ADMINISTRATIVE INFORMATION:

- Effective Date: This engineering bulletin (EB) is effective upon signature.
- Superseded Issuances: None
- Disposition of Issued Materials: The material issued in this EB will reside in the Environmental Manual (TEM) § 4.1.1 National Environmental Policy Act (NEPA) as Appendix H.

PURPOSE: To announce the availability of TEM § 4.1.1 NEPA, Appendix H. Programmatic Agreement Between the Federal Highway Administration, New York Division [FHWA], and the New York State Department of Transportation [NYSDOT] Regarding the Processing of Actions Classified as Categorical Exclusions [CEs] for Federal-Aid Highway Projects.

TECHNICAL INFORMATION:

- This EB issues TEM § 4.1.1 NEPA, Appendix H.
- The Programmatic Agreement Between the Federal Highway Administration, New York Division, and the New York State Department of Transportation Regarding the Processing of Actions Classified as Categorical Exclusions for Federal-Aid Highway Projects was executed September 28, 2017 (2017 Programmatic Agreement Regarding CEs).
- The 2017 Programmatic Agreement Regarding CEs replaces the FHWA New York Division’s Programmatic Categorical Exclusion signed July 15, 1996 as found in Environmental Procedures Manual Chapter 2 Attachment 2.2.C.
- For Federal-aid projects and other Federal actions administered or undertaken by NYSDOT, the 2017 Programmatic Agreement Regarding CEs authorizes the NYSDOT to determine on behalf of the FHWA that a project qualifies as a Categorical Exclusion listed in 23 CFR 771.117; defines the conditions under which the NYSDOT may make a Categorical Exclusion determination; and when the conditions are not met for NYSDOT to make a Categorical Exclusion determination, specifies how the NYSDOT recommends and requests that the FHWA determine that a project qualifies as a Categorical Exclusion.
- The 2017 Programmatic Agreement Regarding CEs references revised Federal Environmental Approvals Worksheet (FEAW) and FEAW Thresholds documents. These revised documents will be distributed under a separate EB.
- The 2017 Programmatic Agreement Regarding CEs includes reporting requirements. The reporting procedures and responsibilities of the NYSDOT Project Manager or RLPL will be distributed under a separate EB.

IMPLEMENTATION:

- The 2017 Programmatic Agreement Regarding CEs was executed September 28, 2017 and goes into effect immediately for all NYSDOT projects that qualify as Categorical Exclusions,
which have not received NEPA approval at the time of this EB. The 2017 Programmatic Agreement Regarding CEs references revised Federal Environmental Approvals Worksheet (FEAW) and FEAW Thresholds documents. These revised documents will be distributed under a separate EB. Until those revised documents are distributed, follow existing procedures.

- The reporting requirements within the 2017 Programmatic Agreement Regarding CEs, go into effect immediately for all NYSDOT projects that qualify as Categorical Exclusions, which have not received NEPA approval at the time of this EB. Once the Categorical Exclusion determination is made, Project Managers (or Regional Local Project Liaisons, as appropriate) will record the requested information using the link provided at TEM § 4.1.1.

TRANSMITTED MATERIALS: The materials can be accessed within TEM § 4.1.1 at http://axim22.nysdot.private:7779/portal/page?_pageid=39,1,39_161990&_dad=portal&_schema=PORTAL.

BACKGROUND: Appendix H sets forth the agreement between the FHWA and NYSDOT on the roles and responsibilities of the FHWA and NYSDOT with respect to processing NEPA CEs.

- the FHWA’s NEPA implementing procedures (23 CFR part 771) list a number of CE for certain actions that the FHWA has determined do not individually or cumulatively have any significant environmental impacts (23 CFR 771.117(c)-(d));
- Section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 (July 6, 2012), allowed the FHWA to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews, including agreements that allow a State Department of Transportation to determine that a project qualifies as a CE on behalf of the FHWA; and the Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, 129 Stat. 1312, Sec. 1315 (Dec. 4, 2015) further directed FHWA to enter into such agreements.
- The FHWA developed regulations implementing the authorities in section 1318(d), effective November 6, 2014 (23 CFR 771.117(g)), including that the agreement must set forth the State DOT’s responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance.
- FHWA has information on the authority and purpose of the program at https://www.environment.fhwa.dot.gov/strmlng/programmatic_ce.asp

CONTACT: For additional information, contact Stephanie DeLano, Office of Environment, Environmental Science Bureau, 518-417-6686.