

trator of National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. For further details, see note set out under section 851 of this title.

§ 878. Appropriations; purchases from

The Secretary of Commerce is authorized to purchase, from the appropriation for the National Ocean Survey, provisions, clothing, and small stores for the enlisted men, and food supplies for field parties working in remote localities, such provisions, clothing, small stores, and food supplies to be sold to the employees of said survey and the appropriation reimbursed.

(Mar. 3, 1901, ch. 853, §1, 31 Stat. 1144; Feb. 14, 1903, ch. 552, §4, 32 Stat. 826.)

Editorial Notes

CODIFICATION

Section was a provision of the Sundry Civil Appropriation Act of Mar. 3, 1901.

Upon incorporation into the Code, the words "Secretary of Commerce" were substituted for "Secretary of the Treasury" to conform to act Feb. 14, 1903.

Section was formerly classified to section 661 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 877.

Executive Documents

TRANSFER OF FUNCTIONS

Coast and Geodetic Survey consolidated with National Weather Bureau to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Environmental Science Services Administration abolished and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. For further details, see note set out under section 851 of this title.

§ 878a. Contract for development of a major program; costs; Major Program Annual Report for satellite development program

(a) Definitions

For purposes of this section—

(1) the term "Under Secretary" means Under Secretary of Commerce for Oceans and Atmosphere;

(2) the term "appropriate congressional committees" means—

(A) the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate; and

(B) the Committee on Appropriations and the Committee on Science, Space and Technology of the House of Representatives;

(3) the term "satellite" means the satellites proposed to be acquired for the National Oceanic and Atmospheric Administration (NOAA);

(4) the term "development" means the phase of a program following the formulation phase and beginning with the approval to proceed to implementation, as defined in NOAA Adminis-

trative Order 216-108, Department of Commerce Administrative Order 208-3, and NASA's Procedural Requirements 7120.5c, dated March 22, 2005;

(5) the term "development cost" means the total of all costs, including construction of facilities and civil servant costs, from the period beginning with the approval to proceed to implementation through the achievement of operational readiness, without regard to funding source or management control, for the life of the program;

(6) the term "life-cycle cost" means the total of the direct, indirect, recurring, and nonrecurring costs, including the construction of facilities and civil servant costs, and other related expenses incurred or estimated to be incurred in the design, development, verification, production, operation, maintenance, support, and retirement of a program over its planned lifespan, without regard to funding source or management control;

(7) the term "major program" means an activity approved to proceed to implementation that has an estimated life-cycle cost of more than \$250,000,000; and

(8) the term "baseline" means the program as set following contract award and preliminary design review of the space and ground systems.

(b) Contract requirements for major programs

(1) NOAA shall not enter into a contract for development of a major program, unless the Under Secretary determines that—

(A) the technical, cost, and schedule risks of the program are clearly identified and the program has developed a plan to manage those risks;

(B) the technologies required for the program have been demonstrated in a relevant laboratory or test environment;

(C) the program complies with all relevant policies, regulations, and directives of NOAA and the Department of Commerce;

(D) the program has demonstrated a high likelihood of accomplishing its intended goals; and

(E) the acquisition of satellites for use in the program represents a good value to accomplishing NOAA's mission.

(2) The Under Secretary shall transmit a report describing the basis for the determination required under paragraph (1) to the appropriate congressional committees at least 30 days before entering into a contract for development under a major program.

(3) The Under Secretary may not delegate the determination requirement under this subsection, except in cases in which the Under Secretary has a conflict of interest.

(c) Reports

(1) Annually, at the same time as the President's annual budget submission to the Congress, the Under Secretary shall transmit to the appropriate congressional committees a report that includes the information required by this section for the satellite development program for which NOAA proposes to expend funds in the subsequent fiscal year. The report under this

paragraph shall be known as the Major Program Annual Report.

(2) The first Major Program Annual Report for NOAA's satellite development program shall include a Baseline Report that shall, at a minimum, include—

(A) the purposes of the program and key technical characteristics necessary to fulfill those purposes;

(B) an estimate of the life-cycle cost for the program, with a detailed breakout of the development cost, program reserves, and an estimate of the annual costs until development is completed;

(C) the schedule for development, including key program milestones;

(D) the plan for mitigating technical, cost, and schedule risks identified in accordance with subsection (b)(1)(A); and

(E) the name of the person responsible for making notifications under subsection (d), who shall be an individual whose primary responsibility is overseeing the program.

(3) For the major program for which a Baseline Report has been submitted, subsequent Major Program Annual Reports shall describe any changes to the information that had been provided in the Baseline Report, and the reasons for those changes.

(d) Notification to Under Secretary of excess development costs

(1) The individual identified under subsection (c)(2)(E) shall immediately notify the Under Secretary any time that individual has reasonable cause to believe that, for the major program for which he or she is responsible, the development cost of the program has exceeded the estimate provided in the Baseline Report of the program by 20 percent or more.

(2) Not later than 30 days after the notification required under paragraph (1), the individual identified under subsection (c)(2)(E) shall transmit to the Under Secretary a written notification explaining the reasons for the change in the cost of the program for which notification was provided under paragraph (1).

(3) Not later than 15 days after the Under Secretary receives a written notification under paragraph (2), the Under Secretary shall transmit the notification to the appropriate congressional committees.

(e) Determination by Under Secretary of excess development costs

Not later than 30 days after receiving a written notification under subsection (d)(2), the Under Secretary shall determine whether the development cost of the program has exceeded the estimate provided in the Baseline Report of the program by 20 percent or more. If the determination is affirmative, the Under Secretary shall—

(1) transmit to the appropriate congressional committees, not later than 15 days after making the determination, a report that includes—

(A) a description of the increase in cost and a detailed explanation for the increase;

(B) a description of actions taken or proposed to be taken in response to the cost increase; and

(C) a description of any impacts the cost increase, or the actions described under subparagraph (B), will have on any other program within NOAA; and

(2) if the Under Secretary intends to continue with the program, promptly initiate an analysis of the program, which shall include, at a minimum—

(A) the projected cost and schedule for completing the program if current requirements of the program are not modified;

(B) the projected cost and the schedule for completing the program after instituting the actions described under paragraph (1)(B); and

(C) a description of, and the projected cost and schedule for, a broad range of alternatives to the program.

(f) Completion and transmittal of analysis

NOAA shall complete an analysis initiated under subsection (e)(2) not later than 6 months after the Under Secretary makes a determination under subsection (e). The Under Secretary shall transmit the analysis to the appropriate congressional committees not later than 30 days after its completion.

(Pub. L. 112–55, div. B, title I, § 105, Nov. 18, 2011, 125 Stat. 599; Pub. L. 113–6, div. B, title I, § 105(a), Mar. 26, 2013, 127 Stat. 242.)

Editorial Notes

CODIFICATION

Section is from the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, which is division B of the Consolidated and Further Continuing Appropriations Act, 2012.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:

Pub. L. 110–161, div. B, title I, § 112, Dec. 26, 2007, 121 Stat. 1894.

AMENDMENTS

2013—Subsec. (f). Pub. L. 113–6 substituted “subsection (e)(2)” for “paragraph (2)” and “subsection (e)” for “this subsection”.

Statutory Notes and Related Subsidiaries

REQUIREMENTS ADOPTED BY REFERENCE

Pub. L. 118–42, div. C, title I, § 104, Mar. 9, 2024, 138 Stat. 130, provided in part that: “The requirements set forth by section 105 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012 (Public Law 112–55) [33 U.S.C. 878a], as amended by section 105 of title I of division B of Public Law 113–6, are hereby adopted by reference and made applicable with respect to fiscal year 2024”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 117–328, div. B, title I, § 104, Dec. 29, 2022, 136 Stat. 4519.

Pub. L. 117–103, div. B, title I, § 104, Mar. 15, 2022, 136 Stat. 111.

Pub. L. 116–260, div. B, title I, § 104, Dec. 27, 2020, 134 Stat. 1243.

Pub. L. 116–93, div. B, title I, § 104, Dec. 20, 2019, 133 Stat. 2394.

Pub. L. 116–6, div. C, title I, § 104, Feb. 15, 2019, 133 Stat. 100.

Pub. L. 115–141, div. B, title I, § 104, Mar. 23, 2018, 132 Stat. 408.

Pub. L. 115-31, div. B, title I, §104, May 5, 2017, 131 Stat. 191.

Pub. L. 114-113, div. B, title I, §104, Dec. 18, 2015, 129 Stat. 2294.

Pub. L. 113-235, div. B, title I, §104, Dec. 16, 2014, 128 Stat. 2181.

Pub. L. 113-76, div. B, title I, §104, Jan. 17, 2014, 128 Stat. 51.

Pub. L. 113-6, div. B, title I, §105(b), Mar. 26, 2013, 127 Stat. 242.

§ 878b. Safety and health regulations for scientific and occupational diving

On and after March 11, 2009, the Secretary of Commerce is permitted to prescribe and enforce standards or regulations affecting safety and health in the context of scientific and occupational diving within the National Oceanic and Atmospheric Administration.

(Pub. L. 111-8, div. B, title I, §106, Mar. 11, 2009, 123 Stat. 568.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Department of Commerce Appropriations Act, 2009, which is title I of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2009, which is div. B of the Omnibus Appropriations Act, 2009.

SIMILAR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation act:

Pub. L. 110-161, div. B, title I, §110, Dec. 26, 2007, 121 Stat. 1893.

SUBCHAPTER II—SURVEYS

§§ 881 to 883. Repealed. Aug. 6, 1947, ch. 504, § 10(2)–(5), 61 Stat. 788

Section 881, R.S. §4681, related to authority of the President to order surveys of coasts of the United States. See section 883a of this title.

Section 882, R.S. §4682, related to additional authority to order surveys beyond twenty-league limit. See section 883a of this title.

Section 883, R.S. §§4683, 4684, related to mode of conducting surveys generally. See sections 883a and 883b of this title.

§ 883a. Surveys and other activities

To provide charts and related information for the safe navigation of marine and air commerce, and to provide basic data for engineering and scientific purposes and for other commercial and industrial needs, the Secretary of Commerce, is authorized to conduct the following activities:

- (1) Hydrographic and topographic surveys;
- (2) Tide and current observations;
- (3) Geodetic-control surveys;
- (4) Field surveys for aeronautical charts;
- (5) Geomagnetic, seismological, gravity, and related geophysical measurements and investigations, and observations for the determination of variation in latitude and longitude.

(Aug. 6, 1947, ch. 504, §1, 61 Stat. 787; Pub. L. 86-409, Apr. 5, 1960, 74 Stat. 16; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

Editorial Notes

AMENDMENTS

1960—Pub. L. 86-409 struck out provisions which restricted the Coast and Geodetic Survey in the conduct

of its specified activities to the United States, its Territories and possessions, and which restricted hydrographic and topographic surveys to surveys of coastal water and land areas (including offlying islands, banks, shoals, and other offshore areas), and to surveys of lakes, rivers, reservoirs, and other inland waters not otherwise provided for by statute.

Statutory Notes and Related Subsidiaries

CONTINUOUS PLANKTON RECORDER SURVEY

Pub. L. 117-328, div. JJ, title III, §301, Dec. 29, 2022, 136 Stat. 6092, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 29, 2022], and on an ongoing basis thereafter, the Secretary of Commerce shall conduct a Continuous Plankton Recorder survey.

“(b) REQUIRED ELEMENTS.—For the purpose of conducting the survey required under subsection (a), the Northeast Fisheries Science Center shall—

“(1) to the extent possible, utilize the resources of and partner with, on a volunteer basis, research institutions, nonprofit organizations, commercial vessels, and other Federal agencies;

“(2) in as short a time as possible, ensure relevant survey samples and results are analyzed, stored, archived, and made publicly available;

“(3) prioritize the collection of plankton samples and data that inform the conservation of North Atlantic right whales; and

“(4) to the extent practicable, coordinate with the Government of Canada to develop a transboundary understanding of plankton abundance and distribution.

“(c) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section there is authorized to be appropriated to the Secretary of Commerce \$300,000 for each of fiscal years 2023 through 2032, which shall be derived from existing funds otherwise appropriated to the Secretary.”

GREAT LAKES ENVIRONMENTAL SENSITIVITY INDEX

Pub. L. 116-274, Dec. 31, 2020, 134 Stat. 3356, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Great Lakes Environmental Sensitivity Index Act of 2020’.

“SEC. 2. UPDATE TO ENVIRONMENTAL SENSITIVITY INDEX PRODUCTS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FOR GREAT LAKES.

“(a) UPDATE REQUIRED FOR ENVIRONMENTAL SENSITIVITY INDEX PRODUCTS FOR GREAT LAKES.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2020], the Under Secretary for Oceans and Atmosphere shall commence updating the environmental sensitivity index products of the National Oceanic and Atmospheric Administration for each coastal area of the Great Lakes.

“(b) PERIODIC UPDATES FOR ENVIRONMENTAL SENSITIVITY INDEX PRODUCTS GENERALLY.—Subject to the availability of appropriations and the priorities set forth in subsection (c), the Under Secretary shall—

“(1) periodically update the environmental sensitivity index products of the Administration; and

“(2) endeavor to do so not less frequently than once every 7 years.

“(c) PRIORITIES.—When prioritizing geographic areas to update environmental sensitivity index products, the Under Secretary shall consider—

“(1) the age of existing environmental sensitivity index products for the areas;

“(2) the occurrence of extreme events, be it natural or man-made, which have significantly altered the shoreline or ecosystem since the last update;

“(3) the natural variability of shoreline and coastal environment; and

“(4) the volume of vessel traffic and general vulnerability to spilled pollutants.