



STATE OF ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

NEPA Assignment Program Frequently Asked Questions

What is NEPA Assignment?

- Official Name: Surface Transportation Project Delivery Program (23 U.S.C. 327)
- Assignment of the Federal Highway Administration's (FHWA) National Environmental Policy Act (NEPA) responsibilities to a State who would assume responsibilities for:
 - All NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS)
 - All environmental laws, regulations and orders
- Under this program, the Department of Transportation and Public Facilities (DOT&PF) is deemed to be a Federal Agency for environmental matters on all assigned projects.

About the NEPA Assignment program

- DOT&PF assumes legal responsibility and liability to ensure compliance with all environmental requirements
 - The State of Alaska waives its sovereign immunity (AS 44.23.020(g))
 - DOT&PF agrees to be sued in Federal court
- NEPA Assignment does not reduce any current legal requirements
 - All environmental laws, regulations and orders remain in effect

Why is DOT&PF participating in the NEPA Assignment program?

- The program allows for more efficient delivery of projects and flexibility in DOT&PF procedures
- DOT&PF will be able to build stronger relationships with stakeholders and agencies through direct engagement and ownership of decision-making

Is DOT&PF accountable to maintain high environmental standards?

- DOT&PF will continue to maintain current high standards for environmental reviews and collaboration with partner agencies
- DOT&PF will continue to follow the same federal environmental laws, regulations, and Executive Orders
- DOT&PF Statewide Environmental Office will conduct regular program reviews
- FHWA will regularly conduct in-depth audits of DOT&PF's performance and adherence to environmental laws, regulations and Executive Orders
- FHWA retains final project funding authority and may revoke the program if DOT&PF does not perform to the required standards
- DOT&PF will be held liable for all environmental responsibilities and will be required to defend any claims brought in a Federal court
- This program increases the State's accountability as DOT&PF assumes more risk along with more responsibility for the quality and outcomes of their environmental documents and decisions.

Where has this been done before?

- Alaska has exercised FHWA NEPA responsibility for most CEs, under the 6004 Program (23 U.S.C. 326), since September 2009
- California and Texas assumed full FHWA NEPA responsibilities. Ohio applied for full NEPA Assignment. Utah has CE assignment and will apply for full NEPA assignment.

Scope of the NEPA Assignment Program

- A Memorandum of Understanding (MOU) will define the range of project actions and environmental responsibilities the State assumes
- The NEPA Assignment Program includes assigning FHWA's responsibilities and consultation obligations for environmental laws under the "NEPA umbrella", such as:
 - Endangered Species Act
 - Marine Mammal Protection Act
 - National Historic Preservation Act
 - Magnusson-Stevens Fishery Conservation and Management Act (EFH)
 - Alaska National Interest Lands Conservation Act (ANILCA)
- FHWA retains the following:
 - Federal-aid funding decisions
 - Project-level air quality conformity determinations
 - Government-to-Government Tribal consultation
 - USDOT responsibilities for statewide and metropolitan planning
 - Projects that cross state lines; and projects adjacent to, or that cross, international boundaries

How will this affect Government-to-Government consultation requirements?

- FHWA retains Government-to-Government consultation responsibility
- Upon request of a Tribe, FHWA will enter into consultation with Tribe regarding project
 - If concerns are resolved, the project may remain assigned to DOT&PF
 - If concerns persist, FHWA may elect to take over environmental processing of project
- DOT&PF remains committed to regular outreach and communications with Tribes regarding transportation projects in Alaska.

How will NEPA Assignment change the DOT&PF environmental process?

- Resource Agencies may not see much change
 - DOT&PF already handles the program on a day to day basis, and has exercised authority for most CEs since 2009
- With this program, DOT&PF becomes solely responsible and legally liable for their decisions for all CEs, EAs, and EISs.
- DOT&PF internal procedures will be changed to reflect that DOT&PF assumed additional FHWA responsibilities for all CEs, EAs and EISs.

How will this impact DOT&PF?

- DOT&PF must comply with its MOU commitments in assuming FHWA's environmental responsibilities, just as it has for those CEs processed under the 6004 program MOU since September 2009

How will this impact DOT&PF? (continued)

- DOT&PF will continue to:
 - Maintain detailed files and records, and make them available to FHWA
 - Develop and maintain updated procedures on all environmental processes
 - Provide continuous Quality Assurance/Quality Control (QA/QC) on all actions
 - Dedicate sufficient funding and staff to implement NEPA assignment
 - Maintain the necessary professional and experienced staff to carry out the required environmental analyses
 - Institute and maintain a progressive training plan for environmental staff
 - Conduct regular self-assessments
 - Report all NEPA decisions to FHWA

The Path to NEPA Assignment

- Draft Application currently being developed in coordination with FHWA
- The Application identifies:
 - Scope of Assignment
 - Current & Proposed Organization
 - Current & Proposed Procedures, Tools
 - Roles and Responsibilities
 - Additional Staff and Training
- State public notice for comment on draft Application anticipated May 2016
- Revise Application, based on comments received, and submit formal Application to FHWA expected July 2016
- If the Application is accepted by FHWA, MOU negotiations during Summer 2016
- Federal Register notice of draft MOU anticipated January 2017
- Projected effective date of NEPA Assignment Program: March 2017
- DOT&PF will work with Agencies to update existing agreements
- Internal environmental procedures and guidance will be updated
- DOT&PF staff training will cover:
 - NEPA process and DOT&PF environmental procedures
 - Public involvement and Agency consultation
 - Environmental regulation-specific content (e.g. Endangered Species Act, Marine Mammal Protection Act, wetlands permitting)

What can you do?

- Let us know of any concerns you may have, so that we can address them
- Prepare letters of support to DOT&PF for submittal with the NEPA Assignment application
- Would you like to meet individually with the DOT&PF and the FHWA?
 - DOT&PF contact: Taylor Horne, Statewide Environmental Program Manager, taylor.horne@alaska.gov, (907)465-6957
 - FHWA contact: Tim Haugh, Alaska Division Environmental Program Manager, tim.haugh@dot.gov, (907)526-7430

DOT&PF NEPA Assignment Web Site

<http://www.dot.state.ak.us/stwddes/desenviron/resources/nepa.shtml>