

NEPA Assignment

Surface Transportation Project Delivery Program

*Presentation to MPO's, State and Federal Agencies
December 2017*




NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

Overview

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NEPA Assignment Overview



What is NEPA Assignment?

- Formal assignment of FHWA's NEPA responsibilities to a State
 - All NEPA classes of action – CEs, EAs and EISs
 - All environmental laws, rules, and orders
- NDOT will be the lead Federal Agency on all federal-aid projects for environmental decision-making
- NDOT is legally responsible and liable for compliance

NEPA Assignment does not change any current legal requirements. There are no shortcuts!

NEPA Classes of Action

Categorical Exclusion (CE) (23 USC 326)	Environmental Assessment (EA) & Environmental Impact Statement (EIS) (23 USC 327)
95% of NDOT's program	5% EAs, limited EISs
"Typical" NDOT project (<i>asset preservation, maintenance work, fewer impacts to resources, ROW</i>)	More complicated projects (<i>new lanes, new alignment, lots of ROW acquisition, potential public controversy</i>)
Shorter project delivery time	Extensive coordination, review, and documentation requirements
Process in Place	Requires new SOP and Guidance

NDOT has had responsibility for certain CE documents by programmatic agreement with FHWA since 2015.

NEPA Assignment Options

23 USC § 326 Categorical Exclusions (CEs ONLY)	23 USC § 327 Full Program (CEs, EAs, & EISs)
Demonstrate Readiness – NDOT already responsible for approving ≈ 80% of CEs	Demonstrate Readiness – bigger, more diverse responsibilities
Less risk exposure (not in Federal Register)	Greater risk exposure
Faster implementation	Longer Implementation
No application	Formal application with public comment period
MOU (3 years) – signed by Division Administrator	MOU (5 years) – signed by Agency Administrator
Self assessment reporting	Self assessment reporting
Monitoring reviews – performed by NE Division	Audit reviews – HQ
No performance measures required	Report on specific performance measures

Limitations of NEPA Assignment

- The MOU defines the range of project actions and environmental responsibilities the State assumes
- FHWA retains the following:
 - Engineering decisions (*such as Interchange Justification Reports*)
 - Project level air quality conformity determinations
 - Government-to-Government Tribal consultation
 - USDOT responsibilities for statewide and metropolitan planning
 - Projects that cross state lines



Exclusions from MOU

- Projects that are not designed and constructed by NDOT
- Direct recipient FAHP projects
 - Recreational Trails Program
 - Grants (TIGER, FASTLANE)
 - Tribal projects
- Specific projects designated in MOU to remain with FHWA



NDOT's Approach



What has already happened?

- Built support of Innovation Task Force, Highway Commission
 - Passed New Legislation, LB271 (*April 2017*)
 - Kick-Off Meeting (*June 2017*)
 - Readiness Assessment (*August 2017*)
 - Interagency Kick-Off Meeting (*August 2017*)
 - NDOT/FHWA Workshop (*October 2017*)
 - Decision on Assignment Option (*November 2017*)
 - Staff Changes (*2017*)
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NDOT's Pathway Decision


- NDOT will seek both CE Assignment and the Full NEPA Program as separate, but simultaneous efforts.
- MOU for CE Assignment first, followed by formal application for Full Program Assignment
 - Quickly assume responsibility for majority of program
 - Gain efficiencies for these projects, resulting in savings for State and Local projects



CE Assignment Requirements



CE Assignment Requirements

- Public and Agency Outreach
 - Guidance, Manuals, PAs will be changed to reflect that NDOT has assumed FHWA's responsibilities
 - Draft MOU ⇒ Public Comment ⇒ Execute MOU
 - Other MOU commitments:
 - Financial Assurance
 - Maintain detailed files, records and make them available to FHWA
 - Conduct regular self assessments and continuous QA/QC on all actions
 - Ensure professional and experienced staff to meet the needs and expectations of CE Assignment
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Anticipated Changes



Improvements at NDOT

- This is an Agency-wide effort!
- Staffing Additions
- Improved Documentation of Documentation
 - Record retention
 - Record how and why decision are made
 - Ensure actions are tracked and documented
 - Complete and update existing Guidance, Manuals, and SOPs



Improvements at NDOT

- Quality Assurance and Quality Control
 - Must ensure the completeness and accuracy of all environmental decisions
 - Must conduct regular self-assessments
 - Active tracking and implementation of corrective actions
- Develop Training Program
 - Internal and External
 - Opportunities for Agency and Consultant participation



How will this change the process?

- Resource Agencies & MPOs may not see much change – NDOT already handles the program on a day-to-day basis
- Update existing Programmatic Agreements
 - Cover Letter with Agency signature
 - Describe new roles and responsibilities
- Incorporate and develop conflict/escalation procedures – FHWA will no longer serve as intermediary

All environmental requirements and commitments will be adhered to, just as they are today.



How will this change the process?


How might the process change as we work with your Agency or MPO?



How will this impact FHWA?

- FHWA retains oversight responsibilities and will provide:
 - Training
 - Program Technical Assistance and policy interpretation
 - Monitoring Reviews of NDOT processing and decision-making at specified intervals
 - Process and Program reviews
 - Reports to Congress
- FHWA cannot assist or help NDOT with project specific decision-making on environmental matters


Next Steps & Timeline

- ✓ Limited waiver of sovereign immunity
 - ✓ Identify desired scope of Assignment
 - Outreach – Listen and learn
 - Update existing Documentation, Programmatic Agreements
 - Prepare MOU
 - Train and implement
 - **MOU executed by Spring 2018**
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Full NEPA Assignment Goal



Full NEPA Assignment Goal

- There is overlap in effort, outreach will continue
 - Immediately proceed into Full Program requirements
 - Legal Sufficiency Review and Audit Procedures & Training
 - Establish Performance Measures
 - Update and review remaining policies and documentation to reflect full program responsibilities
 - Formal Application – Goal to submit in fall 2018
 - MOU goal in spring 2019
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How can your Agency help?



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- Share your thoughts and concerns so that we can understand and address them
- Work with NDOT to update any areas that are necessary
 - Processes/procedures/guidance documents
 - Programmatic Agreements
- Prepare letters of support during public comment periods
- Help us continue to improve and ensure positive performance of this program



NEPA Assignment

Surface Transportation Project Delivery Program

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