



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

CECW-CO

OCT 19 2017

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

1. Section 1110 of WRDA 2016 amends Section 2106 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014). Section 2106, as amended, authorizes the Secretary to provide funds to donor ports and energy transfer ports, subject to the availability of appropriations and certain specified requirements. In addition, it specifies the purposes for which the ports may use such funds. Section 1110 of WRDA 2016 and Section 2106 of WRRDA 2014, as amended by Section 1110 of WRDA 2016 (33 U.S.C. 2238c), are enclosed.

2. This guidance supersedes CECW-CO memorandum, dated 14 July 2016, subject: Implementation Guidance for Section 2106 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Additional Measures at Donor Ports and Energy Transfer Ports.

3. Section 2106, as amended, provides definitions for donor ports, medium-sized donor ports, and energy transport ports. Based on these definitions, the following ports qualify as donor ports, medium-sized donor ports, and energy transfer ports, respectively:

Donor Ports:

Long Beach, CA ^{1/}
Los Angeles, CA
Miami, FL
New York/New Jersey, NY & NJ ^{1/}
Seattle, WA
Tacoma, WA

Medium-Sized Donor Ports:

Port Everglades, FL
Port Hueneme, CA
San Diego, CA

CECW-CO

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

Energy Transfer Ports:

Mobile, AL
Long Beach, CA ^{1/}
Baton Rouge, LA
Lake Charles, LA
New Orleans, LA
Plaquemines, LA
South Louisiana, LA
Baltimore, MD
New York/New Jersey, NY & NJ ^{1/}
Beaumont, TX
Corpus Christi, TX
Houston, TX
Texas City, TX
Norfolk, VA

^{1/} The ports of Long Beach and New York/New Jersey qualify as both donor ports and energy transfer ports. Section 2106(b)(2)(B) prohibits ports from receiving funds as both a donor port and an energy transfer port, and both ports have elected to receive funds as a donor port.

4. Section 2106, as amended, specifies that appropriations made available to carry out Section 2106 shall be provided in equal amounts to (1) donor ports and medium-sized donor ports, and (2) energy transfer ports. For example, if \$50 million is provided, \$25 million would be allocated to donor ports and medium-sized donor ports, and \$25 million would be allocated to energy transfer ports. Section 2106(b)(2)(A) further specifies that funds provided for energy transfer ports shall be divided equally among all states with energy transfer ports. Furthermore, Section 2106(b)(2)(C) specifies that for the funds provided for donor ports and medium-sized ports, 50 percent shall be equally divided among eligible donor ports and 50 percent shall be divided among eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.

5. Energy transfer ports within the State of Louisiana have elected to distribute funds among the Louisiana ports in accordance with the direction specified for the donor ports, whereas energy transfer ports within the State of Texas have elected to distribute funds equally among the Texas ports. A spreadsheet showing the FY 2017 Work Plan allocations is enclosed. The methodology used to distribute funds for donor ports,

CECW-CO

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

medium-sized donor ports, and energy transfer ports as applied for the FY 2017 Work Plan allocations will be used unless the Administration develops different Work Plan rating criteria, Congress provides additional statutory direction, or HQUSACE approves a different methodology based on a request from either the State of Louisiana or Texas.

6. Section 2106, as amended, involves the provision of funds to ports for work that is traditionally a non-federal responsibility; therefore, budgeting for these funds will have a low priority for inclusion in the President's annual budget. Districts, however, should canvass their respective donor ports, medium-sized donor ports, and energy transfer ports each year during development of the annual budget and work plans to obtain feedback from the ports on what work/activities the ports would accomplish if Congress appropriates funds for Section 2106. The district will then enter work packages in the Corps of Engineers Civil Work Integrated Funding Database under the Civil Works maintenance project associated with the port, using Category/Class/Subclass (CCS) Code "11D", Work Category Code "61123," and Phase Activity Code "DE." The district shall enter two separate work packages each year for each project. The first work package will reflect the amount that the project would receive if Congress were to appropriate \$25 million in the budget year for donor ports, medium-sized donor ports, and energy transfer ports. The second work package would be for an identical amount in the event Congress were to appropriate \$50 million in the budget year for donor ports, medium-sized donor ports, and energy transfer ports.

7. Uses of Appropriated Section 2106 Funds.

a. Section 2106, as amended, provides that funds provided to ports under this section may be used for the following purposes:

(1) To provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo (maritime cargo for which the United States port of unloading is different than the United States port of entry);

(2) For expanded uses, which as defined in Section 210(f) of the Water Resources Development Act of 1986, as amended (33 U.S.C. 2238(f)), means:

(i) Maintenance dredging of a berth in a harbor that is accessible to a federal navigation project and that benefits commercial navigation at the harbor.

CECW-CO

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

(ii) Maintenance dredging and placement of legacy contaminated sediment, and sediment unsuitable for open water disposal, if:

(a) Such dredging and placement benefits commercial navigation at the harbor; and

(b) Such sediment is located in and affects the maintenance of a federal navigation project or is located in a berth that is accessible to a federal navigation project; or

(3) For environmental remediation related to dredging berths and federal navigation channels.

b. Activities associated with expanded uses and environmental remediation related to dredging berths and federal navigation channels for which the Section 2106 funds may be used include non-federal berth and access channel dredging and dredged material placement of material from berths, access channels, and legacy-contaminated sediments related to dredging berths and federal navigation channels; necessary engineering and design and supervision administration, including hydrographic surveys, dredged material testing and monitoring, permitting; and, environmental documentation.

8. Procedures.

a. As funds are appropriated to carry out Section 2106, USACE Districts will notify the non-federal sponsors of qualifying donor ports and energy transfer ports of the estimated amount of funding to be provided based on the methodology for calculating the port's share, less reductions, if any, for savings & slippages, one percent holdbacks, across the board reductions, etc. The non-federal sponsor should provide written notice to the USACE District advising of whether the funds should be: 1) issued to the non-federal sponsor to carry out work for which Section 2106 funds are provided, 2) retained by the district to perform such work on behalf of the non-federal sponsor, or 3) transferred to the U.S. Customs and Border Protection to provide payments to importers.

b. Following apportionment of Section 2106 funds.

(1) If a non-federal sponsor wants the Section 2106 funds to be used to provide payments to importers entering cargo through that port, the Secretary, in consultation with the port electing to provide payments under Section 2106(c), shall

CECW-CO

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers. HQUSACE will send a memorandum to Commissioner of U.S. Customs and Border Protection (CBP) advising how funds are to be distributed to the top importers for those ports that elect to provide rebates and will transfer, via the Intra-Governmental Payment and Collection system, those funds directly to the Commissioner of U.S. Customs and Border Protection. The CBP is responsible for making payments to importers of discretionary cargo that is shipped through the port and most at risk of diversion to seaports outside of the United States.

(2) If a non-federal sponsor wants to perform work using the Section 2106 funds, the district and non-federal sponsor will execute a Memorandum of Agreement (MOA), which allows the district to provide funds to the non-federal sponsor and describes the non-federal sponsor's responsibilities regarding use of the funds and reporting requirements. After execution of the MOA and receipt of work allowances for Section 2106 funds, the district may provide funds to the non-federal sponsor. In general, execution of the MOA will allow for provision of funds to the non-federal sponsor for the current fiscal year and for subsequent fiscal years. As required by the MOA, the non-federal sponsor must provide reports to the district detailing the use of the funds and the benefits achieved with the funds within 30 days after the end of each federal fiscal year and within 30 days after completion of all work under the MOA.

(3) If a non-federal sponsor requests that the Corps perform work using the Section 2106 funds, and the Corps agrees, the district and non-federal sponsor will execute a MOA, which provides for retention of the funds by the district to carry out work. In general, execution of the MOA will allow for retention of funds for the district to carry out work in the current fiscal year and in subsequent fiscal years.

(4) Template Memoranda of Agreement will be posted on the HQUSACE Agreements website. Following district counsel review and concurrence that the negotiated agreement is acceptable, the district commander may approve and sign the agreement. Any proposed substantive deviations to the template agreements must be submitted through the MSC to the appropriate Headquarters Regional Integration Team (RIT) for resolution.

c. By October 31 of each year, each district with donor ports, medium-sized donor ports, or energy transfer ports shall submit a report, including any information provided by the non-federal sponsors, through the Major Subordinate Command, to

CECW-CO

SUBJECT: Implementation Guidance for Section 1110 of the Water Resources Development Act of 2016 (WRDA 2016), Donor Ports and Energy Transfer Ports

HQUSACE, Attn: CECW-CO detailing how the Section 2106 funds were expended in the previous fiscal year and outlining the benefits achieved with the Section 2106 funds.

d. Following receipt of the district reports, HQUSACE will prepare a report to Congress that provides an assessment of the impact of the amounts provided and used under Section 2106 on those ports that received funds and any impact on domestic harbors or ports that did not receive funds under this section.

10. Questions regarding this implementation guidance may be directed to Jeffrey McKee, Chief, Navigation and Operations Branch, at 202-761-8648 or jeffrey.a.mckee@usace.army.mil.



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

Encl

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SEC. 1110 of WRDA 2016. DONOR PORTS AND ENERGY TRANSFER PORTS.

Section 2106 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 2238c) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively;

(B) by inserting after paragraph (1) the following:

“(2) DISCRETIONARY CARGO.—The term ‘discretionary cargo’ means maritime cargo for which the United States port of unloading is different than the United States port of entry.”;

(C) in paragraph (3) (as redesignated)—

(i) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and indenting appropriately;

(ii) in the matter preceding clause (i) (as redesignated) by striking “The term” and inserting the following:

“(A) IN GENERAL.—The term”;

(iii) by adding at the end the following:

“(B) CALCULATION.—For the purpose of calculating the percentage described in subparagraph (A)(iii), payments described under subsection (c)(1) shall not be included.”;

(D) in paragraph (5)(A) (as redesignated), by striking “Code of Federal Regulation” and inserting “Code of Federal Regulations”;

and

(E) by adding at the end the following:

“(8) MEDIUM-SIZED DONOR PORT.—The term ‘medium-sized donor port’ means a port—

“(A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

“(B) at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of the Internal Revenue Code of 1986;

“(C) that received less than 25 percent of the total amount of harbor maintenance taxes collected at that port in the previous 5 fiscal years; and

“(D) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded onto vessels in fiscal year 2012.”;

(2) in subsection (b)—

(A) in paragraph (1), by striking “donor ports” and inserting “donor ports, medium-sized donor ports,”; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “and” at the end; and

(ii) by striking subparagraph (B) and inserting the following:

“(B) shall be made available to a port as either a donor port, medium-sized donor port, or an energy transfer port, and no port may receive amounts from more than 1 designation; and

“(C) for donor ports and medium-sized donor ports—

“(i) 50 percent of the funds shall be equally divided between the eligible donor ports as authorized by this section; and

“(ii) 50 percent of the funds shall be divided between the eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.”;

(3) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “donor port” and inserting “donor port, a medium-sized donor port,”; and

(B) in paragraph (1)—

(i) by striking “or shippers transporting cargo”;

(ii) by striking “U.S. Customs and Border Protection” and inserting “the Secretary”; and

(iii) by striking “amount of harbor maintenance taxes collected” and inserting “value of discretionary cargo”;

(4) by striking subsection (d) and inserting the following:

“(d) ADMINISTRATION OF PAYMENTS.—

“(1) IN GENERAL.—If a donor port, a medium-sized donor port, or an energy transfer port elects to provide payments to importers under subsection (c), the Secretary shall transfer to the Commissioner of U.S. Customs and Border Protection an amount equal to those payments that would otherwise be provided to the port under this section to provide the payments to the importers of the discretionary cargo that is—

“(A) shipped through the port; and

“(B) most at risk of diversion to seaports outside of the United States.

“(2) REQUIREMENT.—The Secretary, in consultation with a port electing to provide payments under subsection (c), shall determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers.”;

(5) in subsection (f)—

(A) in paragraph (1) by striking “2018” and inserting “2020”;

(B) by striking paragraph (2) and inserting the following:

“(2) DIVISION BETWEEN DONOR PORTS, MEDIUM-SIZED DONOR PORTS, AND ENERGY TRANSFER PORTS.—For each fiscal year,

amounts made available to carry out this section shall be provided in equal amounts to—

“(A) donor ports and medium-sized donor ports; and

“(B) energy transfer ports.”; and

(C) in paragraph (3)—

(i) by striking “2015 through 2018” and inserting “2016 through 2020”; and

(ii) by striking “2019 through 2022” and inserting “2021 through 2025”; and

(6) by adding at the end the following:

“(g) SAVINGS CLAUSE.—Nothing in this section waives any statutory requirement related to the transportation of merchandise as authorized under chapter 551 of title 46, United States Code.”

Section 2106 of WRRDA 2016, as amended by Section 1110 of WRDA 2014 (33 U.S.C. 2238c). ADDITIONAL MEASURES AT DONOR PORTS AND ENERGY TRANSFER PORTS.

(a) Definitions.—In this section:

(1) Cargo container

The term "cargo container" means a cargo container that is 1 Twenty-foot Equivalent Unit.

(2) Discretionary cargo

The term "discretionary cargo" means maritime cargo for which the United States port of unloading is different than the United States port of entry.

(3) Donor port

(A) In general

The term "donor port" means a port-

(i) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);

(ii) at which the total amount of harbor maintenance taxes collected comprise not less than \$15,000,000 annually of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;

(iii) that received less than 25 percent of the total amount of harbor maintenance taxes collected at that port in the previous 5 fiscal years; and

(iv) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded on to vessels in fiscal year 2012.

(B) Calculation

For the purpose of calculating the percentage described in subparagraph (A)(iii), payments described under subsection (c)(1) shall not be included.

(4) Energy commodity

The term "energy commodity" includes-

- (A) petroleum products;
- (B) natural gas;
- (C) coal;
- (D) wind and solar energy components; and
- (E) biofuels.

(5) Energy transfer port

The term "energy transfer port" means a port-

- (A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or any successor regulation); and
- (B)(i) at which energy commodities comprised greater than 25 percent of all commercial activity by tonnage in fiscal year 2012; and
- (ii) through which more than 40,000,000 tons of cargo were transported in fiscal year 2012.

(6) Expanded uses

The term "expanded uses" has the meaning given the term in section 2238(f) of this title.

(7) Harbor maintenance tax

The term "harbor maintenance tax" has the meaning given the term in section 2238(f) of this title.

(8) Medium-sized donor port

The term "medium-sized donor port" means a port-

- (A) that is subject to the harbor maintenance fee under section 24.24 of title 19, Code of Federal Regulations (or a successor regulation);
- (B) at which the total amount of harbor maintenance taxes collected comprise annually more than \$5,000,000 but less than \$15,000,000 of the total funding of the Harbor Maintenance Trust Fund established under section 9505 of title 26;
- (C) that received less than 25 percent of the total amount of harbor maintenance taxes collected at that port in the previous 5 fiscal years; and
- (D) that is located in a State in which more than 2,000,000 cargo containers were unloaded from or loaded onto vessels in fiscal year 2012.

(b) Authority

(1) In general

Subject to the availability of appropriations, the Secretary may provide to donor ports, medium-sized donor ports, and energy transfer ports amounts in accordance with this section.

(2) Limitations

Amounts provided under this section-

- (A) for energy transfer ports shall be divided equally among all States with an energy transfer port;

(B) shall be made available to a port as either a donor port, medium-sized donor port, or an energy transfer port, and no port may receive amounts from more than 1 designation; and

(C) for donor ports and medium-sized donor ports-

(i) 50 percent of the funds shall be equally divided between the eligible donor ports as authorized by this section; and

(ii) 50 percent of the funds shall be divided between the eligible donor ports and eligible medium-sized donor ports based on the percentage of the total harbor maintenance tax revenues generated at each eligible donor port and medium-sized donor port.

(c) Use of funds

Amounts provided under this section may be used by a donor port, a medium-sized donor port, or an energy transfer port-

(1) to provide payments to importers entering cargo through that port, as calculated by the Secretary according to the value of discretionary cargo;

(2) for expanded uses; or

(3) for environmental remediation related to dredging berths and Federal navigation channels.

(d) Administration of payments

(1) In general

If a donor port, a medium-sized donor port, or an energy transfer port elects to provide payments to importers under subsection (c), the Secretary shall transfer to the Commissioner of U.S. Customs and Border Protection an amount equal to those payments that would otherwise be provided to the port under this section to provide the payments to the importers of the discretionary cargo that is-

(A) shipped through the port; and

(B) most at risk of diversion to seaports outside of the United States.

(2) Requirement

The Secretary, in consultation with a port electing to provide payments under subsection (c), shall determine the top importers at the port, as ranked by the value of discretionary cargo, and payments shall be limited to those top importers.

(e) Report to Congress

(1) In general

Not later than 18 months after June 10, 2014, the Secretary shall assess the impact of the authority provided by this section and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of that assessment, including any recommendations for amending or reauthorizing the authority.

(2) Factors

In carrying out the assessment under paragraph (1), the Secretary shall assess-

(A) the impact of the amounts provided and used under this section on those ports that received funds under this section; and

(B) any impact on domestic harbors and ports that did not receive funds under this section.

(f) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2015 through 2020.

(2) Division between donor ports, medium-sized donor ports, and energy transfer ports

For each fiscal year, amounts made available to carry out this section shall be provided in equal amounts to-

(A) donor ports and medium-sized donor ports; and

(B) energy transfer ports.

(3) Additional appropriations

If the target total budget resources under subparagraphs (A) through (D) of section 2238b(b)(1) of this title are met for each of fiscal years 2016 through 2020, there is authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2021 through 2025.

(g) Savings clause

Nothing in this section waives any statutory requirement related to the transportation of merchandise as authorized under chapter 551 of title 46.