



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

SACW

FEB 23 2026

MEMORANDUM FOR COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Programmatic Direction on Processing Requests for Permission Under 33 U.S.C. § 408

1. References:

- a. Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 ("Section 408").
- b. 33 C.F.R. Part 333, Processing of Department of the Army Permits and 33 U.S.C. 408 Permissions, National Environmental Policy Act Implementing Procedures.
- c. Engineering Circular 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408 (Sept. 10, 2018).

2. Purpose: The purpose of this memorandum is to provide direction to the U.S. Army Corps of Engineers (Corps) to codify the overall procedures for the consideration of requests for permission under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 408 (Section 408) and to develop nationwide categorical permissions to streamline the review process for appropriate categories of activities.

3. Background:

a. The Corps decision to issue or deny a Section 408 permission is based on a determination of whether the temporary or permanent "occupation or use will not be injurious to the public interest" and whether the occupation or use "will . . . impair the usefulness of such work." 33 U.S.C. § 408(a). The Corps follows an internal policy document for handling requests for permission, Ref. c., and regulations in the Code of Federal Regulations (CFR) for National Environmental Policy Act (NEPA) compliance, Ref. b.

b. For at least the last five decades, the Corps has provided a streamlined authorization process for certain categories of activities under another provision of the Rivers and Harbors Act of 1899, Section 10. 33 U.S.C. § 403; 33 C.F.R. § 330.1(g). The Corps internal policy for implementing Section 408 allows for the establishment of similarly streamlined authorizations under the Section 408 authority, which it identifies

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as “categorical permissions.” Ref. c at Para. 8.b. & Appendix C. The Corps has taken regional approach and has issued categorical permissions for certain activities within a Corps Division. See e.g. Regional Categorical Permission for Section 408 Requests, U.S. Army Corps of Engineers Great Lakes and Ohio River Division (Sept. 2023); Regional Categorical Permission for Section 408 Requests, U.S. Army Corps of Engineers South Pacific Division (March 2025).

4. Direction:

a. President Trump highlighted the significant compliance costs borne by the American public in “synthesizing the collective meaning not just of formal regulations but also rules, memoranda, administrative orders, guidance documents, policy statements, and interagency agreements that are not subject to the Administrative Procedure Act.” Executive Order 14192, Unleashing Prosperity Through Deregulation, Sec. 1, 90 Fed. Reg. 9065 (Jan. 31, 2025). Army Civil Works took a significant first deregulatory step by codifying how the Corps would implement NEPA when making permission decisions under Section 408. Ref. b. I am directing the Corps to take the next step and, following the Administrative Procedure Act’s requirements, codify the procedures for requesting permission that currently only exist in an Engineering Circular. See 33 U.S.C. § 408(c)(1)(Water Resource Development Act of 2024 amending Section 408 requiring “the Secretary shall establish clear, concise, and specific guidance [for Section 408] to be used within the Corps of Engineers and by non-Federal entities developing applications for permission standardizing the review process across Districts”). The effort I am directing was included as part of the Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions under Regulatory Identification Number 0710-AB22.<sup>1</sup> These procedures should identify ways to ease the regulatory burden on the public and ensure that we only require permissions as specifically authorized by Congress in 33 U.S.C. § 408(a).

b. Responding to the nation’s critical energy need, President Trump has directed federal agencies to “undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule.” Executive Order 14154, Unleashing American Energy, Sec. 5(d), 90 Fed. Reg. 8353 (Jan. 20, 2025). As categorical permissions under Section 408 are synonymous with “general permitting and permit by rule,” I am directing the Corps to expand the use of categorical permissions focusing first on nationwide categorical permissions and then determining how regional or district specific categorical permissions can complement the nationwide permissions (specifically how they could be used to facilitate a requestor’s Endangered Species Act and National Historic Preservation Act compliance). Additionally, the Corps should consider how categorical

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<sup>1</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=0710-AB22>

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permissions could facilitate non-Federal hydropower development and investment at Corps projects.

c. As a matter of policy, I am directing that the nationwide categorical permissions shall be included as part of the rulemaking process codifying the Section 408 procedures. The categorical permissions will ultimately be an appendix to the codified procedures.

d. I am directing the Corps to prioritize this effort and to provide bi-weekly updates to the Office of the Assistant Secretary of the Army for Civil Works.

5. The point of contact for this memorandum is Mr. Milton Boyd, Acting Deputy Assistant Secretary of the Army (Policy and Legislation). He may be contacted at [milton.w.boyd.civ@army.mil](mailto:milton.w.boyd.civ@army.mil) or (703) 693-3655.



ADAM R. TELLE

CF:  
DCG-CEO, USACE  
DCW, USACE