

17 AAC 12.010 is repealed:

17 AAC 12.010. Purpose. Repealed. [THIS CHAPTER IMPLEMENTS THE RESPONSIBILITIES ASSIGNED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND ASSUMED BY THE DEPARTMENT FOR ENVIRONMENTAL REVIEW, CONSULTATION, OR OTHER ACTION REQUIRED UNDER 42 U.S.C. 4321 – 4370f (NATIONAL ENVIRONMENTAL POLICY ACT) FOR FEDERALLY FUNDED HIGHWAY PROJECTS. THE EXTENT OF THE DEPARTMENT'S ASSUMPTION OF RESPONSIBILITIES IS SPECIFICALLY STATED IN ONE OR MORE MEMORANDA OF UNDERSTANDING EXECUTED BETWEEN THE STATE OF ALASKA AND THE UNITED STATES UNDER 23 U.S.C. 326 AND 327 AND AS 44.42.300.] (Eff. 8/23/2009, Register 191; repealed ___/___/___, Register ____)

Authority: AS 44.42.030 AS 44.42.300

17 AAC 12.020 is repealed:

17 AAC 12.020. Implementation of 23 U.S.C. 326 (state assumption of responsibility for categorical exclusions). Repealed.

[(a) AS PROVIDED IN 23 U.S.C. 326, THE DEPARTMENT MAY ASSUME

(1) RESPONSIBILITY FOR DETERMINING WHETHER A PROPOSED FEDERALLY FUNDED HIGHWAY PROJECT IS CATEGORICALLY EXCLUDABLE FROM THE REQUIREMENTS OF 42 U.S.C. 4321 – 4370f (NATIONAL ENVIRONMENTAL POLICY ACT) BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION; AND

(2) ALL OR PART OF THE RESPONSIBILITIES FOR ENVIRONMENTAL REVIEW, CONSULTATION, OR OTHER RELATED ACTIONS REQUIRED UNDER FEDERAL LAWS AND EXECUTIVE ORDERS APPLICABLE TO CATEGORICALLY EXCLUDED PROJECTS, WITH THE EXCEPTION OF GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH INDIAN TRIBES.

(b) THE ASSUMPTION OF RESPONSIBILITIES DESCRIBED IN (a) OF THIS SECTION INCLUDES

(1) TAKING THE ROLE OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION FOR THE PURPOSES OF THE FEDERAL LAWS UNDER WHICH THE RESPONSIBILITIES ARE EXERCISED; AND

(2) ANY OTHER MATTERS REASONABLY NECESSARY FOR SUCCESSFUL EXERCISE OF THE ASSIGNED RESPONSIBILITIES.] (Eff. 8/23/2009, Register 191; repealed ___/___/___, Register ___)

Authority: AS 44.42.030 AS 44.42.300

17 AAC 12.030 is repealed:

17 AAC 12.030. Implementation of 23 U.S.C. 327 (NEPA pilot program). Repealed.

[(a) AS PROVIDED IN 23 U.S.C. 327, THE DEPARTMENT MAY ASSUME

(1) THE RESPONSIBILITIES OF THE SECRETARY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION WITH RESPECT TO ONE OR MORE FEDERALLY FUNDED HIGHWAY PROJECTS FOR COMPLIANCE WITH THE REQUIREMENTS OF 42 U.S.C. 4321 – 4370f (NATIONAL ENVIRONMENTAL POLICY ACT); AND

(2) ALL OR PART OF THE RESPONSIBILITIES FOR ENVIRONMENTAL REVIEW, CONSULTATION, OR OTHER ACTION REQUIRED UNDER ANY FEDERAL ENVIRONMENTAL LAW PERTAINING TO THE REVIEW OR APPROVAL OF A SPECIFIC PROJECT.

(b) THE ASSUMPTION OF RESPONSIBILITIES DESCRIBED IN (a) OF THIS SECTION INCLUDES

(1) TAKING THE ROLE OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION FOR THE PURPOSES OF THE FEDERAL LAWS UNDER WHICH THE RESPONSIBILITIES ARE EXERCISED; AND

(2) ANY OTHER MATTERS REASONABLY NECESSARY FOR SUCCESSFUL EXERCISE OF THE ASSIGNED RESPONSIBILITIES.] (Eff. 8/23/2009, Register 191; repealed ___/___/___, Register ___)

Authority: AS 44.42.030 AS 44.42.300

17 AAC 12.040 is repealed:

17 AAC 12.040. Adoption of federal NEPA requirements. Repealed.

[(a) FOR PURPOSES OF THIS CHAPTER, THE FOLLOWING SECTIONS OF 23 C.F.R. PART 771 (ENVIRONMENTAL IMPACT AND RELATED PROCEDURES) AND 23 C.F.R.

PART 774 (PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES) ARE ADOPTED BY REFERENCE AND ARE APPLICABLE TO THE DUTIES ASSUMED BY THE DEPARTMENT UNDER THIS CHAPTER EXCEPT AS MODIFIED BY (b) AND (c) OF THIS SECTION:

(1) 23 C.F.R. 771.107 (DEFINITIONS FOR 23 C.F.R. PART 771), REVISED AS OF APRIL 23, 2009;

(2) 23 C.F.R. 771.109 (APPLICABILITY AND RESPONSIBILITIES), REVISED AS OF APRIL 23, 2009;

(3) 23 C.F.R. 771.111 (EARLY COORDINATION, PUBLIC INVOLVEMENT AND PROJECT DEVELOPMENT), REVISED AS OF APRIL 23, 2009;

(4) 23 C.F.R. 771.113 (TIMING OF ADMINISTRATION ACTIVITIES), REVISED AS OF APRIL 23, 2009;

(5) 23 C.F.R. 771.115 (CLASSES OF ACTIONS), REVISED AS OF APRIL 23, 2009;

(6) 23 C.F.R. 771.117 (CATEGORICAL EXCLUSIONS), REVISED AS OF APRIL 23, 2009;

(7) 23 C.F.R. 771.119 (ENVIRONMENTAL ASSESSMENTS), REVISED AS OF APRIL 23, 2009;

(8) 23 C.F.R. 771.121 (FINDING OF NO SIGNIFICANT IMPACT), REVISED AS OF APRIL 23, 2009;

(9) 23 C.F.R. 771.123 (DRAFT ENVIRONMENTAL IMPACT STATEMENTS), REVISED AS OF APRIL 23, 2009;

(10) 23 C.F.R. 771.125 (FINAL ENVIRONMENTAL IMPACT STATEMENTS), REVISED AS OF APRIL 23, 2009;

(11) 23 C.F.R. 771.127 (RECORD OF DECISION), REVISED AS OF APRIL 23, 2009;

(12) 23 C.F.R. 771.129 (RE-EVALUATIONS), REVISED AS OF APRIL 23, 2009;

(13) 23 C.F.R. 771.130 (SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENTS), REVISED AS OF APRIL 23, 2009;

(14) 23 C.F.R. PART 774 (PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (49 U.S.C. 304(4)(f)), REVISED AS OF APRIL 11, 2008.

(b) THE FEDERAL REGULATIONS THAT ARE ADOPTED BY REFERENCE IN (a) OF THIS SECTION ARE REVISED AS FOLLOWS:

(1) THE FIRST SENTENCE OF 23 C.F.R. 771.107(b) IS REVISED TO READ: "A HIGHWAY PROJECT PROPOSED FOR FHWA FUNDING.";

(2) 23 C.F.R. 771.107(c) IS REVISED BY REPLACING "FHWA OR FTA" WITH "ADMINISTRATION";

(3) 23 C.F.R. 771.107(d) IS NOT ADOPTED;

(4) ONLY THE FIRST SENTENCE OF 23 C.F.R. 771.109(b) IS ADOPTED BY REFERENCE; THE REST OF THAT SUBSECTION IS NOT ADOPTED;

(5) 23 C.F.R. 771.109(c)(1) IS REVISED TO READ: "IF THE APPLICANT MEETS THE REQUIREMENTS OF 42 U.S.C. 4332(2)(D) (SEE. 102(2)(D) OF THE NATIONAL ENVIRONMENTAL POLICY ACT), THE APPLICANT SHALL PREPARE THE ENVIRONMENTAL IMPACT STATEMENT (EIS) AND OTHER ENVIRONMENTAL DOCUMENTS WITH THE ADMINISTRATION FURNISHING GUIDANCE, PARTICIPATING IN THE PREPARATION, AND INDEPENDENTLY EVALUATING THE DOCUMENT.";

(6) 23 C.F.R. 771.109(c)(2), (3), (4), (5), AND (6) ARE NOT ADOPTED;

(7) 23 C.F.R. 771.109(d) IS NOT ADOPTED;

(8) 23 C.F.R. 771.111(c) IS NOT ADOPTED;

(9) 23 C.F.R. 771.111(h)(1) IS REVISED TO READ: "BEFORE APPROVING PLANS FOR A FEDERAL-AID HIGHWAY PROJECT INVOLVING THE BYPASSING OF, OR GOING THROUGH, ANY CITY, TOWN, OR VILLAGE, EITHER INCORPORATED OR UNINCORPORATED, THE ADMINISTRATION WILL CERTIFY TO THE SECRETARY OF TRANSPORTATION THAT IT HAS HAD PUBLIC HEARINGS, OR HAS AFFORDED THE OPPORTUNITY FOR THOSE HEARINGS, AND HAS CONSIDERED THE ECONOMIC AND SOCIAL EFFECTS OF THAT LOCATION, ITS IMPACT ON THE ENVIRONMENT, AND ITS CONSISTENCY WITH THE GOALS AND OBJECTIVES OF SUCH URBAN PLANNING AS HAS BEEN PROMULGATED BY THE COMMUNITY. BEFORE APPROVING PLANS FOR AN INTERSTATE SYSTEM PROJECT, THE ADMINISTRATION WILL CERTIFY TO THE SECRETARY OF TRANSPORTATION THAT IT HAS HAD PUBLIC HEARINGS AT A CONVENIENT LOCATION, OR HAS AFFORDED THE OPPORTUNITY FOR THOSE HEARINGS, FOR THE PURPOSE OF ENABLING PERSONS IN RURAL AREAS THROUGH OR CONTIGUOUS TO WHOSE PROPERTY THE HIGHWAY WILL PASS TO EXPRESS ANY OBJECTIONS THEY MAY HAVE TO THE PROPOSED LOCATION OF THE HIGHWAY. THAT CERTIFICATION WILL BE ACCOMPANIED BY A REPORT THAT INDICATES THE CONSIDERATION GIVEN TO THE ECONOMIC, SOCIAL, ENVIRONMENTAL, AND OTHER EFFECTS OF

THE PLAN OR HIGHWAY LOCATION OR DESIGN AND VARIOUS ALTERNATIVES THAT WERE RAISED DURING THE HEARING OR THAT WERE OTHERWISE CONSIDERED. THE ADMINISTRATION WILL PROVIDE PUBLIC INVOLVEMENT OPPORTUNITIES THAT ARE EQUIVALENT TO THOSE FOUND IN 40 C.F.R. PARTS 1500 - 1508."

(10) 23 C.F.R. 771.111(h)(2)(iii) IS REVISED BY REPLACING "STATE HIGHWAY AGENCY" WITH "APPLICANT," AND BY REPLACING "FHWA" WITH "ADMINISTRATION";

(11) 23 C.F.R. 771.111(h)(2)(vi) IS REVISED BY REPLACING "FHWA" WITH "ADMINISTRATION";

(12) 23 C.F.R. 771.111(h)(3) IS REVISED BY REPLACING "FHWA" WITH "ADMINISTRATION," AND BY REPLACING "STATE HIGHWAY AGENCY" WITH "APPLICANT";

(13) 23 C.F.R. 771.111(h)(4), (i), AND (j) ARE NOT ADOPTED;

(14) IN THE THIRD SENTENCE OF 23 C.F.R. 771.113(a), THE PHRASE "OR ROLLING STOCK" IS NOT ADOPTED;

(15) 23 C.F.R. 771.113(b), (c), AND (d) ARE NOT ADOPTED;

(16) 23 C.F.R. 771.117(c)(17), (18), AND (19) ARE NOT ADOPTED;

(17) 23 C.F.R. 771.117(d)(8), (9), (10), AND (11) ARE NOT ADOPTED;

(18) 23 C.F.R. 771.117(e) IS NOT ADOPTED;

(19) 23 C.F.R. 771.121(c) IS REVISED TO READ: "(c) IF A FEDERAL AGENCY HAS ISSUED A FINDING OF NO SIGNIFICANT IMPACT (FONSI) ON AN ACTION THAT INCLUDES AN ELEMENT PROPOSED FOR FEDERAL FUNDING, THE ADMINISTRATION WILL EVALUATE THE FEDERAL AGENCY'S FONSI. IF THE ADMINISTRATION DETERMINES THAT THIS ELEMENT OF THE PROJECT AND ITS ENVIRONMENTAL IMPACTS HAVE BEEN ADEQUATELY IDENTIFIED AND ASSESSED, AND CONCURS IN THE DECISION TO ISSUE A FONSI, THE ADMINISTRATION WILL ISSUE ITS OWN FONSI INCORPORATING THE FEDERAL AGENCY'S FONSI. IF ENVIRONMENTAL ISSUES HAVE NOT BEEN ADEQUATELY IDENTIFIED AND ASSESSED, THE ADMINISTRATION WILL REQUIRE APPROPRIATE ENVIRONMENTAL STUDIES.";

(20) 23 C.F.R. 771.123(b) IS REVISED TO READ: "(b) AFTER PUBLICATION OF THE NOTICE OF INTENT, THE APPLICANT, IN COOPERATION WITH THE ADMINISTRATION, WILL BEGIN A SCOPING PROCESS. THE SCOPING PROCESS WILL BE USED TO IDENTIFY THE RANGE OF ALTERNATIVES AND IMPACTS AND

THE SIGNIFICANT ISSUES TO BE ADDRESSED IN THE ENVIRONMENTAL IMPACT STATEMENT (EIS) AND TO ACHIEVE THE OTHER OBJECTIVES OF 40 C.F.R. 1501.7. SCOPING IS NORMALLY ACHIEVED THROUGH PUBLIC AND AGENCY INVOLVEMENT PROCEDURES REQUIRED BY 23 C.F.R. 771.111. IF A SCOPING MEETING IS TO BE HELD, IT WILL BE ANNOUNCED IN THE ADMINISTRATION'S NOTICE OF INTENT AND THE APPLICANT'S NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION MADE UNDER (a) OF THIS SECTION.";

(21) THE FIRST SENTENCE OF 23 C.F.R. 771.123(c) IS REVISED TO READ: "THE DRAFT EIS SHALL BE PREPARED BY THE APPLICANT WITH APPROPRIATE GUIDANCE AND PARTICIPATION BY THE ADMINISTRATION;"

(22) 23 C.F.R. 771.123(d) IS REVISED TO READ: "THE APPLICANT MAY SELECT A CONSULTANT TO ASSIST IN THE PREPARATION OF AN EIS IN ACCORDANCE WITH AS 36.30 (STATE PROCUREMENT CODE).";

(23) THE FIRST SENTENCE IN 23 C.F.R. 771.123(f) IS REVISED TO READ: "THE APPLICANT SHALL BE RESPONSIBLE FOR PRINTING THE EIS.";

(24) 23 C.F.R. 771.123(h) IS REVISED TO READ: "THE PUBLIC HEARING REQUIREMENTS ARE AS DESCRIBED IN 23 C.F.R. 771.111(h). WHENEVER A PUBLIC HEARING IS HELD, THE DRAFT EIS MUST BE AVAILABLE AT THE PUBLIC HEARING AND FOR A MINIMUM OF 15 DAYS IN ADVANCE OF THE PUBLIC HEARING. THE AVAILABILITY OF THE DRAFT EIS SHALL BE MENTIONED, AND PUBLIC COMMENTS REQUESTED, IN ANY PUBLIC HEARING NOTICE AND AT ANY PUBLIC HEARING PRESENTATION. IF A PUBLIC HEARING IS NOT HELD, A NOTICE SHALL BE PLACED IN A NEWSPAPER OF GENERAL CIRCULATION SIMILAR TO A PUBLIC HEARING NOTICE ADVISING WHERE THE DRAFT EIS IS AVAILABLE FOR REVIEW, HOW COPIES MAY BE OBTAINED, AND WHERE THE COMMENTS SHOULD BE SENT.";

(25) 23 C.F.R. 771.123(j) IS NOT ADOPTED;

(26) THE FIRST SENTENCE OF 23 C.F.R. 771.125(a)(1) IS REVISED TO READ: "AFTER CIRCULATION OF A DRAFT ENVIRONMENTAL IMPACT STATEMENT (EIS) AND CONSIDERATION OF COMMENTS RECEIVED, A FINAL EIS SHALL BE PREPARED BY THE APPLICANT WITH APPROPRIATE GUIDANCE AND PARTICIPATION BY THE ADMINISTRATION.";

(27) 23 C.F.R. 771.125(d) AND (e) ARE NOT ADOPTED;

(28) 23 C.F.R. 771.125(g) IS REVISED BY REPLACING "IN LOCAL NEWSPAPERS" WITH "IN A NEWSPAPER OF GENERAL CIRCULATION";

(29) 23 C.F.R. 771.130(e) IS NOT ADOPTED;

(30) THE LEAD-IN LANGUAGE OF 23 C.F.R. 774.15(e) IS REVISED TO READ: "A CONSTRUCTIVE USE OCCURS WHEN";

(31) THE LEAD-IN LANGUAGE OF 23 C.F.R. 774.15(f) IS REVISED TO READ: "A CONSTRUCTIVE USE DOES NOT OCCUR WHEN."

(c) UNLESS THE CONTEXT IN WHICH A TERM IS USED CLEARLY REQUIRES A DIFFERENT MEANING, TERMS IN THE PROVISIONS ADOPTED BY REFERENCE IN THIS SECTION HAVE THE FOLLOWING MEANINGS:

(1) "ADMINISTRATION" MEANS THE COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES AND OTHER POSITIONS WITHIN THE DEPARTMENT THAT HAVE BEEN DELEGATED AUTHORITY BY THE COMMISSIONER TO APPROVE ENVIRONMENTAL DOCUMENTS;

(2) "APPLICANT" MEANS AN ORGANIZATIONAL UNIT WITHIN THE DEPARTMENT THAT DEVELOPS AND MANAGES FEDERALLY FUNDED HIGHWAY PROJECTS;

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES;

(4) "HEADQUARTERS" MEANS THE OFFICE OF THE COMMISSIONER WITHIN THE DEPARTMENT;

(5) "SECRETARY OF TRANSPORTATION" MEANS THE SECRETARY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION.] (Eff. 8/23/2009, Register 191; repealed ___/___/___, Register ____)

Authority: AS 44.42.030 AS 44.42.300

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