



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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WASHINGTON, DC 20314-1000

CECW-P

DEC 08 2015

MEMORANDUM FOR Commander, North Atlantic Division (CENAD-PD)

SUBJECT: Implementation Guidance for Section 4010(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – Chesapeake Bay

1. Section 4010(a) of WRRDA 2014 further amends Section 510 of the Water Resources Development Act of 1996, which authorized the Chesapeake Bay Environmental Restoration and Protection Program (hereinafter the "Section 510 Program"). Section 4010(a) directs development of a comprehensive Chesapeake Bay restoration plan not later than 2 years after the enactment of WRRDA 2014 and provides for design and construction, cost shared 75 percent Federal and 25 percent non-Federal, of water-related resources protection and restoration projects affecting the Chesapeake Bay estuary, based on the comprehensive plan. It changes the types of projects eligible for assistance to sediment and erosion control; protection of eroding shorelines; ecosystem restoration, including restoration of submerged aquatic vegetation; protection of essential public works; beneficial uses of dredged material; and other related projects that may enhance the living resources of the estuary. It provides that Section 510 will be carried out in cooperation with the Environmental Protection Agency, the National Oceanographic and Atmospheric Administration, the United States Fish and Wildlife Service, and other federal agencies as, appropriate, and with appropriate State and local government agencies, including the Chesapeake Bay Commission. It also provides that a project carried out under this authority that is on lands owned by the Federal Government shall be carried out at the expense of that Federal agency with jurisdiction of those lands except that the Federal agency may accept funds from non-Federal entities for that project. A copy of Section 510, as amended, is enclosed.

2. Comprehensive Plan Development

a. In FY 14, a reconnaissance study was initiated pursuant to a Senate Committee on Environment and Public Works study resolution, adopted 26 September 2002, for a comprehensive master plan for restoring, preserving, and protecting the Chesapeake Bay ecosystem. Upon completion of this ongoing reconnaissance study, and subject to the availability of funding, a comprehensive assessment, which is cost shared 75 % Federal and 25 % non-Federal, will be prepared following the execution of an agreement that follows the Watershed and River Basin Assessment model. This comprehensive assessment will be used to fulfill the requirement for a comprehensive plan directed in WRRDA 2014.

b. The comprehensive assessment will result in a plan that provides a single, comprehensive, and integrated restoration plan to guide the implementation of projects affecting the Chesapeake Bay estuary and will be developed to avoid duplication of any ongoing or planned actions of other Federal, State and local agencies and nongovernmental organizations. The Plan will be developed in cooperation with the Environmental Protection Agency, the National Oceanographic and Atmospheric Administration, the United States Fish and Wildlife Service, and other federal agencies as, appropriate, and with appropriate State and local government agencies, including the Chesapeake Bay Commission.

c. Making maximum use of existing information, the Plan will identify the ecological needs, problems, and opportunities in the watershed and will identify the environmental restoration projects that can be implemented to achieve overall watershed restoration goals in an integrated manner. To the maximum extent practicable, the Plan will identify at least one project for each of the basin states of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia, and at least one project for the District of Columbia. The Plan will identify an implementation strategy that specifies the scope, goals, and timing and extent of proposed projects and anticipated benefits as well as any necessary order of implementation in the case of dependencies.

d. In addition to projects that potentially may be implemented by the Corps of Engineers, the Plan will identify potential projects or actions that may be implemented by other Federal, State and local entities under their own authorities. A project identified in the Plan may be carried out under the authority of Section 510 only to the extent that funds are specifically appropriated for such work. Additionally, a potential project identified in the Plan may be considered, as appropriate, for further analysis under the Continuing Authorities Program or under specific study authorizations.

e. The Plan must comply with Planning Bulletin 2014-01, including an endorsement of vertical alignment from the MSC Planning Chief. The Plan should be completed within two years after execution of the agreement for the comprehensive assessment. Development of the Plan shall be undertaken in accordance with EC 1105-2-411 and other applicable Civil Works policies and guidance, and will incorporate SMART planning principles.

f. Two checkpoint meetings will be conducted during development of the Plan and will be attended by the districts, NAD, NAD-RIT, and the HQ review team. The district will document each checkpoint meeting by a memorandum that indicates policy compliance, adherence to SMART Planning principles and future study direction. The draft report will undergo a minimum 30-day concurrent review by the MSC and HQUSACE, including members of OWPR, prior to publishing of the final report.

1) Checkpoint 1: Appropriate documentation will be presented for the following: Goals, problems and opportunities, objectives and constraints, existing and future without project conditions. The management measures and screening will also be presented, along with any technical, legal or policy issues of concern that have arisen during study development. This checkpoint will be held no later than 6 months after signing of the agreement for the comprehensive assessment.

2) Checkpoint 2: Products that were utilized/developed and outcomes/results of collaboration should be identified. Additionally, the results of any plan evaluations and comparisons should be presented. This checkpoint will be held no later than 1 year after signing of the agreement for the comprehensive assessment, unless otherwise agreed to by the RIT.

g. Approval of the final report for the Plan will follow the procedures for a Watershed Plan in paragraph 10.a and b of EC 1105-2-411.

3. Implementation of Project Design and Construction under Section 510. A project identified in the Plan may be carried out under the authority of Section 510 only to the extent that funds are specifically appropriated. Any previous guidance provided for the implementation of projects under this authority is rescinded.

a. As modified by WRRDA 2014, the Section 510 Program authorizes the Corps to design and construct water-related resource protection and restoration projects that affect the Chesapeake Bay watershed, including projects for sediment and erosion control; protection of eroding shorelines; ecosystem restoration, including restoration of submerged aquatic vegetation; protection of essential public works; beneficial uses of dredged material; and other related projects that may enhance the living resources of the estuary. Design and construction of projects is cost shared 75 percent Federal and 25 percent non-Federal, with the costs of operation, maintenance, repair, replacements, and rehabilitation a 100 percent non-Federal expense. Credit for the value of lands, easements, rights-of-way, and relocations provided by the non-Federal sponsor may be afforded up to, but not exceeding, the non-Federal cost share.

b. To the extent funds are specifically appropriated to implement a project under Section 510 Program, the district will prepare a feasibility level analysis consistent with the guidance for comparable projects in the Continuing Authority Program (CAP) and include a letter of intent from the non-Federal sponsor stating its support and understanding of its responsibilities. Costs for the feasibility level analysis will be kept to a minimum in keeping with SMART planning principles. These planning costs will be included as a feasibility cost and cost shared under a project partnership agreement, once executed.

c. The report will be submitted to the MSC for review and approval, with the MSC Commander authorized to approve projects that have a total cost for planning, design and construction of not more than \$7,000,000. Projects with a total cost in excess of \$7,000,000 must be submitted to HQUSACE for approval. Projects with a total cost in excess of \$10 million will not be implemented under this authority. In addition, any proposal to carry out a project, at Federal expense, on lands under the jurisdiction of the Department of the Army, must be submitted to HQUSACE for approval.

d. Prior to initiating any design or construction, and once the appropriate approvals have been obtained, a project partnership agreement (PPA) between the Corps and non-Federal sponsor must be executed. The district must submit the draft agreement package through the district for review and then submission to HQUSACE for review and coordination with the ASA(CW).



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Section 510 of WRDA 1996, as amended by Section 5020 WRDA 2007 and Section 4010 of WRRDA 2014

SEC. 510. CHESAPEAKE BAY ENVIRONMENTAL RESTORATION AND PROTECTION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish a program to provide environmental assistance to non-Federal interests in the basin States described in subsection (f) and the District of Columbia in the Chesapeake Bay watershed.

(2) FORM.—The assistance under paragraph (1) shall be in the form of design and construction assistance for water-related resource protection and restoration projects affecting the Chesapeake Bay estuary, based on the comprehensive plan under subsection (b), including projects for:

- (A) sediment and erosion control;
- (B) protection of eroding shorelines;
- (C) ecosystem restoration, including restoration of submerged aquatic vegetation;
- (D) protection of essential public works;
- (E) beneficial uses of dredged material; and
- (F) other related projects that may enhance the living resources of the estuary.

(b) COMPREHENSIVE PLAN.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Water Resources Reform and Development Act of 2014, the Secretary, in cooperation with State and local governmental officials and affected stakeholders, shall develop a comprehensive Chesapeake Bay restoration plan to guide the implementation of projects under subsection (a)(2).

(2) COORDINATION.—The restoration plan described in paragraph (1) shall, to the maximum extent practicable, consider and avoid duplication of any ongoing or planned actions of other Federal, State, and local agencies and nongovernmental organizations.

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(3) PRIORITIZATION.—The restoration plan described in paragraph (1) shall give priority to projects eligible under subsection (a)(2) that will also improve water quality or quantity or use natural hydrological features and systems.

(c) LOCAL COOPERATION AGREEMENT.—

(1) IN GENERAL.—Before providing assistance under this section, the Secretary shall enter into a local cooperation agreement with a non-Federal interest for the design and construction of a project carried out pursuant to the comprehensive Chesapeake Bay restoration plan described in subsection (b).

(2) REQUIREMENTS.—Each local cooperation agreement entered into under this subsection shall provide for—

(A) the development by the Secretary, in consultation with appropriate Federal, State, and local officials, of a resource protection and restoration plan; and

(B) the establishment of such legal and institutional structures as are necessary to ensure the effective longterm operation and maintenance of the project by the non-Federal interest.

(3) PROJECTS ON FEDERAL LAND.—A project carried out pursuant to the comprehensive Chesapeake Bay restoration plan described in subsection (b) that is located on Federal land shall be carried out at the expense of the Federal agency that owns the land on which the project will be a carried out.

(4) NON-FEDERAL CONTRIBUTIONS.—A Federal agency carrying out a project described in paragraph (3) may accept contributions of funds from non-Federal entities to carry out that project.

(d) COST SHARING.—

(1) FEDERAL SHARE.—Except as provided in paragraph (2)(B), the Federal share of the total project costs of each local cooperation agreement entered into under this section shall be 75 percent.

(2) NON-FEDERAL SHARE.—

(A) VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, AND RELOCATIONS.— In determining the non-Federal contribution toward carrying out a local cooperation agreement entered into under this section, the Secretary shall provide credit to a non-Federal interest for the value of lands, easements, rights-of-way, and relocations provided by SUBJECT: Implementation Guidance for Section 4010(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – Chesapeake Bay

the non-Federal interest, except that the amount of credit provided for a project under this paragraph may not exceed 25 percent of the total project costs.

(B) OPERATION AND MAINTENANCE COSTS.—The non-Federal share of the costs of operation and maintenance of activities carried out under an agreement under this section shall be 100 percent.

(e) COOPERATION.—In carrying out this section, the Secretary shall cooperate with-

(1) the heads of appropriate Federal agencies, including –

(A) the Administrator of the Environmental Protection Agency;

(B) the Secretary of Commerce, acting through the Administrator of the National Oceanographic and Atmospheric Administration;

(C) the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

(D) the heads of such other Federal agencies as the Secretary determines to be appropriate; and;

(2) agencies of a State, or political subdivision of a State, including the Chesapeake Bay Commission.

(f) PROJECTS.—The Secretary shall establish, to the maximum extent practicable, at least 1 project under this section in-

(1) regions within the Chesapeake Bay watershed of each of the basin States of Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia; and

(2) the District of Columbia.

(g) PROTECTION OF RESOURCES.—A project established under this section shall be carried out using such measures as are necessary to protect environmental, historic, and cultural resources.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$40,000,000.