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DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

Federal Transit Administration

[FHWA ZRIN – 2125-ZA04; FTA ZRIN – 2132-ZA01]

MAP-21 Section 1306 Financial Penalties Guidance

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are issuing joint guidance on the implementation of the financial penalty provisions contained in Section 1306 of the Moving Ahead for Progress in the 21st Century Act (MAP-21). The financial penalty provisions require Federal agencies of jurisdiction (Reviewing Agency) to render a decision on a permit, license, or other approval related to a transportation project within 180 days from the later of the date FHWA or FTA issue a Record of Decision or Finding of No Significant Impacts for a project, or the date on which an application for a permit, license, or approval for the project is complete. If the Reviewing Agency does not render a decision by the 180-day deadline, it is subject to a rescission of funds of \$10,000 or \$20,000 per week until the Reviewing Agency renders a decision. The FHWA and FTA have the authority to grant “no-fault” certifications if the Reviewing Agency’s failure to decide was due to circumstances beyond its control. You may review the guidance by visiting FHWA’s

Web site at <http://www.fhwa.dot.gov/map21>, or FTA's Web site at <http://www/fta.dot.gov/map21>.

DATE: This Guidance is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For FHWA: Bruce Bender, Office of Project Delivery and Environmental Review, (202) 366-2851, or Jomar Maldonado, Office of the Chief Counsel, (202) 366-1373, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. For FTA: Elizabeth Patel, Office of Planning and Environment, (202) 366-0244, or Dana Nifosi, Office of Chief Counsel, (202) 366-4011, Federal Transit Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Section 1306 of MAP-21 (Pub. L. 112-141, 126 Stat. 535) codified in 23 U.S.C. 139 that “[a] Federal agency of jurisdiction over an approval required for a project under applicable laws shall complete any required approval on an expeditious basis using the shortest existing applicable process.” 23 U.S.C. 139(h)(6)(A). If a Reviewing Agency fails to decide within a specific timeframe, an amount shall be rescinded from the applicable office of the head of the agency not later than 1 day after the applicable date and once each week thereafter until a final decision is rendered. The rescission amount is equal to \$20,000 per week if the project will be funded under Title 23, U.S. Code, and is estimated to cost more than \$100 million, or \$10,000 per week for any other projects

requiring an environmental assessment or environmental impact statement under FHWA's or FTA's procedures implementing the National Environmental Policy Act of 1969 (NEPA). The applicable date is described as the later of (I) the date that is 180 days after the date on which an application for the permit, license, or approval is complete; and (II) the date that is 180 days after the date on which the Federal lead agency issues a decision on the project under NEPA. 23 U.S.C. 139(h)(6)(B)(ii).

The FHWA and FTA developed this guidance in coordination with the Reviewing Agencies that are most likely to be affected by this provision; however, it is not intended to guide their implementation specifically. The guidance provides a framework for FHWA and FTA personnel to make "no-fault" certifications and serves as a consensus document to help inform agency-specific implementation by the Reviewing Agencies. The guidance is available online at www.fhwa.dot.gov/map21, and www.fta.dot.gov/map21.

Authority: Sec. 1306, Pub. L. 112-141, 126 Stat. 535 (2012).

Issued on: March 25, 2014.

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