

Ohio Department of Transportation

NEPA Assignment Self-Assessment

12/28/15 through 04/01/16

Prepared by the Ohio Department of Transportation, Office of Environmental Services

June 28, 2016

Executive Summary:

This Self-Assessment is to ensure the Ohio Department of Transportation (ODOT) is compliant with the 23 USC 327 Memorandum of Understanding (MOU) between ODOT and the Federal Highway Administration (FHWA). As required by Section 8.2.5 of the MOU, ODOT must submit a Self-Assessment Report prior to each FHWA annual audit. The current Self-Assessment was prepared for the first audit.

The Review Team conducted a self-assessment of ODOT's environmental and NEPA processes, and of projects approved between December 28, 2015 and April 1, 2016. The Review Team reviewed projects from all 12 Districts, and conducted interviews with 3 Districts, focusing on NEPA processes, roles, and responsibilities. The Review Team also assessed ODOT's program management processes within the Office of Environmental Services (OES) and the Districts by using checklists and interviewing resource agencies.

Overall, ODOT is compliant with the MOU and all assumed laws and regulations. However, the Review Team identified several Observations and one instance of Non-Compliance.

Results of the Self-Assessment:

General Compliance Results				
Action Area <i>(*Modify list as needed for each state's needs)</i>	In compliance: Self-Assessment shows that the state is in compliance with these areas (Include Best Practices, if any).	Observations: Self-Assessment shows potential items that pose a clear and direct compliance issue with a law/regulation or one that if not addressed, could lead to a future full compliance issue.	Findings: Self-Assessment shows non-compliance with these areas.	Not Applicable: This area was not observed during this Self-Assessment period.
Clean Air Act (CAA), 42 U.S.C.	X			

Action Area <i>(*Modify list as needed for each state's needs)</i>	In compliance: Self-Assessment shows that the state is in compliance with these areas (Include Best Practices, if any).	Observations: Self-Assessment shows potential items that pose a clear and direct compliance issue with a law/regulation or one that if not addressed, could lead to a future full compliance issue.	Findings: Self-Assessment shows non-compliance with these areas.	Not Applicable: This area was not observed during this Self-Assessment period.
Compliance with the noise regulations at 23 CFR part 772	<p style="text-align: center;">X</p>			
Endangered Species and Habitat <i>(i.e. Section 7 of the Endangered Species Act of 1973, Fish and Wildlife Coordination Act, 16 U.S.C., Migratory Bird Treaty Act, 16 U.S.C.)</i>	<p style="text-align: center;">X</p>			
Section 106 of the National Historic Preservation Act of 1966	<p style="text-align: center;">X</p>			
Section 4(f) of the Department of Transportation Act of 1966	<p style="text-align: center;">X</p>			
Native American Grave Protection and Repatriation Act (NAGPRA)				<p style="text-align: center;">X</p>
Farmland Protection Act (FPPA)	<p style="text-align: center;">X</p>			
Clean Water Act	<p style="text-align: center;">X</p>			
Wild and Scenic Rivers Act	<p style="text-align: center;">X</p>			
Land and Water Conservation Fund (LWCF) Act	<p style="text-align: center;">X</p>			

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E.O. 11990, Protection of Wetlands	<p style="text-align: center;">X</p>			
E.O. 11988, Floodplain Management			<p style="text-align: center;">X (Single Occurrence)</p>	
E.O. 13690, Federal Flood Risk Management Standard (FFRMS)	<p style="text-align: center;">X</p>			
E.O. 12898, Environmental Justice	<p style="text-align: center;">X</p>			
Section 601 of 42YSC 200(d) (Title VI)	<p style="text-align: center;">X</p>			
Other		<p style="text-align: center;">X (See Observations Section on Page 4)</p>		

In Compliance:

The Review Team found ODOT’s Self-Assessment to be satisfactory overall. District staff illustrated their knowledge of policies and OES guidance documents and how to use them to produce NEPA documents compliant with the laws and regulations assumed under the 23 USC 327 MOU. ODOT has training, guidance, and agency agreements to detail the processes in place to ensure compliance with all state and federal regulations. In addition, all guidance documents have been adjusted to facilitate any changes required by the MOU and NEPA Assignment. Since ODOT had robust programmatic agreements (PA) with various environmental agencies prior to NEPA Assignment (Categorical Exclusion PA, Section 106 PA, etc.), ODOT-OES and District staff were able to easily continue their NEPA studies and

approvals with minimal changes, allowing ODOT to remain compliant throughout the transition process.

Best Practices:

1. Two Districts highlighted the Air/Noise flowcharts to demonstrate the lack of need for studies. This is not required, but highlighting the path makes it easy to see how ODOT reached a decision.

ODOT's program management, document and records management, training program, and legal sufficiency review processes are compliant with the MOU and assumed laws (see attached spreadsheet). ODOT partnered with its resource agencies to develop escalation procedures in preparation for NEPA Assignment. Additionally, further guidance documents and training courses were offered to prepare and provide information to environmental staff and consultants. ODOT ensures all environmental staff and consultants who work on ODOT projects have the required training and/or prequalification for the work they are performing, and enforces the processes described in OES guidance materials. Furthermore, ODOT's record retention exceeds what is required by FHWA and Ohio Department of Administrative Services policies.

Observations (Areas of Concern):

All of ODOT's observations are minor issues that could potentially lead to future compliance concerns. ODOT is confident these issues have either already been addressed, or will be addressed and remedied in the immediate future.

1. Many districts needed improvement with Environmental Justice processes, regulated by E.O. 12898. For example, some Districts used census tract instead of block group for their Low Income map. Also, the locations for some projects were not clearly shown on the maps and/or only one map was uploaded to the project file where there should be two - one for Low Income and one for Minority, per OES Guidance. However, the projects with the potential Environmental Justice issues were completed prior to OES's new Environmental Justice Guidance but after the implementation of EJ Screen. Therefore, the Environmental Justice processes documented in those projects do not match with the current guidance. ODOT feels all districts are now satisfactorily following the new guidance, resulting in compliance with E.O. 12898.
2. A small number of public involvement materials released shortly after the execution of the MOU did not include the required NEPA Assignment language. ODOT feels this observation was due to a learning curve, and the language is now included on all public involvement materials. ODOT-OES will continue to remind Districts to include the language even though they feel the Districts are currently inserting the language on all required documents. Additionally, even though Districts have been completing the minimum public involvement requirements, they were sometimes not documented in the EnviroNet project file. ODOT-OES has reminded these districts to include all materials and activities in the project file, even if it is a screenshot of the District webpage for smaller projects.
3. ODOT also needs to improve their descriptions of Title VI compliance. Title VI compliance occurs throughout the state by ensuring adequate public access to all public outreach activities. Any concerns of Title VI nature are addressed through coordination with our

Division of Opportunity, Diversity and Inclusion (DODI), however, additional training and education is warranted and ODOT continues to partner with DODI to further educate our staff.

4. Districts were not addressing Maintenance of Traffic issues during public involvement. ODOT-OES reminded the Districts to follow the Public Involvement Manual which states if any road closures or detours will occur, emergency and public services must be contacted as part of public involvement during the NEPA process.
5. If a waterway permit has not been obtained at the time the NEPA document is signed, then an environmental commitment to obtain any required permits which includes enough detail that the commitment can be implemented (regulated by the Clean Water Act) should be included. The commitment should state who is responsible for obtaining the permit and that the permit is required prior to conducting in-stream work. ODOT is confident that all Districts have been obtaining the required permits before impacting Waters of the U.S., however, some were not including environmental commitments to obtain even if the permit was not provided prior to NEPA approval. ODOT-OES reminded these districts to include a commitment if the permit has not yet been obtained, and to say who shall be responsible for obtaining the permit (ODOT, local sponsor, etc.).
6. ODOT recognizes the learning curve associated with following the File Management Guidance. However, ODOT-OES, Districts, and consultants working for ODOT must follow the processes outlined in the guidance. Naming conventions are for consistency and tracking purposes. Date fields are for tracking and to ensure NEPA decision documents are reviewed and approved in the correct order (and prior to NEPA approval). Additionally, all necessary documents must be uploaded to the project file. Statewide, some required documentation was missing and/or mislabeled. Each District was made aware of their projects that were missing documents. Most of the mislabeled documents were uploaded by consultants, therefore ODOT must be diligent by enforcing the guidance and checking to make sure all documents are uploaded correctly before NEPA approval.
7. Wetland findings are not currently part of the EnviroNet system. Prior to NEPA Assignment Wetland Findings were addressed by a Programmatic Wetland Finding in conjunction with FHWA under an existing programmatic agreement. After NEPA Assignment ODOT moved forward with updating EnviroNet to ensure the wetland finding questions were addressed. However, that fix isn't scheduled to occur until Phase 4 which should be implemented in early 2017. In the meantime, OES developed a paper form for Districts to upload and document compliance with EO 11990. ODOT had training prior to NEPA Assignment on how to utilize this paper form, but there is a learning curve with the Districts.

Findings (Non-Compliance)

The Review Team identified one area of non-compliance. There was one project for which the District did not coordinate with the local floodplain administrator, which is non-compliant with the requirements of the National Flood Insurance Program (NFIP) and Executive Order (EO) 11988. The Review Team understands this NEPA document was still in-review when OES was refining the Floodplain Guidance. However, coordination was still required under all versions of the guidance which has been in place since December 2015. The Review Team acknowledges potential deficiencies in Executive Order 11988 prior to NEPA Assignment. OES implemented

corrective action prior to entering into NEPA Assignment by creating the updated Floodplain Guidance Corrective action for this finding will be ensuring all Districts act under the newly issued Floodplain Guidance (Dated April 5, 2016). Additionally, OES has updated the CE Training to add a module for Floodplains, it has been discussed in our NEPA Chats, District Environmental Coordinator Meetings, and Environmental Update Meetings.

General Improvement Opportunities:

The following are potential areas for improvement. All of these areas are currently compliant with the laws and regulations assumed by the MOU, but are suggested areas for improvement.

ODOT-OES suggests:

- Including an environmental commitment for the contractor to notify ODOT at least 18 days prior to beginning to construction. ODOT will then notify emergency and public services at least 14 days prior to the start of construction if there will be a detour or road closure. This would act as a courtesy reminder to emergency services and schools that their routes may need to be altered.
- Thoroughly reviewing Local Public Agency (LPA) projects to ensure their utility and right-of-way processes match ODOT's. Local-sponsors may have different processes, and they could result in a non-compliance issue if not caught by ODOT.
- Following the Project Development Process when developing feasibility studies. The PDP is ODOT's guidance on how different technical disciplines communicate and the order in which projects are to be completed. The PDP is in place to ensure all required tasks and studies are completed before moving onto the next stage.
- Including a detailed explanation as to why preferred alternative was chosen, and why none of the other alternatives were selected. This includes justification when eliminating alternatives.
- Ensuring responses to public comments occur in a timely manner, even if the LPA is responsible. Also, document all public comments and responses to those comments in the project file. If no comments were received, address in the remarks box.
- Not including ODOT Construction & Material Specification (CMS) items as environmental commitments since they are part of the normal process. The Review Team discovered some CMS items were added following instruction from OES, but ODOT staff addressed this discrepancy and the Districts will no longer receive that instruction.

Performance Measurements:

The following is a discussion on how ODOT complied with all other components of the MOU.

Compliance with NEPA and other Federal environmental statutes and regulations:

As discussed above, ODOT is compliant with NEPA and other Federal environmental statutes and regulations.

Quality Control and Quality Assurance for NEPA decisions:

Quality control and quality assurance occurred for all required documents and NEPA approvals. ODOT conducted reviews for all technical reports and documents for each NEPA document level as well as peer reviews for all D-level and above documents. Districts or consultants prepared discipline specific reports and OES approved each report or technical document before the NEPA document was approved. ODOT also instituted an interim peer-review process for all D-level and above documents on March 24, 2016. Depending on the level, the document will either be peer-reviewed at the district level (D1) or at OES (D2 and higher) for discipline specific reviews. All peer-review processes are now documented in EnviroNet. If peer-review occurred after the interim guidance was issued and prior to the EnviroNet updates, a memo-to-file was included in the project file documenting peer-review.

Relationships with agencies and the general public:

ODOT conducted phone interviews with the Ohio Department of Natural Resources (ODNR) and the State Historic Preservation Office (SHPO). Both ODNR and SHPO had positive responses regarding their professional relationship with ODOT, the materials ODOT submits, and ODOT's compliance with the laws each agency regulates. SHPO did request to hold more team meetings on a regular basis to provide status updates and discuss any issues that may arise. They indicated these meetings have been extremely beneficial in the past and feel they foster improved communication between the agencies.

Increased efficiency and timelines in completion of NEPA process:

U.S. Fish and Wildlife Service (USFWS) PA Processing

We requested and received an extension on our current Indiana Bat Programmatic Agreement (IB Programmatic Agreement) extremely quickly. Acting as FHWA, we were able to write up and request an extension of the IB Programmatic Agreement on 1/27/16 at 9:53 am, and received the signed approval to extend it from USFWS by 1/28/16 at 12:54 pm. Therefore, ODOT and USFWS had extended an agreement in just over 24 hours.

Prior to NEPA Assignment, ODOT would have written up the letter for FHWA to send and would have needed to provide it to FHWA 2-3 weeks ahead of the date needed. Typically before that, ODOT would have spent 30-60 days discussing with FHWA the need for an extension, and providing justification for an extension.

Other Agency Agreements

ODOT was able to initiate formal consultation with a partner agency in 20 minutes. Prior to NEPA Assignment, ODOT would draft a letter and provide it to FHWA, they would review it for 1-2 weeks, and forward to the partner agency.

Project Process Savings

The following table outlines each environmental action that would have previously been submitted to FHWA for review prior to implementation of NEPA Assignment. The FHWA review time for most of the actions would have been 30 days except for the Section 4(f) de minimis impact finding and the Air/Noise Conformity (PM 2.5) documents which would have been for a 15 day non-objection period. Additionally, most items are submitted to FHWA more than once for back-checks, which is typically a 10 day review period. The overall reduction in project review time during our self-assessment period is an estimated 470 days.

Policy Actions	Total # of Reviews	# of FHWA Review Days	# of FHWA Back-check Review Days	Total # Days Saved per Document
PDP Documents Reviewed				
Draft Purpose & Need (D3 & higher)	0	30	10	0
Alternatives Evaluation Report (D3 & higher)	0	30	10	0
Feasible Alternative Analysis (D3 & higher)	0	30	10	0
NEPA Documents Reviewed				
Categorical Exclusion (D3 & higher)	0	30	10	0
Environmental Assessment	1	30	10	40
Environmental Impact Statement	1	30	10	40
NEPA Documents Approved				
Categorical Exclusion (D3 & higher)	0	30	10	0
Environmental Assessment	0	30	10	0
Environmental Impact Statement	0	30	10	0
Section 4(f)				
De minimis Impact Finding	6	15	10	150
Programmatic Evaluation	0	30	10	0
Individual Evaluation	0	30	10	0
Air/Noise Documents Reviewed				
Air/Noise Conformity PM2.5 Documents Reviewed	6	15	10	150
Ecological Actions				
Ecological Documents Reviewed				
Biological Assessment and/or Biological Opinion (ESA - Sec 7)	1	30	10	40
Cultural Resources Actions				
Section 4(f) Documents Reviewed				
De minimis Impact Finding	2	15	10	50
Programmatic Evaluation (D3 & higher)	0	30	10	0
Individual Evaluation (D3 & higher)	0	30	10	0
TOTAL # DAYS SAVED				470

Self-Assessment Scope

The Self-Assessment is designed to ensure environmental documents prepared and approved following the execution of the NEPA Assignment MOU between FHWA and ODOT were compliant with the MOU and assumed laws and regulations. Furthermore, the review ensures all projects were approved at the appropriate document level and that all corresponding NEPA activities were conducted in accordance with federal and state regulations. The attached checklists indicate all areas reviewed for compliance and the associated results. Each district has a checklist based on project reviews. The statewide checklist is based on ODOT's projects overall. Finally, there are four program management checklists: one for OES and ODOT as a whole, and one each for District 6, District 7, and District 10.

OES selected 15% of C1 and C2 documents approved between December 28, 2015 and April 1, 2016 to review for each District. All D-level projects approved within the review period were reviewed. The Review Team reviewed projects based on the Project-Specific Checklist and combined all responses into District checklists to reflect the overall results. Districts 6, 7, and 10 also received a more in-depth review including an interview and Program Management checklist. Interview questions focused on policies and procedures so the Review Team could obtain a well-rounded view of information on both program management and projects in relation to NEPA Assignment compliance. ODOT also conducted agency interviews with ODNR and SHPO.

Self-Assessment Review Team:

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Kevin Davis, Environmental Policy Section Supervisor
Doug App, NEPA Documents Coordinator
Veronica Trecuzzi, NEPA Documents Coordinator
Larry Hoffman, Major Projects Coordinator
Heather McColeman, Major Projects Coordinator
Amanda Foley, Environmental Specialist/Permits Coordinator
Jacque Annarino, NEPA Assignment & Public Involvement Coordinator

Previous Self-Assessment Resolution/Follow up

No previous Self-Assessments were conducted.