



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

[Docket No. FHWA-2020-0011]

Proposed Fourth 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), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed MOU and 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 changes: clarifying that this assignment applies to highway projects; and including provisions for UDOT's use of the Federal Transit Administration (FTA) and the Federal Transit Administration's (FRA) CEs for highway projects. In order to use FTA or FRA's

CEs, UDOT will consult with FTA or FRA, as appropriate, and report to FHWA at the end of the calendar year the instances where it applied a CE using this provision.

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-2020-0011], by any of the methods described below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

- Website: <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 9:00 a.m. and 5:00 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. All comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

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. Mr. Jay Payne, Office of the Chief Counsel, (202) 366-4241, James.o.Payne@dot.gov, Federal Highway Administration, U.S. Department of Transportation, 1200 new Jersey Avenue S.E., Washington, D.C. 20590. For the 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 fourth time. The original MOU became effective on July 1, 2008, for an initial term of three (3) years and the first renewal followed on July 1, 2011, the second renewal followed on June 30, 2014, and the third renewal followed on June 23, 2017. The proposed fourth MOU revision is set to supersede the third renewed MOU prior to its expiration date on June 23, 2020. 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), those listed as examples in 23 CFR 771.117(d), and for activities that are highway projects within the categories listed in 23 CFR 771.116 and 23 CFR 771.118. 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 part 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. 300101, *et seq.*
8. Section 4(f) Requirements, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR Part 774.
9. Title 54, Chapter 3125 – Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508.
10. Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001-3013; 18 U.S.C. 1170.
11. American Indian Religious Freedom Act, 42 U.S.C. 1996.
12. Farmland Protection Policy Act, 7 U.S.C. 4201- 4209.
13. Clean Water Act, 33 U.S.C. 1251-1377 (Section 401, 404, and 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, 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. Flood Disaster Protection Act, 42 U.S.C. 4001- 4128.
22. Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)(14).
23. FHWA wetland and natural habitat mitigation regulations, 23 CFR 777.
24. Land and Water Conservation Fund Act, 54 U.S.C. 200301 *et seq.* (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. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
29. Planning and Environment Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
30. Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135.
31. E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR sections 650.113 and 650.115); E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; 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 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 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 fourth renewal of the State's participation in the program and incorporates changes to clarify that this assignment applies to highway projects, as defined in 23 CFR 773.103; and to include provisions for UDOT's use of the Federal Transit Administration's (FTA) and the Federal Transit Administration's (FRA) CEs (23 CFR 771.116 and 23 CFR 771.118, respectively) for highway projects, as provided for in 23 CFR 771.117(h). In order to use FTA or FRA's CEs, UDOT will consult with FTA or FRA, as appropriate, and report to FHWA at the end of the calendar year the instances where it applied a CE using this provision.

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)

Ivan Marrero,

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Federal Highway Administration.

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