



US Army Corps
of Engineers®

REGULATORY GUIDANCE LETTER

No. 06-01

Date: 25 January 2006

SUBJECT: Determining the Timeliness of Requests for Appeal (RFA).

1. Purpose and Applicability

a. Purpose: The purpose of this guidance is to provide a consistent national approach in determining when Requests for Appeal (RFA) must be received by Division Engineers in order to be considered appealable actions under 33 C.F.R. part 331. This guidance provides certainty to the regulated public and ensures the full ability of affected parties to consider pursuing administrative appeals for certain Corps of Engineer regulatory decisions. This Regulatory Guidance Letter (RGL) reaffirms that an affected party must submit an RFA to the appropriate Division Engineer so that the RFA is received within 60 days of the date of the corresponding Notification of Appeal Process (NAP) form. The terms “affected party,” “appealable action,” “Notification of Appeal Process (NAP),” and “Request for Appeal (RFA)” are defined in 33 CFR part 331.2.

b. Applicability: This guidance applies to all RFAs submitted for the purpose of initiating the administrative appeal process pursuant to 33 CFR part 331.

2. Appeals Regulations 33 CFR part 331: Discussion

a. As part of its administrative appeals program, the Corps must determine if an RFA is complete and meets the criteria for appeal. Criteria for appeal are defined in 33 CFR part 331.5(a) and include the requirement that an RFA must be received by the Division Engineer within 60 days of the date of the NAP.

b. Actions not appealable are defined in 33 CFR part 331.5 (b) and include any RFA that has not been received by the Division Engineer within 60 days of the date of the NAP. See 33 C.F.R. part 331.5(b)(6).

3. Guidance

a. The following guidelines will apply when calculating the “within 60 days of the date of the NAP” timeframe specified in the administrative appeal regulations:

“Day 1” is designated as the date of the NAP form. “Day 60” is designated as the 60th calendar day after the date of the NAP form, with the official counting of calendar days beginning on “Day 1” as designated above. When “Day 60” is a traditional non-working day (e.g., a holiday or a weekend), the 60 day timeframe is *extended* to the next business day.

b. Section 331.5(b)(6) clearly states that an RFA not received by the division engineer within 60 days of the date of the NAP is not an appealable action. In all cases, except in those narrow instances already described in paragraph 3(a) of this RGL, an RFA *received* on or after “Day 61” is not an appealable action, regardless of the Corps office it was submitted to or the date on which it was *submitted* to the Corps.

c. To ensure that the public understands where the RFA must be sent to be considered under the Appeals process, all districts will include the following language in every letter to the affected party informing them of jurisdictional determinations, proffered permits, or permit denials:

This letter contains an ****approved jurisdictional determination/ proffered permit/ permit denial**** for your ****subject site/ proposed project/ permit application****. If you object to this ****determination/ decision****, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this ****determination/decision **** you must submit a completed RFA form to the ****Division name**** Division Office at the following address:

Name of Review Officer or Division POC
Division Review Office Phone and Fax Number
Name of Division
Building/Street Address
City, State and Zip code

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by ****insert Day 60.****

It is not necessary to submit an RFA form to the Division office if you do not object to the **** determination/ decision**** in this letter.

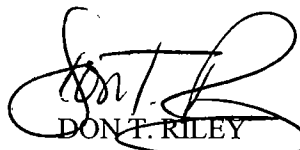
d. To assist Division staff in determining whether RFAs have been received in a timely manner, District staff must ensure that information contained within NAPs are accurate and complete and that NAPs and corresponding cover letters are accurately dated.

i. District staff must complete the top portion of every NAP/ RFA form with the name of the applicant, the file number, the date, and the type of decision being provided. District staff must complete the bottom portion of NAP/ RFA forms with the appropriate point of contact information for the District and Division office. The contact information for the Division office, described at paragraph 3(c) of this RGL, must also be included in the appropriate box on page 2 of NAP/ RFA forms.

ii. The NAP/ RFA form and associated cover letter must be dated with the same date. The date must be the calendar day when those documents are actually mailed to the affected party.

4. Duration

This guidance is effective immediately and remains in effect unless revised or rescinded.


DON T. RILEY
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