

Statutory Notes and Related Subsidiaries

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 1002 of Pub. L. 114-322, set out as a note under section 2201 of this title.

§ 2341c. Criteria for funding environmental infrastructure projects**(a) In general**

Not later than 180 days after December 27, 2020, the Secretary shall develop specific criteria for the evaluation and ranking of individual environmental assistance projects authorized by Congress (including projects authorized pursuant to environmental assistance programs) for the Secretary to carry out.

(b) Minimum criteria

For the purposes of carrying out this section, the Secretary shall evaluate, at a minimum—

(1) the nature and extent of the positive and negative local economic impacts of the project, including—

(A) the benefits of the project to the local economy;

(B) the extent to which the project will enhance local development;

(C) the number of jobs that will be directly created by the project; and

(D) the ability of the non-Federal interest to pay the applicable non-Federal share of the cost of the project;

(2) the demographics of the location in which the project is to be carried out, including whether the project serves—

(A) a rural community; or

(B) an economically disadvantaged community, including an economically disadvantaged minority community;

(3) the amount of appropriations a project has received;

(4) the funding capability of the Corps of Engineers with respect to the project;

(5) whether the project could be carried out under other Federal authorities at an equivalent cost to the non-Federal interest; and

(6) any other criteria that the Secretary considers to be appropriate.

(c) Inclusion in guidance

The Secretary shall include the criteria developed under subsection (a) in the annual Civil Works Direct Program Development Policy Guidance of the Secretary.

(d) Report to Congress

For fiscal year 2022, and biennially thereafter, in conjunction with the President’s annual budget submission to Congress under section 1105(a) of title 31, the Secretary shall submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Transportation and Infrastructure and the Committee on Appropriations of the House of Representatives a report that identifies the Secretary’s ranking of individual environmental assistance projects authorized by Congress for the Secretary to carry out, in accordance with the criteria developed under this section.

(Pub. L. 116-260, div. AA, title I, §137, Dec. 27, 2020, 134 Stat. 2650.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2020, 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 div. AA of Pub. L. 116-260, set out as a note under section 2201 of this title.

DEFINITIONS

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

§ 2342. Access to water resource data**(a) In general**

Using available funds, the Secretary shall make publicly available, including on the Internet, all data in the custody of the Corps of Engineers on—

(1) the planning, design, construction, operation, and maintenance of water resources development projects; and

(2) water quality and water management of projects owned, operated, or managed by the Corps of Engineers.

(b) Limitation

Nothing in this section may be construed to compel or authorize the disclosure of data or other information determined by the Secretary to be confidential information, privileged information, law enforcement information, national security information, infrastructure security information, personal information, or information the disclosure of which is otherwise prohibited by law.

(c) Timing

The Secretary shall ensure that data is made publicly available under subsection (a) as quickly as practicable after the data is generated by the Corps of Engineers.

(d) Partnerships

In carrying out this section, the Secretary may develop partnerships, including through cooperative agreements, with State, tribal, and local governments and other Federal agencies.

(Pub. L. 110-114, title II, §2017, Nov. 8, 2007, 121 Stat. 1077; Pub. L. 114-322, title I, §1135, Dec. 16, 2016, 130 Stat. 1656.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 2007, and not as part of the Water Resources Development Act of 1986 which comprises this chapter.

AMENDMENTS

2016—Pub. L. 114-322 amended section generally. Prior to amendment, section related to access to water resource data.

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DATA TRANSPARENCY

Pub. L. 116-260, div. AA, title I, § 158(b), Dec. 27, 2020, 134 Stat. 2662, provided that: “The Secretary [of the Army] shall prioritize making publicly available water resources data in the custody of the Corps of Engineers, as authorized by section 2017 of the Water Resources Development Act of 2007 (33 U.S.C. 2342).”

“SECRETARY” DEFINED

Secretary means the Secretary of the Army, see section 2 of Pub. L. 110-114, set out as a note under section 2201 of this title.

§ 2343. Independent peer review**(a) Project studies subject to independent peer review****(1) In general**

Project studies shall be subject to a peer review by an independent panel of experts as determined under this section.

(2) Scope

The peer review may include a review of the economic and environmental assumptions and projections, project evaluation data, economic analyses, environmental analyses, engineering analyses, formulation of alternative plans, methods for integrating risk and uncertainty, models used in evaluation of economic or environmental impacts of proposed projects, and any biological opinions of the project study.

(3) Project studies subject to peer review**(A) Mandatory**

A project study shall be subject to peer review under paragraph (1) if—

- (i) the project has an estimated total cost of more than \$200,000,000, including mitigation costs, and is not determined by the Chief of Engineers to be exempt from peer review under paragraph (6);
- (ii) the Governor of an affected State requests a peer review by an independent panel of experts; or
- (iii) the Chief of Engineers determines that the project study is controversial considering the factors set forth in paragraph (4).

(B) Discretionary**(i) Agency request**

A project study shall be considered by the Chief of Engineers for peer review under this section if the head of a Federal or State agency charged with reviewing the project study determines that the project is likely to have a significant adverse impact on environmental, cultural, or other resources under the jurisdiction of the agency after implementation of proposed mitigation plans and requests a peer review by an independent panel of experts.

(ii) Deadline for decision

A decision of the Chief of Engineers under this subparagraph whether to conduct a peer review shall be made within 21 days of the date of receipt of the request by the head of the Federal or State agency under clause (i).

(iii) Reasons for not conducting peer review

If the Chief of Engineers decides not to conduct a peer review following a request under clause (i), the Chief shall make publicly available, including on the Internet, the reasons for not conducting the peer review.

(iv) Appeal to Chairman of Council on Environmental Quality

A decision by the Chief of Engineers not to conduct a peer review following a request under clause (i) shall be subject to appeal by a person referred to in clause (i) to the Chairman of the Council on Environmental Quality if such appeal is made within the 30-day period following the date of the decision being made available under clause (iii). A decision of the Chairman on an appeal under this clause shall be made within 30 days of the date of the appeal.

(4) Factors to consider

In determining whether a project study is controversial under paragraph (3)(A)(iii), the Chief of Engineers shall consider if—

- (A) there is a significant public dispute as to the size, nature, or effects of the project; or
- (B) there is a significant public dispute as to the economic or environmental costs or benefits of the project.

(5) Project studies excluded from peer review

The Chief of Engineers may exclude a project study from peer review under paragraph (1)—

- (A) if the project study does not include an environmental impact statement and is a project study subject to peer review under paragraph (3)(A)(i) that the Chief of Engineers determines—
 - (i) is not controversial;
 - (ii) has no more than negligible adverse impacts on scarce or unique cultural, historic, or tribal resources;
 - (iii) has no substantial adverse impacts on fish and wildlife species and their habitat prior to the implementation of mitigation measures; and
 - (iv) has, before implementation of mitigation measures, no more than a negligible adverse impact on a species listed as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the critical habitat of such species designated under such Act;

(B) if the project study—

- (i) involves only the rehabilitation or replacement of existing hydropower turbines, lock structures, or flood control gates within the same footprint and for the same purpose as an existing water resources project;
- (ii) is for an activity for which there is ample experience within the Corps of Engineers and industry to treat the activity as being routine; and
- (iii) has minimal life safety risk; or

(C) if the project study does not include an environmental impact statement and is a