DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
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CECW-MVD

MEMORANDUM FOR COMMANDER, Mississippi Valley Division (CEMVD-PD)

SUBJECT: Implementation Guidance for Section 4002(d) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) – Flexibility in Maintaining Navigation.

1. Section 4002(d) of WRRDA 2014 authorizes the Secretary, in consultation with the Coast Guard, to prepare a report identifying areas that are unsafe and unreliable for commercial navigation during extreme low water events along the authorized Federal navigation channel of the Mississippi River and measures to address those areas. It provides that the report shall be made publically available and will include: data from the most recent extreme low water events that impacted navigation; locations for potential modifications including improvements outside the authorized navigation channel that will alleviate hazards that constrain navigation; and recommendations for possible actions to address constrained navigation during extreme low water events. Further, Section 4002(d) provides that if the Secretary, in consultation with the Coast Guard, determines it to be critical to maintaining safe and reliable navigation within the authorized Federal navigation channel, the Secretary may carry out critical activities outside of the authorized channel, including construction and operation of maintenance of fleeting areas that have been identified in the report, as necessary to maintain reliable navigation during extreme low water events. Finally, Section 4002(d) requires the Secretary, not later than 60 days after initiating an activity pursuant to Section 4002(d), to submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a notice that includes a description of the activities undertaken, including the costs and a comprehensive description of how the activities were necessary for maintaining safe and reliable navigation of the Federal channel.

2. At such time that funds are specifically appropriated for a study under this authority, the Mississippi Valley Division (MVD) may carry out the study at full Federal expense. The report will use existing data from the most recent extreme low water events and identify locations and recommend potential actions that would address constrained navigation during extreme low water events. MVD will coordinate with the Coast Guard in identifying the locations and recommended actions. Actions recommended must be economically justified, environmentally acceptable, and technically feasible. The report will be provided to the Headquarters Regional Integration Team (RIT) for review and processing to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for a decision. MVD will make the report, once approved, available to the public on its website.

3. Using available operation and maintenance funds, MVD may carry out activities approved in the report to maintain safe and reliable navigation of the channel during an extreme low water event. No later than 21 days after initiating an approved activity, MVD will submit a notice to the Headquarters RIT that describes the activities undertaken and their costs. The notice will also include a comprehensive description of how the activities are necessary for maintaining safe and reliable navigation. Within 10 days of receipt, the Headquarters RIT will provide the notice to the ASA(CW) for transmittal to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives Congress.

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Encl

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Section 4002 (d) FLEXIBILITY IN MAINTAINING NAVIGATION.—
(1) EXTREME LOW WATER EVENT DEFINED.—In this subsection, the term "extreme low water event" means an extended period of time during which low water threatens the safe commercial use of the Mississippi River for navigation including the use and availability of fleeting areas.

(2) REPORT ON AREAS FOR ACTION.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of the department in which the Coast Guard is operating, shall complete and make publicly available a report identifying areas that are unsafe and unreliable for commercial navigation during extreme low water events along the authorized Federal navigation channel on the Mississippi River and measures to address those restrictions.

(B) INCLUSIONS.—The report under subparagraph (A) shall—

(i) consider data from the most recent extreme low water events that impacted navigation along the authorized Federal navigation channel on the Mississippi River;

(ii) identify locations for potential modifications, including improvements outside the authorized navigation channel, that will alleviate hazards at areas that constrain navigation during extreme low water events along the authorized Federal navigation channel on the Mississippi River; and

(iii) include recommendations for possible actions to address constrained navigation during extreme low water events.

(3) AUTHORIZED ACTIVITIES.—If the Secretary, in consultation with the Secretary of the department in which the Coast Guard is operating, determines it to be critical to maintaining safe and reliable navigation within the authorized Federal navigation channel on the Mississippi River, the Secretary may carry out activities outside the authorized Federal navigation channel along the Mississippi River, including the construction and operation of maintenance of fleeting areas, that—

(A) are necessary for safe and reliable navigation in the Federal channel; and

(B) have been identified in the report under paragraph (2).

(4) RESTRICTION.—The Secretary shall only carry out activities authorized under paragraph (3) for such period of time as is necessary to maintain reliable navigation during the extreme low water event.

(5) NOTIFICATION.—Not later than 60 days after initiating an activity under this subsection, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a notice that includes—

(A) a description of the activities undertaken, including the costs associated with the activities; and

(B) a comprehensive description of how the activities are necessary for maintaining safe and reliable navigation of the Federal channel.