

(2) prioritizing requests for assistance under the Program.

(d) Factors

The criteria developed under subsection (c) shall take into account such factors as wheth-
er—

(1) a rural water supply project—

(A) serves—

(i) rural areas and small communities; or
(ii) Indian tribes; or

(B) promotes and applies a regional or watershed perspective to water resources management;

(2) there is an urgent and compelling need for a rural water supply project that would—

(A) improve the health or aesthetic quality of water;

(B) result in continuous, measurable, and significant water quality benefits; or

(C) address current or future water supply needs;

(3) a rural water supply project helps meet applicable requirements established by law; and

(4) a rural water supply project is cost effective.

(e) Inclusions

The Secretary may include—

(1) to the extent that connection provides a reliable water supply, a connection to pre-existing infrastructure (including impoundments and conveyance channels) as part of a rural water supply project; and

(2) notwithstanding the limitation on population under section 2401(9)(A) of this title, a town or community with a population in excess of 50,000 inhabitants in an area served by a rural water supply project if, at the discretion of the Secretary, the town or community is considered to be a critical partner in the rural supply project.

(Pub. L. 109-451, title I, § 103, Dec. 22, 2006, 120 Stat. 3347.)

§ 2403. Rural water programs assessment

(a) In general

In consultation with the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Director of the Indian Health Service, the Secretary of Housing and Urban Development, and the Secretary of the Army, the Secretary shall develop an assessment of—

(1) the status of all rural water supply projects under the jurisdiction of the Secretary authorized but not completed prior to December 22, 2006, including appropriation amounts, the phase of development, total anticipated costs, and obstacles to completion;

(2) the current plan (including projected financial and workforce requirements) for the completion of the projects identified in paragraph (1) within the time frames established under the provisions of law authorizing the projects or the final engineering reports for the projects;

(3) the demand for new rural water supply projects;

(4) rural water programs within other agencies and a description of the extent to which those programs provide support for rural water supply projects and water treatment programs in Reclamation States, including an assessment of the requirements, funding levels, and conditions of eligibility for the programs assessed;

(5) the extent of the demand that the Secretary can meet with the Program;

(6) how the Program will complement authorities already within the jurisdiction of the Secretary and the heads of the agencies with whom the Secretary consults; and

(7) improvements that can be made to coordinate and integrate the authorities of the agencies with programs evaluated under paragraph (4), including any recommendations to consolidate some or all of the activities of the agencies with respect to rural water supply.

(b) Consultation with States

Before finalizing the assessment developed under subsection (a), the Secretary shall solicit comments from States with identified rural water needs.

(c) Report

Not later than 2 years after December 22, 2006, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a detailed report on the assessment conducted under subsection (a).

(Pub. L. 109-451, title I, § 104, Dec. 22, 2006, 120 Stat. 3348.)

§ 2404. Appraisal investigations

(a) In general

On request of a non-Federal project entity with respect to a proposed rural water supply project that meets the eligibility criteria published under section 2402(c) of this title and subject to the availability of appropriations, the Secretary may—

(1) receive and review an appraisal investigation that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity;

(2) conduct an appraisal investigation; or

(3) provide a grant to, or enter into a cooperative agreement with, the non-Federal project entity to conduct an appraisal investigation, if the Secretary determines that—

(A) the non-Federal project entity is qualified to complete the appraisal investigation in accordance with the criteria published under section 2402(c) of this title; and

(B) using the non-Federal project entity to conduct the appraisal investigation is a cost-effective alternative for completing the appraisal investigation.

(b) Deadline

An appraisal investigation conducted under subsection (a) shall be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated.

(c) Appraisal report

In accordance with subsection (f), after an appraisal investigation is submitted to the Secretary under subsection (a)(1) or completed under paragraph (2) or (3) of subsection (a), the Secretary shall prepare an appraisal report that—

- (1) considers—
 - (A) whether the project meets—
 - (i) the appraisal criteria developed under subsection (d); and
 - (ii) the eligibility criteria developed under section 2402(c) of this title;
 - (B) whether viable water supplies and water rights exist to supply the project, including all practicable water sources such as lower quality waters, nonpotable waters, and water reuse-based water supplies;
 - (C) whether the project has a positive effect on public health and safety;
 - (D) whether the project will meet water demand, including projected future needs;
 - (E) the extent to which the project provides environmental benefits, including source water protection;
 - (F) whether the project applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;
 - (G) whether the project—
 - (i) implements an integrated resources management approach; or
 - (ii) enhances water management flexibility, including providing for—
 - (aa) local control to manage water supplies under varying water supply conditions; and
 - (bb) participation in water banking and markets for domestic and environmental purposes; and
 - (H) promotes long-term protection of water supplies;
 - (I) preliminary cost estimates for the project; and
 - (J) whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project; and
- (2) provides recommendations on whether a feasibility study should be initiated under section 2405(a) of this title.

(d) Appraisal criteria**(1) In general**

Not later than 1 year after December 22, 2006, the Secretary shall promulgate criteria (including appraisal factors listed under subsection (c)) against which the appraisal investigations shall be assessed for completeness and appropriateness for a feasibility study.

(2) Inclusions

To minimize the cost of a rural water supply project to a non-Federal project entity, the Secretary shall include in the criteria methods to scale the level of effort needed to complete the appraisal investigation relative to

the total size and cost of the proposed rural water supply project.

(e) Review of appraisal investigation**(1) In general**

Not later than 90 days after the date of submission of an appraisal investigation under paragraph (1) or (3) of subsection (a), the Secretary shall provide to the non-Federal entity that conducted the investigation a determination of whether the investigation has included the information necessary to determine whether the proposed rural water supply project satisfies the criteria promulgated under subsection (d).

(2) No satisfaction of criteria

If the Secretary determines that the appraisal investigation submitted by a non-Federal entity does not satisfy the criteria promulgated under subsection (d), the Secretary shall inform the non-Federal entity of the reasons why the appraisal investigation is deficient.

(3) Responsibility of Secretary

If an appraisal investigation as first submitted by a non-Federal entity does not provide all necessary information, as defined by the Secretary, the Secretary shall have no obligation to conduct further analysis until the non-Federal project entity submitting the appraisal study conducts additional investigation and resubmits the appraisal investigation under this subsection.

(f) Appraisal report

Once the Secretary has determined that an investigation provides the information necessary under subsection (e), the Secretary shall—

- (1) complete the appraisal report required under subsection (c);
- (2) make available to the public, on request, the appraisal report prepared under this subchapter; and
- (3) promptly publish in the Federal Register a notice of the availability of the results.

(g) Costs**(1) Federal share**

The Federal share of an appraisal investigation conducted under subsection (a) shall be 100 percent of the total cost of the appraisal investigation, up to \$200,000.

(2) Non-Federal share**(A) In general**

Except as provided in subparagraph (B), if the cost of conducting an appraisal investigation is more than \$200,000, the non-Federal share of the costs in excess of \$200,000 shall be 50 percent.

(B) Exception

The Secretary may reduce the non-Federal share required under subparagraph (A) if the Secretary determines that there is an overwhelming Federal interest in the appraisal investigation.

(C) Form

The non-Federal share under subparagraph (A) may be in the form of any in-kind serv-

ices that the Secretary determines would contribute substantially toward the conduct and completion of the appraisal investigation.

(h) Consultation; identification of funding sources

In conducting an appraisal investigation under subsection (a)(2), the Secretary shall—

(1) consult and cooperate with the non-Federal project entity and appropriate State, tribal, regional, and local authorities;

(2) consult with the heads of appropriate Federal agencies to—

(A) ensure that the proposed rural water supply project does not duplicate a project carried out under the authority of the agency head; and

(B) if a duplicate project is being carried out, identify the authority under which the duplicate project is being carried out; and

(3) identify what funding sources are available for the proposed rural water supply project.

(Pub. L. 109-451, title I, §105, Dec. 22, 2006, 120 Stat. 3349.)

§ 2405. Feasibility studies

(a) In general

On completion of an appraisal report under section 2404(c) of this title that recommends undertaking a feasibility study and subject to the availability of appropriations, the Secretary shall—

(1) in cooperation with a non-Federal project entity, carry out a study to determine the feasibility of the proposed rural water supply project;

(2) receive and review a feasibility study that is—

(A) developed by the non-Federal project entity, with or without support from the Secretary; and

(B) submitted to the Secretary by the non-Federal project entity; or

(3)(A) provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity to conduct a feasibility study, for submission to the Secretary, if the Secretary determines that—

(i) the non-Federal entity is qualified to complete the feasibility study in accordance with the criteria promulgated under subsection (d); and

(ii) using the non-Federal project entity to conduct the feasibility study is a cost-effective alternative for completing the appraisal investigation; or

(B) if the Secretary determines not to provide a grant to, or enter into a cooperative agreement with, a non-Federal project entity under subparagraph (A), provide to the non-Federal project entity notice of the determination, including an explanation of the reason for the determination.

(b) Review of non-Federal feasibility studies

(1) In general

In conducting a review of a feasibility study submitted under paragraph (2) or (3) of subsection (a), the Secretary shall—

(A) in accordance with the feasibility factors described in subsection (c) and the criteria promulgated under subsection (d), assess the completeness of the feasibility study; and

(B) if the Secretary determines that a feasibility study is not complete, notify the non-Federal entity of the determination.

(2) Revisions

If the Secretary determines under paragraph (1)(B) that a feasibility study is not complete, the non-Federal entity shall pay any costs associated with revising the feasibility study.

(c) Feasibility factors

Feasibility studies authorized or reviewed under this subchapter shall include an assessment of—

(1) near- and long-term water demand in the area to be served by the rural water supply project;

(2) advancement of public health and safety of any existing rural water supply project and other benefits of the proposed rural water supply project;

(3) alternative new water supplies in the study area, including any opportunities to treat and use low-quality water, nonpotable water, water reuse-based supplies, and brackish and saline waters through innovative and economically viable treatment technologies;

(4) environmental quality and source water protection issues related to the rural water supply project;

(5) innovative opportunities for water conservation in the study area to reduce water use and water system costs, including—

(A) nonstructural approaches to reduce the need for the project; and

(B) demonstration technologies;

(6) the extent to which the project and alternatives take advantage of economic incentives and the use of market-based mechanisms;

(7)(A) the construction costs and projected operations, maintenance, and replacement costs of all alternatives; and

(B) the economic feasibility and lowest cost method of obtaining the desired results of each alternative, taking into account the Federal cost-share;

(8) the availability of guaranteed loans for a proposed rural water supply project;

(9) the financial capability of the non-Federal project entity to pay the non-Federal project entity's proportionate share of the design and construction costs and 100 percent of operations, maintenance, and replacement costs, including the allocation of costs to each non-Federal project entity in the case of multiple entities;

(10) whether the non-Federal project entity has developed an operations, management, and replacement plan to assist the non-Federal project entity in establishing rates and fees for beneficiaries of the rural water supply project that includes a schedule identifying the annual operations, maintenance, and replacement costs that should be allocated to each non-Federal entity participating in the project;