

APPENDIX N

**USACE PROCESS FOR REQUESTING
WAIVERS/VARIANCES**

The following process shall be used for requesting waiver(s)/variance(s) from the requirements in this manual: (Other DOD Components must submit their requests for interpretations through their chain of command.)

1. All requests and responses shall be in writing.
2. The requestor must specifically identify the requirement from which he/she seeks relief. The requestor must provide the exact citation and quote the requirement in question. A separate request must be made for each requirement.
3. The requestor must state whether he/she seeks a waiver (total elimination of the requirement) or a variance (retaining the basic requirement, but doing it differently).
4. The requestor must state in detail why it is not possible or practical to comply with the requirement.
5. It is incumbent on the requestor to provide the evaluator with all the information (maps, drawings, references, calculations, change analysis or impact, etc.) necessary to make a decision. The burden of proof rests with the requestor. Failure to provide the necessary information could be justification for denying the request. It is not up to the evaluator to defend the requirement being questioned. It is up to the requestor to make his/her case why it should be waived or a variance granted.

EM 385-1-1
3 Nov 03

6. The requestor must state the specific period of time and specific operation for which the request is being made. Waivers/variances will be granted for specific times and operations and may not be used as a defense for failure to comply with a requirement at another time or on another project. Waivers/variances are granted for specific times and operations and may not be carried over to other operations unless the evaluator extends the scope to include other times and operations. If warranted, HQ USACE may issue a global variance based on an individual request.

7. The requestor must explain how the method he/she plans to use in lieu of the requirement provides protection equal to or greater than the requirement being challenged. Again, the burden of proof rests with the requestor.

8. The requestor must provide a detailed AHA addressing the new procedure. Risk assessment should be a part of the AHA process.

9. It is incumbent on the requestor to research the literature to determine if there is an OSHA or other legal standard addressing the requirement from which he/she is seeking relief. If there is another standard(s), then the requestor must identify it and provide a copy of the approved request for waiver/variance from that organization (i.e., OSHA). Requests for waivers/variances will not be processed until this requirement has been met.

10. Once the requestor has developed his/her waiver/variance package, he/she should send it along with a cover letter up through the USACE chain of command to the authority having jurisdiction to make the decision. Each echelon should evaluate the request and provide their written rationale for concurring or non-concurring with the request. The person responsible for making that determination at each level must sign-off on the request.

11. HQ USACE shall have at least 30 days to consider the request and to render a written decision to the next lower echelon.