

# Engineer Circular 1165-2-216

## Requests to Alter USACE Projects

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# Background

- 33 USC 408
- Provides the Secretary of the Army authority to grant permission to alter a USACE civil works project if
  1. Does not impair usefulness of the project
  2. Not injurious to the public interest



# Policy Goals & Components

Policy Goal	Policy Components
Consistency	<ul style="list-style-type: none"><li>• Applies to all types of Civil Works projects</li><li>• Establishes step-by-step procedures and decision-making criteria</li><li>• Be transparent on what information is required</li></ul>
Flexibility	<ul style="list-style-type: none"><li>• Allows for scalability based on scope, scale, and level of complexity</li></ul>
Decision-level Clarity	<ul style="list-style-type: none"><li>• Provides criteria to determine when a Section 408 request requires HQUSACE review and decision</li></ul>
Federal Action Clarity	<ul style="list-style-type: none"><li>• Clarifies environmental compliance requirements</li></ul>
Coordination	<ul style="list-style-type: none"><li>• Encourages coordination throughout process</li><li>• Requires that requests be endorsed by the non-federal sponsors to ensure concurrence</li><li>• Establishes a Section 408 coordinator</li></ul>



# Terminology

- No more “minor” versus “major”
- Permission (instead of permit)
- Alteration (instead of modification or encroachment)
- Requester (instead of applicant)
- H&H System Performance Analysis (instead of H&H Risk Analysis)



# What does this EC apply to?

- All USACE Civil Works projects
- Requests received after date of EC (31 July 2014)
- Only proposed alterations within real estate interests of the federally authorized project
- Actions that build upon, alter, improve, move, occupy, or otherwise could affect the project



# What does this EC NOT apply to?

- Activities beyond the project boundary
- Routine operation and maintenance activities



# Basic Layout of the EC

- The main EC applies to all Section 408 requests
- The appendices provide supplemental guidance -
  - ▶ Dams and Reservoirs (including Navigation Dams)
  - ▶ Non-Federal Hydropower Development
  - ▶ Levee, Floodwall or Flood Risk Management Channel Projects
  - ▶ Navigation Channels, Harbors, Locks, Jetties, Bridges, and Features
  - ▶ Accepting funds through Section 214
  - ▶ System Performance Analysis



# Key Policy Highlights

What's the same?

What's different?





# Role of the Non-federal Sponsor

Same	Different
<p>Because non-federal sponsors are cost-share partners and/or have O&amp;M responsibilities –</p> <ul style="list-style-type: none"><li>▪ Section 408 requests must come from or have written concurrence of the non-federal sponsor</li><li>▪ If there are multiple sponsors, each sponsor must provide concurrence</li></ul>	<p>Clarification is provided that 33 CFR 208.10 focuses on sponsors' responsibilities. Decision to issue a Section 408 permission is a USACE responsibility. Processes for both can work together, but one does not replace the other.</p>



# Decision Level

Same	Different
<p>Questions in which the answer "yes" would require a Division/HQUSACE review and decision</p> <ul style="list-style-type: none"><li>▪ Impact study alternatives?</li><li>▪ Crediting being sought?</li></ul>	<p>Questions in which the answer "yes" would require a Division/HQUSACE review and decision</p> <ul style="list-style-type: none"><li>▪ Type II IEPR (Safety Assurance Review)?</li><li>▪ EIS (USACE lead agency)?</li><li>▪ Change how authorized purpose is met?</li><li>▪ Installation of hydropower facilities?</li><li>▪ Is ASA(CW) approval needed under Section 204(f)?</li></ul>



# HQUSACE Level Decision

Formerly “Major 408s”



# Request & Notification Documentation

Same	Different
Letter of Intent: Written request	No change
Request Letter prior to submission to Division: Written acknowledgment and acceptance of any new O&M requirements & hold and save the government free from damages	
Written Notification: Letter of Permission or denial letter & sponsor permit	



# Environmental Compliance

Same	Different
A Section 408 decision is a federal action and NEPA and other environmental compliance is required.	Some form of public noticing is required for alterations that are expected to have a less than significant effect
Scope of analysis limited to the federal project areas that would be directly or indirectly affected by proposed alteration.	EAs will not be circulated without Division approval
Leverage existing NEPA documentation	EISs do not have to come up to HQ before released for public review



# Type II IEPR (SAR) Review Plans

Same	Different
Review plan approved by the Division Commander and endorsed by Risk Management Center	Risk Management Center is the Review Management Office
	For dams and levees the RMC will determine if Senior Oversight Group engagement is needed



# Division/HQ Review

Same	Different
<p><u>Complete</u> “Summary of Findings” should be submitted to Division then to HQ</p>	<p>HQ review may begin during the EIS “cooling off period”</p>
	<p>The Division has the ability to deny the request prior to reaching HQ</p>



# District Level Decision

Formerly “Minor 408s and Encroachments”





# Public Notice

Same	Different
	Some form of public noticing is required for alterations that are expected to have a less than significant effect



# Written Request

Same	Different
<p>A request for Section 408 permission can originate from a non-federal sponsor or an independent requester.</p>	<p>Written statement whether the requester is pursuing authorization pursuant to Sections 10/404 and, if so, the date or anticipated date of application/ preconstruction notification submittal</p>
<p>The requester must either be the non-federal sponsor or have the <u>endorsement</u> of the non-federal sponsor <u>prior to a written request</u> (endorsement prior to written request = complete application)</p>	<p>Information regarding whether credit under Section 221 of the Flood Control Act of 1970, as amended, or other law is being sought</p>
<p>Complete description including drawings, sketches, maps, and plans that are sufficient for the district to determine the location, purpose and need, anticipated construction schedule, and level of technical documentation needed to inform its evaluation.</p>	



# Environmental Compliance

Same	Different
A Section 408 decision is a federal action and NEPA and other environmental compliance is required.	Environmental compliance is required for what was previously titled "encroachment permits".
	EAs will not be circulated without Division approval
	Some form of public noticing is required for alterations that are expected to have a less than significant effect



# Written Notification

Same	Different
Written notification of approval or denial from District to sponsor for inclusion in sponsor permit	Approval vs. “no objection” or Denial vs. “object”
	Encroachments outside the easement will have no comment letter (eg. fences along the easement boundary)



# Funding

- Current policy for funding remains unchanged
- EC clarifies various sources that can be used if funding is available
- Moving toward more visibility of funding needs



# WRRDA

- Post *process* for public comment within one year
- Establish specific timelines
- Create a public database for tracking
- Policy for accepting funds under Section 214 of WRDA 2000 will be updated



# Next Steps

- A notice was posted in the Federal Register  
<https://www.federalregister.gov/articles/2014/08/06/2014-18593/policy-and-procedural-guidance-for-processing-requests-to-alter-us-army-corps-of-engineers-civil>
- Collect internal and external feedback on USACE Civil Works webpage at  
<http://www.usace.army.mil/Missions/CivilWorks/Section408.aspx>



# Discussion

