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MEMORANDUM

TO: Environmental Staff
Department of Transportation & Public Facilities

DATE: May 1, 2019

FROM: Douglas Kolwaite
Acting Statewide Environmental Program
Manager

SUBJECT: Planning and
Environmental
Linkage (PEL)
Studies/NEPA

The Statewide Environmental Office (SEO) has been receiving class of action determination requests for Planning and Environmental Linkages (PEL) studies as well as copies of Expedited Categorical Exclusions developed in advance of a PEL study. PEL studies are discussed in the 327 MOU in section 3.2.1 as a USDOT responsibility that DOT&PF has assumed from FHWA. Until DOT&PF has developed a PEL Guidebook or stand-alone procedures the following interim guidance will be applied to a PEL study.

After careful consideration of the regulations,— we have concluded a PEL study does not require a NEPA approval prior to initiation, as a PEL study is the product of a planning effort to clarify transportation development issues and potential solutions in advance of the NEPA process. PEL studies are intended to streamline the process by allowing DOT&PF to engage with the public, develop or refine a purpose and need statement, and even perform preliminary screening of alternatives during the planning process – and allow this to be conducted in a way that would focus and expedite the NEPA process. Essentially, a properly conducted PEL study will allow some of the work in the planning phase to be carried forward into the NEPA process to reduce duplication and to refine the scope of the NEPA process.

PEL studies are generally pre-NEPA planning activities, and planning activities for federal highway projects have been exempted from NEPA since 1998 in furtherance of this streamlining measure (Implementing regulation are at 23 CFR 450.212). In 2012's MAP-21, and again in 2015's FAST Act, Congress enacted the statutory authority for lead agencies and cooperating agencies to incorporate by reference planning products, like PEL studies, into NEPA documents (23 USC 168(b)). PEL studies may be developed pursuant to other authorities, and for other purposes, but this interim guidance is solely focused on the development of a PEL study for possible incorporation in a federal-aid highway project's environmental document. An extensive guide to linking highway transportation planning and NEPA processes is located in Appendix A to FHWA's planning regulations at 23 CFR Part 450.

The regions adoption or incorporation by reference of a PEL study into an environmental document requires compliance with the ten statutory conditions of 23 USC 168(d). The Interim PEL Questionnaire (attached) will be used by the SEO to determine compliance with the Section 168 conditions and for the preparation of SEO's letter to the Regional Environmental Manager (REM)

documenting concurrence. A cooperating agency or other federal permitting agency must also concur that all Section 168 conditions have been met, if a PEL study is relied upon as the basis for the issuance of a project permit or approval. Until DOT&PF develops a PEL Guidebook, the REMs should use the following interim conditions for adopting or incorporating by reference a PEL study in a NEPA document:

During the planning process:

- a) The PEL study must be developed in consultation with the appropriate Federal and State resource agencies and any appropriate municipal government or Tribe.
- b) The PEL study must be developed using a broad consideration of transportation needs and potential effects (i.e, corridor or subarea analysis), and must consider the effects on the human and natural environment.
- c) The PEL study must be developed using a Public Involvement Plan (Preconstruction Manual Section 520.1) including a public notice that the resulting planning products may be adopted during a subsequent environmental review process.

During the environmental review process:

- a) The completed PEL study must be made available for public review and comment by members of the general public and Federal, State, local, and tribal governments that may have an interest in the proposed project.
- b) DOT&PF must include in its public notice a statement of any regulatory agency's intention to adopt or incorporate by reference the PEL study.
- c) DOT&PF must consider any resulting comments.

To ensure that the PEL study is appropriate for use in a NEPA document, several other conditions must also be met:

- a) There is no significant new information or new circumstance that has a reasonable likelihood of affecting the continued validity or appropriateness of the PEL study.
- b) The PEL study has a rational basis and is based on reliable and reasonably current data and reasonable and scientifically acceptable methodologies.
- c) The PEL study is documented in sufficient detail to support the decision or the results of the analysis and to meet requirements for use of the information in the environmental review process.
- e) The PEL study must be completed by the region within 5 years of the date of the environmental documents in which the information is adopted or incorporated by reference.

To expedite the SEO's review of a PEL study, a region must first complete the Interim PEL Questionnaire (attached) and submit the completed document to the SEO along with the PEL study being reviewed. The Interim PEL Questionnaire should be used as a guide throughout the planning process, and not just completed at the end of the process. The SEO will remain available to work with the regions during the development of PEL studies to ensure that the deliverables are effective in reducing duplication, and successful in refining the scope of the projects prior to initiating the NEPA

process.