.

(3) Purposes for sediment use in projects

The purposes of using sediment for the construction, repair, modification, or rehabilitation of Federal water resources projects are—

(A) to reduce storm damage to property;

(B) to protect, restore, and create aquatic and ecologically related habitats, including wetlands; and

(C) to transport and place suitable sediment for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies.

(4) Reducing costs

To reduce or avoid Federal costs, the Secretary shall consider the beneficial use of

dredged material in a manner that contributes to the maintenance of sediment resources in the nearby coastal system.

(b) Secretarial findings

Subject to subsection (c), projects carried out under subsection (a) may be carried out in any case in which the Secretary finds that—

- (1) the environmental, economic, and social benefits of the project, both monetary and nonmonetary, justify the cost of the project; and
- (2) the project will not result in environmental degradation.

(c) Determination of project costs

(1) Costs of construction

(A) In general

Costs associated with construction of a project under this section or identified in a regional sediment management plan shall be limited solely to construction costs that are in excess of the costs necessary to carry out the dredging for construction, operation, or maintenance of an authorized Federal water resources project in the most cost-effective way, consistent with economic, engineering, and environmental criteria.

(B) Cost sharing

(i) In general

Except as provided in clause (ii), the non-Federal share of the construction cost of a project under this section shall be determined as provided in subsections (a) through (d) of section 2213 of this title.

(ii) Special rule

Construction of a project under this section for one or more of the purposes of protection, restoration, or creation of aquatic and ecologically related habitat, the cost of which does not exceed \$750,000 and which is located in a disadvantaged community as determined by the Secretary, may be carried out at Federal expense.

(C) Total cost

The total Federal costs associated with construction of a project under this section may not exceed \$10,000,000.

(2) Operation, maintenance, replacement, and rehabilitation costs

Operation, maintenance, replacement, and rehabilitation costs associated with a project under this section are the responsibility of the non-Federal interest.

(d) Selection of dredged material disposal method for purposes related to environmental restoration or storm damage and flood reduction

(1) In general

At the request of the non-Federal interest for a water resources development project involving the disposal of dredged material, the Secretary, using funds appropriated for construction or operation and maintenance of the project, may select a disposal method that is not the least cost option if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to—

(A) the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion; or

(B) the hurricane and storm or flood risk reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property.

(2) Federal share

The Federal share of such incremental costs shall be determined in accordance with subsection (c).

(3) Special rule

Disposal of dredged material under this subsection may include a single or periodic application of sediment for beneficial use and shall not require operation and maintenance.

(4) Disposal at non-Federal cost

The Secretary may accept funds from a non-Federal interest to dispose of dredged material as provided under section 2213(d)(1) of this title.

(5) Selection of dredged material disposal method for certain purposes

Activities carried out under this subsection—

(A) shall be carried out using amounts appropriated for construction or operation and maintenance of the project involving the disposal of the dredged material; and

(B) shall not be carried¹ out using amounts made available under subsection (g).

(e) State and regional plans

The Secretary may—

(1) cooperate with any State or group of States in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State or among States;

(2) encourage State participation in the implementation of the plan; and

(3) submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan.

(f) Priority areas

In carrying out this section, the Secretary shall give priority to a regional sediment management project in the vicinity of each of the following:

(1) Little Rock Slackwater Harbor, Arkansas.

(2) Fletcher Cove, California.

(3) Egmont Key, Florida.

(4) Calcasieu Ship Channel, Louisiana.

(5) Delaware River Estuary, New Jersey and Pennsylvania.

(6) Fire Island Inlet, Suffolk County, New York.

(7) Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven, New York.

(8) Morehead City, North Carolina.

(9) Toledo Harbor, Lucas County, Ohio.

(10) Galveston Bay, Texas.

(11) Benson Beach, Washington.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$62,500,000 per fiscal year,

¹ So in original. Probably should be preceded by "be".

of which not more than \$5,000,000 per fiscal year may be used for the development of regional sediment management plans authorized by subsection (e) and of which not more than \$3,000,000 per fiscal year may be used for construction of projects to which subsection (c)(1)(B)(ii) applies. Such funds shall remain available until expended.

(Pub. L. 102-580, title II, §204, Oct. 31, 1992, 106 Stat. 4826; Pub. L. 104-303, title II, §207, Oct. 12, 1996, 110 Stat. 3680; Pub. L. 106-53, title II, §209, Aug. 17, 1999, 113 Stat. 287; Pub. L. 110-114, title II, §2037(a), Nov. 8, 2007, 121 Stat. 1094; Pub. L. 113-121, title I, §§1030(d)(1), 1038, June 10, 2014, 128 Stat. 1232, 1236; Pub. L. 114-322, title I, §1122(i), Dec. 16, 2016, 130 Stat. 1647; Pub. L. 115-270, title I, §§1150, 1157(d), Oct. 23, 2018, 132 Stat. 3787, 3794; Pub. L. 116-260, div. AA, title I, §125(a)(2)(C), Dec. 27, 2020, 134 Stat. 2637.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (d)(1). Pub. L. 116-260, §125(a)(2)(C)(i)(I), in introductory provisions, substituted “At the request of the non-Federal interest for a water resources development project involving the disposal of dredged material, the Secretary, using funds appropriated for construction or operation and maintenance of the project, may select” for “In developing and carrying out a Federal water resources project involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest.”

Subsec. (d)(1)(B). Pub. L. 116-260, §125(a)(2)(C)(i)(II), substituted “hurricane and storm or flood risk reduction benefits” for “flood and storm damage and flood reduction benefits”.

Subsec. (d)(5). Pub. L. 116-260, §125(a)(2)(C)(ii), added par. (5).

2018—Subsec. (a)(1)(A). Pub. L. 115-270, §1150, inserted “including a project authorized for flood control,” after “an authorized Federal water resources project.”

Subsec. (g). Pub. L. 115-270, §1157(d), substituted “\$62,500,000” for “\$50,000,000”.

2016—Subsec. (a)(1). Pub. L. 114-322, §1122(i)(1), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (d)(3), (4). Pub. L. 114-322, §1122(i)(2), added pars. (3) and (4).

2014—Subsec. (a)(1). Pub. L. 113-121, §1038(1)(A), inserted “or used in” after “obtained through”.

Subsec. (a)(3)(C). Pub. L. 113-121, §1038(1)(B), inserted “for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies” before period at end.

Subsec. (a)(4). Pub. L. 113-121, §1038(1)(C), added par. (4).

Subsec. (c)(1)(C). Pub. L. 113-121, §1030(d)(1)(A), substituted “\$10,000,000” for “\$5,000,000”.

Subsec. (d). Pub. L. 113-121, §1038(2)(A), substituted “Selection of dredged material disposal method for purposes related to environmental restoration or storm damage and flood reduction” for “Selection of dredged material disposal method for environmental purposes” in heading.

Subsec. (d)(1). Pub. L. 113-121, §1038(2)(B), substituted “in relation to—” for “in relation to the environmental benefits, including the benefits to the aquatic environ-

ment to be derived from the creation of wetlands and control of shoreline erosion.” and added subpars. (A) and (B).

Subsec. (e)(1). Pub. L. 113-121, §1038(3), added par. (1) and struck out former par. (1) which read as follows: “cooperate with any State in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State;”.

Subsec. (g). Pub. L. 113-121, §1030(d)(1)(B), substituted “\$50,000,000” for “\$30,000,000”.

2007—Pub. L. 110-114 amended section generally. Prior to amendment, section related to beneficial uses of dredged material.

1999—Subsec. (c). Pub. L. 106-53, §209(1), in introductory provisions, substituted “binding agreement with the Secretary” for “cooperative agreement in accordance with the requirements of section 1962d-5b of title 42”.

Subsec. (g). Pub. L. 106-53, §209(2), added subsec. (g). 1996—Subsecs. (e), (f). Pub. L. 104-303 added subsec. (e) and redesignated former subsec. (e) as (f).

Statutory Notes and Related Subsidiaries

APPLICABILITY

Pub. L. 110-114, title II, §2037(c), as added by Pub. L. 113-121, title I, §1030(d)(2), June 10, 2014, 128 Stat. 1232, provided that: “The amendment made by subsection (a) [amending this section] shall not apply to any project authorized under this Act [see Tables for classification] if a report of the Chief of Engineers for the project was completed prior to the date of enactment of this Act [Nov. 8, 2007].”

PROJECT SELECTION

Pub. L. 116-260, div. AA, title I, §125(b)(3), Dec. 27, 2020, 134 Stat. 2638, provided that: “In selecting projects for the beneficial use of dredged materials under section 1122 of the Water Resources Development Act of 2016 (33 U.S.C. 2326 note) [set out as a note below], the Secretary [of the Army] shall prioritize the selection of at least one project for the utilization of thin layer placement of dredged fine and coarse grain sediment and at least one project for recovering lost storage capacity in reservoirs due to sediment accumulation authorized by subsection (a)(8) of such section, to the extent that a non-Federal interest has submitted an application for such project purposes that otherwise meets the requirements of such section.”

COORDINATION WITH EXISTING AUTHORITIES

Pub. L. 116-260, div. AA, title I, §125(d)(2), Dec. 27, 2020, 134 Stat. 2640, provided that: “The Secretary [of the Army] may carry out the dredge pilot program authorized by section 1111 of the Water Resources Development Act of 2018 (33 U.S.C. 2326 note) in coordination with Federal regional dredge demonstration programs in effect on the date of enactment of this Act [Dec. 27, 2020].”

DREDGE PILOT PROGRAM

Pub. L. 115-270, title I, §1111, Oct. 23, 2018, 132 Stat. 3774, as amended by Pub. L. 116-260, div. AA, title I, §125(d)(1), Dec. 27, 2020, 134 Stat. 2640, provided that:

“(a) IN GENERAL.—The Secretary [of the Army] is authorized to carry out a pilot program to award contracts with a duration of up to 5 years for the operation and maintenance of—

“(1) harbors and inland harbors referred to in section 210(a)(2) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(a)(2)); or

“(2) inland and intracoastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978 (33 U.S.C. 1804).

“(b) SCOPE.—In carrying out the pilot program under subsection (a), the Secretary may award a contract described in such subsection, which may address one or more harbors, inland harbors, or inland or intracoastal waterways in a geographical region, if the Secretary

determines that the contract provides cost savings compared to the awarding of such work on an annual basis or on a project-by-project basis.

“(c) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first contract is awarded pursuant to the pilot program carried out under subsection (a), the Secretary shall submit to Congress a report evaluating, with respect to the pilot program and any contracts awarded under the pilot program—

- “(1) cost effectiveness;
- “(2) reliability and performance;
- “(3) cost savings attributable to mobilization and demobilization of dredge equipment; and
- “(4) response times to address navigational impediments.

“(d) SUNSET.—The authority of the Secretary to enter into contracts pursuant to the pilot program carried out under subsection (a), shall expire on the date that is 10 years after the date of enactment of this Act [Oct. 23, 2018].”

BENEFICIAL USE OF DREDGED SEDIMENT

Pub. L. 115-270, title I, §1148, Oct. 23, 2018, 132 Stat. 3787, provided that:

“(a) IN GENERAL.—In carrying out a project for the beneficial reuse of sediment to reduce storm damage to property under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326) that involves only a single application of sediment, the Secretary [of the Army] may grant a temporary easement necessary to facilitate the placement of sediment, if the Secretary determines that granting a temporary easement is in the interest of the United States.

“(b) LIMITATION.—If the Secretary grants a temporary easement under subsection (a) with respect to a project, that project shall no longer be eligible for future placement of sediment under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326).”

BENEFICIAL USE OF DREDGED MATERIAL

Pub. L. 114-322, title I, §1122(a)–(h), Dec. 16, 2016, 130 Stat. 1645, 1646, as amended by Pub. L. 115-270, title I, §1130, Oct. 23, 2018, 132 Stat. 3780; Pub. L. 116-260, div. AA, title I, §125(b)(1), Dec. 27, 2020, 134 Stat. 2638, provided that:

“(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 16, 2016], the Secretary [of the Army] shall establish a pilot program to carry out projects for the beneficial use of dredged material, including projects for the purposes of—

- “(1) reducing storm damage to property and infrastructure;
- “(2) promoting public safety;
- “(3) protecting, restoring, and creating aquatic ecosystem habitats;
- “(4) stabilizing stream systems and enhancing shorelines;
- “(5) promoting recreation;
- “(6) supporting risk management adaptation strategies;
- “(7) reducing the costs of dredging and dredged material placement or disposal, such as projects that use dredged material for—

- “(A) construction or fill material;
- “(B) civic improvement objectives; and
- “(C) other innovative uses and placement alternatives that produce public economic or environmental benefits; and

- “(8) recovering lost storage capacity in reservoirs due to sediment accumulation, if the project also has a purpose described in any of paragraphs (1) through (7).

“(b) PROJECT SELECTION.—In carrying out the pilot program, the Secretary shall—

- “(1) identify for inclusion in the pilot program and carry out 35 projects for the beneficial use of dredged material;
- “(2) consult with relevant State agencies in selecting projects; and

“(3) select projects solely on the basis of—

- “(A) the environmental, economic, and social benefits of the projects, including monetary and nonmonetary benefits; and
- “(B) the need for a diversity of project types and geographical project locations.

“(c) REGIONAL BENEFICIAL USE TEAMS.—

“(1) IN GENERAL.—In carrying out the pilot program, the Secretary shall establish regional beneficial use teams to identify and assist in the implementation of projects under the pilot program.

“(2) COMPOSITION.—

“(A) LEADERSHIP.—For each regional beneficial use team established under paragraph (1), the Secretary shall appoint the Commander of the relevant division of the Corps of Engineers to serve as the head of the team.

“(B) MEMBERSHIP.—The membership of each regional beneficial use team shall include—

- “(i) representatives of relevant Corps of Engineers districts and divisions;
- “(ii) representatives of relevant State and local agencies; and
- “(iii) representatives of Federal agencies and such other entities as the Secretary determines appropriate, consistent with the purposes of this section.

“(d) CONSIDERATIONS.—The Secretary shall carry out the pilot program in a manner that—

“(1) maximizes the beneficial placement of dredged material from Federal and non-Federal navigation channels;

“(2) incorporates, to the maximum extent practicable, 2 or more Federal navigation, flood control, storm damage reduction, or environmental restoration projects;

“(3) coordinates the mobilization of dredges and related equipment, including through the use of such efficiencies in contracting and environmental permitting as can be implemented under existing laws and regulations;

“(4) fosters Federal, State, and local collaboration;

“(5) implements best practices to maximize the beneficial use of dredged sand and other sediments; and

“(6) ensures that the use of dredged material is consistent with all applicable environmental laws.

“(e) COST SHARING.—

“(1) IN GENERAL.—Projects carried out under this section shall be subject to the cost-sharing requirements applicable to projects carried out under section 204 of the Water Resources Development Act of 1992 (33 U.S.C. 2326).

“(2) ADDITIONAL COSTS.—Notwithstanding paragraph (1), if the cost of transporting and depositing dredged material for a project carried out under this section exceeds the cost of carrying out those activities pursuant to any other water resources project in accordance, if applicable, with the Federal standard (as defined in section 335.7 of title 33, Code of Federal Regulations), the Secretary may not require the non-Federal interest to bear the additional cost of such activities.

“(f) REPORT.—Not later than 2 years after the date of enactment of this Act [Dec. 16, 2016], and annually thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that includes—

“(1) a description of the projects selected to be carried out under the pilot program;

“(2) documentation supporting each of the projects selected;

“(3) the findings of regional beneficial use teams regarding project selection; and

“(4) any recommendations of the Secretary or regional beneficial use teams with respect to the pilot program.

“(g) TERMINATION.—The pilot program shall terminate after completion of the 35 projects carried out pursuant to subsection (b)(1).

“(h) EXEMPTION FROM OTHER STANDARDS.—The projects carried out under this section shall be carried out notwithstanding the definition of the term ‘Federal standard’ in section 335.7 of title 33, Code of Federal Regulations.”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102-580, set out as a note under section 2201 of this title.

§ 2326a. Dredged material disposal facility partnerships

(a) Additional capacity or replacement capacity

(1) Provided by Secretary

(A) In general

Subject to subparagraph (B), at the request of a non-Federal interest with respect to a project, the Secretary may—

(i) provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes; or

(ii) permit the use of dredged material disposal facility capacity required for project purposes by the non-Federal interest if the Secretary determines that replacement capacity can be constructed at the facility or another facility or site before such capacity is needed for project purposes.

(B) Agreement

Before the Secretary takes an action under subparagraph (A), the non-Federal interest shall agree to pay—

(i) all costs associated with the construction of the additional capacity or replacement capacity in advance of construction of such capacity; and

(ii) in the case of use by a non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), any increase in the cost of operation and maintenance of the project that the Secretary determines results from the use of the project capacity by the non-Federal interest in advance of each cycle of dredging.

(C) Credit

In the event the Secretary determines that the cost to operate or maintain the project decreases as a result of use by the non-Federal interest of dredged material disposal capacity required for project purposes under subparagraph (A)(ii), the Secretary, at the request of the non-Federal interest, shall credit the amount of the decrease toward any cash contribution of the non-Federal interest required thereafter for construction, operation, or maintenance of the project, or of another navigation project.

(2) Cost recovery authority

The non-Federal interest may recover the costs assigned to the additional capacity under paragraph (1)(A)(i) through fees assessed on third parties whose dredged material is deposited at the facility and who enter into agreements with the non-Federal interest for

the use of the facility. The amount of such fees may be determined by the non-Federal interest.

(3) Special rule for designation of replacement capacity facility or site

(A) In general

Subject to such terms and conditions as the Secretary determines to be necessary or advisable, an agreement under paragraph (1)(B) for use permitted under paragraph (1)(A)(ii) shall reserve to the non-Federal interest—

(i) the right to submit to the Secretary for approval at a later date an alternative to the facility or site designated in the agreement for construction of replacement capacity; and

(ii) the right to construct the replacement capacity at the alternative facility or site at the expense of the non-Federal interest.

(B) Requirement

The Secretary shall not reject a site for the construction of replacement capacity under paragraph (1)(A)(ii) that is submitted by the non-Federal interest for approval by the Secretary before the date of execution of the agreement under paragraph (1)(B), or thereafter, unless the Secretary—

(i) determines that the site is environmentally unacceptable, geographically unacceptable, or technically unsound; and

(ii) provides a written basis for the determination under clause (i) to the non-Federal interest.

(4) Public comment

The Secretary shall afford the public an opportunity to comment on the determinations required under this subsection for a use permitted under paragraph (1)(A)(ii).

(b) Non-Federal use of disposal facilities

(1) In general

The Secretary—

(A) may permit the use of any dredged material disposal facility under the jurisdiction of, or managed by, the Secretary by a non-Federal interest if the Secretary determines that such use will not reduce the availability of the facility for project purposes; and

(B) may impose fees to recover capital, operation, and maintenance costs associated with such use.

(2) Use of fees

Notwithstanding section 1341(c) of this title but subject to advance appropriations, any monies received through collection of fees under this subsection shall be available to the Secretary, and shall be used by the Secretary, for the operation and maintenance of the disposal facility from which the fees were collected.

(c) Dredged material facility

(1) In general

The Secretary may enter into a partnership agreement under section 1962d-5b of title 42