



NPS Instructions for Developing Memoranda of Agreement (MOA) for Earmark Projects in SAFETEA-LU (Final DRAFT 4-12-07)

Why?

In SAFETEA-LU, funding for National Park Service (NPS) earmark projects in several SAFETEA-LU programs was included in State DOT allocations, rather than being administered by the Federal Highway Administration (FHWA). Under these circumstances the earmarks are technically State funding. They are subject to laws governing both FHWA (23 U.S.C. 132, which is attached) and the Park Service (16 U.S.C. Sections 1-3), which require that funds provided by state and local agencies be transferred only under agreement between the grantor and grantee. The model agreements attached have been designed to easily respond to this requirement and to be modified to fit the individual situation, including unique state information needs.

When Needed?

If the project is included is one of the following SAFETEA-LU programs, an MOA between the NPS and state is needed: Section 1934, 1702, and Discretionary Bridge and Surface Transportation Projects. States may elect to have FHWA withdraw the funds from the State transportation agency and make them available to the NPS. This is often due to state procurement law(s) that may conflict with the FAR. In these cases, the FHWA Division Administrator should be a signatory, as well. States have several options on when they transfer funds and whether this is done annually. A few states have provided the 20 percent match, but most earmarks will require an NPS or partner match. State funding also is subject to Congressionally directed reductions that have been averaging 15 percent per year; SAFETEA-LU earmarks are subject to these reductions. These items will need to be addressed in the agreement and are included in the model form.

When Not Needed?

If the project is a Public Lands Discretionary (PLHD) earmark, you will not need an MOA; FHWA has a separate application that must be filled out even when funds have been designated for a PLHD earmark in an appropriations bill. Applications normally are taken shortly after the bill is enacted. Please contact Mr. Larry Beidel on 202-366-4653 or Mr. Aron Reif on 202-366-9489 for information.

What Else?

1. Earmark funds are transferred through the NPS Washington Office (WASO) to the pertinent region. In addition to the MOA, the WASO Budget Office requires a spending plan (in accordance with line item construction procedures) for funds each time funds are transferred.
2. States may have specific requirements that necessitate other information or forms in developing agreements. Most states have a Federal Aid manager in their Finance office, who can help with these matters.

How?

Instructions follow for both the Master MOA with the state and sub-agreement for individual projects, when more than one park in a state has an earmark(s):

1. Per agreement with the FHWA headquarters, when the FHWA will be the conduit for the funds (i.e. States request direct transfer of funds to NPS from Infrastructure) or when FHWA will be developing these projects for NPS through Federal Lands Highways, FHWA may also be a party to the MOA. The NPS Regional Director will sign the MOA for NPS and an authorized NPS Agreements Technical Representative must be identified under key officials;
2. The project sub-agreement will be a separate document in States where there are earmarks for more than one park. The sub-agreement describes the particulars of that project and is important to ensuring that the schedule for transferring funds is agreed to by both parties. NPS signatory level is the Park Superintendent and the project manager. Where there is a single project in a State, the two agreements can be combined, and the Park and project manager should be added as signatories to the MOA;
3. Earmark funds are technically reimbursable funds, but procedures have been worked out with FHWA headquarters to manage the flow of funds in recognition of NPS' limitation on spending money up front. This issue may be raised by the State DOT in your discussions. If the State is to give the funds directly to the NPS, rather than through FHWA, they must be on a cash basis, with the State applying to FHWA for reimbursement as NPS provides documentation of work completed.
4. A sample MOA and sub-agreement are available and are meant as guides in recognition that each project has its own unique needs, as do many states. The basic requirements of both NPS and FHWA, however, are reflected in these documents to insure proper transfer of funds. For example, there are prompts to include the "demo id" numbers, which FHWA's Budget Office requires for transfer of funds. Demo id numbers are provided by the state DOT.
5. With the substantial increase in the number of earmarks, WASO now views these projects as part of a program with all funds to be transferred from FHWA or the State through WASO.
6. Given the variability of these projects questions may come up. The Regional FLHP Coordinators should be able to answer most questions or know who can. Another resource is the WASO coordinator for earmarks and the Authorized Agreements Technical Representative, Jim Evans, who can be reached at 202-513-7021.
7. As an electronic form, just type in the shaded section of the MOA and the shading will disappear.

Attachment A

Section 132: Payments on Federal-aid projects undertaken by a Federal agency

(a) In General.--In a case in which a proposed Federal-aid project is to be undertaken by a Federal agency in accordance with an agreement between a State and the Federal agency, the State may--

- (1) direct the Secretary to transfer the funds for the Federal share of the project directly to the Federal agency; or
- (2) make such deposit with, or payment to, the Federal agency as is required to meet the obligation of the State under the agreement for the work undertaken or to be undertaken by the Federal agency.

(b) Reimbursement.--On execution with a State of a project agreement described in subsection (a), the Secretary may reimburse the State, using any available funds, for the estimated Federal share under this title of the obligation of the State deposited or paid under subsection (a)(2). . .

For a copy of SAFETEA-LU, please see: www.FHWA.dot.gov. Title 23 U.S.C. with the changes of SAFETEA-LU is still in draft and not yet available on the web. (January 8, 2007). All Regional FLHP Coordinators will receive a copy of Title 23, when it is available.