

(Pub. L. 116–260, div. AA, title I, §155, Dec. 27, 2020, 134 Stat. 2660.)

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.

§ 2348. Project acceleration

(a) Definitions

In this section:

(1) Environmental impact statement

The term “environmental impact statement” means the detailed statement of environmental impacts of a project required to be prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) Environmental review process

(A) In general

The term “environmental review process” means the process of preparing an environmental impact statement, environmental assessment, categorical exclusion, or other document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for a project study.

(B) Inclusions

The term “environmental review process” includes the process for and completion of any environmental permit, approval, review, or study required for a project study under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) Federal jurisdictional agency

The term “Federal jurisdictional agency” means a Federal agency with jurisdiction delegated by law, regulation, order, or otherwise over a review, analysis, opinion, statement, permit, license, or other approval or decision required for a project study under applicable Federal laws (including regulations).

(4) Federal lead agency

The term “Federal lead agency” means the Corps of Engineers.

(5) Project

The term “project” means a water resources development project to be carried out by the Secretary.

(6) Project sponsor

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

(7) Project study

The term “project study” means a feasibility study for a project carried out pursuant to section 2282 of this title.

(b) Applicability

(1) In general

This section—

(A) shall apply to each project study that is initiated after June 10, 2014, and for which an environmental impact statement is prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) may be applied, to the extent determined appropriate by the Secretary, to other project studies initiated after June 10, 2014, and for which an environmental review process document is prepared under that Act.

(2) Flexibility

Any authority granted under this section may be exercised, and any requirement established under this section may be satisfied, for the conduct of an environmental review process for a project study, a class of project studies, or a program of project studies.

(3) List of project studies

(A) In general

The Secretary shall annually prepare, and make publicly available, a separate list of each study that the Secretary has determined—

(i) meets the standards described in paragraph (1); and

(ii) does not have adequate funding to make substantial progress toward the completion of the project study.

(B) Inclusions

The Secretary shall include for each project study on the list under subparagraph (A) a description of the estimated amounts necessary to make substantial progress on the project study.

(c) Project review process

(1) In general

The Secretary shall develop and implement a coordinated environmental review process for the development of project studies.

(2) Coordinated review

The coordinated environmental review process described in paragraph (1) shall require that any review, analysis, opinion, statement, permit, license, or other approval or decision issued or made by a Federal, State, or local governmental agency or an Indian tribe for a project study described in subsection (b) be conducted, to the maximum extent practicable, concurrently with any other applicable governmental agency or Indian tribe.

(3) Timing

The coordinated environmental review process under this subsection shall be completed not later than the date on which the Secretary, in consultation and concurrence with the agencies identified under subsection (e), establishes with respect to the project study.

(d) Lead agencies

(1) Joint lead agencies

(A) In general

At the discretion of the Secretary and subject to the requirements of the National En-

environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the requirements of section 1506.8 of title 40, Code of Federal Regulations (or successor regulations), including the concurrence of the proposed joint lead agency, a project sponsor may serve as the joint lead agency.

(B) Project sponsor as joint lead agency

A project sponsor that is a State or local governmental entity may—

(i) with the concurrence of the Secretary, serve as a joint lead agency with the Federal lead agency for purposes of preparing any environmental document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) prepare any environmental review process document under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) required in support of any action or approval by the Secretary if—

(I) the Secretary provides guidance in the preparation process and independently evaluates that document;

(II) the project sponsor complies with all requirements applicable to the Secretary under—

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

(bb) any regulation implementing that Act; and

(cc) any other applicable Federal law; and

(III) the Secretary approves and adopts the document before the Secretary takes any subsequent action or makes any approval based on that document, regardless of whether the action or approval of the Secretary results in Federal funding.

(2) Duties

The Secretary shall ensure that—

(A) the project sponsor complies with all design and mitigation commitments made jointly by the Secretary and the project sponsor in any environmental document prepared by the project sponsor in accordance with this subsection; and

(B) any environmental document prepared by the project sponsor is appropriately supplemented to address any changes to the project the Secretary determines are necessary.

(3) Adoption and use of documents

Any environmental document prepared in accordance with this subsection shall be adopted and used by any Federal agency making any determination related to the project study to the same extent that the Federal agency could adopt or use a document prepared by another Federal agency under—

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

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

(4) Roles and responsibility of lead agency

With respect to the environmental review process for any project study, the Federal lead

agency shall have authority and responsibility—

(A) to take such actions as are necessary and proper and within the authority of the Federal lead agency to facilitate the expeditious resolution of the environmental review process for the project study; and

(B) to prepare or ensure that any required environmental impact statement or other environmental review document for a project study required to be completed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is completed in accordance with this section and applicable Federal law.

(e) Participating and cooperating agencies

(1) Identification of jurisdictional agencies

With respect to carrying out the environmental review process for a project study, the Secretary shall identify, as early as practicable in the environmental review process, all Federal, State, and local government agencies and Indian tribes that may—

(A) have jurisdiction over the project;

(B) be required by law to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) be required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(2) State authority

If the environmental review process is being implemented by the Secretary for a project study within the boundaries of a State, the State, consistent with State law, may choose to participate in the process and to make subject to the process all State agencies that—

(A) have jurisdiction over the project;

(B) are required to conduct or issue a review, analysis, opinion, or statement for the project study; or

(C) are required to make a determination on issuing a permit, license, or other approval or decision for the project study.

(3) Invitation

(A) In general

The Federal lead agency shall invite, as early as practicable in the environmental review process, any agency identified under paragraph (1) to become a participating or cooperating agency, as applicable, in the environmental review process for the project study.

(B) Deadline

An invitation to participate issued under subparagraph (A) shall set a deadline by which a response to the invitation shall be submitted, which may be extended by the Federal lead agency for good cause.

(4) Procedures

Section 1501.6 of title 40, Code of Federal Regulations (as in effect on June 10, 2014) shall govern the identification and the participation of a cooperating agency.

(5) Federal cooperating agencies

Any Federal agency that is invited by the Federal lead agency to participate in the envi-

environmental review process for a project study shall be designated as a cooperating agency by the Federal lead agency unless the invited agency informs the Federal lead agency, in writing, by the deadline specified in the invitation that the invited agency—

- (A)(i)(I) has no jurisdiction or authority with respect to the project;
- (II) has no expertise or information relevant to the project; or
- (III) does not have adequate funds to participate in the project; and
- (ii) does not intend to submit comments on the project; or
- (B) does not intend to submit comments on the project.

(6) Administration

A participating or cooperating agency shall comply with this section and any schedule established under this section.

(7) Effect of designation

Designation as a participating or cooperating agency under this subsection shall not imply that the participating or cooperating agency—

- (A) supports a proposed project; or
- (B) has any jurisdiction over, or special expertise with respect to evaluation of, the project.

(8) Concurrent reviews

Each participating or cooperating agency shall—

- (A) carry out the obligations of that agency under other applicable law concurrently and in conjunction with the required environmental review process, unless doing so would prevent the participating or cooperating agency from conducting needed analysis or otherwise carrying out those obligations; and
- (B) formulate and implement administrative, policy, and procedural mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner.

(f) Programmatic compliance

(1) In general

The Secretary shall issue guidance regarding the use of programmatic approaches to carry out the environmental review process that—

- (A) eliminates repetitive discussions of the same issues;
- (B) focuses on the actual issues ripe for analyses at each level of review;
- (C) establishes a formal process for coordinating with participating and cooperating agencies, including the creation of a list of all data that is needed to carry out an environmental review process; and
- (D) complies with—
 - (i) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (ii) all other applicable laws.

(2) Requirements

In carrying out paragraph (1), the Secretary shall—

(A) as the first step in drafting guidance under that paragraph, consult with relevant Federal, State, and local governmental agencies, Indian tribes, and the public on the appropriate use and scope of the programmatic approaches;

(B) emphasize the importance of collaboration among relevant Federal, State, and local governmental agencies, and Indian tribes in undertaking programmatic reviews, especially with respect to including reviews with a broad geographical scope;

(C) ensure that the programmatic reviews—

- (i) promote transparency, including of the analyses and data used in the environmental review process, the treatment of any deferred issues raised by Federal, State, and local governmental agencies, Indian tribes, or the public, and the temporal and special scales to be used to analyze those issues;
- (ii) use accurate and timely information in the environmental review process, including—
 - (I) criteria for determining the general duration of the usefulness of the review; and
 - (II) the timeline for updating any out-of-date review;
- (iii) describe—
 - (I) the relationship between programmatic analysis and future tiered analysis; and
 - (II) the role of the public in the creation of future tiered analysis; and
- (iv) are available to other relevant Federal, State, and local governmental agencies, Indian tribes, and the public;

(D) allow not fewer than 60 days of public notice and comment on any proposed guidance; and

(E) address any comments received under subparagraph (D).

(g) Coordinated reviews

(1) Coordination plan

(A) Establishment

(i) In general

The Federal lead agency shall, after consultation with and with the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, establish a plan for coordinating public and agency participation in, and comment on, the environmental review process for a project study or a category of project studies.

(ii) Incorporation

The plan established under clause (i) shall be incorporated into the project schedule milestones set under section 2282(g)(2) of this title.

(B) Schedule

(i) In general

As soon as practicable but not later than 45 days after the close of the public com-

ment period on a draft environmental impact statement, the Federal lead agency, after consultation with and the concurrence of each participating and cooperating agency and the project sponsor or joint lead agency, as applicable, shall establish, as part of the coordination plan established in subparagraph (A), a schedule for completion of the environmental review process for the project study.

(ii) Factors for consideration

In establishing a schedule, the Secretary shall consider factors such as—

- (I) the responsibilities of participating and cooperating agencies under applicable laws;
- (II) the resources available to the project sponsor, joint lead agency, and other relevant Federal and State agencies, as applicable;
- (III) the overall size and complexity of the project;
- (IV) the overall schedule for and cost of the project; and
- (V) the sensitivity of the natural and historical resources that could be affected by the project.

(iii) Modifications

The Secretary may—

- (I) lengthen a schedule established under clause (i) for good cause; and
- (II) shorten a schedule only with concurrence of the affected participating and cooperating agencies and the project sponsor or joint lead agency, as applicable.

(iv) Dissemination

A copy of a schedule established under clause (i) shall be—

- (I) provided to each participating and cooperating agency and the project sponsor or joint lead agency, as applicable; and
- (II) made available to the public.

(2) Comment deadlines

The Federal lead agency shall establish the following deadlines for comment during the environmental review process for a project study:

(A) Draft environmental impact statements

For comments by Federal and States¹ agencies and the public on a draft environmental impact statement, a period of not more than 60 days after publication in the Federal Register of notice of the date of public availability of the draft environmental impact statement, unless—

- (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor or joint lead agency, as applicable, and all participating and cooperating agencies; or
- (ii) the deadline is extended by the Federal lead agency for good cause.

(B) Other environmental review processes

For all other comment periods established by the Federal lead agency for agency or

public comments in the environmental review process, a period of not more than 30 days after the date on which the materials on which comment is requested are made available, unless—

- (i) a different deadline is established by agreement of the Federal lead agency, the project sponsor, or joint lead agency, as applicable, and all participating and cooperating agencies; or
- (ii) the deadline is extended by the Federal lead agency for good cause.

(3) Deadlines for decisions under other laws

In any case in which a decision under any Federal law relating to a project study, including the issuance or denial of a permit or license, is required to be made by the date described in subsection (h)(5)(B)(ii), 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) as soon as practicable after the 180-day period described in subsection (h)(5)(B)(ii), an initial notice of the failure of the Federal agency to make the decision; and
- (B) every 60 days thereafter until such date as all decisions of the Federal agency relating to the project study have been made by the Federal agency, an additional notice that describes the number of decisions of the Federal agency that remain outstanding as of the date of the additional notice.

(4) Involvement of the public

Nothing in this subsection reduces any time period provided for public comment in the environmental review process under applicable Federal law (including regulations).

(5) Transparency reporting

(A) Reporting requirements

Not later than 1 year after June 10, 2014, the Secretary shall establish and maintain an electronic database and, in coordination with other Federal and State agencies, issue reporting requirements to make publicly available the status and progress with respect to compliance with applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.) and any other Federal, State, or local approval or action required for a project study for which this section is applicable.

(B) Project study transparency

Consistent with the requirements established under subparagraph (A), the Secretary shall publish the status and progress of any Federal, State, or local decision, action, or approval required under applicable laws for each project study for which this section is applicable.

(h) Issue identification and resolution

(1) Cooperation

The Federal lead agency, the cooperating agencies, and any participating agencies shall work cooperatively in accordance with this section to identify and resolve issues that could delay completion of the environmental

¹ So in original. Probably should be "State".

review process or result in the denial of any approval required for the project study under applicable laws.

(2) Federal lead agency responsibilities

(A) In general

The Federal lead agency shall make information available to the cooperating agencies and participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration.

(B) Data sources

The information under subparagraph (A) may be based on existing data sources, including geographic information systems mapping.

(3) Cooperating and participating agency responsibilities

Based on information received from the Federal lead agency, cooperating and participating agencies shall identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of the project, including any issues that could substantially delay or prevent an agency from granting a permit or other approval that is needed for the project study.

(4) Accelerated issue resolution and elevation

(A) In general

On the request of a participating or cooperating agency or project sponsor, the Secretary shall convene an issue resolution meeting with the relevant participating and cooperating agencies and the project sponsor or joint lead agency, as applicable, to resolve issues that may—

- (i) delay completion of the environmental review process; or
- (ii) result in denial of any approval required for the project study under applicable laws.

(B) Meeting date

A meeting requested under this paragraph shall be held not later than 21 days after the date on which the Secretary receives the request for the meeting, unless the Secretary determines that there is good cause to extend that deadline.

(C) Notification

On receipt of a request for a meeting under this paragraph, the Secretary shall notify all relevant participating and cooperating agencies of the request, including the issue to be resolved and the date for the meeting.

(D) Elevation of issue resolution

If a resolution cannot be achieved within the 30 day-period beginning on the date of a meeting under this paragraph and a determination is made by the Secretary that all information necessary to resolve the issue has been obtained, the Secretary shall forward the dispute to the heads of the relevant agencies for resolution.

(E) Convention by Secretary

The Secretary may convene an issue resolution meeting under this paragraph at any

time, at the discretion of the Secretary, regardless of whether a meeting is requested under subparagraph (A).

(5) Financial penalty provisions

(A) In general

A Federal jurisdictional agency shall complete any required approval or decision for the environmental review process on an expeditious basis using the shortest existing applicable process.

(B) Failure to decide

(i) In general

If a Federal jurisdictional agency fails to render a decision required under any Federal law relating to a project study that requires the preparation of an environmental impact statement or environmental assessment, including the issuance or denial of a permit, license, statement, opinion, or other approval by the date described in clause (ii), the amount of funds made available to support the office of the head of the Federal jurisdictional agency shall be reduced by an amount of funding equal to the amounts specified in subclause (I) or (II) and those funds shall be made available to the division of the Federal jurisdictional agency charged with rendering the decision by not later than 1 day after the applicable date under clause (ii), and once each week thereafter until a final decision is rendered, subject to subparagraph (C)—

(I) \$20,000 for any project study requiring the preparation of an environmental assessment or environmental impact statement; or

(II) \$10,000 for any project study requiring any type of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) other than an environmental assessment or environmental impact statement.

(ii) Description of date

The date referred to in clause (i) is the later of—

(I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and

(II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(C) Limitations

(i) In general

No transfer of funds under subparagraph (B) relating to an individual project study shall exceed, in any fiscal year, an amount equal to 1 percent of the funds made available for the applicable agency office.

(ii) Failure to decide

The total amount transferred in a fiscal year as a result of a failure by an agency to make a decision by an applicable deadline shall not exceed an amount equal to 5

percent of the funds made available for the applicable agency office for that fiscal year.

(iii) Aggregate

Notwithstanding any other provision of law, for each fiscal year, the aggregate amount of financial penalties assessed against each applicable agency office under the Water Resources Reform and Development Act of 2014 and any other Federal law as a result of a failure of the agency to make a decision by an applicable deadline for environmental review, including the total amount transferred under this paragraph, shall not exceed an amount equal to 9.5 percent of the funds made available for the agency office for that fiscal year.

(D) No fault of agency

(i) In general

A transfer of funds under this paragraph shall not be made if the applicable agency described in subparagraph (A) notifies, with a supporting explanation, the Federal lead agency, cooperating agencies, and project sponsor, as applicable, that—

(I) the agency has not received necessary information or approvals from another entity in a manner that affects the ability of the agency to meet any requirements under Federal, State, or local law;

(II) significant new information, including from public comments, or circumstances, including a major modification to an aspect of the project, requires additional analysis for the agency to make a decision on the project application; or

(III) the agency lacks the financial resources to complete the review under the scheduled time frame, including a description of the number of full-time employees required to complete the review, the amount of funding required to complete the review, and a justification as to why not enough funding is available to complete the review by the deadline.

(ii) Lack of financial resources

If the agency provides notice under clause (i)(III), the Inspector General of the agency shall—

(I) conduct a financial audit to review the notice; and

(II) not later than 90 days after the date on which the review described in subclause (I) is completed, 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 on the notice.

(E) Limitation

The Federal agency from which funds are transferred pursuant to this paragraph shall not reprogram funds to the office of the head of the agency, or equivalent office, to reimburse that office for the loss of the funds.

(F) Effect of paragraph

Nothing in this paragraph affects or limits the application of, or obligation to comply with, any Federal, State, local, or tribal law.

(i) Memorandum of agreements for early coordination

(1) Sense of Congress

It is the sense of Congress that—

(A) the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process should cooperate with each other, State agencies, and Indian tribes on environmental review and project delivery activities at the earliest practicable time to avoid delays and duplication of effort later in the process, prevent potential conflicts, and ensure that planning and project development decisions reflect environmental values; and

(B) the cooperation referred to in subparagraph (A) should include the development of policies and the designation of staff that advise planning agencies and project sponsors of studies or other information foreseeably required for later Federal action and early consultation with appropriate State and local agencies and Indian tribes.

(2) Technical assistance

If requested at any time by a State or project sponsor, the Secretary and other Federal agencies with relevant jurisdiction in the environmental review process, shall, to the maximum extent practicable and appropriate, as determined by the agencies, provide technical assistance to the State or project sponsor in carrying out early coordination activities.

(3) Memorandum of agency agreement

If requested at any time by a State or project sponsor, the Federal lead agency, in consultation with other Federal agencies with relevant jurisdiction in the environmental review process, may establish memoranda of agreement with the project sponsor, Indian tribe, State and local governments, and other appropriate entities to carry out the early coordination activities, including providing technical assistance in identifying potential impacts and mitigation issues in an integrated fashion.

(j) Limitations

Nothing in this section preempts or interferes with—

(1) any obligation to comply with the provisions of any Federal law, including—

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

(B) any other Federal environmental law;

(2) the reviewability of any final Federal agency action in a court of the United States or in the court of any State;

(3) any requirement for seeking, considering, or responding to public comment; or

(4) any power, jurisdiction, responsibility, duty, or authority that a Federal, State, or local governmental agency, Indian tribe, or project sponsor has with respect to carrying

out a project or any other provision of law applicable to projects.

(k) Timing of claims

(1) Timing

(A) In general

Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of a permit, license, or other approval issued by a Federal agency for a project study shall be barred unless the claim is filed not later than 3 years after publication of a notice in the Federal Register announcing that the permit, license, or other approval is final pursuant to the law under which the agency action is taken, unless a shorter time is specified in the Federal law that allows judicial review.

(B) Applicability

Nothing in this subsection creates a right to judicial review or places any limit on filing a claim that a person has violated the terms of a permit, license, or other approval.

(2) New information

(A) In general

The Secretary shall consider new information received after the close of a comment period if the information satisfies the requirements for a supplemental environmental impact statement under title 40, Code of Federal Regulations (including successor regulations).

(B) Separate action

The preparation of a supplemental environmental impact statement or other environmental document, if required under this section, shall be considered a separate final agency action and the deadline for filing a claim for judicial review of the action shall be 3 years after the date of publication of a notice in the Federal Register announcing the action relating to such supplemental environmental impact statement or other environmental document.

(l) Categorical exclusions

(1) In general

Not later than 180 days after June 10, 2014, the Secretary shall—

(A) survey the use by the Corps of Engineers of categorical exclusions in projects since 2005;

(B) publish a review of the survey that includes a description of—

(i) the types of actions that were categorically excluded or could be the basis for developing a new categorical exclusion; and

(ii) any requests previously received by the Secretary for new categorical exclusions; and

(C) solicit requests from other Federal agencies and project sponsors for new categorical exclusions.

(2) New categorical exclusions

Not later than 1 year after June 10, 2014, if the Secretary has identified a category of ac-

tivities that merit establishing a categorical exclusion that did not exist on the day before June 10, 2014, based on the review under paragraph (1), the Secretary shall publish a notice of proposed rulemaking to propose that new categorical exclusion, to the extent that the categorical exclusion meets the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (or successor regulation).

(m) Review of project acceleration reforms

(1) In general

The Comptroller General of the United States shall—

(A) assess the reforms carried out under this section; and

(B) not later than 5 years and not later than 10 years after June 10, 2014, 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 the results of the assessment.

(2) Contents

The reports under paragraph (1) shall include an evaluation of impacts of the reforms carried out under this section on—

(A) project delivery;

(B) compliance with environmental laws; and

(C) the environmental impact of projects.

(n) Performance measurement

The Secretary shall establish a program to measure and report on progress made toward improving and expediting the planning and environmental review process.

(o) Implementation guidance

The Secretary shall prepare, in consultation with the Council on Environmental Quality and other Federal agencies with jurisdiction over actions or resources that may be impacted by a project, guidance documents that describe the coordinated environmental review processes that the Secretary intends to use to implement this section for the planning of projects, in accordance with the civil works program of the Corps of Engineers and all applicable law.

(Pub. L. 110–114, title II, §2045, Nov. 8, 2007, 121 Stat. 1103; Pub. L. 113–121, title I, §1005(a)(1), June 10, 2014, 128 Stat. 1199.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(1), (2), (b)(1), (d)(1), (3)(A), (4)(B), (f)(1)(D)(i), (g)(5)(A), (h)(5)(B), and (j)(1)(A), 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.

The Water Resources Reform and Development Act of 2014, referred to in subsec. (h)(5)(C)(iii), is Pub. L. 113–121, June 10, 2014, 128 Stat. 1193. For complete classification of this Act to the Code, see Short Title of 2014 Amendment note set out under section 2201 of this title and Tables.

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

2014—Pub. L. 113–121 amended section generally. Prior to amendment, section related to project streamlining.

Statutory Notes and Related Subsidiaries

“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.

§ 2349. Categorical exclusions in emergencies

For the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is—

- (1) in the same location with the same capacity, dimensions, and design as the original water resources project as before the declaration described in this section;¹ and
- (2) commenced within a 2-year period beginning on the date of a declaration described in this section.

(Pub. L. 113–121, title I, § 1005(b), June 10, 2014, 128 Stat. 1212.)

Editorial Notes

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in text, is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§ 5121 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 5121 of Title 42 and Tables.

This section, referred to in par. (1), means section 1005 of title I of Pub. L. 113–121, which amended this section and 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.

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.

§ 2350. Corrosion prevention

(a) In general

To the greatest extent practicable, the Secretary shall encourage and incorporate corro-

sion prevention activities at water resources development projects.

(b) Activities

In carrying out subsection (a), the Secretary, to the greatest extent practicable, shall ensure that contractors performing work for water resources development projects—

- (1) use best practices to carry out corrosion prevention activities in the field;
- (2) use industry-recognized standards and corrosion mitigation and prevention methods when—
 - (A) determining protective coatings;
 - (B) selecting materials; and
 - (C) determining methods of cathodic protection, design, and engineering for corrosion prevention;
- (3) use certified coating application specialists and cathodic protection technicians and engineers;
- (4) use best practices in environmental protection to prevent environmental degradation and to ensure careful handling of all hazardous materials;
- (5) demonstrate a history of employing industry-certified inspectors to ensure adherence to best practices and standards; and
- (6) demonstrate a history of compliance with applicable requirements of the Occupational Safety and Health Administration.

(c) Corrosion prevention activities defined

In this section, the term “corrosion prevention activities” means—

- (1) the application and inspection of protective coatings for complex work involving steel and cementitious structures, including structures that will be exposed in immersion;
- (2) the installation, testing, and inspection of cathodic protection systems; and
- (3) any other activities related to corrosion prevention the Secretary determines appropriate.

(d) Report

In the first annual report submitted to Congress after December 16, 2016, in accordance with section 556 of this title, and section 2295(b) of this title, the Secretary shall report on the corrosion prevention activities encouraged under this section, including—

- (1) a description of the actions the Secretary has taken to implement this section; and
- (2) a description of the projects utilizing corrosion prevention activities, including which activities were undertaken.

(Pub. L. 113–121, title I, § 1033, June 10, 2014, 128 Stat. 1233; Pub. L. 114–322, title I, § 1142, Dec. 16, 2016, 130 Stat. 1658.)

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

2016—Subsec. (d). Pub. L. 114–322 added subsec. (d).

¹ See References in Text note below.