

“(c) IMPLEMENTATION.—

“(1) IN GENERAL.—In carrying out the pilot program under this section, the Secretary may—

“(A) accept and expend funds provided by a non-Federal interest to carry out, for an authorized project (or a separable element of an authorized project), modernization activities for such project; or

“(B) coordinate with the non-Federal interest in order to allow the non-Federal interest to carry out, for an authorized project (or a separable element of an authorized project), such modernization activities.

“(2) NUMBER.—The Secretary shall select not more than 2 authorized projects to participate in the pilot program under paragraph (1).

“(3) CONDITIONS.—Before carrying out modernization activities pursuant to paragraph (1)(B), a non-Federal interest shall—

“(A) obtain any permit or approval required in connection with such activities under Federal or State law that would be required if the Secretary were to carry out such activities; and

“(B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for such activities has been filed pursuant to the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

“(4) MONITORING.—For any modernization activities carried out by the non-Federal interest pursuant to this section, the Secretary shall regularly monitor and audit such activities to ensure that—

“(A) the modernization activities are carried out in accordance with this section; and

“(B) the cost of the modernization activities is reasonable.

“(5) REQUIREMENTS.—The requirements of section 3142 of title 40, United States Code[,] shall apply to any modernization activities undertaken under or pursuant to this section, either by the Secretary or the non-Federal interest.

“(d) AGREEMENTS.—

“(1) ACTIVITIES CARRIED OUT BY NON-FEDERAL INTEREST.—

“(A) IN GENERAL.—

“(i) WRITTEN AGREEMENT.—Before a non-Federal interest initiates modernization activities for an authorized project pursuant to this subsection (c)(1)(B), the non-Federal interest shall enter into a written agreement with the Secretary, under section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), that requires the modernization activities to be carried out in accordance with—

“(I) a plan approved by the Secretary; and

“(II) any other terms and conditions specified by the Secretary in the agreement.

“(ii) REQUIREMENTS.—A written agreement under clause (i) shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the modernization activities were carried out by the Secretary, including all mitigation required to offset environmental impacts of the activities, as determined by the Secretary.

“(B) ALIGNMENT WITH ONGOING ACTIVITIES.—A written agreement under subparagraph (A) shall include provisions that, to the maximum extent practicable, align modernization activities under this section with ongoing operations and maintenance activities for the applicable authorized project.

“(C) INDEMNIFICATION.—As part of a written agreement under subparagraph (A), the non-Federal interest shall agree to hold and save the United States free from liability for any and all damage that arises from the modernization activities carried out by the non-Federal interest pursuant to this section.

“(2) ACTIVITIES CARRIED OUT BY SECRETARY.—For modernization activities to be carried out by the Secretary pursuant to subsection (c)(1)(A), the non-Fed-

eral interest shall enter into a written agreement with the Secretary, containing such terms and conditions as the Secretary determines appropriate.

“(e) REIMBURSEMENT.—

“(1) AUTHORIZATION.—Subject to the availability of appropriations, the Secretary may reimburse a non-Federal interest for the costs of modernization activities carried out by the non-Federal interest pursuant to an agreement entered into under subsection (d), or for funds provided to the Secretary under subsection (c)(1)(A), if—

“(A) the non-Federal interest complies with the agreement entered into under subsection (d); and

“(B) with respect to modernization activities carried out by the non-Federal interest pursuant to the agreement, the Secretary determines that the non-Federal interest complied with all applicable Federal requirements in carrying out the modernization activities.

“(2) LIMITATION.—The Secretary may only reimburse a non-Federal interest under paragraph (1) for costs of construction that would otherwise be paid from amounts appropriated from the general fund of the Treasury pursuant to section 102 of the Water Resources Development Act of 1986 (33 U.S.C. 2212).

“(f) RULE OF CONSTRUCTION.—Nothing in this section—

“(1) affects the responsibility of the Secretary for the operations and maintenance of the inland waterway system, as of the day before the date of enactment of this Act [Dec. 27, 2020], including the responsibility of the Secretary for the operations and maintenance costs for any covered project after the modernization activities are completed pursuant to this section;

“(2) prohibits or prevents the use of Federal funds for operations and maintenance of the inland waterway system or any authorized project within the inland waterway system; or

“(3) prohibits or prevents the use of Federal funds for construction or major rehabilitation activities within the inland waterway system or for any authorized project within the inland waterway system.

“(g) NOTIFICATION.—If a non-Federal interest notifies the Secretary that the non-Federal interest intends to carry out modernization activities for an authorized project, or separable element thereof, pursuant to this section, the Secretary shall provide written notice to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives concerning the intent of the non-Federal interest.

“(h) SUNSET.—

“(1) IN GENERAL.—The authority of the Secretary to enter into an agreement under this section shall terminate on the date that is 5 years after the date of enactment of this Act.

“(2) REIMBURSEMENT ELIGIBILITY.—The termination of authority under paragraph (1) shall not extinguish the eligibility of a non-Federal interest to seek reimbursement under subsection (e).”

§ 2251. Inland Waterways Users Board**(a) Establishment of Users Board**

There is hereby established an Inland Waterway Users Board (hereinafter in this section referred to as the “Users Board”) composed of the eleven members selected by the Secretary, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on in-

land waterways. The Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation, and Commerce may each designate, a representative to act as an observer of the Users Board.

(b) Duties of Users Board

(1) In general

The Users Board shall meet not less frequently than semiannually to develop and make recommendations to the Secretary and Congress regarding the inland waterways and inland harbors of the United States.

(2) Advice and recommendations

For commercial navigation features and components of the inland waterways and inland harbors of the United States, the Users Board shall provide—

(A) prior to the development of the budget proposal of the President for a given fiscal year, advice and recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels;

(B) advice and recommendations to Congress regarding any feasibility report for a project on the inland waterway system that has been submitted to Congress pursuant to section 2282d of this title;

(C) advice and recommendations to Congress regarding an increase in the authorized cost of those features and components;

(D) not later than 60 days after the date of the submission of the budget proposal of the President to Congress, advice and recommendations to Congress regarding construction and rehabilitation priorities and spending levels; and

(E) advice and recommendations on the development of a long-term capital investment program in accordance with subsection (d).

(3) Project development teams

The chairperson of the Users Board shall appoint a representative of the Users Board to serve as an advisor to the project development team for a qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(4) Independent judgment

Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board.

(c) Duties of Secretary

The Secretary shall—

(1) communicate not less frequently than once each quarter to the Users Board the status of the study, design, or construction of all commercial navigation features or components of the inland waterways or inland harbors of the United States; and

(2) submit to the Users Board a courtesy copy of all completed feasibility reports relating to a commercial navigation feature or component of the inland waterways or inland harbors of the United States.

(d) Capital investment program

(1) In general

Not later than 1 year after June 10, 2014, the Secretary, in coordination with the Users

Board, shall develop and submit to Congress a report describing a 20-year program for making capital investments on the inland and intracoastal waterways based on the application of objective, national project selection prioritization criteria.

(2) Consideration

In developing the program under paragraph (1), the Secretary shall take into consideration the 20-year capital investment strategy contained in the Inland Marine Transportation System (IMTS) Capital Projects Business Model, Final Report published on April 13, 2010, as approved by the Users Board.

(3) Criteria

In developing the plan and prioritization criteria under paragraph (1), the Secretary shall ensure, to the maximum extent practicable, that investments made under the 20-year program described in paragraph (1)—

(A) are made in all geographical areas of the inland waterways system; and

(B) ensure efficient funding of inland waterways projects.

(4) Strategic review and update

Not later than 5 years after June 10, 2014, and not less frequently than once every 5 years thereafter, the Secretary, in coordination with the Users Board, shall—

(A) submit to Congress and make publicly available a strategic review of the 20-year program in effect under this subsection, which shall identify and explain any changes to the project-specific recommendations contained in the previous 20-year program (including any changes to the prioritization criteria used to develop the updated recommendations); and

(B) make revisions to the program, as appropriate.

(e) Project management plans

The chairperson of the Users Board and the project development team member appointed by the chairperson under subsection (b)(3) may sign the project management plan for the qualifying project or the study or design of a commercial navigation feature or component of the inland waterways and inland harbors of the United States.

(f) Administration

(1) In general

The Users Board shall be subject to chapter 10 of title 5, other than section 1013, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency.

(2) Members not considered special Government employees

For the purposes of complying with chapter 10 of title 5, the members of the Users Board shall not be considered special Government employees (as defined in section 202 of title 18).

(3) Travel expenses

Non-Federal members of the Users Board while engaged in the performance of their du-

ties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(Pub. L. 99-662, title III, §302, Nov. 17, 1986, 100 Stat. 4111; Pub. L. 106-109, §8(a), Nov. 24, 1999, 113 Stat. 1495; Pub. L. 113-121, title II, §2002(d), June 10, 2014, 128 Stat. 1262; Pub. L. 117-286, §4(a)(202), Dec. 27, 2022, 136 Stat. 4328.)

Editorial Notes

AMENDMENTS

2022—Subsec. (f)(1). Pub. L. 117-286, §4(a)(202)(A), substituted “chapter 10 of title 5, other than section 1013,” for “the Federal Advisory Committee Act (5 U.S.C. App.), other than section 14.”

Subsec. (f)(2). Pub. L. 117-286, §4(a)(202)(B), substituted “chapter 10 of title 5,” for “the Federal Advisory Committee Act (5 U.S.C. App.).”

2014—Subsec. (b). Pub. L. 113-121, §2002(d)(1), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: “The Users Board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehabilitation priorities and spending levels on the commercial navigational features and components of the inland waterways and inland harbors of the United States for the following fiscal years. Any advice or recommendation made by the Users Board to the Secretary shall reflect the independent judgment of the Users Board. Notwithstanding section 3003 of Public Law 104-66 (31 U.S.C. 1113 note; 109 Stat. 734), the Users Board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with the Congress.”

Subsecs. (c) to (f). Pub. L. 113-121, §2002(d)(2), added subsecs. (c) to (f) and struck out former subsec. (c). Prior to amendment, text read as follows: “The Users Board shall be subject to the Federal Advisory Committee Act, other than section 14, and, with the consent of the appropriate agency head, the Users Board may use the facilities and services of any Federal agency. Non-Federal members of the Users Board while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.”

1999—Subsec. (b). Pub. L. 106-109, in last sentence, substituted “Notwithstanding section 3003 of Public Law 104-66 (31 U.S.C. 1113 note; 109 Stat. 734), the” for “The”.

§ 2252. Project delivery process reforms

(a) Requirements for qualifying projects

With respect to each qualifying project, the Secretary shall require—

- (1) for each project manager, that—
 - (A) the project manager have formal project management training and certification; and
 - (B) the project manager be assigned from among personnel certified by the Chief of Engineers; and
- (2) for an applicable cost estimation, that—
 - (A) the Secretary utilize a risk-based cost estimate with a confidence level of at least 80 percent; and
 - (B) the cost estimate be developed—
 - (i) for a qualifying project that requires an increase in the authorized amount in accordance with section 2280 of this title, during the preparation of a post-authorization change report or other similar decision document;

- (ii) for a qualifying project for which the first construction contract has not been awarded, prior to the award of the first construction contract;

- (iii) for a qualifying project without a completed feasibility report in accordance with section 2282 of this title, prior to the completion of such a report; and

- (iv) for a qualifying project with a completed feasibility report in accordance with section 2282 of this title that has not yet been authorized, during design for the qualifying project.

(b) Additional project delivery process reforms

Not later than 18 months after June 10, 2014, the Secretary shall—

- (1) establish a system to identify and apply on a continuing basis best management practices from prior or ongoing qualifying projects to improve the likelihood of on-time and on-budget completion of qualifying projects;

- (2) evaluate early contractor involvement acquisition procedures to improve on-time and on-budget project delivery performance; and

- (3) implement any additional measures that the Secretary determines will achieve the purposes of this subtitle, including—

- (A) the implementation of applicable practices and procedures developed pursuant to management by the Secretary of an applicable military construction program;

- (B) the development and use of a portfolio of standard designs for inland navigation locks, incorporating the use of a center of expertise for the design and review of qualifying projects;

- (C) the use of full-funding contracts or formulation of a revised continuing contracts clause; and

- (D) the establishment of procedures for recommending new project construction starts using a capital projects business model.

(c) Pilot projects

(1) In general

Subject to paragraph (2), the Secretary may carry out pilot projects to evaluate processes and procedures for the study, design, and construction of qualifying projects.

(2) Inclusions

At a minimum, the Secretary shall carry out pilot projects under this subsection to evaluate—

- (A) early contractor involvement in the development of features and components;

- (B) an appropriate use of continuing contracts for the construction of features and components; and

- (C) applicable principles, procedures, and processes used for military construction projects.

(Pub. L. 113-121, title II, §2002, June 10, 2014, 128 Stat. 1261.)

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REFERENCES IN TEXT

This subtitle, referred to in subsec. (b)(3), is subtitle A (§§2001-2013) of title II of Pub. L. 113-121, which en-