

23 USC §326 CE Assignment MOU Monitoring Plan FHWA, Utah Division and the Utah Department of Transportation

FHWA Utah Division and UDOT SAFETEA-LU Section 6004 Categorical Exclusion Delegation Process & Monitoring Agreement

The FHWA and the State shall cooperate in monitoring performance pursuant to the Memorandum of Understanding (MOU), as signed on July 30, 2008, and each party shall modify its practices as needed to assure quality performance by the State and the FHWA. Monitoring by the FHWA and the State will include consideration of the technical competency and organizational capacity of the State, as well as the State's performance of its CE processing functions. Performance considerations will include, without limitation, the quality and consistency of the State's project determinations, adequacy and capability of the resources applied by the State, and the quality and consistency of the State's administration of its responsibilities under the MOU. The primary objective of Section 6004 Memorandum of Understanding monitoring plan is to determine whether the State is adequately performing the categorical exclusion (CE) decision-making role that, in the absence of the MOU, is carried out by the FHWA. A second purpose is to obtain information on the environmental results of the State's assumption of CE and other environmental responsibilities, so that the FHWA can assess the overall effectiveness of the CE assignment program. The FHWA can undertake monitoring efforts whenever the Division deems appropriate. Minimum frequencies are established by the applicable Section 6004 MOU (Stipulation IV(F)(5)-(6)).

STATE PERFORMANCE REQUIREMENTS

A. Processing Projects Assigned Under the MOU signed on June 30, 2008

1. **Applicability:** Under the June 30, 2008 MOU between FHWA and UDOT, any project that is listed in 23 CFR 771.117 (c) or 23 CFR 771.117 (d) that conforms to the provisions of 23 CFR 771.117(a) and after an assessment pursuant to 23 CFR 771.117(b) for unusual circumstances where the result is a determination that a CE classification is proper can be processed under the terms and conditions of the June 30, 2008 MOU.
2. **Preparation:** UDOT Region Environmental staff or consultants prepare the CE documentation using the ePM CE module. The record keeping should be thorough and complete and should include all appropriate correspondence, clearance letters, and determinations. These records may be retained in electronic or paper format. If retained as paper records, they should be bound by staple, 3 ring binder, or comb to make it easy to replace pages if needed.
3. **Mitigation Commitments:** Mitigation commitments are expected to be entered into the ePM Environmental Management System while preparing the CE. The completion of each commitment is to be assigned to a project phase and an individual must be identified who will be responsible for the implementation of the commitment.
4. **Review:** The documentation for each project proposed as a CE must be reviewed by a competent reviewer who is not the individual who prepared the documentation. A record of this review including who performed the review and the date it occurred must be recorded and included with the project documentation.

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5. **Approval:** The approval or determination that the proposed project is properly classified as a CE under the provisions of the MOU is made by the UDOT Region Environmental Manager. The name of the individual approving the CE, the date of the approval, and the statement that the approval was made according to the provisions of the MOU must be included with the project documentation.

6. **Archive & Records Retention:** The UDOT Region Environmental staff will provide a hard copy or a digital copy in Portable Document Format (pdf) of the completed CE document and all relevant clearance memos, determinations, correspondence and technical studies to UDOT Environmental Services staff. UDOT Environmental Services staff will: (1) digitally archive the CE document and all relevant documentation, (2) update the statewide list of CE's completed under the June 30, 2008 MOU and (3) report all completed CE projects on a quarterly basis to the FHWA Utah Division Office. The UDOT Environmental Services staff will keep a copy of all Federally funded CE documents completed under the June 30, 2008 MOU for a period of no less than 3 years from the signature date.

Once the Project Wise data management system becomes available, UDOT Environmental Services will archive all completed CE documents using this system.

If electronic signature ability becomes feasible for the CE documents, UDOT will electronically sign all CE documents.

Records will be available for inspection by FHWA at any time.

7. **UDOT Process Review:** UDOT Environmental Services staff will review Federally funded CE documents completed pursuant to the June 30, 2008 MOU at a frequency of no less than once every month to ensure that:
 - a. The projects were classified correctly under the June 30, 2008 MOU.
 - b. The ePM form was filled out correctly, signed and dated, all applicable mitigation commitments have been entered and assigned, and that the completion date was entered in ePM.
 - c. The purpose and need statements and descriptions are clearly written and accurately described.
 - d. The project files contain all relevant clearance memos, determinations, correspondence and technical studies.

If UDOT Environmental Services finds any classification errors per statement 7(a) during the Process Review, they will immediately notify the Region Environmental Manager and the FHWA Utah Division office and they will reclassify the project appropriately. Any 7(b), 7(c) and 7(d) errors that are found will be documented on the CE Quality Control Form. UDOT Environmental Services will then collaboratively work with the Region Environmental Manager to amend the CE so that the errors are corrected and identify ways to ensure the errors are not repeated on future projects.

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UDOT Environmental Services will maintain a CE Quality Control Form, which will be a record of the errors found during the Quality Control process and the actions taken to ensure the errors were corrected.

8. **4(f) Impacts:** If a Federally funded CE project that is processed under the June 30, 2008 MOU requires either a Programmatic 4(f) or an Individual 4(f) evaluation, UDOT Environmental Services must review and concur in writing with the Programmatic 4(f) or Individual 4(f) determinations prior to the approval of the CE document. If UDOT Environmental Services determines legal review is needed, UDOT will hire an attorney who will provide a legal sufficiency review of the 4(f) evaluation and determination.
9. **Endangered Species Act Section 7:** If a Federally funded CE project that is processed under the June 30, 2008 MOU involves a formal Endangered Species Act Section 7 consultation for a threatened or endangered species, UDOT Environmental Services must be involved with the consultation and concur in writing with the determination prior to the approval of the CE document.
10. **Native American Consultation:** Per Stipulation II (B) of the June 30, 2008 MOU, for any Federally funded CE project that is processed under the June 30, 2008 MOU that requires government-to-government consultation with Native American tribes as described in 36 CFR 800.16(m), UDOT Region Environmental staff will provide the FHWA Utah Division Office with the appropriate documentation and information necessary for the Native American consultation. The FHWA Utah Division Office will be responsible for conducting the Native American consultation. UDOT may assist FHWA in consultation according to the terms of any Native American consultation agreements executed with Federally-recognized Tribes.

B. Excluded projects: determination and documentation

1. **Applicability:** Under the June 30, 2008 MOU between FHWA and UDOT, any project that is not listed in 23 CFR 771.117 (c) or 23 CFR 771.117 (d) is excluded from assignment according to the provisions of the June 30, 2008 MOU and must be processed according to the procedures listed in this section and approved by FHWA.
2. **Preparation:**
 - a. *If the project involves the addition of through travel lanes:* UDOT Region Environmental staff will complete and submit the CE Exclusion Form to UDOT Environmental Services. UDOT Environmental Services will review the project to ensure that it can be processed as a CE III under the December 31, 2003 MOU between FHWA & UDOT. If UDOT Environmental Services concurs with the CE classification, the UDOT Region Environmental staff or consultants prepare the CE using the ePM CE module. The document should be thorough and complete and the project files should include all appropriate correspondence, clearance letters, determinations and other documentation. It is suggested to bind by staple, 3 ring binder, or comb to make it easy to replace pages if needed.
 - b. *If the project does not involve the addition of through travel lanes:* UDOT Region Environmental staff will complete and submit the CE Exclusion Form to UDOT Environmental Services. UDOT Environmental Services will review the CE Exclusion Form and forward the CE Exclusion Form to the FHWA Utah Division

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office if it concurs that the project would be appropriately classified as a CE. The FHWA Utah Division office will review the CE Exclusion Form and notify UDOT Environmental Services once it has determined whether the project can be classified as a CE. Once FHWA has concurred with the project classification as a CE, the Region Environmental staff or consultants will then prepare the CE using the ePM CE module. The document should be thorough and complete and the project files should include all appropriate correspondence, clearance letters, determinations and other documentation. It is suggested to bind by staple, 3 ring binder, or comb to make it easy to replace pages if needed.

3. **Mitigation Commitments:** Mitigation Commitments are expected to be entered into the ePM Environmental Management System while preparing the CE. The completion of each commitment is to be assigned to a phase phase and an individual must be identified who is responsible for the implementation of the commitment.
4. **Review:** The CE is reviewed, signed and dated by a competent reviewer who was not the preparer. Additionally, the Region Environmental Manager will review, sign and date the CE document on the line titled "Review/Concur".
5. **Approval:** The UDOT Region Environmental Manager will send three hard copies of the complete CE document to UDOT Environmental Services, who will review the document and send the CE document to the FHWA Utah Division office for final signature. The FHWA Area Engineer will review the CE document and sign and date as the Approver.
6. **Archive & Records Retention:** After the CE document has been signed, the FHWA Utah Division office will provide a final hard copy of the completed CE document and all relevant clearance memos, determinations, correspondence and technical studies to UDOT Environmental Services staff and an additional final hard copy to the UDOT Region Environmental Manager. UDOT Environmental Services staff will archive the CE document and all relevant documentation and keep a copy for a period of no less than 3 years from the signature date.

C. State Quality Control

UDOT Environmental Services staff will review Federally funded CE documents completed pursuant to the June 30, 2008 MOU at a frequency of no less than once every month to ensure that:

1. The projects were classified correctly under the June 30, 2008 MOU.
2. The ePM form was filled out correctly, signed and dated; all applicable mitigation commitments have been entered and assigned; and that the completion date was entered in ePM.
3. The purpose and need statements and descriptions are clearly written and accurately described.
4. The project files contain all relevant clearance memos, determinations, correspondence and technical studies.

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If UDOT Environmental Services finds any significant errors during the Process Review, they will notify the Region Environmental Manager and they will collaboratively correct the errors and identify ways to ensure the errors are not repeated on future projects.

UDOT Environmental Services will maintain the **UDOT CE Quality Control Form**, which will be a record of the significant errors found during the Quality Control process and the actions taken to ensure the errors were corrected.

D. June 30, 2008 MOU Performance Monitoring and Quality Assurance

1. Quarterly Submittal to FHWA of CE Determinations

UDOT Environmental Services will compile all the CE determinations that have occurred during the last calendar year quarter and submit to FHWA within 15 days of the Quarter ending. (Qtr 1 - April 15, Qtr 2 - July 15, Qtr 3 - October 15, Qtr 4 – January 15)

UDOT will use the Quarterly CE Determinations Report Template

2. State CE Performance Report

UDOT Environmental Services will compile and write a report summarizing UDOT's performance with the June 30, 2008 MOU. The report will summarize the results documented on the CE Quality Control form, identify areas where improvement is needed and what measures UDOT is taking to implement improvements. The report will include actions taken by UDOT that resulted from quality control efforts.

The report will be due at the conclusion of the 18th and 30th month from the start of the June 30, 2008 MOU. (January 1, 2010, July 1, 2011)

Following the submission of both reports, UDOT will schedule a follow up meeting with FHWA to discuss the reports, the State's performance of the June 30, 2008 MOU, and FHWA's monitoring activities.

3. Maintain Project Records

The UDOT Region Environmental staff will provide a hard copy or a digital copy (in .pdf format) of the completed CE document and all relevant clearance memos, determinations, correspondence and technical studies to UDOT Environmental Services staff. UDOT Environmental Services staff will digitally archive the CE document and all relevant documentation. The UDOT Environmental Services staff will keep a copy of all federally funded CE documents completed under the June 30, 2008 MOU for a period of no less than 3 years from the signature date. Once the Project Wise data management system becomes available, UDOT Environmental Services will archive all completed CE documents using this system.

If electronic signature ability becomes feasible for the CE documents, UDOT will electronically sign all CE documents.

Records will be available for inspection by FHWA at any time.

4. Quality & Timeliness Monitoring

The *FHWA Monitoring Reviews of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* guidance document lists six quality measures and one timeliness measure

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that will be evaluated once UDOT receives SAFETEA-LU Section 6004 delegation. The quality measures and timeliness measures are listed here:

a. Quality Measures

- i. CE decisions are appropriately and timely documented.
- ii. CE decisions are factually and legally supportable at the time the decision is made.
- iii. CE decision-making procedures comply with NEPA, 23 CFR 771.117, and the June 30, 2008 MOU.
- iv. UDOT has met staffing and quality control requirements of the MOU.
- v. UDOT has complied with other Federal and State legal requirements.
- vi. UDOT has complied with recordkeeping requirements.

b. Timeliness Measures

- i. The CE assignment reduces the time required for processing assigned CEs.

UDOT will use the **UDOT CE Quality Control Form** to monitor the quality measures listed above and the information recorded on the **Quarterly CE Determinations Report Template** to monitor the timeliness measure. As baseline information for the timeliness measure does not exist, UDOT will qualitatively evaluate the effects of the MOU's delegation on the CE process.

When requested by FHWA, UDOT will provide a summary report of the quality and timeliness measures to the FHWA Utah Division.

5. FHWA Data-Gathering & Monitoring

As suggested in the *FHWA Monitoring Reviews of SAFETEA-LU Section 6004 Categorical Exclusion Assignments* guidance document, FHWA may conduct the following monitoring activities:

- Evaluate projects assigned under the June 30, 2008 MOU; FHWA will spend more effort evaluating (d) list projects.
- Evaluate program level data on items specified in the June 30, 2008 MOU.
- Review the quarterly reports submitted by UDOT per MOU Stipulation IV(F).
- Confirm the CE process is operating in accordance with the MOU.
- Assess UDOT's staff capability.
- Randomly select CE projects processed under the MOU and review for appropriate documentation and performance.
- Conduct interviews with UDOT Project Managers and Environmental staff.
- Review agency and public complaints and UDOT's responses to complaints.
- Coordinate within the FHWA to identify any FHWA staff concerns about CE decisions.
- Conduct field reviews of selected MOU CE projects to assess whether the type and scope of impacts are consistent with the CE document.
- Review UDOT's gross data on CE, EA and EIS projects for any anomalies.
- Determine how well UDOT met the quality and timeliness measures.
- Additional follow-up on the above steps, as necessary.