

CERM-F

Regulation
No. 37-1-28

30 April 2013

Financial Administration
CONTINUING RESOLUTION AUTHORITY (CRA)

1. This change 1 to Engineering Regulation 37-1-28, 30 November 2001 changes the ownership of the regulation, adds the table of contents and updates guidance throughout the regulation.

2. Substitute pages as shown below:

Remove page(s)	Insert page(s)
	i
1 - 4	1 - 4
A-1 to A-3	A-1 to A-6
B-1	B-1

FOR THE COMMANDER:



C. DAVID TURNER
Colonel, Corps of Engineers
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DEPARTMENT OF THE ARMY
U. S. Army Corps of Engineers
Washington, DC 20314-1000

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CONTINUING RESOLUTION AUTHORITY (CRA)

1. Purpose. This regulation establishes the procedures by which the U.S. Army Corps of Engineers (USACE) activities will operate under and immediately following the enactment and the subsequent termination of one or more Continuing Resolutions. This regulation is not intended to replace or duplicate the policy contained in higher headquarters regulations; but rather, it provides guidance specifically applicable to USACE.
2. Applicability. This regulation applies to all HQUSACE elements and USACE Commands.
3. Distribution. Statement approved for public release; distribution is unlimited.
4. References.
 - a. Congressional Budget and Impoundment Control Act of 1974, *Public Law 94-344*.
 - b. Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission, and Execution of the Budget*.
 - c. DoD Financial Management Regulation (DoDFMR), *DoD 7000.14R*.
 - d. Defense Finance and Accounting Service (DFAS), DFAS-IN 37-1 Regulation, Chapter 8, "Obligation Management."
 - e. ER 37-1-24, *Operating Budgets*.
 - f. ER 37-1-30, *Financial Administration - Accounting and Reporting*.
 - g. Deputy Secretary of Defense Memorandum, "Guidance for Continuation of Operations in the Absence of Available Appropriations," dated 15 December 2011.
 - h. Army Resource Formulation Guide, Volume 7, Appendix C, Subject: Continuing Resolution Authority General Guidance, dated July 2010.
 - i. Office of Management and Budget Bulletin 12-02, Apportionment of the Continuing Resolution (s) for Fiscal Year 2013 (or its successors).

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j. OPERATION ORDER 2011-15 (USACE Operations in the Absence of Appropriations)

5. General.

a. This regulation provides the basic guidance and direction for all USACE activities for operation under CRAs and immediately following the termination of CRAs pending the apportionment and distribution of annual appropriations

b. Continuing Resolution Authority (CRA) is a joint resolution signed by the President to provide interim appropriations for Federal agencies in the absence of annual appropriations. The CRA provides the authority necessary to allow operations to continue in the absence of those appropriations. Unless provided otherwise in the CRA itself, the conditions applicable to the funding in an account in the previous year apply to the funding under the CRA. There may be multiple CRs or CR extensions before an appropriations act is passed. The Office of Management and Budget (OMB) publishes a bulletin with the first CR providing guidance to agencies on how to compute the amount automatically apportioned and available for obligation for each account during the CRA period. Customarily, the amount automatically apportioned is based on the historical rate for operations, but no more than pro-rata based on the CR period compared to one year. HQUSACE, CECW-IP, maintains data on historical rates and computes the automatically apportioned amounts based on the OMB Bulletin. USACE Guidance for operations in the absence of appropriations is contained in Appendix A. (Automatic apportionment is at the level of the account, not the level of projects, programs, and activities.)

c. A CRA generally provides the authority to spend and the actual appropriations necessary to allow operations to continue in the absence of annual appropriations. Policies provided in references 4b and 4c provide that operations will continue up to the amount contained in the “President’s budget, the previous year’s rate of execution, or the amount recommended by the House and Senate Appropriations Committees, whichever is the lowest or most restrictive.” The Bulletin on automatic apportionment issued by OMB at the beginning of each fiscal year (FY) when not all appropriations bills have been enacted may provide otherwise. In the event of a CRA and consistent with this guidance Headquarters (CERM-B) will provide temporary funding authority, that is, written Funding Authorization Documents (FAD’s) based on the automatic apportionment data provided by CECW-IP.

d. A “Hiatus” or funding gap exists when available appropriations and budget authority are inadequate to support agency operations and may be caused by the failure of Congress to enact either an appropriations act or a CRA or CRA extension. No new obligations may be incurred unless they can be lawfully funded from prior appropriations, are specifically authorized by law, are exempted activities, or are necessary for an orderly shutdown of the agency. See Appendix A for further guidance.

(1) USACE receives most of its annual funding from the Military Construction Appropriations Act, Defense Appropriations Act and the Energy & Water Development Appropriations Act. Therefore, if the government is unable to enact any one of these appropriation acts by 1 October (the start of the fiscal year), it must enact a CRA immediately or USACE activities funded by that appropriation could shut down.

(2) Unless specifically authorized by the CRA itself, new starts are not permitted to begin under a CRA or during a funding gap. However, new start planning and design activities funded with military appropriations are permitted to begin under a CRA.

e. Unless superseded by Reference 4.i., Reference 4d chapter 8, paragraph 080402, states that unless the Office of the Secretary of Defense (OSD) issues other instructions, a CRA provides for the following:

(1) “Rate of execution generally will not exceed the amount contained in the President’s budget, the previous year’s rate of execution, or the amount recommended by the House and Senate Appropriations Committees, whichever is the lowest or most restrictive.”

(2) “No new starts may be initiated. Operations & Maintenance, Army funded minor construction is not considered a new start.”

(3) “No increase in scope of ongoing programs is permitted.”

(4) “No new multiyear procurements are permitted.”

6. Procedures During a CRA:

a. USACE activities must comply with the guidance issued by higher headquarters. Military personnel will be reassigned to essential activities and duties.

b. HQUSACE will provide each USACE Division and FOA with its civil works apportionment in the form of a written FAD. Each Division will sub-allot to Districts in a written FAD. The local Resource Manager distributes funding to the project level per the restrictions in paragraph 5e. Interim funding and Purchase Requests & Commitments (PRCs) guidance for CEFMS is described in Appendix B of this regulation.

(1) Unobligated balances of all carryover funds are reapportioned by the OMB.

(2) Unless directed otherwise by CECW or higher authority, all programs, projects, and activities Project Partnership Agreements (PPAs) funded in the prior fiscal year (before the

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CRA) may continue. Other PPAs may continue if permitted by the CRA itself. For Civil Works, CECW-I issues guidance each year governing allotment of funding at the PPA level.

(3) New contracts may be awarded with CR funds for any PPA, subject to limitations in annual CECW-I guidance.

(4) Continuing Contracts. The following guidance applies to any existing or new contract that employs the “true” continuing contract clause (EFARS Part 252.232-5001) or the “primary” (special) continuing contract clause approved by DOD for DFARS 232.705-70.

(a) To the extent that CR funds allotted by the Division to the District are available to the applicable PPA consistent with paragraph 4.b. CR funds may be obligated on a contract sufficient to cover earnings through or beyond the CR period.

(b) If CR funds allotted by the Division to the District and available to the applicable PPA are not sufficient to fund earnings for the remainder of the FY on a contract, it is critical to include the paragraph below in any new contract employing either clause awarded during the CR period or in contract notices during the CR period for any ongoing contract employing either clause.

“Until enactment of (specific FY) appropriations, it will be necessary to reserve funds for your contract on a limited basis. The amount reserved through (CRA period) is \$XX,XXX,XXX. The amount reserved for your contract thus far in (specific FY) is \$xxx,xxx,xxx. After annual funds have been allocated for (specific FY), you will be advised in writing of the funds reserved for your contract for the entire fiscal year ending September 30, XXXX.”

(c) CECW-I issues annual guidance on the approval process for new continuing contracts.

c. Labor. Obligations of CR funds for labor should be limited to labor costs incurred during the CR period. Where the end of the CR period is sooner than the end of a pay period, CR funds should be obligated only for the portion of the pay period falling in the CR period.

d. Reimbursable work may proceed to the extent that activities have received reimbursable orders (i.e., valid budget authority) from customers.

e. Transfer appropriations under agency symbol 96 may be obligated to the extent that funds are available, unless otherwise advised by HQUSACE or transferring agencies.

f. Additional guidance for CW is provided by CECW-I at the beginning of each Fiscal Year.

APPENDIX A

USACE Operations In The Absence Of Appropriations

First and foremost, do not implement these instructions or furlough any USACE employees without specific direction from the Chief of Engineers. This document is intended for planning purposes only.

A-1. Prior to exhaustion of funding authorities, all USACE activities will identify, by position, the minimum work force necessary to support excepted activities to protect against imminent threats to life and property or to continue support to maintain national security.

Identification of Excepted activities: All HQUSACE Directorates, Offices, Major Subordinate Commands (MSC), Districts/Centers/Laboratories and National Organizations will identify and maintain a list of excepted activities and the personnel associated with those excepted activities to ensure they are minimally staffed through a shutdown. In addition each of these offices must provide that information to the USACE Operations Center (UOC) NLT Close of Business on the day of the notification of a shutdown.

At a minimum the information below is required:

- a. Military Assigned
- b. Department of the Army (DA) Civilian Assigned/DA Civilian Exempt
- c. Contractors Exempt
- d. Activities Exempt

All USACE Commands and HQs staff sections must maintain and verify local phone tree rosters in order to keep the work force informed and/or to recall personnel in case of emergencies. It is critical that leaders communicate current, accurate, consistent status and information to their respective employees.

A-2. Prior to exhaustion of funding authorities, all USACE activities will receive notification to proceed with identification, by position, of the minimum workforce necessary to support exempt activities, or protect against imminent threats to life and property, or to continue support to maintain national security to include continued support to Joint Chiefs of Staff (JCS) operational orders and to safeguard records.

A-3. USACE Commanders and HQs Principals or a designated representative will direct the execution of the shutdown plan at each level. It is required that personnel affected by these procedures are released within four hours of initial notification of a shutdown.

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A-4. Commanders must review activities to determine the funding source. Personnel funded from appropriations that remain available during a hiatus affecting other parts of USACE or the Federal government shall report to work until that appropriation or other funding source is exhausted. Such personnel would include those funded with: available prior-year appropriations, funds earned and maintained in the revolving fund for the supervision and administration of military construction projects, and funds earned and maintained in the revolving fund for overhead activities, etc.). Upon exhaustion of the fund which pays the employee's salary, however, USACE personnel will only report to the extent necessary to support exempt activities or protect against imminent threats to life and property or to continue support to maintain national security.

Activities funded by continuing resolution sources must be reviewed to determine if their missions are required to maintain national security and provide protection against imminent threats to life and property. Once this identification is complete, subordinate units and HQs Principals will identify by position the minimum workforce necessary to protect against imminent threats to life and property or to continue support to maintain national security. HQs Human Resources/Civilian Personnel Advisory Center (CPAC) will notify unions that USACE will be conducting shutdown activities. Supervisors will brief their employees as to whether their work and responsibilities fall into excepted or non-excepted status.

A-5. All active duty uniformed military personnel assigned to USACE are considered exempt from shutdown procedures and will report for duty and carry out assigned duties. In addition to carrying out non-excepted activities in the place of furloughed civilian personnel, this will be to the extent that the non-excepted activity is capable of performance without incurring new obligations. Local USACE Commanders may direct military personnel to perform new or different duty assignments that are normally performed by such personnel.

A-6. Because no disbursements against expired CRA funds are allowed, "exempt" employees and those supporting imminent threats to life and property or to continue support to maintain national security will not receive pay during the shutdown, although pay earned will be provided upon termination of the shutdown. "Non-exempt" personnel will be furloughed and placed in a "non-pay" status and cannot expect to be paid retroactively for the time during which they were furloughed unless legislative relief is enacted.

A-7. Civilian employees being furloughed may be authorized to use their annual leave instead of non-pay status. An employee approved for leave during the furloughed period cannot change their leave status after the enactment of a new appropriation or a CRA which may include retroactive pay for employees not in leave status. USACE activities maintaining less than 100 percent (not fully funded) accrued leave reserves at the end of the previous leave year, must obtain CERM-F (HQ, Finance & Accounting Policy Division) approval before granting this authority.

A-8. Support staff of all Districts, Field Operating Activities (FOAs), Centers, including Engineering Research and Development Center (ERDC) and Army Geospatial Center (AGC), Major Subordinate Commands and Headquarters (including HECSA) directly supporting emergency activities involving the imminent threat to human life or the protection of properties and the exempted activities listed below are to be reduced to the minimum required level possible. Generally, the support staff personnel (includes staff not direct charging time to exempt project, i.e. General and Administrative or Consolidated Departmental Overhead) retained during a furlough would be no larger than 1.5 percent of authorized numbers, respectively, above and beyond necessary staff for the exempted activities.

A-9. The following activities are considered exempt from shutdown procedures and will be performed using minimum staffing:

- a. Emergency Operation Center (EOC) activities (minimum staffing includes all permanent staff plus any augmentation authorized by the local USACE Commander).
- b. Planning, design and construction activities and environmental remediation directly funded by available carryover appropriations – both civil works and military – to the extent prior year funds are available. Minimum activities required to perform critical regulatory permit actions, including Section 214 of the Water Resources Development Act (WRDA).
- c. Reimbursable work, e.g., support for others – for which the ordering agency has provided funding authority and determined that the work is exempt from its shutdown criteria based on program authorities and appropriations.
- d. Other civil works activities that are to be continued without regard to available funding:
 - (1) Operations, minimum required maintenance personnel and security of hydropower plants.
 - (2) Operations and security of navigation locks handling commercial traffic, with minimum required maintenance personnel.
 - (3) Operations and security of gates and other water control features at flood control projects.
 - (4) Emergency response work and support to civil authorities in response to disaster or other immediate threats to life or property with respect to responsibilities to state and local governments. This includes USACE response work under the Flood Control and Coastal Emergency Act, (PL 84-99).

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(5) Operations of the Washington Aqueduct assigned to the Baltimore District.

(6) Congressional and legislative liaison.

(7) Any planning, design and construction activities directly funded by available carryover appropriations – both civil works and military – to the extent funds are available.

(8) Activities necessary to effect the upward adjustment of obligations and the reallocation of prior-year unobligated funds in support of excepted activities. Activities necessary to control funds, record new obligations incurred in the performance of excepted activities, and manage working capital funds.

(9) Any environmental remediation activity, including Formerly Utilized Sites Remedial Action Programs (FUSRAP) to the extent necessary to prevent imminent danger to life and property.

e. Other military activities that are to be continued without regard to available funding:

(1) Operations of the 249th Engineer Battalion.

(2) Exempted (emergency) activities involving reserve component personnel.

(3) Operations of the Army Geospatial Center (AGC) to protect against imminent threats to life and property or to continue direct support to maintain national security.

(4) Operations of the Engineering Research and Development Center (ERDC) in direct support of the war fighter or an exempted activity.

(5) Operations of command and control systems, including computers, telecommunication centers, phone switches and secure conference capability to the extent necessary to support exempt activities and activities funded with prior year funds.

(6) Operations of the following districts and division: Far East (CEPOF); Japan (CEPOJ); Middle East (CEMED), Europe (CENAU) and Transatlantic Division (CETAD) and to the extent necessary to support exempt activities and activities funded with prior year funds.

(7) Forward deployed commands executing Chairman of Joint Chiefs of Staff or Combatant Commander operations/deployment orders and those activities required in direct support of those tasks, including Forward Engineer Support Teams (FEST).

(8) Execution of all Foreign Military Sales (FMS) cases and Host Nation support initiated prior to 30 September of the current FY.

f. Training and Permanent Change of Station (PCS) moves and travel deemed necessary to maintain USACE command and control and related directly to exempted functions. Only travel related to deployment, excepted activities or a declared emergency operation is authorized. Non-exempt personnel on Temporary Duty (TDY) will return to home station immediately as part of shutdown procedures. Personnel on formal detail assignments will remain at their current duty station, in off-duty status.

g. TDY voucher submissions will take place only after the shutdown period.

h. In the event that a USACE element is hosting a conference and is in charge of making the hotel arrangements, an immediate review must take place of the contract provisions regarding postponement, rescheduling, or termination. This is necessary to minimize liability to the government. In turn, immediate engagement with the hotel/facility must take place. After negotiations with the hotel/facility, scheduled attendees are to be advised of the conference status (postponement/cancellation) so they can cancel hotel, airline and any other travel/logistical reservations and avoid liability.

i. Contractors funded by CRA-exhausted appropriations who have undelivered orders at the expiration of the CR period may continue to provide contract services, whether in support of exempt activities or not, until the remaining unexpended funds on the contract have been expended. However, new contracts, including contract renewals or extensions, issuance of task orders [i.e. indefinite delivery/indefinite quantity (IDIQ), exercise of options] may not be awarded unless the contractor is supporting an exempt activity. USACE may continue to enter into new contracts or place task orders under existing contracts, to obtain supplies and services necessary to carry out or support exempt activities, even though the funding appropriation is exhausted. It is emphasized that this authority is to be exercised only when determined to be necessary where delay in contracting would endanger national security or create a risk of life or property.

j. Litigation activities associated with imminent or ongoing legal action, in forums inside or outside of DoD, to the extent required by law or necessary to support exempt activities or court order.

k. Foreign national employees paid with host country funds are exempt from furlough. Additionally, foreign national employees governed by country to country agreements that prohibit furloughs are exempt. Non Appropriated Fund (NAF) employees are exempt.

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1. The Commander USACE is the approving authority for additional excepted activities that are not cited above.

A-10. Any activity or civilian employees not specifically cited above is considered non-exempt and must be furloughed until the enactment of an appropriation or a CR.

Recall:

During funding hiatus, furloughed employees should regularly check the Office of Personnel Management (OPM) website (www.opm.gov) or local media as to whether an appropriation or continuing resolution has been signed. Furloughed employees should report to work the next business day following enactment of a CRA or appropriation law. USACE UOC will notify all activities to execute their local alert rosters once notification is received.

APPENDIX B

CEFMS Process During A CRA

B-1. Civil and Military Funds Distributed through PBAS

a. USACE activities will receive funding authority through CEFMS Funds Distribution Module (FDM) or through PBAS on FADs based on a CRA provided by HQUSACE for both military and civil works programs.

b. USACE activities receiving funds via PBAS FADs will input funds on the Program Authority and Register in CEFMS. Funding accounts will be created or amounts in existing accounts will be increased when funding is distributed to work items.

c. USACE activities are to obligate against carryover and current year funding of the CRA and in accordance with guidance of this regulation.

d. Once a CRA is terminated by enactment of appropriations and work allowances are issued, USACE activities will adjust FADs in CEFMS to reflect amounts actually received. Continuing resolution obligation authority in CEFMS will then be reconciled to the FADs issued in Program Budget Accounting System (PBAS).

e. There are no unique programming mechanics or edits within CEFMS during a CRA.

B-2. Military - Funds Distributed Within CEFMS FDM

a. USACE activities will receive CRA funding authority provided by HQUSACE via the CEFMS Funds Distribution Module (FDM) for TI 21 Military programs.

b. USACE activities will accept CRA funding authority for TI 21 via the FDM and register in CEFMS. Funding accounts will be created or amounts in existing accounts will be increased when funding is distributed to work items.

c. USACE activities are to obligate against carryover and current year funding of the CRA and in accordance with guidance of this regulation.

d. Once a CRA is terminated by enactment of appropriations and work allowances are issued, HQUSACE will adjust FDM to reflect amounts actually received by the activities. This may require revoking or issuing additional funding to the activities.

e. There are no unique programming mechanics or edits within CEFMS during a CRA.