



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

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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



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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.