

CECW-PA  Engineer Regulation 1165-2-122	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1165-2-122  26 August 1991
	Water Resource Policies and Authorities  STUDIES OF HARBOR OR INLAND HARBOR PROJECTS BY NON-FEDERAL INTERESTS	
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CECW-PA

Regulation  
No. 1165-2-122

26 August 1991

Water Resource Policies and Authorities  
STUDIES OF HARBOR OR INLAND HARBOR PROJECTS  
BY NON-FEDERAL INTERESTS

1. Purpose. This regulation provides policy guidance for implementation of Section 203 of the Water Resources Development Act of 1986, Public Law (PL) 99-662 which authorizes non-Federal interests to undertake, on their own, a feasibility study of a proposed harbor or inland harbor project.

2. Applicability. This regulation applies to all HQUSACE/OCE elements, major subordinate commands, districts, laboratories and all field operating agencies (FOA) having Civil Works responsibilities. This regulation and the referenced documents constitute the guidelines for non-Federal interests in compliance with Section 203.

3. References.

a. Water Resources Development Act of 1986, PL 99-662 (Section 203 is attached as appendix A to this regulation).

b. ER 200-2-2, Procedures for Implementing NEPA.

c. ER 1105-2-100, Planning Guidance

d. ER 1140-1-211, Support for Others: Reimbursable Work

4. Definitions.

a. Non-Federal interests - are defined as States, political subdivisions thereof, or other responsible agency described as a legally constituted and financially capable public body with full legal authority and financial capability to execute and perform fully all the requirements and terms of its local cooperation agreement to act as local sponsor in implementation of a specifically authorized Federal harbor or inland harbor project. This includes any interstate agency and port authority established under a compact entered into between two or more states with the consent of Congress under Section 10 of Article 1 of Constitution.

b. Harbor - any channel or harbor or element thereof, in the United States, capable of being utilized in the transportation of commercial cargo in domestic or foreign waterborne commerce by commercial vessels. The term does not include an inland harbor; the Saint Lawrence Seaway; local access or berthing channels; channels or harbors constructed or maintained by non-public interests; or any portion of the Columbia River other than the channels on the downside stream of Bonneville lock and dam.

c. Inland Harbor - a navigation project which is used principally for the accommodation of commercial vessels and the receipt and shipment of waterborne cargoes on inland waters. The term does not include projects on the Great Lakes; projects that are subject to tidal influence; projects with authorized depths of greater than 20 feet; local access or berthing channels; or projects constructed or maintained by non-public interests.

d. Authorized Project - a harbor or inland harbor project that has been specifically authorized by Federal statute. Although the Corps has authority to construct navigation projects under continuing authority programs, studies under Section 203 are for the express purpose of subsequent submittal to Congress for specific authorization and cannot be used as a basis for undertaking construction under a continuing authority program.

e. Without Project Condition - is the most likely condition expected to prevail if no action is taken (in the absence of the proposed plan).

f. With Project Condition - is the condition expected to prevail with the particular plan under consideration.

5. Background. Section 203 of PL 99-662 provides that a non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit the study report to the Secretary of the Army. The Assistant Secretary of the Army (Civil Works) - ASA(CW), acting for the Secretary, shall transmit to Congress within 180 days an assessment as to whether or not the study report and study process comply with Federal law and regulations, and provide any recommendation that the Assistant Secretary may have concerning the project described in the study report. Section 203 also provides that if a project for which a study has been submitted is authorized by Federal law subsequent to submission of the study report by a non-Federal interest, the Secretary shall credit toward the non-Federal share of the cost of construction of such project, an amount equal to the portion of the non-Federal expenditures for developing such study that otherwise would have been the responsibility of the United States if such study had been developed by the Secretary.

6. General Requirements. The non-Federal study report submitted to ASA(CW) will be reviewed to insure compliance with Federal laws and regulations applicable to navigation project feasibility studies, and to enable the ASA(CW) to make appropriate recommendations to the Congress. In order to comply with Federal laws and regulations applicable to feasibility studies of navigation projects for harbors or inland harbors, the report must contain the information described in paragraphs 6a through 6f below (also refer to ER 1105-2-100, Chapter 2, Table 2-1, General Evaluation Guidelines).

a. Statement of the Problem(s).

(1) The report should describe why there is a need for any harbor or inland harbor improvement.

(2) The key assumptions underlying the predicted "without project" conditions over time should be documented and justified as the most likely "without project" parameters.

b. Description of Alternatives. All reasonable project alternatives should be developed which provide full or partial relief to the problems as stated in 6a. For each alternative, the key assumptions underlying the predicted "with project" conditions over time should be documented and justified as the most likely "with project" parameters. Each of the alternatives should be described in detail, and include the following information:

(1) Federal portion of the project. Federal participation in a navigation project is limited to general navigation features and navigation aids that are described in ER 1105-2-100, Sections 4-6a(1) and (2). These include harbor entrance channels and associated protective works, primary access channels to the harbor, basins, and anchorages that are needed for the transit of said channels, and benefit more than one single owner/user or benefit a facility owned by a state, county, municipality, or other public entity.

(2) Non-Federal portion of the project. Facilities to serve vessels and commerce may be needed to achieve the benefits of a navigation project, as well as lands, easements, rights-of-way, relocations and dredged material disposal areas (LERRD). These are a responsibility of the non-Federal interests and an integral part of the project. These include piers, wharves and other waterfront structures and associated local access channels, berthing, mooring, and anchorage areas. Local service facilities and LERRD are described further in ER 1105-2-100, Section 4-6a(3) and (4).

(3) Non-commercial navigational features. The proposed project must be justified entirely by commercial navigation benefits for it to be recommended by ASA(CW) for Federal authorization. However, there may be features of the proposed project which are intended for use by other than commercial navigation (such as recreational navigation). These features, if they become part of the Federally authorized project, will be cost shared at different rates than for general commercial navigation.

c. Public Involvement and Coordination. The Corps of Engineers has established procedures (as outlined in ER 1105-2-100, Chapter 5, Section III) for public involvement in the Corps' own study process, partly because of legal and regulatory requirements, but also because of a general policy that openness and public involvement enhances credibility and acceptability of the final recommendations. Non-Federal studies will be evaluated in part on the degree to which the study process was similarly open to the public.

d. Economic Analysis. The economic analysis should be designed to show that the proposed project is consistent with the economic standards contained in the Water Resources Council's Economic and Environmental Principles and Guidelines (P&G) for Water and Related Land Resources Implementation Studies, March 10, 1983.

(1) Scaling and scoping of the recommended project must be determined using National Economic Development (NED) criteria, except as modified by other explicitly-stated criteria in accordance with the P&G, including consistency with protecting the Nation's environment.

(2) Supporting documentation to allow reviewers to understand the models and assumptions used to estimate project benefits and costs should be provided.

(3) Identification of the NED plan should be based on consideration of the most cost-effective plans for providing different levels of output or service. The plan, which has the greatest net economic benefit consistent with protecting the nation's environment is designated as the NED plan, where net benefits are defined as benefits minus costs.

(4) Cost estimates should be developed on a constant dollar basis. Project implementation cost estimates should include all financial outlays associated with preconstruction engineering and design, construction, and operation, maintenance, and repair costs, including those not requiring cash expenditures. (Note that some costs reflected in the benefit-cost analysis may not be part

of the project implementation expenditures. Examples include the economic cost of unmitigated losses and current market value of lands previously acquired by the non-Federal interest.)

(5) The sensitivity of project justification to key assumptions used in the analysis should be displayed. As a minimum, the benefit/cost ratio for the recommended plan is to be computed, assuming that the amount of traffic existing during the first year remains constant over the project life.

e. Environmental Analysis.

(1) Compliance with the National Environmental Policy Act (NEPA) process and other applicable Federal, State and local laws and regulations is required for Federally authorized projects as indicated in ER 200-2-2 and ER 1105-2-100.

(2) Proposed mitigation measures should be formulated incrementally, and justification presented for the recommended amount and type of mitigation. Coordination and consultation with concerned Federal and State agencies on mitigation and other ecological, cultural, and historical preservation matters should be documented.

f. Study Conclusions and Recommendations. If the study's recommendation is not the NED plan (see 6d above), the basis for the recommended deviation should be documented and justified.

7. Preparation, Coordination, and Processing of Environmental Documents. A project under Section 203 must meet all applicable Federal and State environmental requirements. Non-Federal interests conducting a Section 203 study will be responsible for developing and documenting all information necessary to assess the existing environmental conditions, any potential impacts of the proposed project, and evaluate reasonable alternatives. The report should contain information sufficient to show the consideration given to the environment in the project formulation. Information submitted will be independently evaluated. If appropriate, the applicant may be requested to furnish additional information. Non-Federal interests shall also furnish a proposed draft Environmental Assessment (EA) or Environmental Impact Statement (EIS). Upon determination that the information submitted is adequate and the proposal is otherwise acceptable without additional studies or public involvement, the ASA(CW) will direct his representative to circulate a draft EIS or EA to other agencies, organizations, and the public for review and comment and the final filed with the Environmental Protection Agency (EPA) or a Finding of No Significant Impact (FONSI) will be made available to the public.

8. Requests by Non-Federal Interests for Ongoing Study Guidance. During the study of a proposed harbor or inland harbor project by a non-Federal interest, issues or questions may arise which are not clearly addressed in these guidelines. Non-Federal interests may request study guidance meeting with the district or with ASA(CW) designated representatives. Advance information concerning the current study findings, issues and/or questions should be provided in sufficient time for prior review by those attending the meetings. Non-Federal interests are also encouraged to meet periodically with district personnel to discuss study progress and status.

9. Funding of Feasibility Study. Non-Federal interests conducting studies under Section 203 will be responsible for funding all study costs associated with the feasibility study except for Corps and ASA(CW) review, coordination, and processing of the report and NEPA documents. Up to one half of the actual costs of the non-Federal feasibility study may later be eligible for credit toward the non-Federal interest's share of project construction cost if the project is subsequently authorized and constructed. The credited amount may not however, exceed the amount that would have been the responsibility of the United States if such study had been developed by the Corps of Engineers. Actual feasibility study expenditures will be fully documented and retained by non-Federal interests for audit at such time as credit may be requested.

10. Report Submittal, Review and Processing.

a. General Requirements. ASA(CW) is required by law to submit to Congress an analysis of the study report submitted under Section 203 within 180 days of his receipt of the report. Given the short time requirements, the schedule and review process described in paragraphs 10b through 10g below, must be sufficiently flexible to meet the review requirements of each report.

b. Report Submittal to ASA(CW). The non-Federal interest will submit 25 copies of its report, including all relevant environmental documents, directly to the Assistant Secretary of the Army (Civil Works), Pentagon, Room 2E569, Washington, DC 20310-0108. Additional copies may be required to satisfy the NEPA process.

c. Review Procedures. Upon receipt of a non-Federal interest Section 203 study report, ASA(CW) will refer the report to the Chief of Engineers for review and comments to be furnished within

a 80 day period. The Washington Level Review Center (WLRC) will prepare HQUSACE review comments after consideration of comments from Corps division offices with input from the district.

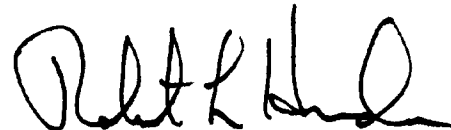
d. Coordination with the Public, States, other Federal Agencies. Within 15 days of receipt of a Section 203 study report, WLRC will dispatch letters transmitting information regarding the project proposal, a draft EIS and related documents to State and Federal agencies for comment, and to designated addressees for information. The non-Federal Interest should provide a mailing list of interested parties to WLRC. The notice shall request comments be submitted to WLRC within 30 days. The draft EIS will be filed with EPA.

e. Furnishing Analysis of Project Proposal to Non-Federal Interest. A preliminary analysis prepared by WLRC and transmitted by ASA(CW) will be provided to the non-Federal interest within 120 days of receipt of the Section 203 study report by ASA(CW). The analysis will address the study findings and the conformity of the study and proposal with applicable laws and regulations.

f. Non-Federal Request for Deferral. At any time, non-Federal interests may request deferral of further report processing and return of the report for revisions or other actions. When a report is later resubmitted, it will be considered as a new report.

g. Recommendations of ASA(CW). After review of comments from State and Federal agencies, WLRC will prepare final recommendations for ASA(CW), including responses to comments from State agencies on the Section 203 study report proposal and FEIS. A ROD will be prepared for the signature of ASA(CW).

FOR THE COMMANDER:



ROBERT L. HERNDON  
Colonel, Corps of Engineers  
Chief of Staff

1 Appendix  
App A - Section 203,  
PL 99-662



## APPENDIX A

## STUDIES OF PROJECTS BY NON-FEDERAL INTERESTS.

SEC 203.

PUBLIC LAW 99-662-NOV. 17, 1386

33 USC 2231.

(a) Submission To Secretary.-A non-Federal interest may on its own undertake a feasibility study of a proposed harbor or inland harbor project and submit it to the Secretary. To assist non-Federal interests, the Secretary shall, as soon as practicable, promulgate guidelines for studies of harbors or inland harbors to provide sufficient information for the formulation of studies.

(b) REVIEW BY SECRETARY.-The Secretary shall review each study submitted under subsection (a) for the purpose of determining whether or not such study and the process under which such study was developed comply with Federal laws and regulations applicable to feasibility studies of navigation project for harbors or inland harbors.

(c) SUBMISSION TO CONGRESS-Not later than 180 days after receiving any study submitted under subsection (a), the Secretary shall transmit to the Congress, in writing, the results of such review and any recommendations the Secretary may have concerning the project described in such plan and design.

(d) CREDIT AND REIMBURSEMENT.-If a project for which a study has been submitted under subsection (a) is authorized by any provision of Federal law enacted after the date of such submission, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing such study that would be the responsibility of the United States if such study were developed by the Secretary.