



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

CECW-P

AUG 05 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Section 1005(b) of the Water Resources Reform and Development Act (WRRDA) of 2014, Categorical Exclusions in Emergencies

1. Section 1005(b) of WRRDA 2014 (Public Law 113-121) provides that the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that is declared a disaster by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) shall be treated as an action that is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement in accordance with 40 C.F.R. Section 1508.4. **The repair or reconstruction activity must be in the same location with the same capacity, dimensions, and design as the water resources project as before the disaster declaration;** be commenced within two years of the disaster declaration; and be absent any extraordinary circumstances that may warrant further review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). A copy of Section 1005(b) of WRRDA 2014 is enclosed (Enclosure 1).
2. ER 500-1-1, "Emergency Employment of Army and Other Resources," includes guidance on conducting environmental compliance under NEPA for the Civil Emergency Management Program, including the rehabilitation of flood control works and protection or repair of Federally authorized shore protective works in accordance with Public Law 84-99 (33 U.S.C. 701n).
3. Categorical exclusions for the Civil Works program are listed in paragraph 9 of ER 200-2-2, "Procedures for Implementing NEPA," and at 33 C.F.R. 230.9. The categorical exclusion at section 230.9(b) includes activities at completed Corps projects which carry out the authorized project purposes including repair, rehabilitation, replacement of existing structures and facilities such as buildings, road, levees, groins, and utilities.
4. For repair or reconstruction work that is in the same location with the same capacity, dimensions, and design as the water resources project as before the disaster declaration; is consistent with Section 1005(b) of WRRDA 2014 as described in paragraph 1 above; and is absent any extraordinary circumstances that may warrant additional NEPA review; district commanders may document the applicability of Section 1005(b) of WRRDA 2014 to satisfy NEPA documentation for that action. Section 1005(b) of WRRDA 2014 does not preclude the use of minor deviations, such as the

SUBJECT: Implementation Guidance for Section 1005(b) of the Water Resources Reform and Development Act (WRRDA) of 2014, Categorical Exclusions in Emergencies

use of improved construction materials or technology, in the repair or reconstruction work so long as the deviation(s) would not result in a change in the location, capacity, dimensions, or design of the water resources project. If repair or reconstruction work involves minor deviation(s), districts shall evaluate the circumstances to determine if the deviation would warrant further NEPA review.

5. For work that does not meet the terms and conditions of Section 1005(b) of WRRDA, districts should apply ER 200-2-2, 33 C.F.R. 230, and ER 500-1-1, as appropriate, to conduct environmental compliance for emergency actions in the most efficient manner.

6. Even though an action may be categorically excluded from preparation of an environmental assessment or environmental impact statement per Section 1005(b) of WRRDA, that does not exempt the action from procedural or substantive compliance with all other applicable Federal laws including, but not limited to, the Endangered Species Act, the Clean Water Act, or the National Historic Preservation Act. Compliance with these other statutes should be completed in the same manner as a district would do for any of the other existing categorical exclusions at 33 C.F.R. 230.9. To the extent practicable, all compliance for other applicable Federal laws must be completed prior to the use of Section 1005(b) of WRRDA 2014 for NEPA compliance.

7. Districts shall track and keep a record of each instance that Section 1005(b) of WRRDA 2014 is used to satisfy NEPA compliance.

Encl



THEODORE A. BROWN, P.E.  
Chief, Planning and Policy  
Directorate of Civil Works

DISTRIBUTION:  
COMMANDERS,  
GREAT LAKES AND OHIO RIVER DIVISION, CELRD  
MISSISSIPPI VALLEY DIVISION, CEMVD  
NORTH ATLANTIC DIVISION, CENAD  
NORTHWESTERN DIVISION, CENWD  
PACIFIC OCEAN DIVISION, CEPOD  
SOUTH ATLANTIC DIVISION, CESAD  
SOUTH PACIFIC DIVISION, CESP  
SOUTHWESTERN DIVISION, CESWD

Enclosure: Text of Section 1005(b) of the Water Resources Reform and Development Act (WRRDA) of 2014

(b) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—For the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that results in a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall treat such repair, reconstruction, or rehabilitation activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations (or successor regulations), if the repair or reconstruction activity is—

(1) in the same location with the same capacity, dimensions, and design as the original water resources project as before the declaration described in this section; and

(2) commenced within a 2-year period beginning on the date of a declaration described in this subsection.

**Diaz, Lauren B HQ02**

---

**From:** Wilson, Max HQ02  
**Sent:** Wednesday, August 03, 2016 3:10 PM  
**To:** Diaz, Lauren B HQ02  
**Subject:** RE: WRRDA 14, Section 1005(b) - Categorical Exclusions, Recommend OASA Chop (UNCLASSIFIED//FOUO)

Lauren,

Terrific. I'm likely going to telework tomorrow, so please use this as my "e-chop."

Max

Max Wilson  
Assistant Counsel  
Environmental Law and Regulatory Programs  
Office of the Chief Counsel  
US Army Corps of Engineers  
☎ (202) 761-8544

////////////////////////////////////  
ATTORNEY WORK PRODUCT  
ATTORNEY CLIENT PRIVILEGE  
DO NOT RELEASE  
////////////////////////////////////

NOTICE: This electronic message contains personal and confidential information for the intended recipients and may contain pre-decisional advice, attorney work product or attorney/client privileged material, which is protected from disclosure under the Freedom of Information Act, 5 U.S.C. § 552. Do not forward, copy or release without prior authorization from the sender. Any review or distribution by others is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply e-mail and delete this message.

-----Original Message-----  
From: Diaz, Lauren B HQ02  
Sent: Wednesday, August 03, 2016 2:39 PM  
To: Wilson, Max HQ02 <John.M.Wilson@usace.army.mil>; Roupas, Mark S HQ02 <Mark.S.Roupas@usace.army.mil>; Gaffney-Smith, Margaret E HQ <Meg.E.Gaffney-Smith@usace.army.mil>; Matusiak, Mark HQ02 <Mark.Matusiak@usace.army.mil>  
Cc: Wood, Lance D HQ02 <Lance.D.Wood@usace.army.mil>  
Subject: FW: WRRDA 14, Section 1005(b) - Categorical Exclusions, Recommend OASA Chop (UNCLASSIFIED//FOUO)  
Importance: High

Deputy Assistant Secretary  
(Policy & Legislation)  
Assistant Secretary of the Army (Civil Works) Let.M.Lee.CIV@mail.mil  
Office: (703)614-3977  
Mobile: (703)269-7676

-----Original Message-----

From: Owen, Gib A CIV USARMY HQDA ASA CW (US)  
Sent: Tuesday, August 02, 2016 3:17 PM  
To: Lee, Let M CIV CEHQ NCR2 (US) <let.m.lee.civ@mail.mil>  
Subject: WRRDA 14, Section 1005(b) - Categorical Exclusions, Recommend OASA Chop (UNCLASSIFIED//FOUO)

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

Let Mon,  
Recommend OASA approval of WRRDA 14, Section 1005(b), Categorical Exclusions guidance. Anne Brown provided chop on 2 August 16.

Section 1005(b) of WRRDA 2014 (Public Law 113-121) provides that the repair, reconstruction, or rehabilitation of a water resources project that is in operation or under construction when damaged by an event or incident that is declared a disaster by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) shall be treated as an action that is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement in accordance with 40 C.F.R. Section 1508.4. The repair or reconstruction activity must be in the same location with the same capacity, dimensions, and design as the water resources project as before the disaster declaration; be commenced within two years of the disaster declaration; and be absent any extraordinary circumstances that may warrant further review under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.).

Gib

Gib Owen  
Assistant for Water Resources Policy & Legislation Office of the Assistant Secretary of the Army for Civil Works  
Washington DC gib.a.owen.civ@mail.mil  
703 695 4641 - Office  
571 274 1929 - Cell

><(((e>`.,.,.,`~.,.,.,><(((e>`.,.,.,`~.,.,.,><(((e>

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY

CLASSIFICATION: UNCLASSIFIED//FOR OFFICIAL USE ONLY