

(II) enhances water management flexibility, including providing for—

(aa) local control to manage water supplies under varying water supply conditions; and

(bb) participation in water banking and markets for domestic and environmental purposes; and

(ii) promotes long-term protection of water supplies;

(H) preliminary cost estimates for the project; and

(I) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and

(2) provides recommendations on whether a feasibility study should be initiated under section 2405(a) of this title.

(d) Appraisal criteria

(1) In general

Not later than 1 year after December 22, 2006, the Secretary shall promulgate criteria (including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.

(2) Inclusions

To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to the total size and cost of the proposed rural water supply project.

(e) Review of appraisal investigation

(1) In general

Not later than 90 days after the date of submission of an appraisal investigation under paragraph (1) or (3) of subsection (a), the Secretary shall provide to the non-Federal entity that conducted the investigation a determination of whether the investigation has included the information necessary to determine whether the proposed rural water supply project satisfies the criteria promulgated under subsection (d).

(2) No satisfaction of criteria

If the Secretary determines that the appraisal investigation submitted by a non-Federal entity does not satisfy the criteria promulgated under subsection (d), the Secretary shall inform the non-Federal entity of the reasons why the appraisal investigation is deficient.

(3) Responsibility of Secretary

If an appraisal investigation as first submitted by a non-Federal entity does not provide all necessary information, as defined by the Secretary, the Secretary shall have no obligation to conduct further analysis until the non-Federal project entity submitting the appraisal study conducts additional investigation and resubmits the appraisal investigation under this subsection.

(f) Appraisal report

Once the Secretary has determined that an investigation provides the information necessary under subsection (e), the Secretary shall—

(1) complete the appraisal report required under subsection (c);

(2) make available to the public, on request, the appraisal report prepared under this subchapter; and

(3) promptly publish in the Federal Register a notice of the availability of the results.

(g) Costs

(1) Federal share

The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to \$200,000.

(2) Non-Federal share

(A) In general

Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than \$200,000, the non-Federal share of the costs in excess of \$200,000 shall be 50 percent.

(B) Exception

The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.

(C) Form

The non-Federal share under subparagraph (A) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the appraisal investigation.

(h) Consultation; identification of funding sources

In conducting an appraisal investigation under subsection (a)(2), the Secretary shall—

(1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;

(2) consult with the heads of appropriate Federal agencies to—

(A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and

(B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and

(3) identify what funding sources are available for the proposed rural water supply project.

(Pub. L. 109-451, title I, §105, Dec. 22, 2006, 120 Stat. 3349.)

§ 2405. Feasibility studies

(a) In general

On completion of an appraisal report under section 2404(c) of this title that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

(1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;

(2) receive and review a feasibility study that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity; or

(3)(A) provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—

(i) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d); and

(ii) using the non-Federal project entity to conduct the feasibility study is a cost-effective alternative for completing the appraisal investigation; or

(B) if the Secretary determines not to provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity under subparagraph (A), provide to the non-Federal project entity notice of the determination, including an explanation of the reason for the determination.

(b) Review of non-Federal feasibility studies

(1) In general

In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

(A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and

(B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

(2) Revisions

If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

(c) Feasibility factors

Feasibility studies authorized or reviewed under this subchapter shall include an assessment of—

(1) near- and long-term water demand in the area to be served by the rural water supply project;

(2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;

(3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;

(4) environmental quality and source water protection issues related to the rural water supply project;

(5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—

(A) nonstructural approaches to reduce the need for the project; and

(B) demonstration technologies;

(6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;

(7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and

(B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;

(8) the availability of guaranteed loans for a proposed rural water supply project;

(9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;

(10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project that includes a schedule identifying the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the project;

(11)(A) the non-Federal project entity administrative organization that would implement construction, operations, maintenance, and replacement activities; and

(B) the fiscal, administrative, and operational controls to be implemented to manage the project;

(12) the extent to which assistance for rural water supply is available under other Federal authorities;

(13) the engineering, environmental, and economic activities to be undertaken to carry out the proposed rural water supply project;

(14) the extent to which the project involves partnerships with other State, local, or tribal governments or Federal entities; and

(15) in the case of a project intended for Indian tribes and tribal organizations, the extent to which the project addresses the goal of economic self-sufficiency.

(d) Feasibility study criteria

(1) In general

Not later than 18 months after December 22, 2006, the Secretary shall promulgate criteria (including the feasibility factors listed under subsection (c)) under which the feasibility studies shall be assessed for completeness and appropriateness.

(2) Inclusions

The Secretary shall include in the criteria promulgated under paragraph (1) methods to scale the level of effort needed to complete the feasibility assessment relative to the total

size and cost of the proposed rural water supply project and reduce total costs to non-Federal entities.

(e) Feasibility report

(1)¹ In general

After completion of appropriate feasibility studies for rural water supply projects that address the factors described in subsection (c) and the criteria promulgated under subsection (d), the Secretary shall—

(A) develop a feasibility report that includes—

(i) a recommendation of the Secretary on—

(I) whether the rural water supply project should be authorized for construction; and

(II) the appropriate non-Federal share of construction costs, which shall be—

(aa) at least 25 percent of the total construction costs; and

(bb) determined based on an analysis of the capability-to-pay information considered under subsections (c)(9) and (f); and

(ii) if the Secretary recommends that the project should be authorized for construction—

(I) what amount of grants, loan guarantees, or combination of grants and loan guarantees should be used to provide the Federal cost share;

(II) a schedule that identifies the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the rural water supply project; and

(III) an assessment of the financial capability of each non-Federal entity participating in the rural water supply project to pay the allocated annual operation, maintenance, and replacement costs for the rural water supply project;

(B) submit the report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives;

(C) make the report publicly available, along with associated study documents; and

(D) publish in the Federal Register a notice of the availability of the results.

(f) Capability-to-pay

(1) In general

In evaluating a proposed rural water supply project under this section, the Secretary shall—

(A) consider the financial capability of any non-Federal project entities participating in the rural water supply project to pay 25 percent or more of the capital construction costs of the rural water supply project; and

(B) recommend an appropriate Federal share and non-Federal share of the capital construction costs, as determined by the Secretary.

(2) Factors

In determining the financial capability of non-Federal project entities to pay for a rural

water supply project under paragraph (1), the Secretary shall evaluate factors for the project area, relative to the State average, including—

(A) per capita income;

(B) median household income;

(C) the poverty rate;

(D) the ability of the non-Federal project entity to raise tax revenues or assess fees;

(E) the strength of the balance sheet of the non-Federal project entity; and

(F) the existing cost of water in the region.

(3) Indian tribes

In determining the capability-to-pay of Indian tribe project beneficiaries, the Secretary may consider deferring the collection of all or part of the non-Federal construction costs apportioned to Indian tribe project beneficiaries unless or until the Secretary determines that the Indian tribe project beneficiaries should pay—

(A) the costs allocated to the beneficiaries; or

(B) an appropriate portion of the costs.

(g) Cost-sharing requirement

(1) In general

Except as otherwise provided in this subsection, the Federal share of the cost of a feasibility study carried out under this section shall not exceed 50 percent of the study costs.

(2) Form

The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the study.

(3) Financial hardship

The Secretary may increase the Federal share of the costs of a feasibility study if the Secretary determines, based on a demonstration of financial hardship, that the non-Federal participant is unable to contribute at least 50 percent of the costs of the study.

(4) Larger communities

In conducting a feasibility study of a rural water supply system that includes a community with a population in excess of 50,000 inhabitants, the Secretary may require the non-Federal project entity to pay more than 50 percent of the costs of the study.

(h) Consultation and cooperation

In addition to the non-Federal project entity, the Secretary shall consult and cooperate with appropriate Federal, State, tribal, regional, and local authorities during the conduct of each feasibility assessment and development of the feasibility report conducted under this subchapter.

(Pub. L. 109-451, title I, §106, Dec. 22, 2006, 120 Stat. 3351.)

§ 2406. Miscellaneous

(a) Authority of Secretary

The Secretary may enter into contracts, financial assistance agreements, and such other agreements, and promulgate such regulations, as are necessary to carry out this subchapter.

¹ So in original. No par. (2) has been enacted.