

(Aug. 5, 1886, ch. 929, §2, 24 Stat. 329; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501.)

#### CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

#### TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of the Army and other offices and officers of Department of the Army under section 401 of this title to extent that they relate generally to location and clearances of bridges and causeways in navigable waters of United States transferred to and vested in Secretary of Transportation by Pub. L. 89-670, §6(g)(6)(A), Oct. 15, 1966, 80 Stat. 941, which created Department of Transportation. Pub. L. 97-449 amended section 401 of this title to reflect transfer made by section 6(g)(6)(A) of Pub. L. 89-670, and repealed section 6(g)(6)(A).

### § 408. Taking possession of, use of, or injury to harbor or river improvements

#### (a) Prohibitions and permissions

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: *Provided*, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: *Provided further*, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

#### (b) Concurrent review

##### (1) NEPA review

##### (A) In general

In any case in which an activity subject to this section requires a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), review and approval of the activity under this section shall, to the maximum extent practicable, occur concurrently with any review and decisions made under that Act.

#### (B) Corps of Engineers as a cooperating agency

If the Corps of Engineers is not the lead Federal agency for an environmental review described in subparagraph (A), the Corps of Engineers shall, to the maximum extent practicable and consistent with Federal laws—

(i) participate in the review as a cooperating agency (unless the Corps of Engineers does not intend to submit comments on the project); and

(ii) adopt and use any environmental document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by the lead agency to the same extent that a Federal agency could adopt or use a document prepared by another Federal agency under—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

#### (2) Reviews by Secretary

In any case in which the Secretary must approve an action under this section and under another authority, including sections 401 and 403 of this title, section 1344 of this title, and section 1413 of this title, the Secretary shall—

(A) coordinate applicable reviews and, to the maximum extent practicable, carry out the reviews concurrently; and

(B) adopt and use any document prepared by the Corps of Engineers for the purpose of complying with the same law and that addresses the same types of impacts in the same geographic area if such document, as determined by the Secretary, is current and applicable.

#### (3) Contributed funds

The Secretary may accept and expend funds received from non-Federal public or private entities to evaluate under this section an alteration or permanent occupation or use of a work built by the United States.

#### (c) Timely review

##### (1) Complete application

On or before the date that is 30 days after the date on which the Secretary receives an application for permission to take action affecting public projects pursuant to subsection (a), the Secretary shall inform the applicant whether the application is complete and, if it is not, what items are needed for the application to be complete.

##### (2) Decision

On or before the date that is 90 days after the date on which the Secretary receives a complete application for permission under subsection (a), the Secretary shall—

(A) make a decision on the application; or

(B) provide a schedule to the applicant identifying when the Secretary will make a decision on the application.

##### (3) Notification to Congress

In any case in which a schedule provided under paragraph (2)(B) extends beyond 120 days

from the date of receipt of a complete application, the Secretary shall provide to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an explanation justifying the extended timeframe for review.

**(d) Work Defined**

For the purposes of this section, the term “work” shall not include unimproved real estate owned or operated by the Secretary as part of a water resources development project if the Secretary determines that modification of such real estate would not affect the function and usefulness of the project.

(Mar. 3, 1899, ch. 425, §14, 30 Stat. 1152; July 26, 1947, ch. 343, title II, §205(a), 61 Stat. 501; Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat. 315; Pub. L. 114-322, title I, §1156(a), Dec. 16, 2016, 130 Stat. 1664; Pub. L. 115-270, title I, §1165, Oct. 23, 2018, 132 Stat. 3797.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

CODIFICATION

Section is from act Mar. 3, 1899, popularly known as the “Rivers and Harbors Appropriation Act of 1899”.

PRIOR PROVISIONS

Section superseded act Sept. 19, 1890, ch. 907, §9, 26 Stat. 426, which prohibited persons taking possession of or using or injuring government works in navigable waters.

Act Aug. 14, 1876, ch. 267, §3, 19 Stat. 139, penalizing persons injuring any pier breakwater, or other work of the United States for the improvement of rivers or harbors or navigation, was probably omitted from the Code as superseded by this section.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115-270 added subsec. (d).

2016—Pub. L. 114-322 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1985—Pub. L. 99-88 inserted further proviso empowering Secretary, on recommendation of Chief of Engineers, to grant permission for alteration or permanent occupation or use of any of public works mentioned in this section when in judgment of Secretary such occupation or use will not be injurious to public interest and will not impair usefulness of such work.

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**§ 408a. Expediting approval of modifications and alterations of projects by non-Federal interests**

**(a) Section 14 application defined**

In this section, the term “section 14 application” means an application submitted by an applicant to the Secretary requesting permission for the temporary occupation or use of a public work, or the alteration or permanent occupation or use of a public work, under section 14 of the Act of March 3, 1899 (commonly known as the “Rivers and Harbors Appropriation Act of 1899”) (33 U.S.C. 408).

**(b) Review**

Not later than 1 year after June 10, 2014, the Secretary, after providing notice and an opportunity for comment, shall establish a process for the review of section 14 applications in a timely and consistent manner.

**(c) Benchmark goals**

**(1) Establishment of benchmark goals**

In carrying out subsection (b), the Secretary shall—

(A) establish benchmark goals for determining the amount of time it should take the Secretary to determine whether a section 14 application is complete;

(B) establish benchmark goals for determining the amount of time it should take the Secretary to approve or disapprove a section 14 application; and

(C) to the extent practicable, use such benchmark goals to make a decision on section 14 applications in a timely and consistent manner.

**(2) Benchmark goals**

**(A) Benchmark goals for determining whether section 14 applications are complete**

To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary reach a decision on whether a section 14 application is complete not later than 15 days after the date of receipt of the application; and

(ii) if the Secretary determines that a section 14 application is not complete, the Secretary promptly notify the applicant of the specific information that is missing or the analysis that is needed to complete the application.

**(B) Benchmark goals for reviewing completed applications**

To the extent practicable, the benchmark goals established under paragraph (1) shall provide that—

(i) the Secretary generally approve or disapprove a completed section 14 application not later than 45 days after the date