

Reference: RGL 83-05

Subject: CATEGORICAL EXCLUSIONS

Title: NATIONWIDE PERMIT AT 330.5(A)(23):CATEGORICAL EXCLUSIONS

Issued: 04/18/83 Expires: 12/31/85

Originator: DAEN-CWO-N

Description: GUIDANCE ON NATIONWIDE PERMIT 330.5(A)(23) FOR CATEGORICAL EXCLUSIONS FOR THE COAST GUARD AND FED HWY ADMINISTRATION INCLUDING BRIDGE RECONSTRUCTION.

1. We have concurred with the determination made by the United States Coast Guard and find that its categorical exclusions contained in Commandant Instruction M16475.1A, Chapter 2(B)(3) and (4) (45 FR 32818, May 19, 1980) (copy enclosed) comply with the provisions of the subject nationwide permit. Effective immediately, these categorical exclusions are covered by the nationwide permit.

2. Recent correspondence with the Federal Highway Administration (FHWA) has resulted in additional clarification of two points of interest associated with its categorical exclusions and the subject nationwide permit. First, FHWA indicates that the exclusions identify classes of activities but of necessity do not define all activities that may be ancillary to the main construction activity. For example, bridge reconstruction may involve some approach roadway reconstruction, the construction of a temporary detour road, the construction of cofferdams or other related work necessary to reconstruct the bridge. The FHWA evaluates the impact of all the ancillary activities before it concludes that any specific project is categorically excluded. FOA's should continue to accept FHWA's environmental determinations of categorical exclusion in accordance with the Department of Transportation/Department of the Army Memorandum of Agreement.

3. The second point was FHWA's recognition that under the nationwide permit the division commander retains the authority to require an individual permit on a case-by-case basis. In order to accommodate this provision of our regulations, FHWA has agreed that in those cases where the decision on a project was close because of factors of regulatory concern to the Corps, but the project was categorically excluded, it will inform the appropriate Corps district office of the full scope of the proposed work. The district commander may then seek discretionary authority as he deems necessary. The Coast Guard has also agreed to this procedure. Both agencies should be notifying their field offices of this clarified procedure.

FOR THE COMMANDER: