US Army Corps of Engineers®

REGULATORY GUIDANCE LETTER

No. 05-07

Date: 7 December 2005

SUBJECT: Approved NEPA Categorical Exclusions for Nationwide Permit 23

1. Purpose and Applicability

a. **Purpose.** To issue guidance regarding the Categorical Exclusions of other federal agencies approved for inclusion under Nationwide Permit 23 (NWP23). This guidance consolidates expired Regulatory Guidance Letters 86-02, 87-10 and 96-01.

b. **Applicability.** This applies to activities that may qualify under NWP23.

2. General Considerations

a. **Background.** Nationwide Permit 23 (NWP23) at 33 CFR 330 was established in 1982 to authorize certain actions by other federal agencies that are categorically excluded under NEPA, in accordance with 40 CFR Part 1500. After receiving a request from an agency to include its Categorical Exclusions (CEs) under NWP23, HQUSACE has approved CEs after conducting a public interest review. HQUSACE has then issued a Regulatory Guidance Letter (RGL) to the field with the approved list of agency CEs.

To date, HQUSACE has concurred with the CEs of three federal agencies for inclusion under NWP23. CEs were approved for the Bureau of Reclamation (BOR) in RGL 86-02 dated January 17, 1986, the Federal Highway Administration (FHWA) in RGL 87-10 dated December 9, 1987, and the U.S. Coast Guard (USCG) in RGL 96-01 dated November 5, 1996. All three RGLs have since expired.

b. **Practice.** While RGLs 86-02, 87-10 and 96-01 are expired, HQUSACE has instructed districts that the guidance provided therein remains generally valid since the RGLs have not been superseded by regulations or other RGLs. Districts currently use these expired RGLs in determining whether activities may be authorized under NWP23.

3. Guidance.

a. The CE actions approved by HQUSACE for BOR, FHWA, and USCG for inclusion under NWP23 (see Attachments 1 though 3) continue to be in effect. Please note the lists include many actions that do not require Department of the Army authorization. However, to be

consistent with past RGLs and reduce confusion when referencing the CE number, we have included all agency CEs.

b. Notification is required to districts for some CE activities to be authorized under NWP23. The federal agency, or its designee, should contact the appropriate district to review the project proposal with the district and ensure the activity would have only minimal individual and cumulative impacts on the aquatic environment. Notification is required for the following:

- BOR: CE activities that involve more than a small amount of fill, activities with the potential to cause more than minor water quality impacts, and activities involving the use of explosives near waters with significant fisheries resources;
- FHWA: CE activities occurring under paragraph (c)(3), (c)(7), (c)(9) and (c)(12), and all activities under (d); and
- USCG: CE activities under number (6) to address potential impacts to wetlands and number (8) to address potential impacts/encroachment on Federal navigation projects.

Districts will review each notification and verify whether the activity meets the terms and conditions of NWP23. Special conditions may be added to ensure no unacceptable adverse effects will result. If the district believes that concerns for the aquatic environment warrant further review, discretionary authority may be exercised on a case-by-case basis to require an individual permit.

c. Districts will provide a response to the federal agency, or its designee, verifying whether the activity meets the terms and conditions of NWP23 within 20 calendar days of receipt of the notification. If the district does respond with 20 calendar days, the activity qualifies for NWP23 and the agency can begin construction.

d. Unless a district or division has regional conditions that require notification for additional CE activities, all other CE activities do not require pre-construction coordination with or notification to the district. BOR, FHWA, and USCG may however voluntarily seek written verification from districts for CE actions that do not require notification.

e. This guidance replaces RGLs 86-02, 87-10 and 96-01.

4. Duration. This guidance remains in effect unless revised or rescinded.

for DON T. RILEY
Major General, US Army
Director of Civil Works

ATTACHMENT 1

RGL 05-07

Bureau of Reclamation

Approved Categorical Exclusions for NWP23

The following BOR Categorical Exclusions were approved for inclusion under NWP23 on January 17, 1986.

A. General Activities.

(2) Training activities of enrollees assigned to the various youth programs. Such training may include minor construction activities for other entities.

(3) Research activities, such as nondestructive data collection and analysis, monitoring, modeling, laboratory testing, calibration, and testing of instruments or procedures and nonmanipulative field studies.

B. Planning Activities.

(3) Data collection studies that involve test excavations for cultural resources investigations or test pitting, drilling, or seismic investigations for geologic exploration purposes where the impacts will be localized.

C. Project Implementation Activities.

(3) Minor construction activities associated with authorized projects which correct unsatisfactory environmental conditions or which merely augment or supplement, or are enclosed within existing facilities.

(4) Approval of land management plans where implementation will only result in minor construction activities and resultant increased operation and maintenance activities.

D. Operation and Maintenance Activities.

(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

(9) Issuance of permits for removal of gravel or sand by an established process from existing quarries.

(11) Implementation of improved appearance and soil and moisture conservation programs where the impacts are localized.

(12) Conduct of programs of demonstration, educational, and technical assistance to water user organizations for improvement of project and on-farm irrigation water use and management.

(17) Minor safety of dams construction activities where the work is confined to the dam, abutment areas, or appurtenant features, and where no major change in reservoir or downstream operation is anticipated as a result of the construction activities.

E. Grant and Loan Activities.

(1) Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.

(2) Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

(3) Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.

ATTACHMENT 2

RGL 05-07

Federal Highway Administration

Approved Categorical Exclusions for NWP23

The following FHWA Categorical Exclusions were approved for inclusion under NWP23 on December 9, 1987.

(c) The following actions meet the criteria for CEs in the CEQ regulation (section 1508.4) and §771.117 of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's *highway safety plan* under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) may be designated as CEs only after cases specific FHWA approval. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act.

ATTACHMENT 3

RGL 05-07

U.S. Coast Guard

Approved Categorical Exclusions for NWP23

The following USCG Categorical Exclusions were approved for inclusion under NWP23 on November 5, 1996.

1. Routine personnel, fiscal, and administrative activities, actions, procedures, and policies which clearly do not have any environmental impacts, such as military and civilian personnel recruiting, processing, paying, and record keeping.

2. Routine procurement activities and actions for goods and services, including office supplies, equipment, mobile assets, and utility services for routine administration, operation, and maintenance.

3. Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an existing approved disposal site.

4. Routine repair, renovation, and maintenance actions on aircraft and vessels.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or settings.

6. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting.

7. Routine repair and maintenance to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables.

8. Minor renovations and additions to waterfront facilities, including mooring piles, fixed floating piers, existing piers, and unburied power cables, which do not require special, site-specific regulatory permits.

9. Routine grounds maintenance and activities at units and facilities. Examples include localized pest management actions and actions to maintain improved grounds (such as landscaping, lawn care, and minor erosion control measures) that are conducted in accordance with applicable Federal, State, and local directives.

10. Installation of devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas.

11. New construction on heavily developed portions of Coast Guard property, when construction, use, and operation will comply with regulatory requirements and constraints.

12. Decisions to decommission equipment or temporarily discontinue use of facilities or equipment. This does not preclude the need to review decommissioning under Section 106 of the National Historic Preservation Act.

13. Demolition or disposal actions that involve buildings or structures when conducted in accordance with regulations applying to removal of asbestos, PCB's, and other hazardous materials, or disposal actions mandated by Congress. In addition, if the building or structure is listed, or eligible for listing, in the National Register of Historic Places, then compliance with Section 106 of the National Historic Preservation Act is required.

14. Outleasing of historic lighthouse properties as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers.

15. Transfer of real property from the Coast Guard to the General Services Administration, Department of the Interior, and other Federal departments and agencies, or as mandated by Congress; and the granting of leases, permits, and easements where there is no substantial change in use of the property.

16. Renewals and minor amendments of existing real estate licenses or grants for use of government-owned real property where prior environmental review has determined that no significant environmental effects would occur.

17. New grants or renewal of existing grants of license, easements, or similar arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles; for such existing rights-of-way as electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and irrigation facilities; and for similar utility and transportation uses.

18. Defense preparedness training and exercises conducted on other than Coast Guard property, where the lead agency or department is not Coast Guard or Department of Transportation and the lead agency or department has completed its NEPA analysis and documentation requirements.

19. Defense preparedness training and exercise conducted on Coast Guard property that do not involve undeveloped property or increase noise levels over adjacent property and that involve a limited number of personnel, such as exercises involving primarily electric simulation or command post personnel.

20. Simulated exercises, including tactical and logistical exercises that involve small numbers of personnel.

21. Training of an administrative or classroom nature.

22. Operations to carry out maritime safety, maritime law enforcement, search and rescue, domestic ice breaking, and oil or hazardous substance removal programs.

23. Actions performed as a part of Coast Guard operations and the Aids to Navigation Program to carry out statutory authority in the area of establishment of floating and minor fixed aids to navigation, except electronic sound signals.

24. Routine movement of personnel and equipment, and the routine movement, handling, and distribution of nonhazardous materials and wastes in accordance with applicable regulations.

25. Coast Guard participation in disaster relief efforts under the guidance or leadership of another Federal agency that has taken responsibility for NEPA compliance.

26. Data gathering, information gathering, and studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

27. Natural and cultural resource management and research activities that are in accordance with interagency agreements and which are designed to improve or upgrade the Coast Guard's ability to manage those resources.

28. Contracts for activities conducted at established laboratories and facilities, to include contractor-operated laboratories and facilities, on Coast Guard-owned property where all airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid and bulk waste disposal practices are in compliance with existing applicable Federal, State, and local laws and regulations.

29. Approval of recreational activities (such as Coast Guard unit picnic) which do not involve significant physical alteration of the environment, increase disturbance by humans of sensitive natural habitats, or disturbance of historic properties, and which do not occur in, or adjacent to, areas inhabited by threatened or endangered species.

30. Review of documents, such as studies, reports, and analyses, prepared for legislative proposals that did not originate in DOT and that relate to matters that are not the primary responsibility of the Coast Guard.

31. Planning and technical studies which do not contain recommendations for authorization or funding for future construction, but may recommend further study. This includes engineering efforts or environmental studies undertaken to define the elements of a proposal or alternatives sufficiently so that the environmental effects may be assessed and does not exclude consideration of environmental matters in the studies.

32. Bridge Administration Program actions which can be described as one of the following: (a) Modification or replacement of an existing bridge on essentially the same alignment or location. Excluded are bridges with historic significance or bridges providing access to undeveloped barrier islands and beaches. (b) Construction of pipeline bridges for transporting potable water. (c) Construction of pedestrian, bicycle, or equestrian bridges and stream gauging cableways used to transport people. (d) Temporary replacement of a bridge immediately after a natural disaster or a catastrophic failure for reasons of public safety, health, or welfare. (e) Promulgation of operating regulations or procedures for drawbridges. (f) Identification of advance approval waterways under 33 CFR 115.70. (g) Any Bridge Program action which is classified as a CE by another Department of Transportation agency acting as lead agency for such action.

33. (blank)

34. Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents. (a) Regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. (b) Regulations concerning internal agency functions or organization or personnel administration, such as funding, establishing Captain of the Port boundaries, or delegating authority. (c) Regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. (d) Regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels. (e) Regulations concerning equipment approval and carriage requirements. (f) Regulations establishing, disestablishing, or changing the size of Special Anchorage Areas or anchorage grounds. (g) Regulations establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. (h) Special local regulations issued in conjunction with a regatta or marine parade; provided that, if a permit is required, the environmental analysis conducted for the permit included an analysis of the impact of the regulations. (i) Regulations in aid of navigation, such as those concerning rules of the road, International Regulations for the Prevention of Collisions at Sea (COLREGS), bridge-to-bridge communication, vessel traffic services, and marking of navigation systems.

35. Approvals of regatta and marine event permits for the following events: (a) Events that are not located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas. (b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal, State, or local government and for which the Coast Guard determines, based on consultation with the Government agency, that the event will not significantly affect the environmentally sensitive area.