

MEMORANDUM

Subject: U.S. Coast Guard Procedures for
Adopting Lead Agency Environmental
Documents

From: Director, Office of Environmental Policy
Washington, D.C.

To: Regional Federal Highway Administrators,
Regions 1-10

Date: September 28, 1983

Reply to
Attn. of: HEV-11

The U.S. Coast Guard (USCG) on September 30, 1983, modified its procedures for adopting a lead agency's environmental document (copy attached). Although the USCG will now prepare a separate determination on our environmental document, it should not delay the permit process. The USCG will make its determination within the normal permit processing time.

There may be a few instances where the USCG will process a Federal Highway Administration (FHWA) categorical exclusion (CE) project with a finding of no significant impact (FONSI). This action reflects a slightly different philosophy between the two agencies but, again, it should not delay issuance of the permit. The USCG has assured us that if the supporting information for our CE classification is provided with the permit application it will have sufficient information upon which to make a FONSI determination. This information should be provided to the USCG in accordance with the USCG/FHWA Memorandum of Understanding dated May 6, 1981 (copy attached).

/Original Signed By/

Ali F. Sevin

2 Attachments

US COAST GUARD
MEMORANDUM

From: Commandant

To: Distribution

Subject: Policy Guidance on Adoption of a Lead Agency's NEPA Document;
change in

Ref: (a) COMDTINST M16475.1A
(b) 40 CFR 1500-1508
(c) COMDTINST M16590.5

1. On 28 July 1983, the Council on Environmental Quality (CEQ) published in the Federal Register additional clarifying guidance on their NEPA regulations, copy enclosed. This new guidance requires that we change our existing procedures on the adoption of lead agency environmental documents as follows:

a. Categorical Exclusions: The responsibility for determining whether or not a proposed bridge action meets the criteria of section 2-B-3.(f) of reference (a) rests solely with the Coast Guard. In those situations where the lead agency has determined that the total project is a Categorical Exclusion (CE) a Coast Guard CE determination (Enclosure (5) to reference (a)), must be prepared. This determination, in essence, documents that the project meets Coast Guard CE criteria, while the lead agency's CE supports the fact that there is no significant impact to the human environment. The lead agency's CE should be attached o the back of the Coast Guard prepared CE determination.

b. Findings Of No Significant Impact (FONSI): In bridge permit actions that involve a lead agency's Environmental Assessment (EA) and FONSI, the Coast Guard must prepare its own FONSI, using the format of Enclosure (4) to reference (a). the use of Enclosure (4) serves both as a statement adopting the lead agency's EA and as a "finding of No Significant Impact" for the Coast Guard. A separate adoption statement is not needed. The lead agency's EA and FONSI should be attached to the back of the Coast Guard prepared FONSI.

c. Environmental Impact Statement (EIS): The case file of proposed bridge permit actions that involve a lead agency's EIS, must contain a copy of the lead agency's Record of Decision (ROD) and a Coast Guard draft ROD. The Coast Guard draft ROD must be limited specifically to the bridge portion of the project and must be prepared in accordance with the provisions of section 1505.2 of reference (b). The case file must also contain an adoption statement signed by the appropriate official who has

been designated the authority to adopt EIS's. A suggested statement used to adopt an EIS is as follows: "After an independent review of the lead agency's Environmental Impact Statement, I have determined that the document adequately assesses the impacts of the bridge(s) and approaches and hereby adopt the bridge related portions of the Environmental Impact Statement."

2. Change 2 to reference (c) will include appropriate changes to reflect this new policy. Please contact me if you have any questions on any of the above adoption procedures.

/Original Signed By/

J. M. SEABROOKE
By direction

Enclosure

U.S. COAST GUARD
FINDING OF NO SIGNIFICANT IMPACT
FOR
(Title of proposed action)

This project has been thoroughly reviewed by the Coast Guard and it has been determined, by the undersigned, that this project will have no significant effect on the human environment.

This finding of no significant impact is based on the attached applicant pre-
pared environmental assessment (reference other environmental documents as appropriate) which has been independently valuated by the Coast Guard and determined to adequately and accurately discuss the environmental issues and impacts of the proposed project and provides sufficient evident and analysis for determining that an environmental impact statement is not required. The Coast Guard takes full responsibility for the accuracy, scope, and content of the attached environmental assessment.

Date	Environmental Reviewer*	Title/Position
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Date	Responsible Official	Title/Position
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*Signature of the Environmental Reviewer for the Bridge Administration Program may be of that program's reviewer.

U.S. COAST GUARD
CATEGORICAL EXCLUSION DETERMINATION
FOR
(Title of Proposed Project)

Brief, yet concise description of location and
the proposed action (1 or 2 paragraphs).

This action has been thoroughly reviewed by the Coast Guard and it has been determined, by the undersigned, to be categorically excluded from further environmental documentation, in accordance with Section 2.B.3. (indicate subsection) of COMDTINST M16475.1A, since implementation of this action will not result in any:

1. Significant impacts on the human environment;
2. Substantial controversy because of effect on the human environment;
3. Impacts which are more than minimal on properties protected under Section 4(f) of the DOT Act, and Section 106 of the Historic Preservation Act; or
4. Inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.

Date Preparer Title/Position

Date Environmental Reviewer Title/Position

Date Responsible Official Title/Position

*Signature of the Environmental Reviewer for the Bridge Administration Program may be that of the preparer's.

U.S. Coast Guard/Federal Highway Administration
Memorandum of Understanding on Coordinating the
Preparation and Processing of Environmental Documents

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to avoid unnecessary duplication of effort by the Coast Guard and the Federal Highway Administration (FHWA), both agencies of the Department of Transportation (DOT), in the preparation and processing of environmental documents pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(c)) and other Federal environmental statutes and orders for bridge projects requiring approvals of both the FHWA and Coast Guard. The NEPA requires the Secretary of Transportation to make explicit analyses of environmental consequences of proposed major Federal actions under DOT jurisdiction and prepare detailed statements which analyze and consider the impact of these proposed actions upon the environment. The procedures set forth in this MOU will be utilized to strengthen the early coordination between the Coast Guard and the FHWA prior to and during the development of the highway section and environmental processing.

II. Definitions

The definitions contained in the Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508) are applicable to this MOU as well as the following:

1. Bridge: The term "bridge and its approaches," as used in 33 CFR 114.05, should be defined in each case by applying proper engineering sense to the facts of the case. The term may be defined generally as including all work integral to the structure itself. For example, if a bridge deck's grade is the same as the grade of the highway approach to it, the point where the abutment terminates would be considered the limit of the bridge. In a case where the bridge deck is at a higher elevation than the approach highway leading up to it, with a change in grade required to reach that elevation, the point where a change in grade in the approach highway occurs would be considered the limit of the bridge. Other bridges, whether highway, railroad, industrial conveyors, pipelines, etc., excepting aerial transmission lines, which are reconstructed, removed, relocated, or otherwise involved in the Federal assistance project requiring approval of the location and plans by the Commandant, U.S. Coast Guard, are included in this definition.
2. Bridge Permit: The approval of location and plans of a

bridge, pursuant to the provisions of 33 U.S.C. 401, 491 et seq., 511 et seq., 525 et seq., and 535, and Acts of Congress authorizing the construction of bridges, including international bridges.

3. Coast Guard: This shall mean the Commandant of the Coast Guard; Chief, Office of Navigation, Chief, Bridge Administration Division; or Commander of a Coast Guard District to the extent of the authority delegated. However, throughout sections IV and V of this MOU, unless otherwise stated, Coast Guard shall mean the Commander of a Coast Guard District.
4. FHWA: This shall mean the Administrator, Federal Highway Administration; the Federal Highway Administrator; or Division Administrator (Division Engineer for Direct Federal highway projects) to the extent of the authority delegated. However, throughout sections IV and V of this MOU, unless otherwise stated, FHWA shall mean the Division Administrator.
5. Highway Agency (HA): The agency with the primary responsibility for initiating and carrying forward the planning, design, and construction of bridges and highways. For bridges and highways financed with Federal-aid highway funds, the HA will normally be the appropriate State highway department. For bridges and highways financed with other funds, such as National Forest, and National Park roads and highways, etc., the HA will be the appropriate Federal or State agency.
6. Federally Aided Highway Project: Highway and bridge projects constructed with the assistance of the FHWA-administered funds, including projects financed from funds transferred to the FHWA from other agencies.
7. Navigable Waters of the United States: (1) For purposes of bridge administration, "navigable waters of the United States" means the following unless specifically declared otherwise by Congress):
 - a. the territorial sea;
 - b. internal waters subject to tidal Influence; and
 - c. internal waters not subject to tidal influence, which
 - (1) are or have been used, or are or have been susceptible for use, by themselves or in connection with others, as highways for substantial interstate or foreign commerce, notwithstanding obstructions that require portages; or

- (2) a governmental or nongovernmental body having expertise in waterway improvement determines or has determined to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others, highways for substantial interstate or foreign commerce.

III. Lead Agency for Environmental Processes

Except as provided for in Section 144(h) of Title 23 U.S.C., the Coast Guard must approve (issue a permit for) the location and plans for highway bridges crossing navigable waters of the United States. A significant number of these bridges are constructed with the assistance of Federal funds administered by the FHWA.

The actions by the FHWA and Coast Guard require an evaluation under the terms of NEPA, as implemented by the CEQ Regulations (40 CFR 1500-1508), DOT Order 5610.IC, applicable parts of the operating agencies' directives (FHPM 7-7-2 and Commandant Instruction M 16475.1A). and other Federal environmental statutes and orders. The CEQ regulations strongly encourage that a single agency (lead agency) be designated to handle the NEPA responsibilities where related actions by several Federal agencies are to be taken. The lead agency, in such instances, assumes the responsibility for consultation with other agencies, coordinating necessary environmental studies and evaluations, and preparation of any NEPA-related determination or document for review by the cooperating Federal agencies prior to making it available for public review.

The Coast Guard and the FHWA agree that, when a highway section requires an action by both FHWA and Coast Guard, the FHWA will normally serve as the lead agency for the preparation and processing of environmental documents.

IV. Responsibility of the FHWA

- A. FHPM 7-7-2 defines three classes of actions which prescribe the level of documentation required in the NEPA process. These are:
 1. Class I (EIS's) - Actions that require an EIS.
 2. Class II (Categorical Exclusions) - Actions that do not individually or cumulatively have a significant effect on the environment.
 3. Class III (Environmental Assessments) - Actions in

which the significance of the impact on the environment is not clearly established. All actions that are not Class I or Class II are Class III. For these actions, an environmental assessment (EA) must be prepared culminating in a decision to prepare an EIS or a finding of no significant impact (FONSI).

The above documents shall demonstrate, where applicable, consideration of and compliance with the requirements of other Federal environmental statutes and orders, including but not limited to:

23 U.S.C. 138 and 49 U.S.C. 1653(f) (Section 4(f) of the Department of Transportation Act of 1966);

16 U.S.C. 461 et seq., Archeological and Historic Preservation Act and 23 U.S.C. 305;

16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

16 U.S.C., 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973;

33 U.S.C. 1251, et seq., Clean Water Act of 1977;

42 U.S.C. 300(f), et seq., Safe Drinking Water Act of 1974;

42 U.S.C. 4371, et seq., Environmental Quality Improvement Act of 1970;

42 U.S.C. 4601, et seq., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

42 U.S.C. 4901, et seq., Noise Control Act of 1972;

42 U.S.C. 7401, et seq., Clean Air Act;

42 U.S.C. 2000(d)-(d)4, Title VI of the Civil Rights Act of 1964;

Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, dated May 13, 1971, implemented by DOT Order 5650.1, dated November 20,

1972;

Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979;

Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.IA, dated August 24, 1978.

- B. It is the intent of this MOU that the data developed and the evaluation of impacts upon the human environment set forth in the appropriate environmental document will satisfy the requirements of both FHWA and the Coast Guard. In order to achieve this result, it is incumbent upon FHWA to initiate early and to maintain continuing coordination with the Coast Guard throughout the NEPA phase of project development. Accordingly, it is the responsibility of FHWA to take the following actions:
1. As the lead agency, FHWA shall be responsible for the preparation of the appropriate documentation for Class I, II, or III projects in accordance with the requirements of FHPM 7-7-2.
 2. The FHWA shall consult with the Coast Guard prior to determining that any project which may require a Coast Guard bridge permit is a Class I, II, or III action.
 3. For each project that may require a Coast Guard bridge permit and is to be processed as a Class I or Class III action, FHWA will request that the Coast Guard become a cooperating agency.
 4. For Class I projects, FHWA will continue to consult with the Coast Guard during the preparation of both the draft and final EIS.
 5. For Class II projects, FHWA will provide the Coast Guard with information which documents that a project is a categorical exclusion.
 6. For Class III projects, FHWA will consult with the Coast Guard during the preparation of both the environmental assessment, and if so determined, the FONSI.
 7. The FHWA will consult with the Coast Guard relative to the need for highway and Coast Guard public hearing opportunities and consider a joint public hearing where appropriate.

8. If FHWA determines, pursuant to Section 144(h) of Title 23 U.S.C., that a project is exempt from a Coast Guard permit, it shall so notify the Coast Guard of same if FHWA believes that sufficient navigation exists to require the establishment, maintenance, and operation of lights and signals as required under 14 U.S.C. 685.
9. When a difference of opinion arises between the FHWA Division Administrator and the Coast Guard District Commander relative to the proper class of action or adequacy of environmental documentation, the FHWA Division Administrator shall meet with the Coast Guard District Commander and attempt to resolve the issue. If the issue is not resolved, the FHWA Division Administrator shall so notify the FHWA Regional Administrator who, in turn, shall consult with the District Commander. If the issue is not resolved at the FHWA Regional Office level, the Regional Administrator shall refer it to the FHWA Associate Administrator for Right-of-Way and Environment for appropriate handling.
10. The FHWA will ensure that the environmental documentation submitted to the Coast Guard with the permit application is complete with respect to satisfying NEPA and other Federal environmental statutes and orders.

V. Responsibility of the Coast Guard

It is the responsibility of the Coast Guard to take the following actions:

1. The Coast Guard shall cooperate with and provide guidance to FHWA and the HA during the determinations of class of actions and in the preparation of appropriate environmental documentation relative to its areas of jurisdiction.
2. The Coast Guard will furnish names of waterway organizations to FHWA and the HA with whom consultation should be made during the development of environmental studies and to whom copies of the draft environmental documents should be sent for review.
3. Provided coordination has been accomplished in accordance with this MOU, the Coast Guard will ordinarily accept FHWA's environmental documentation as satisfactory compliance with NEPA for the purpose of processing the bridge permit application.
4. Where it is necessary for the Coast Guard to hold a hearing or public review of the navigational aspects of

the proposal, the Coast Guard notice will make reference to the approved FHWA environmental documentation. It is not the intent of the Coast Guard notice to invite review and comment on approved FHWA environmental documentation.

By/	/Original Signed By/	/Original Signed
Concur	<u>R. A. Barnhart</u>	Concur <u>J. B. Hayes</u>
_____	Federal Highway Administrator	Commandant, U.S.
Coast Guard		
Date	<u>April 27, 1981</u>	Date <u>May 6, 1981</u>
