



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No. FHWA-2017-0009]

Proposed Third Renewed Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of Utah, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: The FHWA and the State of Utah, acting by and through its Department of Transportation (State), propose a renewal of the State's participation in the **State Assumption of Responsibility for Categorical Exclusions**. This program allows FHWA to assign to States its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed Memorandum of Understanding (MOU), are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act. An amended MOU would renew the State's participation in the program. The MOU will be amended by incorporating the following change: FHWA may terminate the State's participation in this program if FHWA provides the State a notification of noncompliance, and a period of not less than 120 days to take corrective action as FHWA determines necessary, and if the state fails to take satisfactory corrective action as determined by FHWA (Section 1307 of the Fixing America's Surface Transportation [FAST] Act [P.L. 114-94]).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA-2017-0009], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

Web site: <http://www.regulations.gov/>. Follow the instructions for submitting comments on the DOT electronic docket site. Facsimile (Fax): 1-202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

Hand Delivery: 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to <http://www.regulations.gov/> at any time or to 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84129; by email at Edward.woolford@dot.gov or by telephone at 801-955-3524. The FHWA Utah Division Office's normal business hours are 7 a.m. to 4:30 p.m. (Mountain), Monday-Friday, except for Federal Holidays. For State: Mr. Brandon Weston, Environmental Services Director, Utah Department of Transportation, 4501 South 4700 West, Salt Lake City, UT 84129; by email at Brandonweston@Utah.gov or by telephone at 801-965-4603. The Utah Department of Transportation's normal business hours are 8 a.m. to 5 p.m. (Mountain), Monday-Friday, except for State and Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access: Internet users may reach the Office of the Federal Register's home page at:

<http://www.archives.gov/> and the Government Printing Office's database: <http://www.fdsys.gov/>. An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov/>.

Background: Section 326 of Title 23 U.S. Code, creates a program that allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA). In addition, this program allows the assignment of other environmental review requirements applicable to these actions. The FHWA is authorized to act on behalf of the Secretary with respect to these matters. Through an amended MOU, FHWA would renew Utah's participation in this program for a third time. The original MOU became effective on July 1, 2008, for an initial term of three (3) years and the first renewal followed on June 30, 2011 and the second renewal followed on June 30, 2014. The proposed third MOU revision is set to supersede the second renewed MOU prior to its expiration date on June 30, 2017. Stipulation I(B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c) and those listed as examples in 23 CFR 771.117(d). In addition to the NEPA CE determination responsibilities, the MOU would assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

1. Clean Air Act (CAA), 42 U.S.C. 7401-7671q (determinations of project-level conformity if required for the project).
2. Noise Control Act of 1972, 42 U.S.C. 4901-4918
3. Compliance with the noise regulations in 23 CFR 772.
4. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531- 1544, and Section 1536.
5. Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d.
6. Migratory Bird Treaty Act, 16 U.S.C. 703-712.
7. Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 et seq.
8. Archeological and Historic Preservation Act of 1966, as amended, 54 U.S.C. 3201
9. Archeological and Historic Preservation Act, 16 U.S.C. 469-469c
10. American Indian Religious Freedom Act, 42 U.S.C. 1996.
11. Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001-3013; 18 U.S.C. 1170
12. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209.
13. Clean Water Act, 33 U.S.C. 1251- 1377 (Section 404, Section 401, Section 319).
14. Coastal Barrier Resources Act, 16 U.S.C. 3501-3510.
15. Coastal Zone Management Act, 16 U.S.C. 1451-1465.
16. Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j-6.

17. Rivers and Harbors Act of 1899, 33 U.S.C. 403.
18. Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.
19. Emergency Wetlands Resources Act, 16 U.S.C. 3921-3931.
20. TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133 (b)(11).
21. FHWA wetland and natural habitat mitigation regulations at 23 CFR part 777
22. Flood Disaster Protection Act, 42 U.S.C. 4001-4128.
23. Section 4(f), 23 U.S.C. 138 and 49 U.S.C., 303
24. Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604 (known as section 6(f)).
25. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675.
26. Superfund Amendments and Reauthorization Act of 1986 (SARA).
27. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901- 6992k.
28. Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
29. Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
30. Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian

Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species).

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation. This assignment includes transfer to the State of Utah the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the proposed MOU but that have not been completed as of the effective date of the MOU. This is the proposed third renewal of the State's participation in the program and incorporate changes in the termination process from the FAST Act. FHWA may terminate the State's participation in this program if FHWA provides the State a notification of noncompliance, and a period of not less than 120 days to take corrective action as FHWA determines necessary, and if the state fails to take satisfactory corrective action as determined by FHWA. In previous versions of the MOU the period for the State to take corrective action was 30 days.

The FHWA will consider the comments submitted on the proposed MOU when making its decision on whether to execute this renewal MOU. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: May 8, 2017

Ivan Marrero

Division Administrator

Salt Lake City, Utah

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