

2018 MISSOURI RIVER NAVIGATORS MEETING

SECTION 408 INTRODUCTION

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PURPOSE AND AUTHORIZATION

- Authority contained in Section 14 of the Rivers and Harbors Act of 1899 and codified in 33 USC 408
- Guidance provided in EC 1165-2-216 – updated guidance being released in 2018
- Purpose:
 - Review temporary or permanent alterations to USACE federally authorized Civil Works projects to ensure the alteration:
 1. Is not injurious to the public interest; and
 2. Does not impair the usefulness of the project.
 - Geographic scope is the federal projects on the Missouri River within the affected area of the requested alteration that fall within the ordinary high water mark and federal projects intimately connected to the Missouri River that may be altered by the requested action.
 - Examples of USACE Civil Works projects on and along the Missouri River:
 - Levees
 - Navigation Channel
 - BSNP Structures
 - Shallow Water Habitat Improvements
 - Interception and Rearing Complexes
 - Section 1135 and 14 projects



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SECTION 408 REVIEW PROCESS (NWK ONLY)

- NWK 408 Coordinator (with concurrence) determines if a request falls within Section 408 or Work by Others
- Categorical Permissions vs. Alteration-Specific Permissions
- Categorical Permissions – minor/repeatable alterations (one of the first districts to establish)
 - NEPA fulfilled by Programmatic Environmental Assessment (PEA)
 - NWK Categorical Permissions include:
 - Geotechnical investigations, installation and removal of posts, poles, wells, relief wells, and piezometers
 - Horizontal directional drilling
 - Piping systems
 - Slope protection
 - Small structures
 - Ground surface alterations (i.e. boat ramps, access roads, trails, etc.)
 - Categorical Permissions are not established for all actions on the MO River
- All Section 408 decisions made by NWK District Commander



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PRE-COORDINATION

- Early coordination is strongly recommended.
- Requester and USACE are encouraged to discuss potential issues, help focus efforts, minimize costs, and protect sensitive information.
- NWK-specific 408 guidance: www.nwk.usace.army.mil/Missions/Section-408
- EC 1165-2-216 describes the policy and USACE procedural guidance for Section 408.



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WRITTEN REQUEST

- Requester must provide USACE with a formal written request for the Section 408 review to begin.
- Written request must include:
 - Description of the alteration including drawings, maps, and plans (detailed technical information not required at this step);
 - Information regarding whether credit under Section 221 of the Flood Control Act of 1970 is being sought;
 - Information regarding whether the requestor will require the use of federally-owned real property or property owned by the non-federal sponsor; and
 - Non-federal sponsor endorsement is required if USACE determines cost-shared Civil Works projects (i.e. levees) may be impacted by the alteration.
- Requester generates Review Plan (with assistance from USACE)
 - Type II IEPR (Independent External Peer Review) may be required.
 - IEPR requirements included in EC 1165-2-214.



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DISTRICT-LED REVIEW COMPONENTS

ENGINEERING

Technical analysis and design that details impacts to all adjacent federal Civil Works projects to include a hydrologic and hydraulics system performance analysis, analysis of impacts to channel bed, etc.

Determines if the alteration impairs the usefulness of the project.

ENVIRONMENTAL

Requester is responsible for providing information to allow USACE to ensure all applicable environmental compliance requirements are met. If information is not provided, USACE will supplement as necessary.

USACE to utilize existing NEPA documentation associated with the impacted federal projects to the maximum extent practical.

Determines if the alteration is injurious to public interest.

REAL ESTATE

All real property interests required to support the alteration must be provided, including federally managed lands and those owned by the requester.

LAW & POLICY

Proposal must meet all legal and policy requirements.



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FINAL DETERMINATION & REGULATORY COORDINATION

- Final Section 408 determination made by NWK District Commander.
- Section 404/10 permit cannot be issued until Section 408 determination is made but reviews will be completed simultaneously, to the extent practical.
- Section 408 determination focuses on impacts the federal project.
- Section 408 review necessary if any modifications are made to an existing 404/10 permit.



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FUNDING

OPTION 1

- Requester funds technical analysis.
- USACE funds review.
- USACE will utilize an existing source of centrally managed funds.
- Availability of funds not certain.
- Risk that review may be delayed if funding is not available.

OPTION 2

- Requester funds technical analysis.
- Requester funds review.
- Funds submitted via an 1156 agreement
- Requester ensured review will not be delayed due to funding availability.

SCHEDULE

- Overall schedule dependent upon required NEPA documentation and options chosen by the requester for the technical analysis and funding.
- Section 404/10 and 408 reviews will be conducted concurrently.
- Small/simple reviews typically completed within 60 days (some exceptions apply)
- Larger reviews may require longer review period. Schedule will be coordinated with requester.



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POLICY GUIDANCE UPDATES

- EC 1165-2-216 is being updated by HQUSACE.
 - New document is EC 1165-2-220
 - Changes and clarifications being made
 - District is reviewing and determining potential impacts to process
 - No timeframe on when EC will be finalized
- Draft policy is open for public comment
 - **Comment Period – 2/5/2018 – 3/5/2018**
 - Posted to Federal Register – <https://www.federalregister.gov>
 - Comment Portal – <http://www.regulations.gov>
 - Docket Number – COE-2018-0003
 - Email Questions to HQUSACE – HQ-Section408@usace.army.mil
 - Subject – “EC 1165-2-220 Comments”



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