

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration**

[FHWA Docket No. 96-42]

Nationwide Programmatic Agreement for Transportation Enhancement Activities**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed nationwide programmatic agreement among the FHWA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (SHPO); request for comments.

SUMMARY: The purpose of this document is to propose, pursuant to § 316(2) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568), a nationwide programmatic agreement among the FHWA, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. Section 316(2) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914). The proposed agreement would fulfill that requirement. The FHWA has consulted with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers in developing the proposed nationwide programmatic agreement. The FHWA requests comments on the proposed agreement.

DATES: Comments should be received by October 16, 1996.**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 96-42, Federal Highway Administration, Room 4232, HCC-10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Eberle, FHWA Historic Preservation Officer, Office of Environment and Planning, HEP-40, (202) 366-2060, or Mr. Brett Gainer, Attorney-Advisor, Office of the Chief Counsel, HCC-30, (202) 366-1372,

FHWA. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The ISTEA authorized approximately \$3 billion for transportation enhancement activities. These activities span a range of nontraditional transportation projects, including historic preservation activities with a direct relationship to the intermodal transportation system. Since the enactment of the ISTEA, approximately one quarter of the funds expended on transportation enhancement activities have been used to improve over 1100 historic properties. The historic preservation enhancements have also created and improved a wider range of partnerships among State transportation agencies, project sponsors (including States, cities, counties, historic preservation societies, and private owners), and historic preservation organizations like the National Trust for Historic Preservation. The development of such partnerships is important as the Nation looks toward improving the Intermodal system to meet the needs of the 21st century while respecting, preserving, and enhancing its historic framework, the fabric of our Nation, in which it operates.

The development of a nationwide programmatic agreement will permit State transportation agencies to expedite their enhancement activities by activating an existing nationwide review process. This programmatic agreement is based on operational agreements that have been developed in individual States by the FHWA Division offices to speed reviews and reduce paperwork requirements.

The FHWA Administrator would sign this nationwide programmatic agreement on behalf of the FHWA. Individual States may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. The FHWA Division Administrator will be the agency official with responsibility for ensuring that the agreement is carried out.

This programmatic agreement is not mandatory; States do not have to adopt it for their enhancements projects. Many States have already developed agreements that work for them. Some may wish to adapt the approach conveyed in this nationwide programmatic and tailor it for their specific program needs through further consultation with the SHPO, the FHWA, and the ACHP. The nationwide programmatic agreement offers, though,

a quick, easy way to benefit from the work of historic preservation and transportation experts to expedite the transportation enhancement activity effort by encouraging local coordination and public participation and reducing the need for project-by-project coordination with out-of-State groups.

Text of the Nationwide Programmatic Agreement

In order to facilitate the implementation of Transportation Enhancement Activities, the Federal Highway Administration (FHWA), the National Conference of State Historic Preservation Officers (SHPO), and the Advisory Council on Historic Preservation (ACHP) agree that:

Whereas, Section 316(2) (23 U.S.C. 133(e)(5)(B)) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities; and

Whereas, Section 1007(a) (23 U.S.C. 133(b)(8)) of the ISTEA authorizes the expenditure of Federal Surface Transportation Program funds for transportation enhancement activities; and

Whereas, Section 1007(c) (23 U.S.C. 101(a)) of ISTEA defines the term "transportation enhancement activities" to include a variety of project categories that can be beneficial to the preservation of historic properties; and

Whereas, the FHWA has determined that transportation enhancement activities may have effects upon properties included in or eligible for the National Register of Historic Places and has consulted with the ACHP, and the National Conference of SHPOs pursuant to 36 CFR 800.13 of the regulations implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

Whereas, the signatories to this agreement desire to expedite the necessary historic preservation review for transportation enhancement activities beneficial to historic preservation and thereby encourage the use of transportation enhancement funds for historic preservation purposes; and

Whereas, the signatories to this agreement recognize that although most projects advanced as transportation enhancement activities should benefit historic properties, the State Transportation Agency (STA) shall make known any findings regarding effects to historic properties through its normal public participation process;

Now, therefore, the FHWA, the ACHP, and the National Conference of SHPOs, pursuant to § 316(2) of the National Highway System Designation Act of 1995, agree that transportation enhancement activities shall be implemented in accordance with the following stipulations to satisfy the FHWA's section 106 responsibilities for all individual undertakings of transportation enhancement activities which may affect historic properties in any State where this programmatic agreement is activated. The STA may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. Any STA that activates this agreement and implements these terms is hereby deemed to have met the requirements of 36 CFR 800 governing State processes for performing § 106 activities.

Stipulations

The FHWA shall ensure that the following measures are carried out:

I. Expediting the Processing of the Following Categories of Transportation Enhancement Activities:

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including conversion and use for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archeological planning and research.
10. Mitigation of water pollution due to highway runoff.

II. Identifying and Evaluating Historic Properties

A. The STA will be responsible for identifying and evaluating all historic properties within each activity's area of potential effect, and evaluating eligibility for the National Register of Historic Places, in consultation with the individual State Historic Preservation Officer (SHPO), following the procedures set out in 36 CFR 800.4.

B. The STA may encourage or require project sponsors to include historic property documentation or survey results as part of the transportation

enhancement activity application, in consultation with the SHPO.

III. Determining Effect on Historic Properties

The STA will assess the effects of the proposed transportation enhancement activities on historic properties by applying the Criteria of Effect and Adverse Effect (36 CFR 800.9). The STA will ensure that the SHPO is provided adequate documentation to review the STA's effect determination. The SHPO will promptly inform the STA if more information is reasonably necessary to make its determination.

A. No Effect

If the STA determines that the undertaking will have no effect on historic properties, it will notify the SHPO in writing. The SHPO will review this determination and provide written comments to the STA within 15 days after receipt of the STA's finding and adequate documentation. If the SHPO concurs with the STA's no effect determination, or fails to provide comments within 15 days, the undertaking may proceed as planned. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no effect on historic properties or shall apply the Criteria of Adverse Effect and continue the review of the project pursuant to Stipulation III.B. of this agreement.

B. No Adverse Effect and Adverse Effect

1. If the STA determines that the undertaking will have no adverse effect on historic property, it will notify the SHPO in writing. The SHPO shall review this determination and provide written comments to the STA within 30 days after receipt of the STA's finding and adequate documentation.

a. If the SHPO concurs with the STA's no adverse effect determination or fails to provide comments within 30 days, the STA shall document that finding, which shall be available for public inspection, and proceed with the activity as planned without further review by the ACHP.

b. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no adverse effect on historic properties or shall proceed in accordance with Stipulation III.B.2. or III.B.3.

2. If the STA and the SHPO cannot agree that the proposed transportation

enhancement activity will have no adverse effect, or if they agree there is an adverse effect, then the STA shall notify the FHWA and the FHWA shall complete the section 106 process in accordance with 36 CFR 800.5 and 800.6, unless stipulation III.B.3. applies.

3. Transportation enhancement activities may advance without further comment from the ACHP, provided that the FHWA and the SHPO concur with the STA that: (a) the benefits to historic property(ies) outweigh any minor adverse effects (e.g., when a proposed rehabilitation substantially meets the Secretary of the Interior's Standards for Preservation Projects); and that (b) agreed upon measures will be implemented to mitigate those effects (e.g., appropriate recordation measures).

IV. Amending This Programmatic Agreement, if Requested

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accordance with 36 CFR 800.13. No amended agreement shall take effect until it has been executed by all parties and the STA has been duly notified.

V. Processing of Any Public Objections

If at any time during the implementation of the measures contained in this Agreement, an objection to any such measure or its manner of implementation should be raised by an interested person, as that term is defined at 36 CFR 800.1(c)(2), the FHWA shall consult with the objecting party, the SHPO, and, as needed, the ACHP to resolve the objection. In light of the ACHP's views, the FHWA should reconsider the finding. However, an objection by the public does not require the FHWA to suspend action on an undertaking. If the objection concerns the eligibility of a property for the National Register, the FHWA may refer the matter to the Keeper of the National Register, if it considers referral appropriate.

VI. Resolving Disputes Among Parties

Should any party to this Agreement object within 30 days to any action pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all relevant documentation to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

A. Provide the FHWA with recommendations, which the FHWA

will take into account in reaching a final decision regarding the dispute; or

B. Notify the FHWA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VII. Monitoring Transportation Enhancement Activities

The SHPO and the ACHP may monitor any activities carried out pursuant to this Agreement, and the ACHP will review such activity if so requested. The FHWA will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

VIII. Terminating This Programmatic Agreement

Any party to this Programmatic Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will

consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IX. Establishing Duration of This Programmatic Agreement

This Programmatic Agreement will continue in full force until such time that funds for transportation enhancement activities are no longer authorized.

X. Submitting a Biennial Report

The STA shall provide the FHWA, the SHPO, and the ACHP with a biennial report summarizing the actions taken over the prior two calendar years to implement the terms of this Programmatic Agreement and recommending any actions or revisions which should be considered by the parties. The deadline for submission of the report is March 31 or the last work day of March, if earlier, of even years commencing with 1998.

XI. Failing To Comply With This Programmatic Agreement

In the event the FHWA does not carry out the terms of this Agreement, the FHWA will comply with 36 CFR 800.4

through 800.6 with regard to individual undertakings covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the FHWA has afforded the Council a reasonable opportunity to comment on its Transportation Enhancement Program and its effects on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

Executive Director

FEDERAL HIGHWAY ADMINISTRATION

By: _____

Date: _____

Administrator

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: _____

Date: _____

Executive Director

Authority: 23 U.S.C. 101(a), 133(b)(8), 133(e)(5)(B), 315; 49 CFR 1.48(b).

Issued on: September 9, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96-23674 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-22-P