



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

MAY 26 2015

CECW-CO /CEMP-CR

MEMORANDUM FOR Commander, Great Lakes & Ohio River Division,
BG Richard G. Kaiser, (CERLD-DE), 550 Main Street, Cincinnati, OH 45202-3222

SUBJECT: Implementation Guidance for Section 1035 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) - Recreational Access

1. This guidance implements Section 1035 of WRRDA 2014 ("Section 1035") and establishes consistent policies, procedures, and responsibilities to evaluate requests for the addition of floating cabins and associated docks in the Cumberland River Basin. This guidance is only applicable to outgranted marina areas in the Cumberland River Basin. It is not applicable to floating cabins outside of the Cumberland River Basin and does not impact other USACE policies and regulations including 36 C.F.R. Part 327 and ER 405-1-12, the Real Estate Handbook. A copy of Section 1035 of WRRDA 2014 is provided for reference (See Attachment 1).

2. Definitions.

a. Conceptual Development Plan - The proposed or existing marina outgrant plan that shows the area and facilities, services, and surface acreage for the rental of floating cabins and rental of dock space for the temporary use of privately held floating cabins.

b. Vessel - The word "vessel" includes every watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

c. Floating Cabin - A vessel that has overnight accommodations.

d. Marine Sanitation Device - Includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage.

e. Private Exclusive Use - The use or occupancy of individually owned permanent structures for human habitation cited on public land and water areas at USACE civil works projects.¹

¹ Individual houseboats, boat docks and piers, vegetation modification, landscaping, etc. are excluded from this definition, for the purpose of this guidance, since they are addressed under the USACE Shoreline Management Program.

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f. Qualified Individual - One who has skills, knowledge, and experience and recognized safety and fire management training (United States Coast Guard, National Fire Protection Agency, or applicable state agency) related to the construction, operation, maintenance, and acceptable practices concerning systems, equipment, operations and vessels.

g. Dock- A structure extending alongshore or out from the shore into a body of water, to which floating cabins are temporarily moored. This definition also incorporates the term "slip," which is a temporary mooring area for a single floating cabin.

3. A floating cabin is allowed in USACE out-granted project marinas in the Cumberland River Basin if the following requirements are met.

a. Section 1035 expressly requires floating cabins to comply with regulations for recreational vessels issued under 46 U.S.C. §§ 4301-4311 and 33 U.S.C. §1322. Under these provisions, lessees of marina outgrants are required to ensure the floating cabins they establish for rental are in compliance with the construction, equipment, and maintenance requirements defined in the United States Code. Private owners of a floating cabin renting dock space from a lessee are also subject to these requirements. To assist USACE in ensuring compliance with Section 1035, including the additional requirement that the floating cabin meet "required health and safety standards", the lessee and the renter will complete and sign a floating cabin checklist (See Attachment 2). When renting a designated dock space the private owner of a floating cabin and the lessee will also complete and sign the checklist. In either instance, all parties will receive a signed copy of the checklist to assist them in assuring applicable health and safety standards are met. If there are deficiencies noted in the checklist, they must be corrected prior to rental of the floating cabin or designated dock space.

b. Lessees renting floating cabins and private owners of floating cabins renting designated dock space are both required to sign and have a copy of a Certification (See Attachment 3). The Certification will document compliance with applicable laws, regulations, and health and safety standards. Both parties will also be required to sign an Acknowledgment and Release of Liability (See Attachment 4) to hold the United States and its officers, agents and employees harmless from any and all liabilities and losses. Lessees are not permitted to have a floating cabin or dock space renter sign a disclaimer to waive the lessee's liability. New or amended outgrant instruments will incorporate this requirement into the lease provisions. The lessees will hold and maintain copies of all compliance documents for a full five years after completion of the rental.

c. The lessees must ensure that all floating cabins within the marina have a hull identification number (HIN) permanently attached to the starboard side above the

waterline as well as a second unexposed location on the floating cabin. All floating cabins under this policy must also have a maximum capacity plate permanently affixed to the vessel. The plate must clearly state the maximum number of persons the floating cabin will support, the maximum load of equipment in pounds, and the total maximum load of persons and equipment in pounds.

d. To ensure compliance with the requirements of Section 1035 along with USACE's other statutory project obligations and 16 U.S.C. § 460d, all floating cabins must be able to be removed from the water for required maintenance or in the event of drought, flood, or other emergency. Once removed from the water, the floating cabins must be capable of being trailered and transported over roads in accordance with Federal and state highway transportation requirements.

e. Floating cabins are prohibited from being permanently affixed to a dock or any other device within the leased marina premises. Items associated with the floating cabin such as but not limited to patios, planters, and storage boxes, will not be permanently affixed to a dock or another device within the confines of the marina outgrant area and not otherwise left unattended.

f. The lessee must ensure that all floating cabins are equipped with an operable marine sanitation device that is USCG Certified. Type III Devices will be required on waters that are declared a no discharge zone. These devices must also comply with marine electrical regulations in 46 CFR Subchapter J, where applicable.

g. All floating cabins must be supported by separate docks, specifically constructed for this purpose within the marina footprint. All supporting facilities such as (but not limited to), electrical and water, will be in compliance with applicable requirements.

h. Floating cabins will not be used for full time residence or habitation nor for private exclusive use. Short term use or vacation type rental by the lessee is all that is permitted. Rental of a floating cabin by a lessee to any individual for a period longer than 30 days in any 60 consecutive days is prohibited. Dock rental by a lessee to a private floating cabin owner for a period longer than 30 days in any 60 consecutive by the lessee is prohibited. Floating cabins will only be available for rent during the marina seasonal operational time frame.

i. The prohibition on private exclusive use also prohibits lessees from entering into right-to-use timeshare programs with individuals or groups, or similar possessory rights currently prohibited by USACE regulations (See ER 405-1-12, Chapter 8).

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4. All requests for new marina outgrants or the expansion of existing outgrants to include floating cabins for rentals and/or dedicated floating cabin docks for rental will follow the processes and procedures established in ER 405-1-12 Chapter 8 (Real Property Management), the forthcoming ER 405-1-80 (Management and Outgrant Programs), ER 1130-2-550, Chapter 16 (Recreation Operations and Maintenance Policies), ER 200-2-2 (Procedures for Implementing NEPA), and ER 200-2-3 (Environmental Compliance).

5. Request for inclusion of floating cabins into a marina outgrant, as a modification to an existing marina outgrant, or for inclusion into a proposed new marina outgrant will be defined within the proposed marina footprint. The proposed conceptual development plan, designated footprint and associated proposal will clearly define and earmark the specific locations of all proposed floating cabins within the modified or proposed marina outgrant. The floating cabins can be established in a phased approach over the outgrant timeframe provided the proposal and associated documents clearly indicate the specific date, number, and location of each development phase. However, each addition under a phased approach will be treated as a new request to the outgrant and will follow the processes, procedures and fees listed in paragraph 9.

6. In accordance with currently existing lease terms, the Nashville District Real Estate office will request a certification regarding proper inspection of electrical installations annually. This certification request is in addition to the annual certification the lessee is required to provide under the lease in association with water and sanitary systems and the Americans with Disabilities Act.

7. The lessee shall grant access to the lease premises for an annual inspection by the local or state fire department to identify and correct any identified fire hazards. Documentation of the inspection and a schedule to correct any identified deficiencies must be furnished to the Nashville District Real Estate Office. The lessee must provide a weekly update to the Nashville District Real Estate Office addressing the progress made to correct any deficiencies until all deficiencies are addressed.

8. In addition to other applicable codes, the lessee shall comply with the current editions of:

- a. the National Fire Protection Association (NFPA) handbooks
- b. NFPA 303, Marinas and Boatyards
- c. NFPA 70, National Electrical Code
- d. National Electric Code Article 555 on Marinas and Boatyards

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9. The lessee will be required to pay administrative expenses for the outgrant (modified or proposed). Any administrative fees received will be handled in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations," dated 17 September 2010.

10. At a minimum, the lessee will be required to carry one million dollars of liability insurance with applicable District Real Estate and Office of Counsel documentation review of the floating cabins and associated supporting facilities to determine if additional insurance coverage is warranted.

11. The lessee will be required to carry a surety bond at a level commensurate with the approximate cost of restoring the lease premises, or \$50,000, whichever is greater. The appropriate amount of the surety bond will be determined by Nashville District Real Estate. The Nashville District Office of Counsel will also review the surety bond for legal sufficiency.

12. The outgrant provisions for floating cabins (found in Attachment 5), will be added to all modified (amended) or new marina outgrants to ensure compliance within the terms of the outgrant.

13. Any proposed deviation from this policy guidance shall be submitted to the Directorate of Civil Works, Chief of Operations and Regulatory Division and the Director of Real Estate, and will require approval of the ASA (CW).

14. Any change adding floating cabins to a commercial concession lease constitutes an out-of-scope modification. The President's Executive Order 13658, "Establishing a Minimum Wage for Contractors, applicable Department of Labor Regulations, and CEMP-CR Memorandum, December 30, 2014, are therefore applicable.

15. Any questions about this guidance may be directed to Tim Toplisek Natural Resources Branch, 202-761-4259 or timothy.r.toplisek@usace.army.mil or Clayton Redmond in Real Estate, 202-761-1548 or clayton.l.redmond@usace.army.mil.



EDWARD E. BELK, Jr., P.E.
Chief Operations and Regulatory Division
Directorate of Civil Works



BRENDA M. JOHNSON-TURNER
Director of Real Estate

5 ATTACHMENTS

SEC. 1035. RECREATIONAL ACCESS.

(a) DEFINITION OF FLOATING CABIN.—In this section, the term “floating cabin” means a vessel (as defined in section 3 of title 1, United States Code) that has overnight accommodations.

(b) RECREATIONAL ACCESS.—The Secretary shall allow the use of a floating cabin on waters under the jurisdiction of the Secretary in the Cumberland River basin if—

(1) the floating cabin—

(A) is in compliance with regulations for recreational vessels issued under chapter 43 of title 46, United States Code, and section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1322);

(B) is located at a marina leased by the Corps of Engineers; and

(C) is maintained by the owner to required health and safety standards; and

(2) the Secretary has authorized the use of recreational vessels on such waters.

FLOATING CABINS SAFETY AND STRUCTURAL CHECKLIST

NOTES:*

1. Completed checklists are required regardless of floating cabin ownership.

A. If the marina operator is renting a floating cabin, the operator will complete a checklist in the presence of the renter with both parties signing the checklist.

B. If the marina operator is renting a designated floating cabin dock (slip) to a floating cabin owner, both parties will jointly complete and sign the checklist.

2. The renter and marina operator will each have a duly signed copy of the completed checklist for their records. The operator will provide a copy to the renter.

***These requirements are intended to protect the health and safety of renters, marina operators, and their respective guests. Both parties are also required to sign a (1) Certification and (2) Acknowledgment and Release of Liability.**

ATTACHMENT 2

Project:

Lessee:

Dock No.: _____ Slip No.: _____

SAFETY	YES	NO	
<u>Fire Extinguishers</u> – Are they USCG approved? -Is there one Marine Type USCG B-II or two B-I (if in a closed living space) fire extinguishers in the vessel? -Have the fire extinguishers been checked within last month to ensure they operate properly and are fully charged?			
<u>Personal Floatation Devices</u> -Is there one USGS approved PFD per occupant in the vessel? -Is there one USCG approved type V throwable in the vessel? -Are all PFD's immediately accessible for use?			
If the vessel has a marine engine, is it equipped with a Backfire Flame Arrestor?			NA
Per USGS and NFPA guidance, does the vessel have a ventilation system(s) to properly vent emissions from appliances, and heating systems? If equipped with marine engines is the vessel equipped with a ventilation system to properly vent emissions?			
Is the vessel equipped with a working horn, airhorn, bell or whistle (sound producing device) capable of emitting a 4 second blast audible from ½ mile?			
Is the vessel furnished with approved day time visual distress signal(s) per USCG guidance?			
Are inland navigation rules furnished if equipped with a marine engine?			NA
Per USCG guidance are there designated fire escape(s)?			
Per USCG guidance does the vessel have properly installed and working navigation lights and an all around anchor light capable of being lit independently from running lights?			
Per USCG guidance is the vessel equipped with a first aid kit?			
Is the vessel in compliance with all applicable state requirements?			
Are emergency phone numbers posted in the vessel and on the dock?			
STRUCTURAL	YES	NO	
Does the vessel have a permanently affixed hull identification number placard?			
Does the vessel have a permanently affixed maximum capacity placard identifying the maximum number of persons and equipment the floating cabin will support (in pounds)?			
Is the vessel marine sanitation device an approved USCG Type III?			

Project:

Lessee:

Dock No.: _____ Slip No.: _____

<p><u>Floatation</u> -Are the hard shell materials such as plastics, fiberglass, or metal type hull appropriately sized for weight and occupancy rate of the vessel? -The vessel floatation system is free from Styrofoam logs, barrels, or metal drums used for vessel floatation?</p>		
<p>Marine grade construction and materials are used in accordance with Chapters 25, 27, and 28 of the Uniform Building Code and columns and stud walls are adequately braced to 20 pounds per square inch?</p>		
<p><u>Electrical</u> -Are all vessel electrical circuits protected by fuses or circuit breakers? -Are switches and fuse panels protected from rain or water spray? -There are no automatic reset breakers or open knife switches? -Battery(s) are secured and terminals are covered? -Electrical components have current and voltage ratings equal to or greater than the maximum load they may carry? -Current carrying conductors are electronically insulated from non-current carrying metal parts? -Electronic controls and conductors are installed in accordance with good marine practices? All wire is copper and is stranded? -All wiring is properly installed to applicable codes, and there are no exposed areas? -All electrical components/systems are inspected and documented on a yearly basis by a certified and licensed electrician for wear/deterioration/repair/replacement? -Each shore power inlet, generator, or inverter is a separable source of electrical power? -No adapters between the vessel power cords and the shore power inlet are permitted/utilized? -Voltage and amperage of the shore power inlet and power cords to the vessel are the same? The vessel also mirrors these same voltage and amperage requirements? -When more than one shore power inlet is used the shore power neutrals are not connected together on board the boat? -Individual circuits of the vessel are not capable of being energized by more than one source of electrical power at a time? -A ground fault circuit interrupter is provided on all non-permanent 120 volt 15/20/30 amp receptacles? -All vessel light fixtures are U/L certified as waterproof?</p>		
<p><u>Fuel Tanks</u> -Portable (7 gallons or less) tanks are constructed of non-breakable material/free of corrosion or leaks? -Portable tanks are properly secured and equipped with a vapor-tight leak proof cap?</p>		

Project:

Lessee:

Dock No.: _____ Slip No.: _____

-Permanent fuel tanks are properly secured and vented?		
<u>Galley and heating system</u> -Systems and fuel tanks are properly secured and there are no flammable materials nearby? -There is adequate ventilation for all appliances and their fuel source? -Appliance shut off valves are readily accessible? -Heating systems and appliances are inspected and documented on yearly basis by a certified and licensed contractor for wear/deterioration/repair/replacement?		
Deck(s) free of hazards such as cables, ropes, electrical cords, etc?		
Per USCG guidance bilge(s) are clean and properly functioning?		
The vessel is readily removable from lake?		
The vessel is legally trailerable in accordance with State/US DOT guidance?		
All portable flammable liquid containers are UL approved and flammable liquids and rags are properly stored?		
A safety walk-through between the marina operator and renter occurred? Both parties have duly signed completed copies of the checklist, certification, and release of liability forms.		

The Marina Operator acknowledges that the Vessel complies with all requirements of the Floating Cabins Safety and Structural Checklist. The Marina Operator and Renter further acknowledge that the Floating Cabins Safety and Structural Checklist does not guarantee or warrant the safety, usability, or structural soundness of the Vessel.

A private floating cabin owner renting a designated floating cabin slip or dock from the marina operator acknowledges that the Vessel complies with all requirements of the Floating Cabins Safety and Structural Checklist. The Marina Operator and Renter further acknowledge that the Floating Cabins Safety and Structural Checklist does not guarantee or warrant the safety, usability, or structural soundness of the vessel.

Marina Operator _____

Renter _____

Date _____

CERTIFICATION

I, _____, as the owner or authorized agent of (provide description of vessel) _____, a vessel that may be characterized as a "floating cabin" temporarily docked in the _____ marina, on _____ Lake, certify that the vessel meets all requirements of the Floating Cabins Safety and Structural Checklist. The undersigned acknowledges that the Floating Cabins Safety and Structural Checklist does not guarantee or warrant the safety, usability, or structural soundness of the vessel. I further certify that the vessel is in compliance with all applicable Federal, State, and local laws, regulations, and health and safety standards, including but not limited to 46 U.S.C. §§ 4301-4311; 33 U.S.C. § 1322; National Fire Protection Association (NFPA) Handbooks; NFPA 303, Marinas and Boatyards; NFPA 70, National Electrical Code; and National Electric Code Article 555 on Marinas and Boatyards. I will furnish a copy of this certification to all operators of the vessel, prior to the commencement of each individual operation. If I am the sole owner and anticipated operator, a copy of this certification will be provided to the marina operator where the vessel is temporarily docked.

Vessel Owner Signature (or Authorized Agent) _____

Recipient _____

Date _____

ATTACHMENT 3

Acknowledgement and Release of Liability

The United States Army Corps of Engineers ("USACE") has Federal land management responsibility for the water resource development project upon which this floating cabin, more particularly described as _____ ("Vessel"), will be operated. USACE seeks to provide a safe and enjoyable experience for all recreational users, while also satisfying its other statutorily required project responsibilities such as flood control and protection of dam integrity. The parties acknowledge that USACE does not inspect or otherwise warrant the safety, usability, or operability of this Vessel, and such responsibilities fall solely on the Vessel owner, operator, and manufacturer.

By signing below, the parties further agree to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the use, rental, maintenance, or operation of the Vessel.

Marina Operator _____

Renter/Private Vessel Owner _____

Date _____

ATTACHMENT 4

OUTGRANT PROVISIONS FOR FLOATING CABINS

- a. A "floating cabin" is a vessel, as defined by 1 U.S.C. § 3, that has overnight accommodations. The definition of "vessel" includes every watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. A floating cabin does not include any watercraft or other artificial contrivance that does not meet the definition of 1 U.S.C. § 3, as defined in the statute and relevant case law. A "floating cabin dock" is a structure extending alongshore or out from the shore into a body of water, to which floating cabins are temporarily moored. This definition of floating cabin dock also incorporates the term "slip," which is a temporary mooring area for a single floating cabin.
- b. All floating cabins within the lease premises, regardless of vessel ownership, shall comply with all applicable Federal, State, and local laws, regulations, and health and safety standards, including but not limited to 46 U.S.C. §§ 4301-4311; 33 U.S.C. § 1322; National Fire Protection Association (NFPA) Handbooks; NFPA 303, Marinas and Boatyards; NFPA 70, National Electrical Code; and National Electric Code Article 555 on Marinas and Boatyards.
- c. Lessee shall furnish a signed Certification, attached hereto as Exhibit __, to each renter. Lessee is not permitted to have a floating cabin renter or renter of a floating cabin dock sign a disclaimer waiving Lessee's liability. Any private owner of a floating cabin located within the lease premises shall be required to furnish a Certification to Lessee, in the same form as Exhibit __.
- d. Lessor seeks to provide a safe and enjoyable experience for all recreational users, while also satisfying its other statutorily required project responsibilities such as flood control and protection of dam integrity. Lessee stipulates that Lessor does not inspect or otherwise warrant the safety, usability, or operability of Floating Cabins within the lease premises, and such responsibilities fall solely on the Floating Cabin owner, operator, and manufacturer. When renting a floating cabin or floating cabin dock, the Lessee and renter shall sign an Acknowledgement and Release of Liability, attached hereto as Exhibit __.

ATTACHMENT 5

- e. When renting a floating cabin, or, floating cabin dock, the Lessee and renter shall complete and sign a floating cabin checklist, attached hereto as Exhibit ___, to assist the parties in ensuring applicable laws, regulations, and health and safety standards are met.
- f. The Lessee shall invite access to the lease premises for an annual inspection by the local/state fire department to identify and correct (if applicable) any identified fire hazards. Documentation of the inspection and a schedule to correct deficiencies (if applicable) must be furnished to the Nashville District Real Estate Office. Lessee must provide a weekly update to the Nashville District Real Estate Office addressing the progress made to correct any deficiencies until all deficiencies are addressed.
- g. Lessee will ensure all floating cabins within the lease premises are at all times capable of being removed from the water for required maintenance or in the event of drought, flood, or other emergency. Once removed from the water, the floating cabins shall be capable of trailering and transportation over roads in accordance with Federal and state highway transportation requirements.
- h. All floating cabins within the lease premises, including third-party owned floating cabins, shall be equipped with an operable marine sanitation device that is US Coast Guard Certified. Type III Devices are required on waters that are declared a no discharge zone. These devices shall also comply with marine electrical regulations, where applicable.
- i. All floating cabins shall be supported by separate docks, specifically constructed for the purpose of supporting floating cabins.
- j. Floating cabins shall not be used for full time residence/habitation, nor for private exclusive use. Rental to any individual for a period longer than 30 days in any 60 consecutive day period is prohibited. Dock rental to a private floating cabin owner for a period longer than 30 days in any 60 consecutive day period is also prohibited. If the lease premises closes on a seasonal basis, floating cabins shall only be available for rent during the operating season.
- k. Lessee at all times shall carry a surety bond of \$ _____ to cover the cost of restoring the lease premises. Lessee shall provide a copy of the surety bond prior to lease execution.
- l. All documentation associated with a floating cabin rental or floating cabin dock rental, to include the Certification, Checklist, and Release of Liability, shall be held

and maintained for a minimum of five calendar years after completion of the rental.

- m. The Lessee shall ensure that all floating cabins within the marina have a hull identification number (HIN) permanently attached to the starboard side above the waterline of each vessel as well as a second unexposed location on the floating cabin. All floating cabins under this policy shall also have a maximum capacity plate permanently affixed to each vessel. The plate must clearly state the maximum number of persons the floating cabin will support, the maximum load of equipment in pounds, and the total maximum load of persons and equipment in pounds.
- n. Lessee is not permitted to have a floating cabin renter or designated floating cabin dock renter sign a disclaimer waiving the Lessee's liability.
- o. The Lessee shall ensure that no floating cabin within the confines of the marina outgrant is permanently affixed to the floating cabin dock or any other device. Items associated with the floating cabin, such as but not limited to patios, planters, and storage boxes, will not be permanently affixed to the floating cabin dock or another device within the leased premises.