

Application for the Department of the Army Permit
OMB Control No: 0710-0003
Emergency approval approved: 7 July 2017
Emergency approval expired: 31 January 2018

"Terms of Clearance" outlined on the Notice of Action (NOA) stated: In accordance with 5 CFR 1320.13, this information collection is approved for 6 months as a one-time emergency clearance. To continue using this collection after 6 months, the Agency must resubmit an ICR to OMB under the normal PRA clearance process. *As terms of clearance for this approval, the full ICR must specify and address all applicable collections of information relating to this program including the use of "similar joint, federal and state forms" and the use of "follow-on [phone] conversations" mentioned in the Request for Emergency Processing.*

COE "Terms of Clearance" Response

Introduction:

The Corps conducted a data call with its districts to compile a comprehensive list of the information available on the Corps Regulatory Permit process. This information includes items that either are publicly available on Corps websites or are used by the Corps in providing information to applicants and other interested parties.

In total, there are 747 information materials used in our 38 Corps district and 8 Division offices. For the materials that collect information, the Corps either has included (or plans to include) these information materials in an information collection request or has marked them for removal; the remaining materials do not collect information. To help your review, we've categorized the information into the four categories described below.

1. Information provided to applicants upon a written permit decision.

Some of the information is provided to applicants when they receive their written permit decision, such as information on how to appeal the decision (when applicable), a compliance certification on when construction will begin on their parcel, and what to do if they need to transfer their permit to person or entity purchasing their property, to name a few. The compliance certification form is a condition of a verified Nationwide Permit whereby the permittee notes whether construction of the project has begun or if the required compensatory mitigation is complete. We believe these certifications are exempted under 5 CFR 1320.3(h)(1) from the definition of "information" in the PRA. Other than the certification form, the materials in this category do not collect information. Rather, they describe the process for appealing a permit or approved jurisdictional determination or for transferring a permit to a new owner upon the sale of property.

These materials are listed in rows 2 – 18 of the attached list.

2. Information available on Regional and Programmatic General permits and other Regulatory processes.

All districts have Regional or Programmatic General Permits. These permits are, conceptually, the localized variations of the more general Nationwide Permits. The Corps may issue a Regional or Programmatic General permit under conditions where the issuance of a Nationwide Permit might not be appropriate to ensure an applicant's full compliance with applicable laws.

Generally speaking, the Corps issues Regional and Programmatic General permits to account for the regional variations among the Corps districts, which variations are due to other state and local regulations and requirements as well as to unique aquatic resources that require special analysis. The type of permit the Corps ultimately issues depends upon the facts on which the permit application is based. The applications for each type of permit differ only in the substance of the information provided on the application, and as detailed in paragraph 3 below. That is, there is no specific form for each different type of permit, except as provided in paragraph 3.

The majority of the total available materials (607 items or ~81%) provide information on these different types of permits. These materials are provided as a public service and include frequently asked questions and clarifications on the permit application process. Other materials (63 occurrences) are simply district links to information already available on the Headquarters Regulatory homepage. There are 36 links to our Regional Supplements and 1987 Delineation Manual, which describes the process for identifying wetlands and the ordinary high water mark in streams. Information is also included about our compensatory mitigation regulations and jurisdictional determination process (204 postings). These materials are for informational purposes only.

These materials are found in rows 19 – 625.

3. Joint (federal and state) application forms.

In some cases when state and local regulations or requirements apply to a potential permit applicant, a joint application form is used so that the applicant may submit all the required information—to both the Corps and any state or local agencies—on a single form. Such forms are used by 23 Corps districts and 18 available unique joint application forms (there may be one or many Corps districts in a state).

The information collected for these unique permit reviews was included in the burden hours for the ENG 4345, and the Corps will process the individual forms as appropriate, once further guidance is received. We used our permit tracking database, ORM2, to generate the number of actions reviewed per year, regardless of how the information is provided to the Corps districts or how the information is submitted. This information is noted in the supporting statement provided with the expiration date extension request submitted in Jan/Feb of 2017.

Relatedly, we also found 18 forms that request information specific to the Nationwide Permit Program. The existence of these forms is the reason why the Corps has proposed a new, single form in this information collection: ENG 6082. The existing forms will be removed and superseded by the ENG 6082.

These materials are listed on rows 626 – 668.

4. Informational materials helpful to the public.

Some information is provided to assist the public if they are interested in joining a mailing list to receive Corps Regulatory public notices regarding proposed construction activities in their area, how to meet with the Corps prior to submitting an application and the type of information that is most helpful to provide, a notice to navigation interest for work that will commence in navigable waters, how to report a suspected violation of the Clean Water Act or Rivers and Harbors Act, information that needs to be provided when asking for materials from a district using the

Freedom of Information Act process, and other voluntary requests for public meetings and hearings.

These materials are noted in rows 669 – 724.

Conclusion:

Notably, the Corps has removed 24 outdated and expired materials from its websites. Additionally, Corps Headquarters has initiated seven requests for district website links to be updated to the current ENG 4345 form. These materials are listed on rows 725 – 748.

We hope this comprehensive review is sufficient information to begin the federal register notice for the extension of the expiration date, while we are updating the supporting statement with this information.

Additional Info related to OMB Control No 0710-0003

You had also asked about any scripts used when asking for additional information from applicants. We explained we don't have telephone scripts, but some of the information posted is in the form of checklists and other materials to assist applicants in submitting a complete application so the review may be as timely as possible. Follow-up questions with applicants are related to what information is missing from the application. Examples of these questions are included in the supporting statement along with an additional information request letter and description of what information is often lacking. The following is an excerpt from the Supporting statement that is provided with the expiration date extension request:

“Clarifying information may be needed from applicants if the information provided on any application form is incomplete. It is also related to the complexities of the Regulatory Program (e.g., the requirements for a subset of regulated activities to comply with other applicable statutes such as the Endangered Species Act, National Historic Preservation Act, and Magnuson-Stevens Act), and the individual nature of each applicant's specific project. It can also be based on an applicant's interpretation of the information requested. Information may be incorrect or omitted from the application form and clarifying information is sometimes needed to fully evaluate the project proposal. This additional information request may take the form of a letter or phone call. Examples of incomplete application information includes to lack of adequate project/impact descriptions and detailed information on plans. The most common things missing are clearly delineated waters/resources, unclear impacts and project description, insufficient plans, adjacent property owner information, and lack of avoidance & minimization statement (i.e. items required for a public notice). How often this happens is difficult to quantify, although some insight can be provided by looking at additional information requests entered in our permit tracking database vs. the total number of applications evaluated in a given fiscal year. In FY2016, an additional information request subaction was entered about 20% of the time. In other words, for the applications received that year, Corps districts had to ask for additional information for 20% of those applications to make them complete to begin the evaluation process. This total accounts for requests for additional information for all of the reasons noted above, in addition to additional regulatory requirements. Districts need also need to obtain regionally specific information and may ask an applicant for that additional information. The type of information requested can also vary based on the type and extent of the proposed activities, the characteristics of the site where the proposed activity will be conducted, and the effects of the proposed activity on the aquatic environment. For example, our IP requests are more often incomplete than the GP requests because the activities authorized by general

permits have impacts are much smaller than those authorized by individual permits. Reasons for GPs being incomplete are usually unclear project descriptions, lack of sufficient plans and unsigned applications. In addition, our GPs can have regional conditions developed during the GP renewal process which may add regionally specific requirements based on the types and locations of the aquatic resources in the area.”

During the permit evaluation process, the need to comply with other environmental laws and regulations may require additional information requests from project applicants. This is done on a case by case basis and most often done during projects where the activities may affect a listed endangered or threatened species or their critical habitat, may impact historic properties, is located in essential fish habitat, or requires tribal consultations. These additional environmental compliance requirements also occur about 20% of the time and may be closely correlated to the number of additional application requests entered, the type of additional information needed for these reviews can include the names of listed species for non-federal applicants, how compliance with Section 7 of the Endangered Species Act (ESA) was done for federal applicants, identification of any historic properties (vicinity map), how federal applicants comply with Section 106 of the National Historic Preservation Act, and information for Essential Fish Habitat consultation for activities along the marine and estuarine coasts. Additional examples of information needed for ESA consultations include: a list of any endangered or threatened species and designated critical habitat that may be affected by the proposed activity; descriptions of how the proposed activity will affect those listed species and designated critical habitat; and, a discussion of measures proposed by the applicant to avoid or minimize effects to any listed species or designated critical habitat. Districts often provide checklists when this requirement is triggered to assist applicants with their ability to provide needed information. An example would be a cultural resources assessment survey that may also be needed for historic properties consultations.

Checklists are often posted on district websites to assist with identifying what information is needed. A copy of the application form checklist was provided with our original submittal.