

“(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

with one or more non-Federal interests with respect to a water resources project, or group of water resources projects within a geographic region, if appropriate, for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material, which may include effective sediment contaminant reduction technologies) using funds provided in whole or in part by the Federal Government.

(2) Performance

One or more of the parties to a partnership agreement under this subsection may perform the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility.

(3) Multiple projects

If appropriate, the Secretary may combine portions of separate water resources projects with appropriate combined cost-sharing among the various water resources projects in a partnership agreement for a facility under this subsection if the facility serves to manage dredged material from multiple water resources projects located in the geographic region of the facility.

(4) Specified Federal funding sources and cost sharing

(A) Specified Federal funding

A partnership agreement with respect to a facility under this subsection shall specify—

- (i) the Federal funding sources and combined cost-sharing when applicable to multiple water resources projects; and
- (ii) the responsibilities and risks of each of the parties relating to present and future dredged material managed by the facility.

(B) Management of sediments

(i) In general

A partnership agreement under this subsection may include the management of sediments from the maintenance dredging of Federal water resources projects that do not have partnership agreements.

(ii) Payments

A partnership agreement under this subsection may allow the non-Federal interest to receive reimbursable payments from the Federal Government for commitments made by the non-Federal interest for disposal or placement capacity at dredged material processing, treatment, contaminant reduction, or disposal facilities.

(C) Credit

A partnership agreement under this subsection may allow costs incurred by the non-Federal interest before execution of the partnership agreement to be credited in accordance with section 1962d-5b of title 42.

(5) Credit

(A) Effect on existing agreements

Nothing in this subsection supersedes or modifies an agreement in effect on Novem-

ber 8, 2007, between the Federal Government and any non-Federal interest for the cost-sharing, construction, and operation and maintenance of a water resources project.

(B) Credit for funds

Subject to the approval of the Secretary and in accordance with law (including regulations and policies) in effect on November 8, 2007, a non-Federal interest for a water resources project may receive credit for funds provided for the acquisition, design, construction, management, or operation of a dredged material processing, treatment, contaminant reduction, or disposal facility to the extent the facility is used to manage dredged material from the project.

(C) Non-Federal interest responsibilities

A non-Federal interest entering into a partnership agreement under this subsection for a facility shall—

- (i) be responsible for providing all necessary lands, easements, relocations, and rights-of-way associated with the facility; and
- (ii) receive credit toward the non-Federal share of the cost of the project with respect to which the agreement is being entered into for those items.

(d) Public-private partnerships

(1) In general

The Secretary may carry out a program to evaluate and implement opportunities for public-private partnerships in the design, construction, management, or operation and maintenance of dredged material processing, treatment, contaminant reduction, or disposal facilities in connection with construction or maintenance of Federal navigation projects. If a non-Federal interest is a sponsor of the project, the Secretary shall consult with the non-Federal interest in carrying out the program with respect to the project.

(2) Private financing

(A) Agreements

In carrying out this subsection, the Secretary may enter into an agreement with a non-Federal interest with respect to a project, a private entity, or both for the acquisition, design, construction, management, or operation and maintenance of a dredged material processing, treatment, contaminant reduction, or disposal facility (including any facility used to demonstrate potential beneficial uses of dredged material) using funds provided in whole or in part by the private entity.

(B) Reimbursement

If any funds provided by a private entity are used to carry out a project under this subsection, the Secretary may reimburse the private entity over a period of time agreed to by the parties to the agreement through the payment of subsequent user fees. Such fees may include the payment of a disposal or tipping fee for placement of suitable dredged material at the facility.

(C) Amount of fees

User fees paid pursuant to subparagraph (B) shall be sufficient to repay funds contrib-

uted by the private entity plus a reasonable return on investment approved by the Secretary in cooperation with the non-Federal interest with respect to the project and the private entity.

(D) Federal share

The Federal share of such fees shall be equal to the percentage of the total cost that would otherwise be borne by the Federal Government as required pursuant to existing cost-sharing requirements, including section 2213 of this title and section 2326 of this title.

(E) Budget Act compliance

Any spending authority (as defined in section 651(c)(2) of title 2) authorized by this section shall be effective only to such extent and in such amounts as are provided in appropriation Acts.

(Pub. L. 104-303, title II, §217, Oct. 12, 1996, 110 Stat. 3694; Pub. L. 110-114, title II, §2005, Nov. 8, 2007, 121 Stat. 1071; Pub. L. 116-260, div. AA, title I, § 145, Dec. 27, 2020, 134 Stat. 2654.)

Editorial Notes

REFERENCES IN TEXT

The Budget Act, referred to in subsec. (d)(2)(E) heading, probably means the Congressional Budget Act of 1974, titles I through IX of Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1996, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2020—Subsec. (a). Pub. L. 116-260, §145(1), inserted “or replacement capacity” after “Additional capacity” in heading.

Subsec. (a)(1). Pub. L. 116-260, §145(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “At the request of a non-Federal interest with respect to a project, the Secretary may provide additional capacity at a dredged material disposal facility constructed by the Secretary beyond the capacity that would be required for project purposes if the non-Federal interest agrees to pay, during the period of construction, all costs associated with the construction of the additional capacity.”

Subsec. (a)(2). Pub. L. 116-260, §145(3), inserted “under paragraph (1)(A)(i)” after “additional capacity”.

Subsec. (a)(3), (4). Pub. L. 116-260, §145(4), added pars. (3) and (4).

2007—Subsec. (c). Pub. L. 110-114, §2005(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 110-114, §2005(1), redesignated subsec. (c) as (d).

Subsec. (d)(1). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “dredged material”.

Subsec. (d)(2)(A). Pub. L. 110-114, §2005(3), inserted “and maintenance” after “operation” and “processing, treatment, contaminant reduction, or” after “of a dredged material”.

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 104-303, set out as a note under section 2201 of this title.

§ 2326b. Sediment management

(a) In general

The Secretary may enter into cooperation agreements with non-Federal interests with respect to navigation projects, or other appropriate non-Federal entities, for the development of long-term management strategies for controlling sediments at such projects.

(b) Contents of strategies

Each strategy developed under subsection (a) shall—

(1) include assessments of sediment rates and composition, sediment reduction options, dredging practices, long-term management of any dredged material disposal facilities, remediation of such facilities, and alternative disposal and reuse options;

(2) include a timetable for implementation of the strategy; and

(3) incorporate relevant ongoing planning efforts, including remedial action planning, dredged material management planning, harbor and waterfront development planning, and watershed management planning.

(c) Consultation

In developing strategies under subsection (a), the Secretary shall consult with interested Federal agencies, States, and Indian tribes and provide an opportunity for public comment.

(d) Dredged material disposal

(1) Study

The Secretary shall conduct a study to determine the feasibility of constructing and operating an underwater confined dredged material disposal site in the Port of New York-New Jersey that could accommodate as much as 250,000 cubic yards of dredged material for the purpose of demonstrating the feasibility of an underwater confined disposal pit as an environmentally suitable method of containing certain sediments.

(2) Report

The Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1), together with any recommendations of the Secretary that may be developed in a strategy under subsection (a).

(e) Great Lakes tributary model

(1) In general

In consultation and coordination with the Great Lakes States, the Secretary shall develop a tributary sediment transport model for each major river system or set of major river systems depositing sediment into a Great Lakes federally authorized commercial harbor, channel maintenance project site, or Area of Concern identified under the Great Lakes Water Quality Agreement of 1978. Such model may be developed as a part of a strategy developed under subsection (a).

(2) Requirements for models

In developing a tributary sediment transport model under this subsection, the Secretary shall build on data and monitoring information generated in earlier studies and programs of the Great Lakes and their tributaries.