



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
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CESAM-RD

July 11, 2008

PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS

REQUIREMENTS FOR AN APPLICATION TO BE CONSIDERED COMPLETE

TO WHOM IT MAY CONCERN: The Mobile District Regulatory Division, U.S. Army Corps of Engineers (Corps) is circulating this notice to ensure that the public is aware of a recent change to our regulations. This change is described below and is effective as of July 14, 2008.

The Corps, in the Federal Register dated April 10, 2008, issued final regulations governing compensatory mitigation for activities authorized by permits issued by the Department of the Army (DA). While the main focus of the regulations is to establish performance standards and criteria for the use of permittee-responsible compensatory mitigation, mitigation banks, and in-lieu programs to improve the quality and success of compensatory mitigation projects for activities authorized by DA permits, the regulations also redefined what information is required for a complete application for an individual permit.

The requirements for a complete application for an individual permit are discussed in the Corps regulations at 33 CFR 325.1(d). This regulation has been amended by redesignating paragraphs (d)(7), (d)(8), and (d)(9) as paragraphs (d)(8), (d)(9), and (d)(10), respectively, and adding new paragraphs (d)(7) as follows:

325.1 Applications for permits

(d)

(7) For activities involving discharges of dredged or fill material into waters of the United States, the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts.

This requirement has been adopted in the final rule because it will provide useful information for the permit evaluation process.

Pursuant to 332.4(b)(1) of the new regulations, for any activity that requires a standard DA permit pursuant to section 404 of the Clean Water Act, the public notice for the proposed activity must contain a statement explaining how impacts associated with the proposed activity are to be avoided, minimized, and compensated for. The mitigation statement in the public notice is to be based on the information submitted by the applicant, in accordance with the new requirement at 33 CFR 325.1 (d)(7). This explanation shall address, to the extent that such information is provided in the mitigation statement required by 325.1 (d)(7), the proposed avoidance and minimization and the amount, type, and location of any proposed compensatory mitigation, including any out-of-kind compensation, or indicate an intention to use an approved mitigation bank or in-lieu fee program.

The mitigation statement provided should be brief, because the permit evaluation process is an iterative process, and district engineers often require additional avoidance and minimization measures as they evaluate permit applications. The level of detail provided in the public notice must be commensurate with the scope and scale of the impacts.

The full text of the April 10, 2008 Federal Register may be viewed at the following web address:

http://www.usace.army.mil/cw/cecwo/reg/news/final_mitig_rule.pdf

If you have any questions regarding the information contained in this public notice, you may contact Jason W. Steele at 251-690-3188 or by e-mail at Jason.W.Steele@usace.army.mil.

MOBILE DISTRICT
U.S. Army Corps of Engineer