



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**[Docket No. FHWA-2025-0268]**

**Application From the State of Maine to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that FHWA received and reviewed an application from the Maine Department of Transportation (MaineDOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act of 1969 (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the application to be complete and developed a draft MOU with MaineDOT outlining how the State would implement the program with FHWA oversight. The FHWA invites the public to comment on MaineDOT's request, including its application and the proposed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

**DATES:** Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor Room W12-140, Washington, DC 20590-0001.

*Hand Delivery:* West Building Ground Floor, Room W12-140, 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.

*Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

For FHWA: Henry Rettinger by email at [Henry.Rettinger@dot.gov](mailto:Henry.Rettinger@dot.gov), by telephone at 207-622-8350. The FHWA Maine Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Time), Monday-Friday, except for Federal holidays.

For MaineDOT: David Gardner by email at [David.Gardner@maine.gov](mailto:David.Gardner@maine.gov) or by telephone at 207-624-3000. State business hours are 7:30 a.m. to 4:30 p.m. (Eastern Time), Monday-Friday, except Federal and State holidays, although State holidays may not completely coincide with Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may submit or retrieve comments online through the Federal eRulemaking portal at: [www.regulations.gov](http://www.regulations.gov). The Web site is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: [www.federalregister.gov](http://www.federalregister.gov) and the U.S. Government Publishing Office's Web page at: [www.govinfo.gov](http://www.govinfo.gov).

## **Background**

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 et seq.) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Under the proposed initial MOU, FHWA would assign to the State, through MaineDOT, its responsibility of making project-level decisions in relation to NEPA on highway projects within the State of Maine that are proposed to be funded with Title 23 funds or otherwise require FHWA approval, and that require preparation of a categorical exclusion determination, environmental assessment, or environmental impact statement with the exception of the following: (1) highway projects authorized under 23 U.S.C. 202 and 203, highway projects under 23 U.S.C. 204 unless the project will be designed and constructed by MaineDOT; (2) projects that cross State boundaries; (3) projects that cross or are adjacent to international boundaries; (4) recreational trails projects under 23 U.S.C. 206; and (5) projects advanced by direct recipients of Federal-Aid Highway funds other than MaineDOT, including but not limited to: 1. Competitive grant programs; 2. Direct recipient tribal project; and 3. Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program.

The assignment would give the State the responsibility to conduct environmental review, consultation, and other related activities for project delivery under the following laws and requirements:

### Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401-7671q, with the exception of project level conformity determinations (42 U.S.C. 7506)

### FHWA-Specific

- 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
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

### Fisheries and Wildlife

- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668 - 668d
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d, with Essential Fish Habitat requirements at sec. 1855(b)(2)
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Endangered Species Act of 1973, 16 U.S.C. 1531–1544

### Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671-9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k

### Historic and Cultural Resources

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-470(mm)

- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001– 3013; 18 U.S.C. 1170
- Archeological and Historic Preservation Act, 54 U.S.C. 312501- 312508
- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 300101, et seq.
- Section 4(f) of the Department of Transportation Act of 1966 [Section 4(f)], 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

#### Noise

- FHWA noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901-4918

#### Parklands and Other Special Land Uses

- Land and Water Conservation Fund Act, 54 U.S.C. 200302-200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

#### Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

#### Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (sections 319, 401, 402, 404 and 408)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and § 3921
- FHWA wetland and natural habitat mitigation regulations, 23 CFR 777
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- General Bridge Act of 1946, 33 U.S.C. 525-533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406

- Safe Drinking Water Act, 42 U.S.C. 300f–300j–26
- Wetland Mitigation, 23 U.S.C. 119(g) and 133 (b)(14)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287

The Secretary’s responsibilities for government-to-government consultation with Indian tribes, as defined in 36 CFR 800.16(m), are not assigned to or assumed by MaineDOT under the proposed MOU. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes. The MaineDOT will conduct routine consultation with Indian tribes and understands that an Indian tribe has the right for government-to-government consultation with FHWA upon request.

Nothing in the proposed MOU shall be construed to permit MaineDOT’s assumption of the Secretary’s responsibilities for conformity determinations required by Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The assignment under this part does not alter the scope and terms of the Section 326 MOU signed on October 9, 2024, between MaineDOT and FHWA. As applicable, MaineDOT will conduct all environmental reviews authorized under the terms of that MOU.

On the cover page of all environmental analyses prepared under the authority granted by this MOU, MaineDOT shall insert the following language in a way that is conspicuous to the reader, or include it in a CE project record: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by MaineDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated [MMDDYYYY] and executed by FHWA and MaineDOT.

The MaineDOT will also disclose to the public, agencies and tribes as part of agency outreach and public involvement procedures, the above disclosure.

The MaineDOT will not make any determination that an action constitutes a constructive use of a Section 4(f) property under 49 U.S.C. 303/23 U.S.C. 138 without first consulting with FHWA and obtaining approval of such determination.

A copy of the proposed MOU may be viewed on the docket at [www.regulations.gov](http://www.regulations.gov), as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on MaineDOT's Web site at <https://www.maine.gov/dot/programs-services/environmental-efforts/nepa/nepa-assignment>.

The FHWA Maine Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU. FHWA and MaineDOT may revise the MOU based on substantive comments and will be make the final MOU available to the public.

(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. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.117.

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Sean McMaster  
Administrator  
Federal Highway Administration

