

## TITLE 16 - CONSERVATION

### CHAPTER 18 - WATERSHED PROTECTION AND FLOOD PREVENTION

#### § 1012. Rehabilitation of structural measures near, at, or past their evaluated life expectancy

##### (a) Definitions

For purposes of this section:

##### (1) Rehabilitation

The term “rehabilitation”, with respect to a structural measure constructed as part of a covered water resource project, means the completion of all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include:

- (A) protecting the integrity of the structural measure or prolonging the useful life of the structural measure beyond the original evaluated life expectancy;
- (B) correcting damage to the structural measure from a catastrophic event;
- (C) correcting the deterioration of structural components that are deteriorating at an abnormal rate;
- (D) upgrading the structural measure to meet changed land use conditions in the watershed served by the structural measure or changed safety criteria applicable to the structural measure; or
- (E) decommissioning the structure, if requested by the local organization.

##### (2) Covered water resource project

The term “covered water resource project” means a work of improvement carried out under any of the following:

- (A) This chapter.
- (B) Section 13 of the Act of December 22, 1944 (Public Law 78–534; 58 Stat. 905).
- (C) The pilot watershed program authorized under the heading “Flood Prevention” of the Department of Agriculture Appropriation Act, 1954 (Public Law 156; 67 Stat. 214).
- (D) Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq.; commonly known as the Resource Conservation and Development Program).

##### (3) Structural measure

The term “structural measure” means a physical improvement that impounds water, commonly known as a dam, which was constructed as part of a covered water resource project, including the impoundment area and flood pool.

##### (b) Cost share assistance for rehabilitation

##### (1) Assistance authorized

The Secretary may provide financial assistance to a local organization to cover a portion of the total costs incurred for the rehabilitation of structural measures originally constructed as part of a covered water resource project. The total costs of rehabilitation include the costs associated with all components of the rehabilitation project, including acquisition of land, easements, and rights-of-ways, rehabilitation project administration, the provision of technical assistance, contracting, and construction costs, except that the local organization shall be responsible for securing all land, easements, or rights-of-ways necessary for the project.

##### (2) Amount of assistance; limitations

The amount of Federal funds that may be made available under this subsection to a local organization for construction of a particular rehabilitation project shall be equal to 65 percent of the total rehabilitation costs, but not to exceed 100 percent of actual construction costs incurred

in the rehabilitation. However, the local organization shall be responsible for the costs of water, mineral, and other resource rights and all Federal, State, and local permits.

**(3) Relation to land use and development regulations**

As a condition on entering into an agreement to provide financial assistance under this subsection, the Secretary, working in concert with the affected unit or units of general purpose local government, may require that proper zoning or other developmental regulations are in place in the watershed in which the structural measures to be rehabilitated under the agreement are located so that—

(A) the completed rehabilitation project is not quickly rendered inadequate by additional development; and

(B) society can realize the full benefits of the rehabilitation investment.

**(c) Technical assistance for watershed project rehabilitation**

The Secretary, acting through the Natural Resources Conservation Service, may provide technical assistance in planning, designing, and implementing rehabilitation projects should a local organization request such assistance. Such assistance may consist of specialists in such fields as engineering, geology, soils, agronomy, biology, hydraulics, hydrology, economics, water quality, and contract administration.

**(d) Prohibited use**

**(1) Performance of operation and maintenance**

Rehabilitation assistance provided under this section may not be used to perform operation and maintenance activities specified in the agreement for the covered water resource project entered into between the Secretary and the local organization responsible for the works of improvement. Such operation and maintenance activities shall remain the responsibility of the local organization, as provided in the project work plan.

**(2) Renegotiation**

Notwithstanding paragraph (1), as part of the provision of financial assistance under subsection (b) of this section, the Secretary may renegotiate the original agreement for the covered water resource project entered into between the Secretary and the local organization regarding responsibility for the operation and maintenance of the project when the rehabilitation is finished.

**(e) Application for rehabilitation assistance**

A local organization may apply to the Secretary for technical and financial assistance under this section if the application has also been submitted to and approved by the State agency having supervisory responsibility over the covered water resource project at issue or, if there is no State agency having such responsibility, by the Governor of the State. The Secretary shall request the State dam safety officer (or equivalent State official) to be involved in the application process if State permits or approvals are required. The rehabilitation of structural measures shall meet standards established by the Secretary and address other dam safety issues. At the request of the local organization, personnel of the Natural Resources Conservation Service of the Department of Agriculture may assist in preparing applications for assistance.

**(f) Ranking of requests for rehabilitation assistance**

The Secretary shall establish such system of approving rehabilitation requests, recognizing that such requests will be received throughout the fiscal year and subject to the availability of funds to carry out this section, as is necessary for proper administration by the Department of Agriculture and equitable for all local organizations. The approval process shall be in writing, and made known to all local organizations and appropriate State agencies.

**(g) Prohibition on certain rehabilitation assistance**

The Secretary may not approve a rehabilitation request if the need for rehabilitation of the structure is the result of a lack of adequate maintenance by the party responsible for the maintenance.

**(h) Funding**

**(1) Funds of Commodity Credit Corporation**

In carrying out this section, of the funds of the Commodity Credit Corporation, the Secretary shall make available, to remain available until expended—

- (A) \$45,000,000 for fiscal year 2003;
- (B) \$50,000,000 for fiscal year 2004;
- (C) \$55,000,000 for fiscal year 2005;
- (D) \$60,000,000 for fiscal year 2006;
- (E) \$65,000,000 for fiscal year 2007; and<sup>1</sup>
- (F) \$0 for fiscal year 2008.<sup>2</sup>
- (G) \$100,000,000 for fiscal year 2009, to be available until expended.

**(2) Authorization of appropriations**

In addition to amounts made available under paragraph (1), there are authorized to be appropriated to the Secretary to carry out this section, to remain available until expended—

- (A) \$45,000,000 for fiscal year 2003;
- (B) \$55,000,000 for fiscal year 2004;
- (C) \$65,000,000 for fiscal year 2005;
- (D) \$75,000,000 for fiscal year 2006; and
- (E) \$85,000,000 for each of fiscal years 2008 through 2012.

**(i) Assessment of rehabilitation needs**

The Secretary, in concert with the responsible State agencies, shall conduct an assessment of the rehabilitation needs of covered water resource projects in all States in which such projects are located.

**(j) Recordkeeping and reports**

**(1) Secretary**

The Secretary shall maintain a data base to track the benefits derived from rehabilitation projects supported under this section and the expenditures made under this section. On the basis of such data and the reports submitted under paragraph (2), the Secretary shall prepare and submit to Congress an annual report providing the status of activities conducted under this section.

**(2) Grant recipients**

Not later than 90 days after the completion of a specific rehabilitation project for which assistance is provided under this section, the local organization that received the assistance shall make a report to the Secretary giving the status of any rehabilitation effort undertaken using financial assistance provided under this section.

**Footnotes**

<sup>1</sup> So in original. The word “and” probably should not appear.

<sup>2</sup> So in original. The period probably should be “; and”

(Aug. 4, 1954, ch. 656, § 14, as added Pub. L. 106–472, title III, § 313, Nov. 9, 2000, 114 Stat. 2077; amended Pub. L. 107–171, title II, § 2505, May 13, 2002, 116 Stat. 274; Pub. L. 110–234, title II, § 2803, May 22, 2008, 122 Stat. 1086; Pub. L. 110–246, § 4(a), title II, § 2803, June 18, 2008, 122 Stat. 1664, 1814.)

## References in Text

Section 13 of the Act of December 22, 1944, referred to in subsec. (a)(2)(B), is section 13 of act Dec. 22, 1944, ch. 665, 58 Stat. 905, as amended, which is not classified to the Code.

The Department of Agriculture Appropriation Act, 1954, referred to in subsec. (a)(2)(C), is act July 28, 1953, ch. 251, 67 Stat. 205. Provisions under the heading “Flood Prevention” are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Agriculture and Food Act of 1981, referred to in subsec. (a)(2)(D), is Pub. L. 97–98, Dec. 22, 1981, 95 Stat. 1213, as amended. Subtitle H of title XV of the Act is classified generally to subchapter V (§ 3451 et seq.) of chapter 54 of this title. For complete classification of this Act to the Code, see Tables.

## Codification

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

## Amendments

2008—Subsec. (h)(1)(G). Pub. L. 110–246, § 2803(a), added subpar. (G).

Subsec. (h)(2)(E). Pub. L. 110–246, § 2803(b), substituted “each of fiscal years 2008 through 2012” for “fiscal year 2007”.

2002—Subsec. (h). Pub. L. 107–171 added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: “There is authorized to be appropriated to the Secretary to provide financial and technical assistance under this section—

“(1) \$5,000,000 for fiscal year 2001;

“(2) \$10,000,000 for fiscal year 2002;

“(3) \$15,000,000 for fiscal year 2003;

“(4) \$25,000,000 for fiscal year 2004; and

“(5) \$35,000,000 for fiscal year 2005.”

## Effective Date of 2008 Amendment

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.