

(Pub. L. 113–121, title I, §1025, June 10, 2014, 128 Stat. 1229.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Reform and Development Act of 2014, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 113–121, set out as a note under section 2201 of this title.

§ 2227. Clarification of impacts to other Federal facilities

In any case where the modification or construction of a water resources development project carried out by the Secretary adversely impacts other Federal facilities, the Secretary may accept from other Federal agencies such funds as may be necessary to address the adverse impact, including by removing, relocating, or reconstructing those facilities.

(Pub. L. 113–121, title I, §1026, June 10, 2014, 128 Stat. 1229.)

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SUBCHAPTER II—HARBOR DEVELOPMENT

§ 2231. Study of water resources development projects by non-Federal interests

(a) Submission to Secretary

(1) In general

A non-Federal interest may undertake a federally authorized feasibility study of a proposed water resources development project, or, upon the written approval of the Secretary that the modifications are consistent with the authorized purposes of the project, undertake a feasibility study on modifications to a water resources development project constructed by the Corps of Engineers, and submit the study to the Secretary.

(2) Guidelines

To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for the formulation of feasibility studies of water resources development projects undertaken by non-Federal interests to—

(A) ensure that any feasibility study with respect to which the Secretary submits an

assessment to Congress under subsection (c) complies with all of the requirements that would apply to a feasibility study undertaken by the Secretary; and

(B) provide sufficient information for the formulation of the studies, including processes and procedures related to reviews and assistance under subsection (e).

(b) Review by Secretary

(1) In general

The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

(2) Timing

The Secretary may not submit to Congress an assessment of a feasibility study under this section until such time as the Secretary—

(A) determines that the feasibility study complies with all of the requirements that would apply to a feasibility study undertaken by the Secretary; and

(B) completes all of the Federal analyses, reviews, and compliance processes under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), that would be required with respect to the proposed project if the Secretary had undertaken the feasibility study.

(3) Initiation of review

(A) Request

(i) Submission

The non-Federal interest may submit to the Secretary a request that the Secretary initiate the analyses, reviews, and compliance processes described in paragraph (2)(B) with respect to the proposed project prior to the non-Federal interest's submission of a feasibility study under subsection (a)(1).

(ii) Effect

Receipt by the Secretary of a request submitted under clause (i) shall be considered the receipt of a proposal or application that will lead to a major Federal action that is subject to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) that would be required if the Secretary were to undertake the feasibility study.

(B) Deadline

Not later than 10 days after the Secretary receives a request under this paragraph, the Secretary shall begin the required analyses, reviews, and compliance processes.

(4) Notification

Upon receipt of a request under paragraph (3), the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate of the request and a timeline for comple-

tion of the required analyses, reviews, and compliance processes.

(5) Status updates

Not later than 30 days after receiving a request under paragraph (3), and every 30 days thereafter until the Secretary submits an assessment under subsection (c) for the applicable feasibility study, the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, and the non-Federal interest of the status of the Secretary's required analyses, reviews, and compliance processes.

(c) Submission to Congress

(1) Review and submission of studies to Congress

Not later than 180 days after the completion of review of a feasibility study under subsection (b), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an assessment that describes—

(A) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;

(B) any recommendations the Secretary may have concerning the plan or design of the project; and

(C) any conditions the Secretary may require for construction of the project.

(2) Limitation

The completion of the review by the Secretary of a feasibility study that has been submitted under subsection (a)(1) may not be delayed as a result of consideration being given to changes in policy or priority with respect to project consideration.

(d) Credit

If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

(e) Review and technical assistance

(1) Review

The Secretary may accept and expend funds provided by non-Federal interests to undertake reviews, inspections, certifications, and other activities that are the responsibility of the Secretary in carrying out this section.

(2) Technical assistance

At the request of a non-Federal interest, the Secretary shall provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.

(3) Limitation

Funds provided by non-Federal interests under this subsection shall not be eligible for credit under subsection (d) or reimbursement.

(4) Impartial decisionmaking

In carrying out this section, the Secretary shall ensure that the use of funds accepted from a non-Federal interest will not affect the impartial decisionmaking of the Secretary, either substantively or procedurally.

(5) Savings provision

The provision of technical assistance by the Secretary under paragraph (2)—

(A) shall not be considered to be an approval or endorsement of the feasibility study; and

(B) shall not affect the responsibilities of the Secretary under subsections (b) and (c).

(Pub. L. 99-662, title II, §203, Nov. 17, 1986, 100 Stat. 4098; Pub. L. 113-121, title I, §1014(a), June 10, 2014, 128 Stat. 1219; Pub. L. 114-322, title I, §1126, Dec. 16, 2016, 130 Stat. 1648; Pub. L. 115-270, title I, §1152, Oct. 23, 2018, 132 Stat. 3788; Pub. L. 116-260, div. AA, title I, §161(a), Dec. 27, 2020, 134 Stat. 2665.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (b)(2)(B), 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.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116-260, §161(a)(1)(A), inserted “, or, upon the written approval of the Secretary that the modifications are consistent with the authorized purposes of the project, undertake a feasibility study on modifications to a water resources development project constructed by the Corps of Engineers,” after “water resources development project”.

Subsec. (a)(2). Pub. L. 116-260, §161(a)(1)(B), substituted “for the formulation of feasibility studies of water resources development projects undertaken by non-Federal interests to—” for “for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies.” and added subpars. (A) and (B).

Subsec. (b). Pub. L. 116-260, §161(a)(2), designated existing provisions as par. (1), inserted heading, and added pars. (2) to (5).

Subsec. (c)(1). Pub. L. 116-260, §161(a)(3), in introductory provisions, substituted “after the completion of review of a feasibility study under subsection (b)” for “after the date of receipt of a feasibility study of a project under subsection (a)(1)” and “an assessment” for “a report”.

2018—Subsec. (a)(1). Pub. L. 115-270, §1152(1), inserted “federally authorized” before “feasibility study”.

Subsec. (c). Pub. L. 115-270, §1152(2), amended subsec. (c) generally. Prior to amendment, text read as follows: “Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes—

“(1) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;

“(2) any recommendations the Secretary may have concerning the plan or design of the project; and

“(3) any conditions the Secretary may require for construction of the project.”

Subsec. (e). Pub. L. 115-270, §1152(3), amended subsec. (e) generally. Prior to amendment, text read as follows “At the request of a non-Federal interest, the Secretary may provide to the non-Federal interest technical assistance relating to any aspect of a feasibility study if the non-Federal interest contracts with the Secretary to pay all costs of providing such technical assistance.”

2016—Subsec. (e). Pub. L. 114-322 added subsec. (e).

2014—Pub. L. 113-121 amended section generally. Prior to amendment, section related to studies of projects by non-Federal interests.

Statutory Notes and Related Subsidiaries

SHORT TITLE

For short title of title II of Pub. L. 99-662, enacting this subchapter, as the Harbor Development and Navigation Improvement Act of 1986, see section 215 of Pub. L. 99-662, set out as a note under section 2201 of this title.

DEADLINE

Pub. L. 116-260, div. AA, title I, §161(b), Dec. 27, 2020, 134 Stat. 2667, provided that: “Not later than 90 days after the date of enactment of this Act [Dec. 27, 2020], the Secretary [of the Army] shall issue revised guidelines under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) to implement the amendments made by this section [amending this section].”

HOLD HARMLESS

Pub. L. 116-260, div. AA, title I, §161(c), Dec. 27, 2020, 134 Stat. 2667, provided that:

“(1) ONE-YEAR WINDOW.—The amendments made by this section [amending this section] shall not apply to any feasibility study submitted to the Secretary [of the Army] under section 203 of the Water Resources Development Act of 1986 (33 U.S.C. 2231) during the one-year period prior to the date of enactment of this section [Dec. 27, 2020].

“(2) 2020 PROJECTS.—The amendments made by this section shall not apply to any project authorized by section 403 of this Act [section 403 of div. AA of Pub. L. 116-260, 134 Stat. 2743, which is not classified to the Code].”

§ 2232. Construction of water resources development projects by non-Federal interests

(a) Water resources development project defined

In this section, the term “water resources development project” means a project recommendation that results from—

(1) a feasibility report, as such term is defined in section 2282d(f)¹ of this title;

(2) a completed feasibility study developed under section 2231 of this title; or

(3) a final feasibility study for water resources development and conservation and other purposes that is specifically authorized by Congress to be carried out by the Secretary.

(b) Authority

(1) In general

A non-Federal interest may carry out a federally authorized water resources development project, or separable element thereof—

(A) in accordance with a plan approved by the Secretary for the project or separable element; and

(B) subject to any conditions that the Secretary may require, including any conditions specified under section 2231(c)(3) of this title.

(2) Conditions

Before carrying out a water resources development project, or separable element thereof, under this section, a non-Federal interest shall—

(A) obtain any permit or approval required in connection with the project or separable element under Federal or State law, except as provided in paragraph (3); and

(B) ensure that a final environmental impact statement or environmental assessment, as appropriate, for the project or separable element has been filed.

(3) Permit exception

(A) In general

For a project described in subsection (a)(1) or subsection (a)(3), or a separable element thereof, with respect to which a written agreement described in subparagraph (B) has been entered into, a non-Federal interest that carries out a project under this section shall not be required to obtain any Federal permits or approvals that would not be required if the Secretary carried out the project or separable element unless significant new circumstances or information relevant to environmental concerns or compliance have arisen since development of the project recommendation.

(B) Written agreement

For purposes of this paragraph, a written agreement shall provide that the non-Federal interest shall comply with the same legal and technical requirements that would apply if the project or separable element were carried out by the Secretary, including all mitigation required to offset environmental impacts of the project or separable element as determined by the Secretary.

(C) Certifications

Notwithstanding subparagraph (A), if a non-Federal interest carrying out a project under this section would, in the absence of a written agreement entered into under this paragraph, be required to obtain a certification from a State under Federal law to carry out the project, such certification shall still be required if a written agreement is entered into with respect to the project under this paragraph.

(4) Data sharing

(A) In general

If a non-Federal interest for a water resources development project begins to carry out that water resources development project under this section, the non-Federal interest may request that the Secretary transfer to the non-Federal interest all relevant data and documentation under the control of the Secretary with respect to that water resources development project.

¹ See References in Text note below.