

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.)

Editorial Notes

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”.

Statutory Notes and Related Subsidiaries

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 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. A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.

(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) Federal interest determination

(1) In general

(A) Economically disadvantaged communities

In preparing a feasibility report under subsection (a) for a study that will benefit an economically disadvantaged community, upon request by the non-Federal interest for the study, the Secretary shall first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(B) Other communities

(i) Authorization

In preparing a feasibility report under subsection (a) for a study that will benefit a covered community, upon request by the non-Federal interest for the study, the Secretary may, with respect to not more than 3 studies in each fiscal year, first determine the Federal interest in carrying out the study and the projects that may be proposed in the study.

(ii) Covered communities

In this subparagraph, the term “covered community” means a community that—

¹ See References in Text note below.

(I) is not an economically disadvantaged community; and

(II) the Secretary finds has a compelling need for the Secretary to make a determination under clause (i).

(2) Cost share

The costs of a determination under paragraph (1)—

(A) shall be at Federal expense; and

(B) shall not exceed \$200,000.

(3) Deadline

A determination under paragraph (1) shall be completed by not later than 120 days after the date on which funds are made available to the Secretary to carry out the determination.

(4) Treatment

(A) Timing

The period during which a determination is being completed under paragraph (1) for a study shall not be included for purposes of the deadline to complete a final feasibility report under section 2282c(a)(1) of this title.

(B) Cost

The cost of a determination under paragraph (1) shall not be included for purposes of the maximum Federal cost under section 2282c(a)(2) of this title.

(5) Report to non-Federal interest

If, based on a determination under paragraph (1), the Secretary determines that a study or project is not in the Federal interest because the project will not result, or is unlikely to result, in a recommended plan that will produce national economic development benefits greater than cost, but may result in a technically sound and environmentally acceptable plan that is otherwise consistent with section 2281 of this title, the Secretary shall issue a report to the non-Federal interest with recommendations on how the non-Federal interest might modify the proposal such that the project could be in the Federal interest and feasible.

(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.

(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), 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).

(g) Detailed project schedule

(1) In general

Not later than 180 days after June 10, 2014, the Secretary shall determine a set of milestones needed for the completion of a feasibility study under this subsection, including all major actions, report submissions and responses, reviews, and comment periods.

(2) Detailed project schedule milestones

Each District Engineer shall, to the maximum extent practicable, establish a detailed project schedule, based on full funding capability, that lists all deadlines for milestones relating to feasibility studies in the District developed by the Secretary under paragraph (1).

(3) Non-Federal interest notification

Each District Engineer shall submit by certified mail the detailed project schedule under paragraph (2) to each relevant non-Federal interest—

(A) for projects that have received funding from the General Investigations Account of the Corps of Engineers in the period beginning on October 1, 2009, and ending on June 10, 2014, not later than 180 days after the establishment of milestones under paragraph (1); and

(B) for projects for which a feasibility cost-sharing agreement is executed after the establishment of milestones under paragraph (1), not later than 90 days after the date on which the agreement is executed.

(4) Congressional and public notification

Beginning in the first full fiscal year after June 10, 2014, the Secretary shall—

(A) submit an annual report that lists all detailed project schedules under paragraph (2) and an explanation of any missed deadlines to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) make publicly available, including on the Internet, a copy of the annual report de-

scribed in subparagraph (A) not later than 14 days after date² on which a report is submitted to Congress.

(5) Failure to act

If a District Engineer fails to meet any of the deadlines in the project schedule under paragraph (2), the District Engineer shall—

(A) not later than 30 days after each missed deadline, submit to the non-Federal interest a report detailing—

(i) why the District Engineer failed to meet the deadline; and

(ii) a revised project schedule reflecting amended deadlines for the feasibility study; and

(B) not later than 30 days after each missed deadline, make publicly available, including on the Internet, a copy of the amended project schedule described in subparagraph (A)(ii).

(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; Pub. L. 113-121, title I, §1002(a)-(c), June 10, 2014, 128 Stat. 1198; Pub. L. 116-260, div. AA, title I, §117, Dec. 27, 2020, 134 Stat. 2628.)

Editorial Notes

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

2020—Subsec. (b). Pub. L. 116-260 added subsec. (b). A prior subsec. (b) was repealed by Pub. L. 113-121, title I, §1002(a)(1). See 2014 Amendment note below.

2014—Subsec. (a)(1). Pub. L. 113-121, §1002(a)(2), struck out “perform a reconnaissance study and” after “shall”.

Subsec. (a)(2). Pub. L. 113-121, §1002(b), inserted at end “A feasibility report shall include a preliminary analysis of the Federal interest and the costs, benefits, and environmental impacts of the project.”

Subsec. (b). Pub. L. 113-121, §1002(a)(1), struck out subsec. (b) which related to performing reconnaissance studies prior to initiating feasibility studies.

Subsec. (g). Pub. L. 113-121, §1002(c), added subsec. (g).

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 subject 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).

Statutory Notes and Related Subsidiaries

SUMMARY OF ANALYSIS

Pub. L. 116-260, div. AA, title I, §116(b), Dec. 27, 2020, 134 Stat. 2628, provided that: “To the maximum extent practicable, the Secretary [of the Army] shall include in each feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project that contains a flood risk management or hurricane and storm damage risk reduction element, a summary of the natural feature or nature-based feature alternatives, along with their long-term costs and benefits, that were evaluated in the development of the feasibility report, and, if such alternatives were not included in the recommended plan, an explanation of why such alternatives were not included in the recommended plan.”

NATURAL INFRASTRUCTURE

Pub. L. 115-270, title I, §1149(c), Oct. 23, 2018, 132 Stat. 3787, as amended by Pub. L. 116-260, div. AA, title I, §116(a), Dec. 27, 2020, 134 Stat. 2627, provided that: “In carrying out a feasibility report developed under section 905 of the Water Resources Development Act of 1986 (33 U.S.C. 2282) for a project for flood risk management or hurricane and storm damage risk reduction, the Secretary [of the Army] shall consider the use of both traditional and natural feature or nature-based feature alternatives (as such terms are defined in section 1184 of the Water Resources Development Act of 2016 (32 U.S.C. 2289a)), alone or in conjunction with each other, if those alternatives are practicable.”

CONTINUATION OF STUDIES

Pub. L. 113-121, title I, §1002(d), June 10, 2014, 128 Stat. 1199, provided that: “The Secretary [of the Army] shall continue to carry out a study for which a reconnaissance level investigation has been initiated before the date of enactment of this Act [June 10, 2014] as if this section [amending this section], including the amendments made by this section, had not been enacted.”

EXPEDITED COMPLETION OF REPORTS

Pub. L. 113-121, title I, §1003, June 10, 2014, 128 Stat. 1199, provided that: “The Secretary [of the Army] shall—

“(1) expedite the completion of any on-going feasibility study for a project initiated before the date of enactment of this Act [June 10, 2014]; and

“(2) if the Secretary determines that the project is justified in a completed report, proceed directly to preconstruction planning, engineering, and design of

² So in original. Probably should be preceded by “the”.

the project in accordance with section 910 of the Water Resources Development Act of 1986 (33 U.S.C. 2287).”

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 Acad-

emy 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.”

DEFINITIONS

For definition of “economically disadvantaged community” as used in subsec. (b) of this section, see section 160 of div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

§ 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) benchmark 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.