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Section 408 Permission to Alter Army Corps Works: Developments and Congressional Considerations

Congress has authorized the U.S. Army Corps of Engineers (USACE) to undertake thousands of public (civil) works projects across the United States. The Secretary of the Army must grant permission before an entity other than USACE proposes altering a USACE public “work.” Pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. §408), as amended, the Secretary may grant permission if the alteration “will not be injurious to the public interest and will not impair the usefulness of such work.” These permissions are known as *Section 408 permissions*. Alteration examples include a utility line or pipeline crossing USACE-maintained navigable channels or USACE-constructed levees, nonfederal installation of hydropower at USACE dams, and nonfederal sand placement affecting USACE coastal storm damage projects. According to USACE, on average, the agency receives 1,200 Section 408 requests per year. Roughly 3% of projects on the federal infrastructure permitting dashboard reference a Section 408 permission.

New National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§4321 et seq.) procedures may, and a proposed rulemaking and legislation if enacted could, adjust the agency’s Section 408 review process. Congressional deliberations may evaluate the consequences of changes not only for the permission requesters but also the public that benefits from the USACE project. Congress may weigh whether to legislate on the Section 408 authority and process in light of the rulemakings and/or in the context of broader federal permitting process modification efforts.

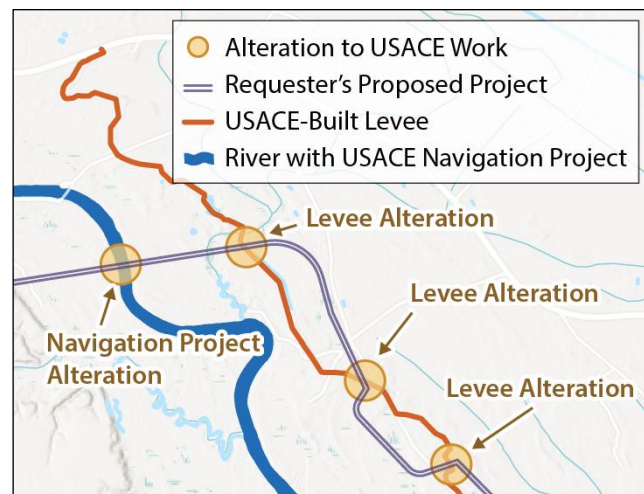
Section 408 Review Process

USACE has established a review process for Section 408 permissions that assesses whether or not a requester’s alteration undermines the structural integrity or functional performance of a USACE work, or harms the public interest. USACE asks for the requester’s project description (including construction techniques, materials, and schedule). Given that a nonfederal sponsor of a USACE project shares many project costs and responsibilities and, in many cases, may not be the Section 408 requester, USACE asks for a Statement of No Objection signed by the nonfederal sponsor. For example, the illustration in **Figure 1** could represent a proposed pipeline or cable that would cross a USACE-built levee operated by a local levee district. USACE also asks for maps and designs showing how USACE works would be altered, and for structural, hydrologic, hydraulic, and geotechnical analyses that the agency determines may be needed for its review.

To arrive at a decision, USACE assesses whether a proposed alteration complies with the agency’s technical standards and requirements, and considers the alteration’s

potential beneficial and harmful impacts. Public interest factors considered include effects on the economy, flood hazards and erosion, navigation, wildlife and habitat, historical sites, and recreation. USACE’s decision is a federal action subject to NEPA environmental review requirements and may also require compliance with other federal statutes. Based on its review, the agency approves or denies permission, and can attach permission conditions.

Figure 1. Illustrative Rendering of Proposed Alterations at USACE Projects Requiring Section 408 Permissions



Source: Illustration by Congressional Research Service.

Statutory Changes Since 2016

Congress has amended the Section 408 authority. In 2018 (P.L. 115-270, §1165), to clarify the relevant USACE civil works project assets, Congress added to 33 U.S.C. §408 that “‘work’ shall not include unimproved real estate owned or operated by the Secretary as part of a water resources development project if the Secretary determines that modification of such real estate would not affect the function and usefulness of the project.”

Congress also has legislated on the Section 408 review process. In 2016, Congress clarified requirements for determinations of a complete Section 408 “application” (which USACE typically refers to as a “request”) and timing and coordination of NEPA reviews for Section 408 requests. P.L. 114-322 (§1156) specified that the Secretary has 30 days to determine an application’s completeness, and 90 days after a completeness determination for a final decision. If there is no decision within 120 days, an explanation to congressional authorizing committees is required. In 2025, Congress amended the review process to

direct the establishment of “clear, concise, and specific guidance to be used within” USACE and by requesters for “standardizing the review process across Districts” (P.L. 118-272, §1105). It also required that USACE provide a preapplication meeting if asked for by the requester.

Guidance Evolution and Rulemaking

Since 2006, USACE has altered its implementation of its Section 408 authority multiple times. Prior to the mid-2000s, the Section 408 permission authority was largely managed by USACE districts primarily through real estate instruments (e.g., easements). Since September 2018, USACE follows internal guidance in Engineer Circular (EC) 1165-2-220, *Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408*. In 2020, USACE announced efforts to develop a rule for processing requests, and in 2022 it held Section 408 listening sessions.

Rulemakings

Effort Toward a Section 408 Rule

In February 2026, the Assistant Secretary for the Army for Civil Works (ASACW) directed USACE to promulgate regulations for the procedures for Section 408 requests and develop nationwide Section 408 categorical permissions. USACE currently does not have national categorical permissions for Section 408. Various USACE districts and divisions, like the South Pacific Division, have developed regional categorical permissions for alterations similar in nature and with similar effects on a USACE work and the environment. In P.L. 118-272 (§1244(c)), Congress directed the Government Accountability Office to evaluate USACE’s Section 408 program, including its permission tracking website and ways to expedite the review process, including through “categorical permissions or the establishment of a single office” to review requests.

During the 119th Congress, lawmakers may assess whether to alter the Section 408 authority (e.g., clarify the scope and use of categorical permissions). Congress also might evaluate its support for USACE proceeding with a rule or less formal guidance (as raised by a waterway stakeholder group). Congress could augment its direction on the Section 408 review process (e.g., clarify public comment opportunities), and specify the materials provided to prospective requesters (e.g., require the development of a publicly accessible GIS database of USACE works, a standardized Section 408 request form, or an appeal process). Some but not all USACE districts, such as Fort Worth District, maintain lists of USACE projects within their boundaries and guides for permission request submittals. Congress could also assess (1) USACE’s efforts at monitoring and enforcement of its Section 408 authority; (2) potential effects of establishing fees for cost recovery and monetary penalties; and (3) whether to require regular reporting to Congress on the request process (including timeliness of decisions).

NEPA Rule for USACE’s Regulatory Program

A Section 408 permission may be one of a number of authorizations from various federal agencies required for a proposed project. For example, Congress has tasked

USACE with administering regulations (i.e., issuing permits) related to protecting navigation (e.g., §10 of the Rivers and Harbors Act of 1899 permits) and discharging dredged or fill material into navigable waters (§404 of the Clean Water Act permits). These regulatory responsibilities are not tied to the presence of a USACE work, unlike the Section 408 permission authority. On July 3, 2025, USACE published an interim final rule (IFR) for NEPA procedures for its regulatory program and Section 408 permissions (33 C.F.R. §333). The IFR went into immediate effect. Prior to this, granting a Section 408 permission fell under NEPA procedures for USACE civil works projects, not its regulatory program.

Some stakeholders commenting on the IFR raised concerns with USACE formally incorporating Section 408 NEPA processes into the IFR as a binding rulemaking, whereas others expressed support for integrating the NEPA regulation of the agency’s regulatory program and Section 408 permissions. Others have raised concerns about the IFR’s publication without public comment, and that the IFR alters public comment opportunities for certain environmental reviews. Congress may choose to not weigh in on USACE implementation of the IFR and development of a final rule. Alternatively, Congress could direct USACE to maintain the Section 408 program within its civil works project activities. Congress also could legislate on the agency’s NEPA processes (e.g., require public comment).

Legislative Proposals

The 119th Congress is considering whether to alter federal permitting processes through legislation, which, if enacted, may alter administration of Section 408 permissions. For example, the House-passed H.R. 4776, which according to its sponsors is intended to shorten permitting timelines and reduce the frequency of litigation, among other things, would add deadlines for agency decisions. For example, it would require a final agency action not later than 30 days after a complete NEPA review. The current timing requirements for USACE’s Section 408 decisions reference a complete application (including the technical analyses) rather than a complete NEPA review. For a discussion of H.R. 4776, see CRS In Focus IF13180, *H.R. 4776, Standardizing Permitting and Expediting Economic Development Act (SPEED Act), as Passed by the House*.

Proposed bills in recent Congresses would have addressed Section 408 permissions in the context of energy infrastructure. For example, S. 879 (118th Congress) would have required the Secretary of the Army to act on all USACE authorizations (including Section 408 permissions) within one year of receiving an application for natural gas transmission pipelines. Other bills in the 118th Congress, H.R. 6708/S. 3433, would have directed changes altering the Section 408 review process for certain nonfederal and federal dredging. A consideration for Congress is how proposed legislation, if enacted, may affect USACE’s reviews of a third party altering USACE works, in addition to effects on federal permitting timelines.

Nicole T. Carter, Specialist in Natural Resources Policy

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