

ment), the well-being of the people of the United States, the prevention of loss of life, and the preservation of cultural and historical values shall be addressed in the formulation and evaluation of water resources projects to be carried out by the Secretary, and the associated benefits and costs, both quantifiable and unquantifiable, and information regarding potential loss of human life that may be associated with flooding and coastal storm events, shall be displayed in the benefits and costs of such projects.

(b) Assessments

For all feasibility reports for water resources projects completed after December 31, 2007, the Secretary shall assess whether—

- (1) the water resources project and each separable element is cost-effective; and
- (2) the water resources project complies with Federal, State, and local laws (including regulations) and public policies.

(Pub. L. 99-662, title IX, § 904, Nov. 17, 1986, 100 Stat. 4185; Pub. L. 101-640, title III, § 315, Nov. 28, 1990, 104 Stat. 4641; Pub. L. 104-303, title II, § 231, Oct. 12, 1996, 110 Stat. 3704; Pub. L. 110-114, title II, § 2033(a), Nov. 8, 2007, 121 Stat. 1084.)

AMENDMENTS

2007—Pub. L. 110-114 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1996—Pub. L. 104-303 inserted “and information regarding potential loss of human life that may be associated with flooding and coastal storm events,” after “unquantifiable,”.

1990—Pub. L. 101-640 inserted “(including preservation and enhancement of the environment)” after “environment”.

RURAL PROJECT EVALUATION AND SELECTION CRITERIA

Pub. L. 102-580, title II, § 214, Oct. 31, 1992, 106 Stat. 4831, directed Comptroller General, not later than 18 months after Oct. 31, 1992, to report to Congress with specific legislative and other recommendations on improving the equitable distribution of water resources development projects in rural areas, prior to repeal by Pub. L. 104-316, title I, § 117, Oct. 19, 1996, 110 Stat. 3835.

§ 2282. Feasibility reports

(a) Preparation of reports

(1) In general

In the case of any water resources project-related study authorized to be undertaken by the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall perform a reconnaissance study and prepare a feasibility report, subject to section 2215 of this title.

(2) Contents of feasibility reports

A feasibility report shall describe, with reasonable certainty, the economic, environmental, and social benefits and detriments of the recommended plan and alternative plans considered by the Secretary and the engineering features (including hydrologic and geologic information), the public acceptability, and the purposes, scope, and scale of the recommended plan. A feasibility report shall also include the views of other Federal agencies and non-Federal agencies with regard to the

recommended plan, a description of a non-structural alternative to the recommended plan when such plan does not have significant nonstructural features, and a description of the Federal and non-Federal participation in such plan, and shall demonstrate that States, other non-Federal interests, and Federal agencies have been consulted in the development of the recommended plan.

(3) Applicability

This subsection shall not apply to—

(A) any study with respect to which a report has been submitted to Congress before November 17, 1986;

(B) any study for a project, which project is authorized for construction by this Act and is not subject to section 903(b);¹

(C) any study for a project which does not require specific authorization by Congress in law or otherwise; and

(D) general studies not intended to lead to recommendation of a specific water resources project.

(4) Feasibility report defined

In this subsection, the term “feasibility report” means each feasibility report, and any associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project. The term includes a project implementation report prepared under title VI of the Water Resources Development Act of 2000 (114 Stat. 2680-2694), a general reevaluation report, and a limited reevaluation report.

(b) Reconnaissance studies

Before initiating any feasibility study under subsection (a) of this section after November 17, 1986, the Secretary shall first perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to enable the Secretary to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report. Such reconnaissance study shall include a preliminary analysis of the Federal interest, costs, benefits, and environmental impacts of such project, and an estimate of the costs of preparing the feasibility report. The duration of a reconnaissance study shall normally be no more than twelve months, but in all cases is to be limited to eighteen months.

(c) Projects not specifically authorized by Congress

In the case of any water resources project-related study authorized to be undertaken by the Secretary without specific authorization by Congress in law or otherwise, the Secretary shall prepare a detailed project report.

(d) Indian tribes

For purposes of studies undertaken pursuant to this section, the Secretary is authorized to consider benefits which may accrue to Indian tribes as a result of a project resulting from such a study.

¹ See References in Text note below.

(e) Standard and uniform procedures and practices

The Secretary shall undertake such measures as are necessary to ensure that standard and uniform procedures and practices are followed by each district office (and each division office for any area in which there is no district office) of the United States Army Corps of Engineers in the preparation of feasibility reports on water resources projects.

(f) Enhanced public participation

(1) In general

The Secretary shall establish procedures to enhance public participation in the development of each feasibility study under subsection (a) of this section, including, if appropriate, establishment of a stakeholder advisory group to assist the Secretary with the development of the study.

(2) Membership

If the Secretary provides for the establishment of a stakeholder advisory group under this subsection, the membership of the advisory group shall include balanced representation of social, economic, and environmental interest groups, and such members shall serve on a voluntary, uncompensated basis.

(3) Limitation

Procedures established under this subsection shall not delay development of any feasibility study under subsection (a) of this section.

(Pub. L. 99-662, title IX, § 905, Nov. 17, 1986, 100 Stat. 4185; Pub. L. 106-541, title II, § 222(a), Dec. 11, 2000, 114 Stat. 2597; Pub. L. 110-114, title II, § 2043(b), Nov. 8, 2007, 121 Stat. 1101.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 99-662, Nov. 17, 1986, 100 Stat. 4082, known as the Water Resources Development Act of 1986. For complete classification of this Act to the Code, see Short Title note set out under section 2201 of this title and Tables.

Section 903(b), referred to in subsec. (a)(3)(B), is section 903(b) of Pub. L. 99-662, title IX, Nov. 17, 1986, 100 Stat. 4184, which is not classified to the Code.

The Water Resources Development Act of 2000, referred to in subsec. (a)(4), is Pub. L. 106-541, Dec. 11, 2000, 114 Stat. 2572. Title VI of the Act is not classified to the Code. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 2201 of this title and Tables.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110-114, § 2043(b)(1), designated first sentence of existing provisions as par. (1) and inserted subsec. (a) and par. (1) headings, substituted “the Secretary that results in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law or otherwise, the Secretary shall perform a reconnaissance study and” for “the Secretary, the Secretary shall” in par. (1), designated second and third sentences of existing provisions as par. (2) and inserted heading, substituted “A feasibility report” for “Such feasibility report” and “The feasibility report” in par. (2), added pars. (3) and (4), and struck out last sentence of existing provisions which read as follows: “This subsection shall not apply to (1) any study with respect to which a report has been submitted to Congress before November 17, 1986, (2) any study for a project, which project is authorized for construction by this Act and is not sub-

ject to section 903(b), (3) any study for a project which is authorized under any of the following sections: section 205 of the Flood Control Act of 1948 (33 U.S.C. 701s), section 2 of the Flood Control Act of August 28, 1946 (33 U.S.C. 701r), section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577), section 3 of the Act entitled ‘An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property’, approved August 13, 1946 (33 U.S.C. 426g), and section 111 of the River and Harbor Act of 1968 (33 U.S.C. 426i), and (4) general studies not intended to lead to recommendation of a specific water resources project.”

Subsec. (b). Pub. L. 110-114, § 2043(b)(2)(A), inserted heading.

Subsecs. (c) to (f). Pub. L. 110-114, § 2043(b)(2)(B)–(E), added subsec. (c), redesignated former subsecs. (c) to (e) as (d) to (f), respectively, and inserted headings in subsecs. (d) and (e).

2000—Subsec. (e). Pub. L. 106-541 added subsec. (e).

NATIONAL ACADEMY OF SCIENCES STUDY

Pub. L. 106-541, title II, § 216, Dec. 11, 2000, 114 Stat. 2595, provided that:

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ACADEMY.—The term ‘Academy’ means the National Academy of Sciences.

“(2) METHOD.—The term ‘method’ means a method, model, assumption, or other pertinent planning tool used in conducting an economic or environmental analysis of a water resources project, including the formulation of a feasibility report.

“(3) FEASIBILITY REPORT.—The term ‘feasibility report’ means each feasibility report, and each associated environmental impact statement and mitigation plan, prepared by the Corps of Engineers for a water resources project.

“(4) WATER RESOURCES PROJECT.—The term ‘water resources project’ means a project for navigation, a project for flood control, a project for hurricane and storm damage reduction, a project for emergency streambank and shore protection, a project for ecosystem restoration and protection, and a water resources project of any other type carried out by the Corps of Engineers.

“(b) INDEPENDENT PEER REVIEW OF PROJECTS.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to study, and make recommendations relating to, the independent peer review of feasibility reports.

“(2) STUDY ELEMENTS.—In carrying out a contract under paragraph (1), the Academy shall study the practicality and efficacy of the independent peer review of the feasibility reports, including—

“(A) the cost, time requirements, and other considerations relating to the implementation of independent peer review; and

“(B) objective criteria that may be used to determine the most effective application of independent peer review to feasibility reports for each type of water resources project.

“(3) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall submit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—

“(A) the results of the study conducted under paragraphs (1) and (2); and

“(B) in light of the results of the study, specific recommendations, if any, on a program for implementing independent peer review of feasibility reports.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$1,000,000, to remain available until expended.

“(c) INDEPENDENT PEER REVIEW OF METHODS FOR PROJECT ANALYSIS.—

“(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Dec. 11, 2000], the Secretary [of the Army] shall contract with the Academy to conduct a study that includes—

“(A) a review of state-of-the-art methods;

“(B) a review of the methods currently used by the Secretary;

“(C) a review of a sample of instances in which the Secretary has applied the methods identified under subparagraph (B) in the analysis of each type of water resources project; and

“(D) a comparative evaluation of the basis and validity of state-of-the-art methods identified under subparagraph (A) and the methods identified under subparagraphs (B) and (C).

“(2) ACADEMY REPORT.—Not later than 1 year after the date of a contract under paragraph (1), the Academy shall transmit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate a report that includes—

“(A) the results of the study conducted under paragraph (1); and

“(B) in light of the results of the study, specific recommendations for modifying any of the methods currently used by the Secretary for conducting economic and environmental analyses of water resources projects.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$2,000,000. Such sums shall remain available until expended.”

ENGINEERING CONSULTING SERVICES

Pub. L. 106-541, title II, §219, Dec. 11, 2000, 114 Stat. 2596, provided that: “In conducting a feasibility study for a water resources project, the Secretary [of the Army], to the maximum extent practicable, should not employ a person for engineering and consulting services if the same person is also employed by the non-Federal interest for such services unless there is only 1 qualified and responsive bidder for such services.”

§ 2282a. Planning

(a) Omitted

(b) Planning process improvements

The Chief of Engineers—

(1) shall adopt a risk analysis approach to project cost estimates for water resources projects; and

(2) not later than one year after November 8, 2007, shall—

(A) issue procedures for risk analysis for cost estimation for water resources projects; and

(B) submit to Congress a report that includes any recommended amendments to section 2280 of this title.

(c) Benchmarks

(1) In general

Not later than 12 months after November 8, 2007, the Chief of Engineers shall establish benchmarks for determining the length of time it should take to conduct a feasibility study for a water resources project and its associated review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Chief of Engineers shall use such benchmarks as a management tool to make the feasibility study process more efficient in all districts of the Corps of Engineers.

(2) Benchmark goals

The Chief of Engineers shall establish, to the extent practicable, under paragraph (1) bench-

mark goals for completion of feasibility studies for water resources projects generally within 2 years. In the case of feasibility studies that the Chief of Engineers determines may require additional time based on the project type, size, cost, or complexity, the benchmark goal for completion shall be generally within 4 years.

(d) Calculation of benefits and costs for flood damage reduction projects

A feasibility study for a project for flood damage reduction shall include, as part of the calculation of benefits and costs—

(1) a calculation of the residual risk of flooding following completion of the proposed project;

(2) a calculation of the residual risk of loss of human life and residual risk to human safety following completion of the proposed project;

(3) a calculation of any upstream or downstream impacts of the proposed project; and

(4) calculations to ensure that the benefits and costs associated with structural and non-structural alternatives are evaluated in an equitable manner.

(e) Centers of specialized planning expertise

(1) Establishment

The Secretary may establish centers of expertise to provide specialized planning expertise for water resources projects to be carried out by the Secretary in order to enhance and supplement the capabilities of the districts of the Corps of Engineers.

(2) Duties

A center of expertise established under this subsection shall—

(A) provide technical and managerial assistance to district commanders of the Corps of Engineers for project planning, development, and implementation;

(B) provide agency peer reviews of new major scientific, engineering, or economic methods, models, or analyses that will be used to support decisions of the Secretary with respect to feasibility studies for water resources projects;

(C) provide support for independent peer review panels under section 2343 of this title; and

(D) carry out such other duties as are prescribed by the Secretary.

(f) Completion of Corps of Engineers reports

(1) Alternatives

(A) In general

Feasibility and other studies and assessments for a water resources project shall include recommendations for alternatives—

(i) that, as determined in coordination with the non-Federal interest for the project, promote integrated water resources management; and

(ii) for which the non-Federal interest is willing to provide the non-Federal share for the studies or assessments.

(B) Constraints

The alternatives contained in studies and assessments described in subparagraph (A)