



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

MAR 20 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1202(c) of the Water Resources Development Act of 2016 (WRDA 2016), Additional Studies, Arctic Deep Draft Port Development Partnerships

1. Section 1202(c) of WRDA 2016 was completed and signed on 5 March 2018. The implementation guidance is posted in the U.S. Army Corps of Engineers website: <http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Questions regarding this implementation guidance should be directed to Steven Kopecky, Deputy Chief, Pacific Ocean Division Regional Integration Team, at (202) 761-4527 or Steven.Kopecky@usace.army.mil.

A handwritten signature in black ink, appearing to read "J. Dalton", with a long horizontal stroke extending to the right.

JAMES C. DALTON, P.E.
Director of Civil Works

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**DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON, DC 20310-0108**

MAR - 5 2018

**MEMORANDUM FOR COMMANDING GENERAL U.S. ARMY CORPS OF
ENGINEERS**

SUBJECT: Implementation Guidance for Section 1202(c) of the Water Resources Development Act of 2016 (WRDA 2016), Additional Studies, Arctic Deep Draft Port Development Partnerships

1. Section 1202(c)(1) of WRDA 2016 amends Section 2105 of the Water Resources Reform and Development Act of 2014, which authorizes the Secretary to provide technical assistance to non-Federal public entities including Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304) and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), for the development, construction, operation, and maintenance of channels, harbors, and related infrastructure associated with deep draft ports for the purposes of Arctic development and security needs. Section 2105, as amended, also allows the Secretary to accept and expend funds from these entities to carry out the technical assistance. In addition, Section 1202(c)(2) amends Section 2105 by replacing the "Secretary of Homeland Security" with the "Secretary of the department in which the Coast Guard is operating." Section 1202(c) and Section 2105, as amended (33 U.S.C. 2243) are enclosed.

The guidance for Section 2105, dated 6 October 2015, remains in effect. In accordance with Section 1202(c) of WRDA 2016, the Assistant Secretary of the Army for Civil Works (ASA(CW) or his designee may enter directly into Section 2105 agreements with a Native Village, Regional Corporation, or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602). The terms of the technical assistance shall be defined in the agreement with the appropriate entity.

Any technical assistance provided pursuant to section 2105, as amended, shall be funded 100 percent by the requesting non-Federal public entity, and documented in an appropriate agreement.

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In developing this agreement, the U.S. Army Corps of Engineers (Corps) should use the model Memorandum of Agreement (MOA) for Support to State and Local Governments, with appropriate modifications, consistent with Section 2105, as amended.

2. Section 1202(c)(3) of WRDA 2016 also expands the feasibility justification of an arctic deep draft harbor and related navigation improvements to include benefits associated with national security and the protection of the homeland. Upon consultation with the Secretary of the department in which the Coast Guard is operating, or appropriate designees, the ASA(CW) or his designee may identify incremental benefits above the National Economic Development (NED) analysis in carrying out the missions specified in section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468) associated with an Arctic deep port. Additionally, upon consultation with the Secretary of Defense, or appropriate designee, the ASA(CW) or his designee may identify national security benefits associated with an Arctic deep draft port. These benefits may be in addition to the benefits identified in the NED analysis associated with an Arctic deep draft port. In identifying the incremental national security benefits, the following policy and procedures will be used to implement Section 1202(c)(3):

For purposes of implementing Section 1202(c)(3), "Arctic" means "the coastal waters of Alaska west of -141 degrees Longitude." "Deep draft port" means a port that has, or in the future may have, a depth of greater than 14 feet. Decision documents will continue to present the NED analyses and identify the NED Plan when alternatives exist with net positive NED benefits.

A decision document may recommend a plan other than the NED Plan based on national security and protection of the homeland upon consultation and direction by the Secretary of the department in which the Coast Guard is operating or the Secretary of Defense, or appropriate designees, that the harbor improvements meet a military mission of either or both agencies.

The selected plan will be supported by a cost-effective and incremental cost-analysis that meets the co-objectives of the Civil Works and Military Programs recommendation. The decision document will present the tradeoffs of impacts for the plan in the final array and describe the compelling justification for any portion of the plan that is not integral to a Civil Works mission.

Navigation improvements that are planned in cooperation with other federal agencies and where those agencies have a significant role in justifying the project (greater than

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50% of the benefits needed to justify), upon a request of that agency, implementation could be accomplished using their funding or done on a reimbursable basis.

3. Questions regarding this implementation guidance may be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at, gib.a.owen.civ@mail.mil or 703-695-4641. Technical questions regarding this implementation guidance may be directed to Steven Kopecky, Deputy Chief, Pacific Ocean Division Regional Integration Team, at (202) 761-4527 or Steven.Kopecky@usace.army.mil.



R. D. JAMES
Assistant Secretary of the Army
Civil Works

Encl

SECTION 1202(C) - ARCTIC DEEP DRAFT PORT DEVELOPMENT PARTNERSHIPS.

Section 2105 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2243) is amended

by striking "(25 U.S.C. 450b)" each place it appears and inserting "(25 U.S.C. 5304) and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)";

in subsection (d) by striking "the Secretary of Homeland Security" and inserting "the Secretary of the department in which the Coast Guard is operating"; and

by adding at the end the following:

(e) **CONSIDERATION OF NATIONAL SECURITY INTERESTS.** In carrying out a study of the feasibility of an Arctic deep draft port, the Secretary

(1) shall consult with the Secretary of the department in which the Coast Guard is operating to identify benefits in carrying out the missions specified in section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468) associated with an Arctic deep draft port;

(2) shall consult with the Secretary of Defense to identify national security benefits associated with an Arctic deep draft port; and

(3) may consider such benefits in determining whether an Arctic deep draft port is feasible.

**SECTION 2105 – ARCTIC DEEP DRAFT PORT DEVELOPMENT PARTNERSHIPS,
AS AMENDED BY SECTION 1202(C) (33 U.S.C. 2243)**

(a) **IN GENERAL** - The Secretary may provide technical assistance to non-Federal public entities, including Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304) and a Native village, Regional Corporation, or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), for the development, construction, operation, and maintenance of channels, harbors, and related infrastructure associated with deep draft ports for purposes of dealing with Arctic development and security needs.

(b) **ACCEPTANCE OF FUNDS**. - The Secretary is authorized to accept and expend funds provided by non-Federal public entities, including Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), to carry out the technical assistance activities described in subsection (a).

(c) **LIMITATION**. - No assistance may be provided under this section until after the date on which the entity to which that assistance is to be provided enters into a written agreement with the Secretary that includes such terms and conditions as the Secretary determines to be appropriate and in the public interest.

(d) **PRIORITIZATION**. - The Secretary shall prioritize technical assistance provided under this section for Arctic deep draft ports identified by the Secretary, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Defense as important for Arctic development and security.

(e) **CONSIDERATION OF NATIONAL SECURITY INTERESTS**. - In carrying out a study of the feasibility of an Arctic deep draft port, the Secretary

- (1) shall consult with the Secretary of the department in which the Coast Guard is operating to identify benefits in carrying out the missions specified in section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468) associated with an Arctic deep draft port;
- (2) shall consult with the Secretary of Defense to identify national security benefits associated with an Arctic deep draft port; and
- (3) may consider such benefits in determining whether an Arctic deep draft port is feasible.

Section 888 of the Homeland Security Act of 2002 (6 U.S.C. 468)

(a) Definitions In this section:

(1) Non-Homeland Security Missions The term "non-homeland security missions" means the following missions of the Coast Guard:

- (A) Marine safety.
- (B) Search and rescue.
- (C) Aids to navigation.
- (D) Living marine resources (fisheries law enforcement).
- (E) Marine environmental protection.
- (F) Ice operations.

(2) Homeland Security Missions The term "homeland security missions" means the following missions of the Coast Guard:

- (A) Ports, waterways and coastal security.
- (B) Drug interdiction.
- (C) Migrant interdiction.
- (D) Defense readiness.
- (E) Other law enforcement.