

Agency	Agency Comments Received	Response to Comments
American Road and Transportation Builders Association (ARTBA)	<p>ARTBA has consistently supported the concept of state delegation of federal environmental review responsibilities since it was first introduced as a five-state pilot program in the “Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users” (SAFTE-LU). ARTBA recently reiterated this support when the pilot program was expanded to include all states in the “Moving Ahead for Progress in the 21st Century” (MAP-21) reauthorization law. ARTBA specifically supported the efforts of the State of Texas to participate in FHWA’s delegation program and is pleased FHWA has issued an MOU allowing Ohio to assume responsibility for federal environmental review of transportation projects.</p>	<p>Thank you for your comment. No changes to the MOU required.</p>
	<p>Allowing Ohio and other states to assume responsibility for environmental reviews rather than provide information to federal agencies on a case-by-case basis could reduce the amount of time involved in the environmental review and approval process by lessening the burden on federal agencies. ARTBA is supportive not only of the Ohio decision to take advantage of the environmental review delegation provisions of MAP-21, but also of FHWA’s efforts to make this program as accessible and appealing as possible to other states. The more states choose to take advantage of delegation, the faster needed transportation improvements will be delivered to the American public.</p>	<p>Thank you for your comment. No changes to the MOU required.</p>

<p>In terms of the delegation process, the US Department of Transportation (U.S. DOT) should also strive to make the delegation program as attractive as possible to other states. To do this, a focus should be placed on flexibility. States, including Ohio, should be given maximum flexibility to use their specialized knowledge in different areas to determine activities for which they are most capable of assuming responsibility. In other words, the process should allow states to assume certain parts of the review process, while leaving others to the federal government depending on what is in the best interest of advancing the project.</p>	<p>Thank you for your comment. No changes to the MOU required. FHWA will continue to work cooperatively with other states to share information on this program and encourage it's use.</p>
<p>ARTBA also urges FHWA to provide information sharing as a part of the delegation program. There should be a centralized clearinghouse detailing the different arrangements allowed under the program. This could allow states to see what works and what does not. If a particular arrangement is effective in one state, this knowledge might be useful to other states considering whether or not they should take advantage of the delegation program.</p>	<p>Thank you for your comment. No changes to the MOU required. FHWA will ensure the results of the NEPA Assignment audits are posted to the Federal Register and will continue to work cooperatively with other states to share information on this program.</p>
<p>NEPA was never meant to be a statute enabling delay, but rather a vehicle to promote balance. While the centerpiece of this balancing in the environmental impacts of a project, other factors must be considered as well, such as the economic, safety, and mobility needs of the affected area and how transportation project or any identified alternative will address those needs. Allowing delegation of the environmental review process to interested states like Ohio will help NEPA to achieve this balance.</p>	<p>Thank you for your comment. No changes to the MOU required.</p>

<p>Seneca Nation of Indians (SNI), Tribal Historic Preservation Office</p>	<p>SNI requests FHWA retain all Sec. 106 processes as they relate to the Tribes/Nations</p>	<p>FHWA will oversee Section 106 assignment through the audit process. FHWA is confident ODOT has the ability and resources to effectively carry out the responsibilities of NEPA Assignment. Additionally, ODOT and Seneca Nation held a meeting on 11/30/15 to discuss all of the concerns raised in these comments. Based on this discussion, SNI can support this direction provided all Federal laws are still being upheld and the Ohio SHPO has approved the Section 106 Programmatic Agreement.</p>
	<p>SNI requests all Historic and Cultural Resources as noted in the Federal Register of Oct. 15, 2015 be retained by FHWA</p>	<p>FHWA will oversee all Historic and Cultural Resources laws and regulations through the audit process. FHWA is confident ODOT has the ability and resources to effectively carry out the responsibilities of NEPA Assignment.</p>
	<p>SNI requests there be no streamlining or reduction of Ohio SHPO reviews</p>	<p>FHWA and ODOT are committed to ensuring all applicable laws and regulations are addressed during the streamlining process. ODOT and Seneca Nation held a meeting on 11/30/15 to discuss all of the concerns raised in these comments. Based on this discussion, SNI can support this direction provided all Federal laws are still being upheld and the Ohio SHPO has approved the Section 106 Programmatic Agreement.</p>

<p>In SNI's experience, ODOT delegated road/bridge projects to local authorities (county), engineers and contractors that have little regard to environmental and cultural resources.</p>	<p>ODOT is still responsible for assuring all NEPA/environmental compliance on all Locally Administered Projects. ODOT's commitment to ensuring compliance with all environmental laws will not change post-NEPA Assignment. ODOT and Seneca Nation held a meeting on 11/30/15 to discuss all of the concerns raised in these comments. Based on this discuss, ODOT and FHWA made it clear that Section 106 responsibilities were not being delegated to others outside of ODOT's Office of Environmental Services.</p>
<p>Ohio does not have laws in place to protect native burials and cultural resources, which is why SNI objects any reduction or streamlining of Ohio SHPO reviews of projects. This lack of protection needs to be addressed in the updated Programmatic Agreement (PA).</p>	<p>All Federal rules and regulations will be maintained and will still apply. FHWA will oversee all Historic and Cultural Resources laws and regulations through the audit process. However, ODOT will take this suggestion under advisement when we submit our next legislative agenda to the Ohio General Assembly</p>
<p>Due to the above issues, Seneca Nation has grave concerns for transferring FHWA responsibilities to ODOT under the MAP-21 Act.</p>	<p>ODOT and Seneca Nation held a meeting on 11/30/15 to discuss all of the concerns raised in these comments. Based on this discussion, SNI can support this direction provided all Federal laws are still being upheld and the Ohio SHPO has approved the Section 106 Programmatic Agreement. FHWA will ensure ODOT is complying with both federal laws and the terms of the MOU through the use of Audits.</p>

<p>US Coast Guard</p>	<p>In 2014, FHWA and the Coast Guard signed a Memorandum of Agreement (MOA) to Coordinate and Improve Bridge Planning and Permitting. The Coast Guard would like to make it clear that acceptance of FHWA NEPA responsibilities does not authorize a State to assume FHWA authority to except a project from Coast Guard bridge permit under 23 U.S.C. 144(c)(2).</p> <p>To clarify the above comment, the US Coast Guard requests the inclusion of the following language into the ODOT-FHWA MOU:</p>	<p>Thank you for your comment. No changes to the MOU required.</p>
	<p>a. Modification to the language in section 3.2.4 to specify that this NEPA MOU does not transfer FHWA authority under 23USC 144(c)(2) to determine that certain bridges are excepted from Coast Guard bridge permit authorities set forth in Title 33 U.S. Code. To wit,</p> <p>"Nothing in the MOU shall be construed to permit ODOT's assumption of the USDOT Secretary's responsibilities for determining exceptions from US Coast Guard bridge permit authorities under 23 U.S.S. 144(c)(2), conformity determinations required under Section 176 of the Clear Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5305 or 5304."</p>	<p><del>The MOU has been changed to include the proposed language in Section 5.1.1 and Section 5.1.1(A).</del>  CORRECTION: The MOU was NOT changed. FHWA did not feel it appropriate to make the change. They do not consider the authority in 23 U.S.C. 144(c)(2) to be an environmental review responsibility and, therefore, as indicated by 23 CFR 773.105(b)(5), is not eligible for assignment. As a result, this authority remains with FHWA. FHWA felt that if we included the section 144 authority as a non-assignable authority in the MOU, then we would have to include other non-environmental review authorities that are related or exercised during the environmental review process. FHWA felt this was unnecessary and could add the complication of raising questions as to why there was no such exclusion in the Texas or California MOUs. They feel it would create confusion rather than clarify the matter.</p>

	<p>b. A specific sub-bullet in Section 5.1.1. which will take the last parenthetical phrase "(the MOU between the USDOT and the US Coast Guard and the MOA between FHWA and the US Coast Guard)" and make it an independent subsection [5.1.1 A under the nomenclature convention of the MOU] stating:</p> <p>"ODOT has reviewed the 2014 MOA between USCG and FHWA and understands that by accepting FHWA's NEPA responsibilities, it also agrees to perform FHWA's obligations set forth in the MOU between the USDOT and the US Coast Guard and the MOA between FHWA and the US Coast Guard."</p>	<p>Proposed change was made. Thank you for your comment.</p>
	<p>The Coast Guard also recommends to FHWA Headquarters that the above changes be included in all future NEPA assignment MOUs to ensure projects move quickly through the NEPA and permitting processes.</p>	<p>FHWA will take these comments under advisement for the development of future NEPA Assignment MOU's.</p>
<p>US Dept. of Housing and Urban Development (HUD)</p>	<p>HUD is concerned about ODOT's assumption of NEPA responsibilities partly because of the HAM-21-1.34 MLK, PID 77628 project where HUD feels ODOT improperly evaluated direct and cumulative impacts for noise and air quality, incorrectly applied environmental justice requirements, botched meaningful or timely notice and engagement with HUD, the tenants and property owner, and failed to mitigate adverse impacts.</p> <p>Accordingly, HUD recommends revisions to the following sections of the draft MOA:</p>	<p>Duly Noted.</p>

<p><u>Early Notice and Coordination</u></p> <p>ODOT shall provide early, timely and separate notices to HUD and the owners and residents of public housing located with 1,000 feet of an ODOT project that is Categorically Excluded or requires preparation of an Environmental Assessment or Environmental Impact Statement. Notice to HUD shall be made separately to the HUD Field Officer and to the HUD environmental officer in whose jurisdiction the project is located. [ref: 3.1.3; 7.1]</p>	<p>ODOT will be subject to the same requirements and expectations as FHWA. ODOT is currently making changes to their Public Involvement Manual to help address this issue. This update will be made public upon approval by FHWA.</p>
<p><u>Public or Agency Objection</u></p> <p>As drafted, the MOU has no provision that allows another federal agency or the public to object to a project. A section should be added to MOU to allow the public and federal or other agencies to object to the proposed ODOT decision prior to ODOT's commitment to project action. HUD's regulation 24 CFR Part 58, subpart H, provides the model for a procedure that FHWA should consider adopting for this purpose. The HUD procedure includes public notification and dissemination requirements that provide for a local comment period and an objection period for a particular project. As related to ODOT, public comment would be made to ODOT for a 15-day period. ODOT would take any comment received into account, following which ODOT would certify to FHWA that NEPA and related laws have been fully addressed. Upon receipt of the ODOT certification, FHWA would observe a 15-day period to allow for an objection on permissible bases, e.g., that a certain compliance authority had not been fulfilled. In the absence of an receipt of object to the contrary, FHWA would assume the validity of the certification and approve the ODOT request.</p>	<p>The assignment program under 23 U.S.C. 327 is different than the CDBG assignment program. Unlike the CDBG assignment program the FHWA program does not require public comment on the decision nor does the Federal agency retain individual project responsibility. The program does not provide for Federal agencies or the public to object to the decision. Rather, the program allows ODOT to make decisions related to environmental review as any Federal agency would. Federal agencies will be able to provide comments to ODOT through the traditional NEPA process and, where applicable, through the environmental review process laid out in 23 U.S.C. 139.</p>

<p><u>Technical Assistance</u></p> <p>As drafted, the MOU explicitly states FHWA will not provide project-level technical assistance to ODOT [ref: 8.1.2]. The agreement should state FHWA will provide project-level technical assistance to ODOT when requested. HUD regularly provides project-level technical assistance to ODOT when requested. HUD regularly provides project-level technical assistance to its grantees and does so without impairing lines or limits of the grantees' assumption authority. Indeed, it is often at the project level when particular questions may arise regarding complex or extenuating circumstances when the grantee (i.e., ODOT most needs assistance from FHWA.</p>	<p>FHWA interprets 23 U.S.C. 327(e) as giving States sole responsibility (and liability) for carrying out the responsibilities assigned with respect to projects. The reference to "solely" means that FHWA does not have the ability to assist the State on project specific matters once the assignment has been granted.</p>
<p><u>Training</u></p> <ol style="list-style-type: none"> <li>1. The MOU allows for FHWA to provide ODOT with training, to the extent FHWA and ODOT deem necessary [ref: 12.1]. The determination as to ODOT's training needs should be made solely by FHWA, but in consultation with ODOT.</li> <li>2. As drafted, the MOU states that ODOT and FHWA will assess ODOT's training needs and plan "in consultation with other Federal agencies as deemed appropriate..." [ref: 12.2]. The MOU should clarify that FHWA will make the determination as to appropriateness of ODOT's training needs and plans.</li> <li>3. ODOT and the FHWA Ohio Field Office shall post on their respective agency websites the training program being implemented by ODOT, including the training plan, training dates, training agencies, and training participants by name and title. This information shall be posted for a period not less that 36 months following the termination of the agreement.</li> </ol>	<ol style="list-style-type: none"> <li>1. &amp; 2. ODOT and FHWA are committed to establishing a cooperative relationship where all parties are appropriately informed of the environmental responsibilities ODOT is assuming under this MOU. ODOT and FHWA will work together to encourage the exchange of insight as to the needs of each entity. Additionally, if FHWA is of the opinion ODOT is not fulfilling their duties under Section 12.1, FHWA may utilize Section 13.2.1(B), 13.2.1(C), or 13.2.1(E).</li> <li>3. ODOT lists all upcoming training sessions, toolkits, and previous presentation slides at <a href="http://www.dot.state.oh.us/Divisions/Planning/Environment/training/Pages/default.aspx">http://www.dot.state.oh.us/Divisions/Planning/Environment/training/Pages/default.aspx</a>. In addition, once ODOT's training plan is completed, it will be posted to the same site.</li> </ol>



Monitoring, Oversight & Audits

1. The MOU should clarify that FHWA will conduct monitoring of ODOT's implementation of its environmental responsibilities, to remove any implication that FHWA may only conduct financial auditing [ref: 8.2.1.].
2. FHWA should review and approve ODOT's quality control and quality assurance (QA/QC) process, versus the need for ODOT to simply consult with FHWA regarding development of the QA/QC plan.
3. Given the unique statutory role U.S. EPA has in evaluating NEPA documents, the U.S. EPA should be listed in the MOA as an agency that FHWA may include to assist FHWA in auditing ODOT [ref: 11.3.1].
4. FHWA environmental monitoring, oversight and audit reports [ref: 8.2; 11.4.2] shall be posted on ODOT's and the FHWA Ohio Field Office's respective agency websites for a period not less than 36 months following the termination of the agreement.

1. The MOU provides adequate clarification that the audit is conducted based on ODOT's environmental actions and not restricted to financial aspects.
2. FHWA did review ODOT's QA/QC procedures, but is not required to have final approval. Through the audit process, if FHWA is of the opinion ODOT is not fulfilling their duties under Section 12.1, FHWA may utilize Section 13.2.1(B), 13.2.1(C), or 13.2.1(E).
3. USEPA has been coordinated with on this program and the MOU. The MOU does not specifically list every group that could be asked to participate in the audit.
4. The audit reports will be posted on both FHWA's and ODOT's websites.

Record Retention and Disclosure

1. The MOU implies that a Draft Environmental Impact Statement (DEIS) is not required to be retained following approval of a Final Environmental Impact Statement (FEIS) [ref: 8.3]. A DEIS can contain important analyses not included in the FEIS. Both the DEIS and FEIS should be retained.
2. ODOT and the FHWA Ohio Field Office shall post on their respective agency websites NEPA and related documents for all projects for the term specified at 8.3.2.B. As drafted, the MOU does not require such posting.

1. Draft EISs are specifically mentioned in 8.3.2(B) as a document that is to be kept for a period of 8 years following the approval of the final construction voucher for a project.
2. The Ohio Public Records Act makes all NEPA documents available for public review upon request. ODOT is currently developing a publically accessible database where all environmental documents will be available for the public to view.

US Environmental Protection Agency	No comments on Draft MOU, but noted minor errors in final NEPA Assignment Application: US EPA is misidentified as the "US Department of Protection Agency" and Ohio EPA as the "Ohio Department of Protection Agency."	Thank you for your comment. This was a typo in the Application and does not need to be addressed in the MOU.
Sierra Club	Sierra Club only just became aware of this public comment process. We are surprised that representatives of ODOT never saw fit to discuss the proposed application and MOU with Sierra Club. In fact, we met with several top officials as ODOT in December 2014 and discussed a wide range of statewide issues; yet this particular subject never came up. Similarly, we did not receive a physical or electronic notice of the process. As we have discussed the matter with our members, many of them are interested in commenting but also concerned that they no longer have time to do so. We request that FHWA extend the comment period from November 16, 2015, as noticed in the Federal Register, to some later date.	In accordance with the statutory provisions for this program (23 U.S.C. 327(b)(2)(C)) and implementing regulations for the application process (23 CFR 773.107(b)) ODOT subjected its application to a period of notice (in newspapers Cleveland, Columbus, Cincinnati, Dayton, and Toledo, made available at the MPO's and ODOT's District Offices) and comment in Ohio beginning in the first week of April to May 15, 2015. ODOT received comments from various organizations as evidenced in the ODOT application. FHWA believes that the 30-day notice and comment opportunity on the application in April and the 30-day notice and comment opportunity provided in October has provided sufficient opportunity for comments on this process. Therefore, FHWA has decided not to extend the comment period on the MOU and application.

	<p>Ultimately, FHWA should reject ODOT's application and the proposed MOU. ODOT seeks to assume FHWA's responsibilities under NEPA and all or part of FHWA's responsibilities for environmental review, consultation or other actions required under other federal laws. Such delegation of federal authorities under NEPA contravenes the very purpose and significance of the Act. Environmental review under NEPA and other federal statutes should remain the purview of federal agencies. There is no other way to ensure the federal decision-making adequately considers the environmental consequences of federal actions.</p>	<p>Congress created a program in 2007 allowing States to subject themselves to the jurisdiction of Federal courts (by waiving their sovereign immunity under the 11th Amendment of the U.S. Constitution). States would then be able to apply, and enter into an agreement that assigns FHWA's environmental responsibilities for highway project development. Ohio is joining the states of California and Texas in this program. Caltrans has had these responsibilities since 2008 and Texas since 2014.</p>
	<p>Beyond the impropriety of such an assignment, Sierra Club has significant reservations about ODOT's ability to implement FHWA's duties under NEPA. ODOT staff does not possess the requisite technical and scientific expertise or experience to properly implement NEPA. ODOT has also shown a serious reluctance to provide the public with opportunities to review and comment on its actions, as it required by NEPA and other federal environmental statutes.</p>	<p>FHWA reviewed ODOT's application and held several meetings with ODOT's staff. As a result, FHWA is satisfied with the resources, including financial and personnel, ODOT has presented to assume these responsibilities. As part of implementing this program ODOT will meet the required Federal responsibilities for providing the public with opportunities to review and comment as appropriate.</p>

	<p><b>NEPA</b></p> <p>Congress passed NEPA in order to “declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation . . . .” NEPA creates specific responsibilities for the federal government. These responsibilities should be shared with the states, but the abdication of any federal role under NEPA should be anathema to the act.</p>	<p>Duly Noted.</p>
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	<p><b>Technical Expertise and Experience</b></p> <p>ODOT is not adequately equipped to administer NEPA.</p> <p>California was the first state to participate in the federal Surface Transportation Project Delivery Program, but California’s participation should not be used as a model for or to justify Ohio’s participation. The California Department of Transportation must reconcile its activities with the California Environmental Quality Act (CEQA). While CEQA is one of several so-called “mini NEPAs” throughout the country, it is far more proscriptive than NEPA. Generally, if a decision complies with CEQA it will comply with NEPA. Consequently, California has developed a body of expertise and hired technical employees who are equipped to handle NEPA duties in some form.</p> <p>On the other hand, Ohio does not have a law that is analogous to NEPA, and while ODOT certainly has experience dealing with NEPA, ODOT has not borne the full responsibility of implementing an environmental review statute.</p>	<p>The law does not limit the availability of this program to States that have a law analogous to NEPA. Therefore, FHWA cannot deny ODOT’s request solely because of the lack of a State NEPA equivalent.</p> <p>All Federal rules and regulations will be maintained and will still apply. FHWA will oversee all laws and regulations through the audit process. As mentioned above, FHWA reviewed ODOT's application and held several meetings with ODOT's staff and, as a result, is satisfied with the resources, including financial and personnel, ODOT has presented to assume these responsibilities.</p>
	<p>ODOT is also not adequately staffed to implement NEPA throughout the State. For example, most planning occurs at the district level. Yet District 8, which oversees a major metropolitan region and a federally designated Wild &amp; Scenic river, does not employ experts in any of the following categories: Endangered Species; Archeological Resources; Historic Preservation; or Ecological/Water Quality. (Ohio Application, p. 13.)</p>	<p>Both the statute and the MOU require FHWA to review ODOT’s processes to ensure the State is complying with the provisions of the MOU. As part of this review process, FHWA may review the areas of concern identified in your letter.</p>

	<p><b>Public Participation</b></p> <p>A major component of the federal government’s duties under NEPA is to ensure public participation. ODOT’s record of facilitating meaningful public participation is poor. For example, Sierra Club regularly participates in public and private meetings with ODOT officials, but this program has never discussed at any of the meetings. If ODOT truly wanted to ensure meaningful public participation, we would have been notified of this process nearly a year ago.</p>	<p>In accordance with the statutory provisions for this program (23 U.S.C. 327(b)(2)(C)) and implementing regulations for the application process (23 CFR 773.107(b)) ODOT subjected its application to a period of notice (advertised in newspapers in Cleveland, Columbus, Cincinnati, Dayton, and Toledo) and comment in Ohio beginning in the first week of April to May 15, 2015. ODOT received comments from various organizations as evidenced in the ODOT application. FHWA believes that the 30-day notice and comment opportunity on the application in April and the 30-day notice and comment opportunity provided in October has provided sufficient opportunity for comments on this process.</p>
	<p><b>Conclusion</b></p> <p>Please reject ODOT's request to assume federal responsibilities under NEPA and other federal environmental statutes.</p>	<p>Duly Noted.</p>