



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

CECW-I

FEB 23 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1042 of the Water Resources Reform and Development Act of 2014, Public Law 113-121 – Reports to Congress

1. Section 1042 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) prescribes penalties for failure to provide certain reports required by statute within 180 days after the submittal dates specified by statute.
2. Required Reports and Trigger Dates for Penalties. Section 1042 applies to four reports. For each report, the due date (the required submittal date), the trigger date (the date that is 180 days after the date that the report is required to be submitted) for penalties, and the organization responsible for completion of the report are provided below. The organization responsible for each report will take all steps necessary to ensure reports are completed within the applicable due date and that no section 1042 penalties are incurred
 - a. Subparagraphs (A) and (B) of section 1043(a)(5) of WRRDA 2014. This is a report on the Non-Federal Implementation Pilot Program for feasibility studies. Due date: 10 June 2016, with an update by 10 June 2019. Trigger dates: 7 December 2016, and 7 December 2019 for the update. Organization responsible for completion of report: CECW-P.
 - b. Section 1046(a)(2)(B) of WRRDA 2014. This is an update to the report entitled "Authorized and Operating Purposes of Corps of Engineers Reservoirs." Due date: 10 June 2016. Trigger date: 7 December 2016. Organization responsible for completion of report: CEIWR.
 - c. Section 210(e)(3) of the Water Resources Development Act of 1986, as amended by section 2102(a) of WRRDA 2014 (33 U.S.C. 2238(e)(3)). This is a report on harbor operation and maintenance. Due dates: the date that the President's Budget for the Civil Works program for Fiscal Year (FY) 2016 is released, and the subsequent dates that the President's Budgets for the Civil Works program for every other (even numbered) FY is released. Trigger date: 180 days after the due date in each case. Organization responsible for completion of report: CECW-I.
 - d. Section 7001 of WRRDA 2014. This is an annual report entitled "Report to Congress on Future Water Resources Development." Due date: 1 February of each year beginning with 1 February 2015. Trigger date: 180 days after 1 February of each year, beginning with 31 July 2015. Organization responsible for completion of report: CECW-P.

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3. No Fault of the Secretary.

a. The penalties discussed in paragraph 4 are not applied in any instance where the Assistant Secretary of the Army for Civil Works (ASA(CW)) has certified in a letter to the applicable committees of Congress that, for the affected report:

(1) A major modification has been made to the content of the report that requires additional analysis for the Secretary to make a final decision on the report;

(2) Amounts have not been appropriated to the agency under any Act to carry out the report; or,

(3) Additional information is required from an entity other than the Corps of Engineers and is not available in a timely manner to complete the report by the deadline.

b. If it appears that a required submittal date will elapse without the applicable report being submitted to Congress, the responsible organization identified in paragraph 2 will prepare a draft certification letter documenting no fault of the Secretary as soon as possible, but no later than 30 days after the required report submittal date has elapsed. That organization shall provide the draft certification letter to SACW to staff for signature, and shall provide a copy to CECW-I. The draft certification letter shall prescribe the time period to which it would apply, which may be either definite or indefinite. The responsible organization also will provide a fact sheet providing background on the condition (see paragraph 5.a.) leading to the draft certification letter.

c. If the signed certification letter follows the trigger date, penalties will be applied for the period between the trigger date and the date the certification letter is submitted to the applicable committees of Congress.

\ d. If the signed certification letter applies to a definite time period and that time period elapses without submittal of a report required by the applicable section of law, the date the time period elapses will be treated as a trigger date for the application of penalties.

4. Penalties. Subject to paragraphs 3 and 5.c., the penalty is \$5,000.00 for each week, or portion thereof, past the trigger date that a report is not submitted. The penalty is applied in accordance with paragraph 5. Subject to paragraph 5.c., the penalties shall continue to accrue without time limit so long as the report is not submitted, and may span fiscal years. Penalties that have accrued but are not applied due to the limitations under paragraph 5.c. do not carry over to a subsequent fiscal year.

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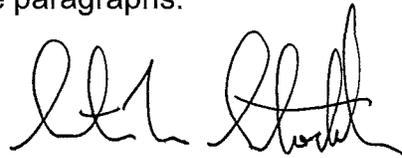
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5. Application of Penalties. The responsible organization identified in paragraph 2 shall notify CECW-I of any report (including a negative report) described in paragraph 2 that the ASA(CW) had not provided to the applicable Committees of Congress by the applicable trigger date and for which the ASA(CW) had not provided a signed certification letter to the applicable Committees of Congress. Not later than 90 days after the full penalty has accrued subject to paragraph 5.c., CECW-I will determine the penalty to be applied and provided to that organization and will request that CERM carry out the reallocations to satisfy the penalties. Subject to paragraph 5.c., CERM will determine the sources of Expenses funds to finance the penalties and will carry out the reallocations to satisfy the penalties.

a. Subject to paragraph 5.c., any penalty under paragraph 4.a. will be processed as a reallocation of Expenses funds to the organization responsible for report preparation from another organization funded by Expenses.

b. Subject to paragraph 5.c., any penalty under paragraph 4.b. also will be processed as a reallocation of Expenses funds to the organization responsible for report preparation from another organization or organizations funded by Expenses.

c. Reallocations pursuant to paragraphs 5.a. and 5.b. for each fiscal year shall not exceed \$50,000 for one report and \$200,000 for all reports. Expenses funds reallocated to an organization pursuant to paragraphs 5.a. and 5.b. may not be used as a source for another reallocation under those paragraphs.



STEVEN L. STOCKTON, P.E.
Director of Civil Works

Encl

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WRRDA 2014 LANGUAGE

SEC. 1042. REPORTS TO CONGRESS.

(a) In General- Subject to the availability of appropriations, the Secretary shall complete and submit to Congress by the applicable date required the reports that address public safety and enhanced local participation in project delivery described in subsection (b).

(b) Reports- The reports referred to in subsection (a) are the reports required under--

(1) subparagraphs (A) and (B) of section 1043(a)(5);

(2) section 1046(a)(2)(B);

(3) section 210(e)(3) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(e)(3)) (as amended by section 2102(a)); and

(4) section 7001.

(c) Failure To Provide a Completed Report-

(1) IN GENERAL- Subject to subsection (d), if the Secretary fails to provide a report listed under subsection (b) by the date that is 180 days after the applicable date required for that report, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Army Corps of Engineers with responsibility for completing that report.

(2) SUBSEQUENT REPROGRAMMING- Subject to subsection (d), for each additional week after the date described in paragraph (1) in which a report described in that paragraph remains uncompleted and unsubmitted to Congress, \$5,000 shall be reprogrammed from the General Expenses account of the civil works program of the Army Corps of Engineers into the account of the division of the Secretary of the Army with responsibility for completing that report.

(d) Limitations-

(1) IN GENERAL- For each report, the total amounts reprogrammed under subsection (c) shall not exceed, in any fiscal year, \$50,000.

(2) AGGREGATE LIMITATION- The total amount reprogrammed under subsection (c) in a fiscal year shall not exceed \$200,000.

Enclosure

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(e) No Fault of the Secretary- Amounts shall not be reprogrammed under subsection (c) if the Secretary certifies in a letter to the applicable committees of Congress that--

(1) a major modification has been made to the content of the report that requires additional analysis for the Secretary to make a final decision on the report;

(2) amounts have not been appropriated to the agency under this Act or any other Act to carry out the report; or

(3) additional information is required from an entity other than the Corps of Engineers and is not available in a timely manner to complete the report by the deadline.

(f) Limitation- The Secretary shall not reprogram funds to the General Expenses account of the civil works program of the Corps of Engineers for the loss of the funds.