



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

CECW-P

APR 04 2018

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1102 of the Water Resources Development Act of 2016 (WRDA 2016), Navigation Safety

1. Section 1102 of WRDA 2016 was completed and signed on 26 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 Sheryl Carruba, Acting Navigation Branch Chief, Operations and Regulatory Division, at 202-761-8648 or Sheryl.A.Carruba@usace.army.mil.

A handwritten signature in black ink, appearing to read "J. Dalton".

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 26 2019

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

SUBJECT: Implementation Guidance for Section 1102 of the Water Resources
Development Act of 2016 (WRDA 2016), Navigation Safety

1. Section 1102 of the WRDA 2016 directs that the Secretary use Section 5 of the River and Harbor Act of March 4, 1915 (33 U.S.C. 562), to carry out navigation safety activities at those projects eligible for operation and maintenance under Section 204(f) of WRDA 1986 (33 U.S.C. 2232(f)). Section 1102 of WRDA 2016, 33 U.S.C. 562, and Section 204(f) of WRDA 1986, as amended, are enclosed.
2. Background. 33 U.S.C. 562 authorizes the Corps of Engineers (Corps) to undertake increases in channel dimensions at entrances, bends, sidings, and turning places as required for safe passage of vessels at projects constructed by the Corps pursuant to Congressional authorization and based on project authorization documents forming the basis of that authorization. Section 204(f) of WRDA 1986, as amended, authorizes a non-federal interest to undertake, subject to several requirements, construction of improvements to a federally authorized harbor or inland harbor, with the Corps responsible for operation and maintenance of those improvements. Section 1102 of WRDA 2016 allows for the use of 33 U.S.C. 562 to carry out navigation safety activities at improvements constructed by non-federal interests under 204(f) of WRDA 1986.
3. For improvements for which operation and maintenance has been assumed in accordance with the requirements of Section 204(f) of WRDA 1986, as amended, and ER 1165-2-211, upon request of the non-federal sponsor and after Investigation funds are specifically authorized, a district may undertake analyses and prepare a decision document that is appropriately scaled to the size and complexity of the requested navigation safety improvements, includes the necessary environmental compliance analysis to include NEPA, and justifies the need for such navigation safety improvements. The district is encouraged to use appropriate information developed by the non-federal sponsor for its analysis of the safety improvements.
4. The analyses and report process should include appropriate milestones to address any policy issues. The district commander will submit the report, through the Major Subordinate Command, to the appropriate Headquarters Regional Integration Team for review by the Office of Water Project Review. The Director of Civil Works will provide a recommendation and transmit the report to the Assistant Secretary of the Army for Civil Works for his review and decision. At such time as the report is approved, the district

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may budget for the proposed navigation safety improvements in the Construction account. Once construction of the navigation safety improvements has been completed, the district may budget for their maintenance in the Operation and Maintenance account. Budgeting will be subject to budgetary policy, and the project will compete with other projects nation-wide for funding during the annual budget or workplan development processes.

5. Questions regarding this implementation guidance should be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works at 703-695-4641 or gib.a.owen.civ@mail.mil. Technical questions should be directed to Navigation Branch Chief, Operations and Regulatory Division, at 202- 761-8648.



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

Encl

SECTION 1102 OF WRDA 2016. NAVIGATION SAFETY.

The Secretary shall use section 5 of the Act of March 4, 1915 (38 Stat. 1053, chapter 142; 33 U.S.C. 562), to carry out navigation safety activities at those projects eligible for operation and maintenance under section 204(f) of the Water Resources Development Act of 1986 (33 U.S.C. 2232(f)).

33 U.S.C. 562. CHANNEL DEPTHS AND DIMENSIONS DEFINED.

In the preparation of projects under this and subsequent river and harbor acts and after the project becomes operational, unless otherwise expressed, the channel depths referred to shall be understood to signify the depth at mean lower low water, as defined by the Department of Commerce for nautical charts and tidal predictions, in tidal waters tributary to the Atlantic and Gulf coasts and at mean lower low water, as defined by the Department of Commerce for nautical charts and tidal predictions, in tidal waters tributary to the Pacific coast and the mean depth for a continuous period of fifteen days of the lowest water, as defined by the Department of Commerce for nautical charts and tidal predictions, in the navigation season of any year in rivers and nontidal channels, and after the project becomes operational the channel dimensions specified shall be understood to admit of such increase at the entrances, bends, sidings, and turning places as may be necessary to allow of the free movement of boats.

SECTION 204(f) OF WRDA 1986, AS AMENDED (33 U.S.C. 2232(f)).

(f) Operation and Maintenance.—Whenever a non-Federal interest carries out improvements to a federally authorized harbor or inland harbor, the Secretary shall be responsible for operation and maintenance in accordance with section 101(b) if

(1) before construction of the improvements

(A) the Secretary determines that the improvements are feasible and consistent with the purposes of this title; and

(B) the Secretary and the non-Federal interest execute a written agreement relating to operation and maintenance of the improvements;

(2) the Secretary certifies that the project or separable element of the project is constructed in accordance with applicable permits and appropriate engineering and design standards; and

3) the Secretary does not find that the project or separable element is no longer feasible.