

dite the feasibility study process for water resource projects.

(f) Final report

Not later than 4 years after June 10, 2014, 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 and make publicly available a report that describes—

- (1) the status of the implementation of this section, including a description of each feasibility study subject to the requirements of this section;
- (2) the amount of time taken to complete each feasibility study; and
- (3) any recommendations for additional authority necessary to support efforts to expedite the feasibility study process, including an analysis of whether the limitation established by subsection (a)(2) needs to be adjusted to address the impacts of inflation.

(Pub. L. 113-121, title I, §1001, June 10, 2014, 128 Stat. 1196; Pub. L. 115-270, title I, §1330(b), Oct. 23, 2018, 132 Stat. 3827; Pub. L. 116-260, div. AA, title III, §360(c), Dec. 27, 2020, 134 Stat. 2733.)

Editorial Notes

REFERENCES IN TEXT

Section 1005, referred to in subsec. (d)(1), is section 1005 of Pub. L. 113-121, which enacted section 2349 of this title and amended generally section 2348 of this title.

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.

AMENDMENTS

2020—Subsec. (c). Pub. L. 116-260, §360(c)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c). Prior to amendment, text of subsec. (c) read as follows: “A feasibility study for which the Secretary has issued a determination under subsection (b) is not authorized after the last day of the 1-year period beginning on the date of the determination if the Secretary has not completed the study on or before such last day.”

Subsec. (d). Pub. L. 116-260, §360(c)(2), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 116-260, §360(c)(1)(A), (B), substituted “The Secretary” for “Notwithstanding the requirements of subsection (c), the Secretary” and “subsection (a)” for “subsections (a) and (c)”.

Subsec. (d)(2). Pub. L. 116-260, §360(c)(1)(B), substituted “subsection (a)” for “subsections (a) and (c)” in introductory provisions.

Subsec. (d)(4). Pub. L. 116-260, §360(c)(1)(C), struck out par. (4). Text read as follows: “The Secretary shall not extend the timeline for a feasibility study for a period of more than 10 years, and any feasibility study that is not completed before that date shall no longer be authorized.”

Subsecs. (e) to (g). Pub. L. 116-260, §360(c)(2), redesignated subsecs. (f) and (g) as (e) and (f), respectively. Former subsec. (e) redesignated (d).

2018—Subsec. (d)(4). Pub. L. 115-270 substituted “10 years” for “7 years”.

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.

§ 2282d. Annual report to Congress

(a) In general

Not later than February 1 of each year, the Secretary shall develop and 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 annual report, to be entitled “Report to Congress on Future Water Resources Development”, that identifies the following:

(1) Feasibility reports

Each feasibility report that meets the criteria established in subsection (c)(1)(A).

(2) Proposed feasibility studies

Any proposed feasibility study submitted to the Secretary by a non-Federal interest pursuant to subsection (b) that meets the criteria established in subsection (c)(1)(A).

(3) Proposed modifications

Any proposed modification to an authorized water resources development project or feasibility study that meets the criteria established in subsection (c)(1)(A) that—

(A) is submitted to the Secretary by a non-Federal interest pursuant to subsection (b); or

(B) is identified by the Secretary for authorization.

(4) Programmatic modifications

Any programmatic modification for an environmental infrastructure assistance program.

(b) Requests for proposals

(1) Publication

Not later than May 1 of each year, the Secretary shall publish in the Federal Register a notice requesting proposals from non-Federal interests for proposed feasibility studies, proposed modifications to authorized water resources development projects and feasibility studies, and proposed modifications for an environmental infrastructure program to be included in the annual report.

(2) Deadline for requests

The Secretary shall include in each notice required by this subsection a requirement that non-Federal interests submit to the Secretary any proposals described in paragraph (1) by not later than 120 days after the date of publication of the notice in the Federal Register in order for the proposals to be considered for inclusion in the annual report.

(3) Notification

On the date of publication of each notice required by this subsection, the Secretary shall—

(A) make the notice publicly available, including on the Internet; and

(B) provide written notification of the publication to the Committee on Environment

and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(c) Contents

(1) Feasibility reports, proposed feasibility studies, and proposed modifications

(A) Criteria for inclusion in report

The Secretary shall include in the annual report only those feasibility reports, proposed feasibility studies, and proposed modifications to authorized water resources development projects and feasibility studies that—

- (i) are related to the missions and authorities of the Corps of Engineers;
- (ii) require specific congressional authorization, including by an Act of Congress;
- (iii) have not been congressionally authorized;
- (iv) have not been included in any previous annual report; and
- (v) if authorized, could be carried out by the Corps of Engineers.

(B) Description of benefits

(i) Description

The Secretary shall describe in the annual report, to the extent applicable and practicable, for each proposed feasibility study and proposed modification to an authorized water resources development project or feasibility study included in the annual report, the benefits, as described in clause (ii), of each such study or proposed modification (including the water resources development project that is the subject of the proposed feasibility study or the proposed modification to an authorized feasibility study).

(ii) Benefits

The benefits (or expected benefits, in the case of a proposed feasibility study) described in this clause are benefits to—

- (I) the protection of human life and property;
- (II) improvement to transportation;
- (III) the national, regional, or local economy;
- (IV) the environment; or
- (V) the national security interests of the United States.

(C) Identification of other factors

The Secretary shall identify in the annual report, to the extent practicable—

- (i) for each proposed feasibility study included in the annual report, the non-Federal interest that submitted the proposed feasibility study pursuant to subsection (b); and
- (ii) for each proposed feasibility study and proposed modification to an authorized water resources development project or feasibility study included in the annual report, whether the non-Federal interest has demonstrated—

- (I) that local support exists for the proposed feasibility study or proposed modification to an authorized water resources

development project or feasibility study (including the water resources development project that is the subject of the proposed feasibility study or the proposed modification to an authorized feasibility study); and

- (II) the financial ability to provide the required non-Federal cost share.

(D) Modifications of projects carried out pursuant to continuing authority programs

(i) In general

With respect to a project being carried out pursuant to a continuing authority program for which a proposed modification is necessary because the project is projected to exceed, in the coming fiscal year, the maximum Federal cost of the project, the Secretary shall include a proposed modification in the annual report if the proposed modification will result in completion of construction the¹ project and the justification for the modification is not the result of a change in the scope of the project.

(ii) Inclusion

For each proposed modification included in an annual report under clause (i), the Secretary shall include in the annual report—

- (I) a justification of why the modification is necessary;
- (II) an estimate of the total cost and timeline required to complete construction of the project; and
- (III) an indication of continued support by the non-Federal interest and the financial ability of the non-Federal interest to provide the required cost-share.

(iii) Definition

For the purposes of this subparagraph, the term “continuing authority program” means any of—

- (I) section 701r of this title;
- (II) section 426g of this title;
- (III) section 577 of this title;
- (IV) section 426i of this title;
- (V) section 2326 of this title;
- (VI) section 701s of this title;
- (VII) section 2330 of this title;
- (VIII) section 701g of this title; and
- (IX) section 2309a of this title.

(2) Transparency

The Secretary shall include in the annual report, for each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included under paragraph (1)(A)—

- (A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of—

- (i) the feasibility report;
- (ii) the proposed feasibility study;
- (iii) the authorized feasibility study for which the modification is proposed; or

¹ So in original. Probably should be preceded by “of”.

- (iv) construction of—
 - (I) the water resources development project that is the subject of—
 - (aa) the feasibility report;
 - (bb) the proposed feasibility study; or
 - (cc) the authorized feasibility study for which a modification is proposed; or
 - (II) the proposed modification to an authorized water resources development project;
- (B) a letter or statement of support for the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study from each associated non-Federal interest;
- (C) the purpose of the feasibility report, proposed feasibility study, or proposed modification to an authorized water resources development project or feasibility study;
- (D) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of—
 - (i) the proposed modification to an authorized feasibility study; and
 - (ii) construction of—
 - (I) the water resources development project that is the subject of—
 - (aa) the feasibility report; or
 - (bb) the authorized feasibility study for which a modification is proposed, with respect to the change in costs resulting from such modification; or
 - (II) the proposed modification to an authorized water resources development project; and
- (E) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of—
 - (i) the water resources development project that is the subject of—
 - (I) the feasibility report; or
 - (II) the authorized feasibility study for which a modification is proposed, with respect to the benefits of such modification; or
 - (ii) the proposed modification to an authorized water resources development project.

(3) Certification

The Secretary shall include in the annual report a certification stating that each feasibility report, proposed feasibility study, and proposed modification to an authorized water resources development project or feasibility study included in the annual report meets the criteria established in paragraph (1)(A).

(4) Appendix

(A) In general

The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.

(B) Limitation

In carrying out the activities described in this section—

- (i) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis of the Secretary's determination that the proposal requires legislative changes to an authorized water resources development project, feasibility study, or environmental infrastructure program;
- (ii) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis that the proposals are for the purposes of navigation, flood risk management, ecosystem restoration, or municipal or agricultural water supply; and
- (iii) the Secretary shall not include proposals in the appendix of the annual report that otherwise meet the criteria for inclusion in the annual report solely on the basis of a policy of the Secretary.

(d) Programmatic modifications in annual report

The Secretary shall include in the annual report only proposed modifications for an environmental infrastructure assistance program that have not been included in any previous annual report. For each proposed modification, the Secretary shall include a letter or statement of support for the proposed modification from each associated non-Federal interest, description of assistance provided, and total Federal cost of assistance provided.

(e) Special rule for initial annual report

Notwithstanding any other deadlines required by this section, the Secretary shall—

- (1) not later than 60 days after June 10, 2014, publish in the Federal Register a notice required by subsection (b)(1); and
- (2) include in such notice a requirement that non-Federal interests submit to the Secretary any proposals described in subsection (b)(1) by not later than 120 days after the date of publication of such notice in the Federal Register in order for such proposals to be considered for inclusion in the first annual report developed by the Secretary under this section.

(f) Publication

Upon submission of an annual report to Congress, the Secretary shall make the annual report publicly available, including through publication on the Internet.

(g) Definitions

In this section:

(1) Annual report

The term “annual report” means a report required by subsection (a).

(2) Feasibility report

(A) In general

The term “feasibility report” means a final feasibility report developed under section 2282 of this title.

(B) Inclusions

The term “feasibility report” includes—

(i) a report described in section 2215(d)(2) of this title; and

(ii) where applicable, any associated report of the Chief of Engineers.

(3) Feasibility study

The term “feasibility study” has the meaning given that term in section 2215 of this title.

(4) Non-Federal interest

The term “non-Federal interest” has the meaning given that term in section 1962d–5b of title 42.

(5) Water resources development project

The term “water resources development project” includes a project under an environmental infrastructure assistance program.

(Pub. L. 113–121, title VII, § 7001, June 10, 2014, 128 Stat. 1360; Pub. L. 114–322, title I, § 1157(b), Dec. 16, 2016, 130 Stat. 1666; Pub. L. 115–270, title I, § 1332(a), Oct. 23, 2018, 132 Stat. 3834; Pub. L. 116–260, div. AA, title I, § 127(a), Dec. 27, 2020, 134 Stat. 2640.)

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.

AMENDMENTS

2020—Subsec. (c)(1)(B)(ii)(III). Pub. L. 116–260, § 127(a)(1)(A)(i), inserted “, regional, or local” after “national”.

Subsec. (c)(1)(D). Pub. L. 116–260, § 127(a)(1)(A)(ii), added subpar. (D).

Subsec. (c)(4)(B)(ii), (iii). Pub. L. 116–260, § 127(a)(1)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (g)(5). Pub. L. 116–260, § 127(a)(2), struck out “if authorized before December 16, 2016” before period at end.

2018—Subsec. (a)(4). Pub. L. 115–270, § 1332(a)(1), added par. (4).

Subsec. (b)(1). Pub. L. 115–270, § 1332(a)(2), substituted “studies, proposed modifications to authorized water resources development projects and feasibility studies, and proposed modifications for an environmental infrastructure program” for “studies and proposed modifications to authorized water resources development projects and feasibility studies”.

Subsec. (c)(4). Pub. L. 115–270, § 1332(a)(5), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows: “The Secretary shall include in the annual report an appendix listing the proposals submitted under subsection (b) that were not included in the annual report under paragraph (1)(A) and a description of why the Secretary determined that those proposals did not meet the criteria for inclusion under such paragraph.”

Subsecs. (d) to (g). Pub. L. 115–270, § 1332(a)(3), (4), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

2016—Subsec. (f)(5). Pub. L. 114–322 added par. (5).

Statutory Notes and Related Subsidiaries

OVER-BUDGET CAP PROGRAMS

Pub. L. 116–260, div. AA, title I, § 127(b), Dec. 27, 2020, 134 Stat. 2642, provided that: “For any project carried out under a continuing authority program, as such term is defined in section 7001(c)(1)(D) of the Water Resources Reform and Development Act of 2014 (33 U.S.C.

2282d[(c)(1)(D)]), [sic] for which the Secretary [of the Army] is required to include a proposed modification in an annual report under such section 7001(c)(1)(D), the Secretary shall, to the extent practicable, inform the non-Federal interest of the process for carrying out the project pursuant to section 105 of the Water Resources Development Act of 1986 (33 U.S.C. 2215) and whether the Secretary has the authority to complete a feasibility study for the project.”

ANNUAL REPORT ON STATUS OF FEASIBILITY STUDIES

Pub. L. 116–260, div. AA, title I, § 127(c), Dec. 27, 2020, 134 Stat. 2642, provided that: “Concurrent with each report submitted under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), the Secretary [of the Army] shall submit to 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 provides for an accounting of all outstanding feasibility studies being conducted by the Secretary, including, for each such study, its length, cost, and expected completion date.”

DISSEMINATION OF INFORMATION

Pub. L. 115–270, title I, § 1104, Oct. 23, 2018, 132 Stat. 3771, as amended by Pub. L. 116–260, div. AA, title II, § 229, Dec. 27, 2020, 134 Stat. 2698, provided that:

“(a) FINDINGS.—Congress finds the following:

“(1) Congress plays a central role in identifying, prioritizing, and authorizing vital water resources infrastructure activities throughout the United States.

“(2) The Water Resources Reform and Development Act of 2014 (Public Law 113–121) established a new and transparent process to review and prioritize the water resources development activities of the Corps of Engineers with strong congressional oversight.

“(3) Section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d) requires the Secretary [of the Army] to develop and submit to Congress each year a Report to Congress on Future Water Resources Development and, as part of the annual report process, to—

“(A) publish a notice in the Federal Register that requests from non-Federal interests proposed feasibility studies and proposed modifications to authorized water resources development projects and feasibility studies for inclusion in the report; and

“(B) review the proposals submitted and include in the report those proposed feasibility studies and proposed modifications that meet the criteria for inclusion established under such section 7001.

“(4) Congress will use the information provided in the annual Report to Congress on Future Water Resources Development to determine authorization needs and priorities for purposes of water resources development legislation.

“(5) To ensure that Congress can gain a thorough understanding of the water resources development needs and priorities of the United States, it is important that the Secretary take sufficient steps to ensure that non-Federal interests are made aware of the new annual report process, including the need for non-Federal interests to submit proposals during the Secretary’s annual request for proposals in order for such proposals to be eligible for consideration by Congress.

“(b) DISSEMINATION OF PROCESS INFORMATION.—

“(1) IN GENERAL.—The Secretary shall develop, support, and implement education and awareness efforts for non-Federal interests with respect to the annual Report to Congress on Future Water Resources Development required under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d), including efforts to—

“(A) develop and disseminate technical assistance materials, seminars, and guidance on the annual process as it relates to non-Federal interests;

“(B) provide written notice to local elected officials and previous and potential non-Federal inter-

ests on the annual process and on opportunities to address local water resources challenges through the missions and authorities of the Corps of Engineers;

“(C) issue guidance for non-Federal interests to assist such interests in developing proposals for water resources development projects that satisfy the requirements of such section 7001; and

“(D) provide, at the request of a non-Federal interest, assistance with researching and identifying existing project authorizations and Corps of Engineers decision documents.

“(2) ANNUAL REPORTING.—Not less frequently than annually, 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 a written update on the progress of the implementation of paragraph (1), including a description of each education and outreach action the Secretary is taking to implement that paragraph.

“(3) GUIDANCE; COMPLIANCE.—The Secretary shall—

“(A) issue guidance on the uniform implementation by each district of the Corps of Engineers of the process for submitting proposals under section 7001 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2282d); and

“(B) each year, ensure compliance with the guidance issued under subparagraph (A).”

“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.

§ 2282d-1. Report to Congress on authorized studies and projects

(a) In general

Not later than February 1 of each year, the Secretary shall develop and submit to Congress an annual report, to be entitled “Report to Congress on Authorized Water Resources Development Projects and Studies”, that identifies—

(1) ongoing or new feasibility studies, authorized within the previous 20 years, for which a Report of the Chief of Engineers has not been issued;

(2) authorized feasibility studies for projects in the preconstruction, engineering and design phase;

(3) ongoing or new water resources development projects authorized for construction within the previous 20 years; and

(4) authorized and constructed water resources development projects the Secretary has the responsibility to operate or maintain.

(b) Contents

(1) Inclusions

(A) Criteria

The Secretary shall include in each report submitted under this section only a feasibility study or water resources development project—

(i) that has been authorized by Congress to be carried out by the Secretary and does not require any additional congressional authorization to be carried out;

(ii) that the Secretary has the capability to carry out if funds are appropriated for such study or project under any of the “Investigations”, “Construction”, “Operation and Maintenance”, or “Mississippi River and Tributaries” appropriations accounts for the Corps of Engineers; and

(iii) for which a non-Federal interest—

(I) in the case of a study or a project other than a project for which funds may be appropriated for operation and maintenance, has entered into a feasibility cost-sharing agreement, design agreement, or project partnership agreement with the Corps of Engineers, or has informed the Secretary that the non-Federal interest has the financial capability to enter into such an agreement within 1 year; and

(II) demonstrates the legal and financial capability to satisfy the requirements for local cooperation with respect to the study or project.

(B) Description of benefits

(i) Description

The Secretary shall, to the maximum extent practicable, describe in each report submitted under this section the benefits, as described in clause (ii), of each feasibility study and water resources development project included in the report.

(ii) Benefits

The benefits referred to in clause (i) are benefits to—

(I) the protection of human life and property;

(II) improvement to transportation;

(III) the national, regional, or local economy;

(IV) the environment; or

(V) the national security interests of the United States.

(2) Transparency

The Secretary shall include in each report submitted under this section, for each feasibility study and water resources development project included in the report—

(A) the name of the associated non-Federal interest, including the name of any non-Federal interest that has contributed, or is expected to contribute, a non-Federal share of the cost of the study or project;

(B) the purpose of the study or project;

(C) an estimate, to the extent practicable, of the Federal, non-Federal, and total costs of the study or project, including, to the extent practicable, the fully funded capability of the Corps of Engineers for—

(i) the 3 fiscal years following the fiscal year in which the report is submitted, in the case of a feasibility study; and

(ii) the 5 fiscal years following the fiscal year in which the report is submitted, in the case of a water resources development project; and

(D) an estimate, to the extent practicable, of the monetary and nonmonetary benefits of the study or project.

(3) Certification

The Secretary shall include in each report submitted under this section a certification stating that each feasibility study or water resources development project included in the report meets the criteria described in paragraph (1)(A).