

**EXECUTIVE ORDER 13604: IMPROVING PERFORMANCE OF FEDERAL
PERMITTING AND REVIEW OF INFRASTRUCTURE PROJECTS**

DEPARTMENT OF HOMELAND SECURITY AND UNITED STATES COAST GUARD

AGENCY PLAN

Mission

Within the Department of Homeland Security, the authority for permitting of federal infrastructure lies with the U.S. Coast Guard's Bridge Program. The Coast Guard's Bridge Program ensures the safe and unencumbered passage of marine traffic on the nation's waterways by promoting security, mobility and safety on our critical national maritime transportation systems.

Overview of Statutory Authorities

In 1967, the Coast Guard was transferred to the newly created Department of Transportation. As a part of this, and in keeping with its navigation safety roles, the Coast Guard was assigned responsibility for permitting bridges that spanned navigable waters. In 2002, the Congress preserved all previously assigned Coast Guard duties in the Homeland Security Act of 2002 when the service transferred from the Department of Transportation to the Department of Homeland Security.

The Coast Guard approves location and plans of bridges and causeways under the authority of several Acts pertaining to bridges. All permitting authorities under the below sections were transferred to the Secretary of Homeland Security under 6 U.S.C. 552(d). These Acts include the following:

Section 9 of the Rivers and Harbors Act approved March 3, 1899, as amended, 33 U.S.C. § 401, prohibits the construction of any bridge or causeway across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army.

Section 1 of the Act of March 23, 1906, as amended, 33 U.S.C. § 491, prohibits the construction of any bridge across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Secretary of Transportation. This section shall not apply to any bridge over waters that are not subject to the ebb and flow of the tide and are not used or capable of being used by reasonable improvement for interstate or foreign commerce.

Section 502 of the General Bridge Act of 1946, as amended, 33 U.S.C. § 525, empowers the Coast Guard to regulate the construction of bridges and causeways within or across waterways defined as navigable by the agency. The General Bridge Act of 1946 is cited as the legislative authority for bridge construction in most cases.

The International Bridge Act of 1972, 33 U.S.C. § 535, requires both a Presidential Permit from the Department of State and a Coast Guard bridge permit. The Department of State and the Coast Guard jointly work together on technical assistance matters regarding preparation of environmental documents for international bridges. This joint cooperation ensures the respective responsibilities of each agency are fulfilled for preparing environmental documents related to the construction of international bridges without unnecessary duplication of effort. A Coast Guard bridge permit is required for all bridges over waterways that form the U.S. boundaries with Mexico and Canada whether or not the waterway in fact carries navigation.

Delegation of Authority for Permit Actions

The Coast Guard Bridge Manual, COMDTINST M16590.5 (series), Chapter 4.C, http://www.uscg.mil/directives/cim/16000-16999/CIM_16590_5C.pdf, outlines the delegation of authority for the issuance of permits and permit amendments. NEPA reviews are typically conducted at the Coast Guard district (regional) commander level. If the project is controversial, may involve litigation, or the Coast Guard is the lead federal agency under NEPA, the Headquarters Bridge Program office will also review the NEPA documentation to ensure the project is not setting an adverse precedent and for decision regarding action to be taken on such issues or actions.

Roles and Responsibilities

With respect to infrastructure permitting, the Coast Guard Bridge Program is responsible for issuing bridge permits approving the location and plans of all new bridges, modification of existing bridges, international bridges, and causeways in or over navigable waterways of the United States.

Involvement with Other Federal Agencies

The Coast Guard Bridge Program coordinates with federal agencies early in the permitting process to ensure most, if not all, issues are addressed before an application is submitted to the Coast Guard. These federal agencies include, but are not limited to the USACE, NOAA, USFWS, USEPA, ACHP, FTA, BLM, NPS, USDA, FHWA and DOI.

Current operational practices for collaboration and coordination for processing permits and reviews: Internal Federal Agency

The Bridge Program maintains an office at Coast Guard Headquarters in Washington, DC, and offices in each Coast Guard District, nationwide. The Headquarters and District offices collaborate in the development of nationwide policy. For controversial and atypical projects, the district offices coordinate with Headquarters to ensure that procedural steps taken are consistent with current USCG guidance.

Checklists: The Bridge Program has developed checklists to assist Bridge Program personnel with preparing environmental documents and bridge permit applications, which require detailed administrative, navigational and environmental evaluations to support the administrative record.

Automated File Transfer: To facilitate internal documentation transfer and review between District Offices and USCG HQ, documentation is now uploaded to an online intranet USCG Portal by the District Bridge Office that is then accessed and downloaded by USCG HQ. This eliminates lengthy delays previously experienced from mail delivery of hardcopy documentation and reduces paper usage.

Current operational practices for collaboration and coordination for processing permits and reviews: Federal Interagency

In 1973, the Coast Guard and the USACE executed an MOA to clarify the areas of jurisdiction and the responsibilities of the Coast Guard and the USACE with respect to the alteration of bridges; the construction, operation and maintenance of bridges and causeways as distinguished from other types of structures over or in navigable waters of the United States; the closure of waterways and the restriction of passage through or under bridges in connection with their construction, operation, maintenance and removal; the selection of an appropriate design flood flow for flood hazard analysis of any proposed water opening; and to provide for coordination and consultation on projects and activities in or affecting the navigable waters of the United States.

In 1981, the USCG and the FHWA executed an MOU to avoid unnecessary duplication of effort by the Coast Guard and the FHWA, during the permitting process, in the preparation and processing of environmental documents pursuant to the National Environmental Policy Act (NEPA) and other federal environmental statutes and orders. The procedures in the MOU are intended to strengthen the early coordination between the Coast Guard and FHWA prior to and during the development of environmental documentation for a proposed project.

Current operational practices for collaboration and coordination for processing permits and reviews: Other Government Agencies

Other government agencies are afforded input in the permitting process, either through formal consultation, as required by federal, state, or other laws or regulations, or via the public notice comment period if they are a stakeholder. These other agencies may include, but are not limited to State historic preservation offices, departments of transportation, and departments of conservation; local non-state government entities with jurisdiction over boroughs, counties, townships, historic districts, etc.; and Tribal historic preservation offices and other entities representing Indian tribes, Alaska Native Groups, Native Hawaiians and other Native American groups.

Best practices, Interagency Agreements, (i.e. Programmatic Agreements, MOUs, etc.) with specific examples where outcomes reduced processing times, and produce better outcomes.

Bridge Permit Application Guide: This document provides specific and detailed instructions regarding the information required in an application for it to be complete and accepted by the Coast Guard. A more detailed description is provided later in this document.

USCG/FHWA MOU: With assistance from a DOT detailee, the Coast Guard is updating the 1981 USCG/FHWA MOU to include a strategy to streamline the requirements of NEPA and Section 106, encouraging these processes to occur concurrently, as both agencies prepare and process environmental documents. In addition, the Coast Guard is reviewing the best practice initiatives regarding the 404/USFWS/FHWA synchronized decision-making tool and developing a list of recommendations for applicants regarding timing of engagement with the Coast Guard regarding permit applications. This list of recommendations is on a Gantt Chart developed to capture the bridge permit processing timeline, which begins with project scoping and concludes with permit issuance. The Gantt chart identifies consultation duration and key milestones in consultation that must be met before the permitting process advances. These milestones are prescribed in statute, regulation, and/or policy. The goal is to identify what steps can be taken early in the permitting process to avoid delays that occur due to external factors, such as extended formal consultation with other federal agencies. This update is anticipated by December 31, 2012. We are also planning to expand the MOU to include all DOT agencies impacted by bridge permitting: FHWA, FRA, FTA and Pipeline and Hazardous Materials Safety Administration (PHMSA).

FHWA currently has a Programmatic Agreement (PA) with the State of Florida DOT for certain types of projects that are Categorically Excluded under NEPA. In those cases, the state takes the lead for FHWA for compliance with NEPA. FHWA then determines if the state's work satisfies FHWA's obligations under NEPA. The criteria for those Categorically Excluded projects include no adverse impacts to ESA, EFH, Section 106 resources, wetlands, etc. Once the Coast Guard receives a bridge permit application for these projects, there is an obligation to ensure that coordination with ESA/EFH agencies has been satisfied. When seeking this information, there are resulting delays because the criteria for those projects requires that there are no adverse impacts, and the state has already completed the necessary coordination with resource agencies. Therefore, removing the requirement for coordination beyond what was conducted by the state should be included in the USCG/FHWA MOU update. This will save time and effort during the District and Headquarters review processes. In order to achieve similar efficiencies, it might be necessary to develop programmatic agreements with State DOTs.

USCG/USACE MOA: The Coast Guard is planning to update the 1973 MOA with USACE, in order to provide more clarity on jurisdictional issues during permitting. Topics that need to be refined in the MOA include, but are not limited to the following: jurisdiction over dredge/fill and submarine cables, defining other obstructions in the waterway under the Truman-Hobbs Act and non Truman-Hobbs Act bridge projects, jurisdiction and coordination in a federal channel, and defining retention of structures under Section 10.

Standard Operating Procedure (SOP): The USCG is developing a nationwide Standard Operating Procedure to document procedural steps and determine areas for improvement. This SOP will improve process transparency and it is anticipated that this effort will showcase best practices in various districts that can be implemented nationwide. It is anticipated that the SOP will be developed by November 30, 2013.

Project Tracker: The USCG is developing performance indicators and an automated quarterly reporting system to track project progress and delays internally. This initiative will also improve process transparency by providing project status in relation to the expected customer service standard for that function.

General Bridge Permits: The USCG is researching viability of a General Bridge Permit for the Coast Guard to allow projects that meet certain criteria to obtain expedited bridge permits. General Permits (similar to those issued by the US Army Corps of Engineers) are issued nationwide or regionally for a category of activities that are similar in nature and cause minimal individual and cumulative adverse impacts. General Permits have minimal cycle times compared to the average Coast Guard permit cycle time of ten months.

Bridge Program Manual: The Bridge Program is revising its policy manual to further clarify policy and guidance for the Bridge Program staff. The manual will include updates to the environmental laws and controls chapter (Chapter 3) to ensure that all NEPA and environmental requirements are satisfied thoroughly, consistently, and efficiently during the permitting process. The manual will include updated guidance on bridge permit applications (Chapter 4), with references to the revised Bridge Permit Application Guide and the checklists to ensure bridge permit applications include detailed administrative, navigational, and environmental evaluations needed for permit processing. Additional manual revisions include a reorganization of permit conditions (Chapter 5) with clear guidance on when to issue special permit conditions as well as a newly created index of conditions to facilitate drafting permit language.

Enclosure (5) of the Bridge Manual: The Bridge Program Manual previously included Enclosure (5), which was an agreement with FHWA requiring the preparation of an EIS for projects having a significant effect on historic resources unless certain criteria were met, regardless of the lead federal agency's level of environmental documentation. The Bridge Program and FHWA recently agreed to terminate Enclosure (5) thereby reducing unnecessary duplicative analyses on historical resources and shortening the overall review time.

Conflict Resolution

The Coast Guard Bridge Program is typically involved in the early stages of project design to ensure issues and conflicts that may arise with stakeholders and affected public interests during the permitting and review processes are identified and addressed early in the process. The Coast Guard will issue preliminary public notices to solicit feedback from these stakeholders and the public on proposed projects. In addition, the Coast Guard reviews draft environmental documents and navigational evaluations for sufficiency.

Examples of conflict resolution guidelines are found in the 1973 USCG/USACE MOA and the 1981 USCG/FHWA MOU.

“Share in Cost” Authorities

The Coast Guard is in early discussions with the FHWA regarding obtaining resources to assist with transportation project reviews under SAFETEA-LU Section 6002. According to the

website <http://www.fhwa.dot.gov/hep/section6002/2.htm>, “SAFETEA-LU allows USDOT to approve the request of a State to provide Federal-aid highway or Federal transit funds to a Federal or State agency or federally recognized Indian tribe participating in the environmental review process, to support activities by that agency or tribe that directly and meaningfully contribute to expediting and improving the planning and delivery of transportation projects in that State. USDOT encourages the use of this authority where agency resources are a constraint on the environmental review process.”

In this endeavor the Coast Guard and FHWA will consider if and how funding can be extended to the Coast Guard to assist in Coast Guard review and issuance of bridge permit application when a bridge is part of a larger roadway project under the purview of FHWA. A determination on the viability of this resource initiative will be made by December 31, 2012.

Mitigation Opportunities

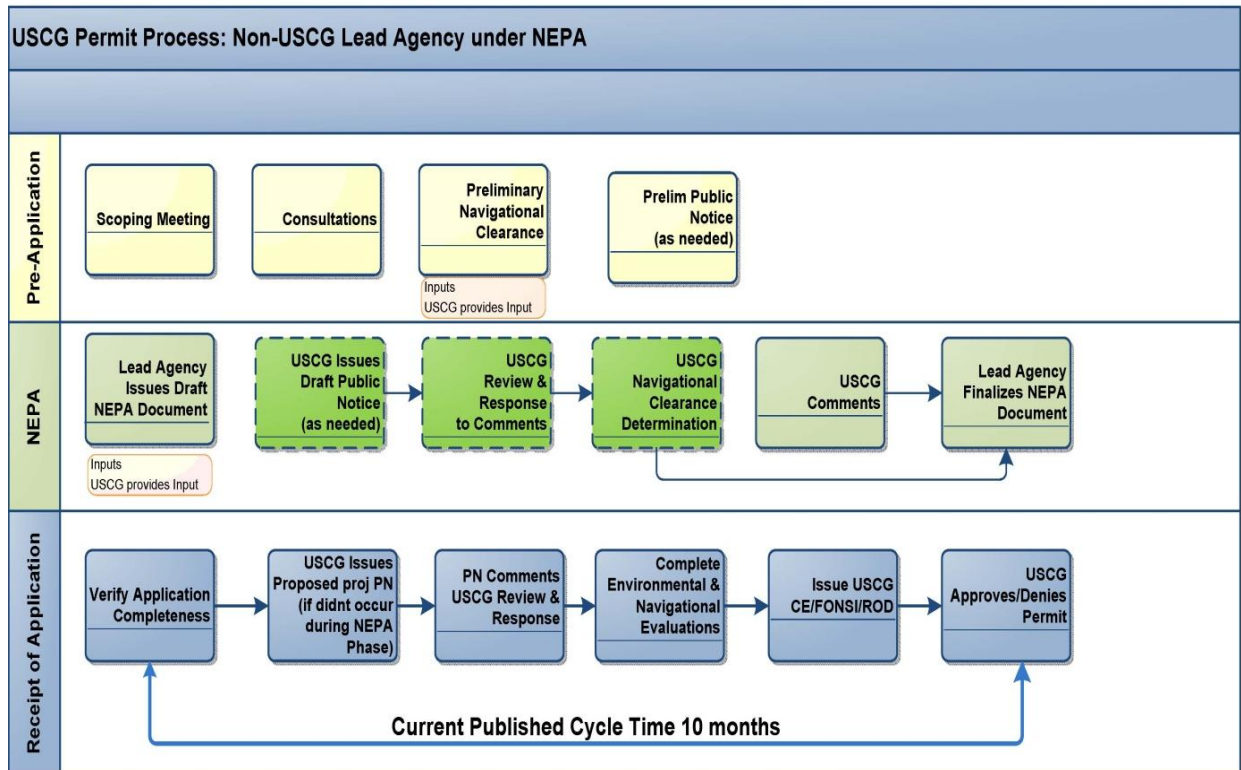
A Coast Guard bridge permit does not relieve the permittee of their responsibilities for compliance with any other laws or regulations that maybe the under the jurisdiction of any federal, state or local authority. Prior to bridge permit issuance, the Coast Guard ensures that all other permits, specifying mitigation that is required for the Coast Guard to meet its requirement under NEPA and other environmental laws, have been obtained. As a consequence, permitting delays occur when another agency’s permit, which includes necessary environmental mitigation, is conditioned as valid upon issuance of a Coast Guard bridge permit. That is to say, the Coast Guard must issue a bridge permit prior to the other agency’s permit going into effect.

Coast Guard seeks to resolve such hindrances in the permitting process by collaborating with agencies in the early stages of permit application and potentially including procedural guidance in agreements with other agencies regarding these issues. Early coordination ensures that mitigating measures are sufficiently addressed in advance of bridge permit issuance.

Bridge Permit Application Requirements

In October 2011, the Bridge Program updated its Bridge Permit Application Guide (BPAG) to provide improved guidance to applicants on what is required for a bridge permit application to be accepted by the Coast Guard for processing. The guide is available online at http://www.uscg.mil/hq/cg5/cg551/BPAG_Page.asp, along with an introduction to the Coast Guard bridge permitting process and an overview of the bridge permit processing procedure. This guide further clarified environmental and navigational requirements for bridge permit applications. The BPAG is available publicly, and other agencies cooperating in review of the proposed project can access the BPAG to understand the Bridge Program’s application requirements and permit processing in relation to their own procedures. As shown in the figure below, the average processing time for a Coast Guard bridge permit is ten months from the date of Coast Guard receipt of a complete permit application.

USCG Permit Process



Use of Information Technology

The Coast Guard Bridge Program does not have an “enterprise information technology system” to track and/or facilitate the permitting and review process. The Bridge Program is in the early stages of developing performance indicators and an automated quarterly reporting system to track project progress and delays. The Bridge Program currently has an internal database at Headquarters to track cycle times of permits, from the date of application receipt to the date of permit issuance. The system records critical case information, to include project description and location, date of bridge permit application, lead federal agency, NEPA document level, date of permit, and justification for processing delays, if any. Below is a screen shot of the database:

The screenshot shows a software application window with a menu bar (Home, Create, External Data, Database Tools, Acrobat) and a toolbar. The main area displays a form with the following fields:

Permit Number	2-12-1	CGHQ Rcvd Date	08-May-12	Existing Vert Clear	19
Reissued Permit No.		Case Reviewer		Prop Vert Clear	21
Amendments		Action Date	30-May-12	% Incr Vertical	10.526
District	1st (dpb)	Max Commence Date	30-May-15	Existing Horiz Clear	260
District Preparer		Max Complete Date	20-May-18	Prop Horiz Clear	264
Project / Location	Replacement of the Memorial Bridge (US 1) across the Piscataqua River, mile 1.9, between Portsmouth, NH and Kittery, ME	Cycle Time (mos)	8	% Incr Horizontal	1.5385
Action Type	Headquarters	Cycle Time >10 Justification		Project Cost	\$20,000,000.00
Env Documentation	CATEX	Memo To File Date		Channel Depth 25'?	<input type="checkbox"/>
Lead Agency	FHWA	Action Code	Done	Located in/near Port?	<input type="checkbox"/>
Application Date	29-Sep-11	PN No.	1-110		
Completion Report Completion Date - DO NOT USE		Notice Date	21-Dec-11		
Archived by Jacquie	<input type="checkbox"/>	Supplemental No.			
		Supplemental Date			
		PN District	1st (dpb)		
		Submittal Status			

The Department of Homeland Security deployed version 1 of an enterprise-wide system for managing NEPA review and documentation in December of 2011, with a focus on managing the application of a categorical exclusion, although it is designed to also perform internal scoping and issue identification for EAs and EISs. Version 2 of the system, to be deployed by December 2012, will build on Version 1 and become the DHS system of record for all classes of NEPA documents. Version 2 will also include NEPA process management capability for all classes of NEPA documents.

Currently, with regard to the projects on the EO 13604 Priority Project list, the Coast Guard is the lead federal agency for the Bayonne Bridge Project and is responsible for developing the project schedule and collaborating with other agencies using MAX to meet project milestone requirements. The Coast Guard is a cooperating agency for several other EO 13604 Priority Projects. The Coast Guard monitors the Federal Infrastructure Project Dashboard for project scheduling and consultation requirements with other agencies.

In addition, the State of Florida developed the Efficient Transportation Decision Making web site to make information available about proposed transportation projects. <https://etdmpub.fl-estat.org/est/>. The Coast Guard Bridge Office in Miami, Florida uses this website to obtain environmental consultation information for various bridge projects.

The Department of Homeland Security (DHS) is developing a form for collection of information from applicants to use in project environmental compliance review. This form is to be submitted to OMB for approval by December 2013. Once approved, information in the DHS form will inform the enterprise-wide system for managing NEPA review and documentation.

Public Outreach

Public notices are issued upon receipt of bridge permit applications, and copies are provided to local stakeholders, including other government agencies. Via the public notice, other government agencies, adjacent property owners, public officials, news media, and other interested parties are afforded the opportunity to submit comments and concerns regarding the proposed bridge project to assist the Coast Guard with making its final determination regarding permit issuance.

The Bridge Program offers announcements of the availability of public notices, which may be viewed <http://www.navcen.uscg.gov/?pageName=pnBridges> . Stakeholders may then submit comments via email. Some District offices also have websites where specific bridge information is posted.