

Regulatory Guidance Letter 87-10

SUBJECT: Use of Nationwide Permit 23 for New Federal Highway Administration Categorical Exclusions

DATE: December 9, 1987

EXPIRES: December 31, 1990

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1. We have concurred with the categorical exclusions submitted by the FHWA (Department of Transportation) pursuant to the subject nationwide permit at 33 CFR 330.5(a)(23), with stipulations. The new FHWA categorical exclusions were published in the Federal Register on 28 August 1987 (49 CFR 771.117), and became effective on 27 November 1987. A copy is enclosed.
 2. The stipulation is that each activity occurring under paragraph (c)(3), (c)(7), (c)(9) and (c)(12) as well as all activities under all (d) paragraphs must be verified on a case by case basis by the district engineer or his regulatory staff. That is, the FHWA or local transportation agency to be funded by the FHWA should contact the appropriate Corps district to review the project proposal with the regulatory staff to ensure that the proposed activities would have only minimal adverse individual and cumulative impacts on the aquatic environment. If the district engineer thinks that concerns for the aquatic environment warrant further review, he should seek assertion of the division engineer's discretionary authority to require an individual permit. The district engineer will coordinate with state and Federal resource agencies, if appropriate, when making his determination that concerns for the aquatic environment warrant further review. Development of local procedures to streamline such coordination is encouraged.
 3. In all areas, the district engineer will provide a response to the transportation agency as to whether he will seek assertion of the division engineer's discretionary authority within 20 calendar days. If the district engineer does not provide a response during this time, the activity qualifies for a nationwide permit, and the agency can begin construction.
 4. This guidance expires 31 December 1990 unless sooner revised or rescinded.

FOR THE CHIEF OF ENGINEERS: