



## NEPA Assignment Program Frequently Asked Questions

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### What is NEPA Assignment?

- Congress allows States to assume Federal Highway Administration (FHWA) environmental review responsibility under the National Environmental Policy Act (NEPA) under [23 U.S. Code § 327](#) - Surface Transportation Project Delivery Program – “NEPA Assignment”.
- Under this program, the Maine Department of Transportation (MaineDOT) will assume responsibility for NEPA.
- FHWA provides information on NEPA Assignment at [https://www.environment.fhwa.dot.gov/nepa/program\\_assignment.aspx](https://www.environment.fhwa.dot.gov/nepa/program_assignment.aspx)

### What does the NEPA Assignment Program cover?

- MaineDOT acts as the Lead Federal Agency for environmental review and consultation with agencies.
- Applies to all Federal-aid highway projects.
- Applies to all NEPA classes of action: Categorical Exclusions (CE), Environmental Assessments (EA), and Environmental Impact Statements (EIS) and all environmental laws, regulations, and Executive Orders.
- NEPA Assignment does not change federal environmental protection standards and therefore MaineDOT is still responsible for complying with all federal environmental laws, rules, and orders under the “NEPA Umbrella.”
- MaineDOT is legally responsible for environmental decisions under this program.
  - Maine Revised Statutes 23 MRS 4206 (P) has been amended.
- FHWA retains an auditing and monitoring role and the following responsibilities:
  - NEPA Assignment program-level oversight, but no project-level assistance.
  - Clean Air Act conformity determinations.
  - Tribes retain the ability to request Government-to-Government consultation.
  - Statewide and metropolitan planning.
  - Excluded projects (projects that cross international or state lines).

### Why is MaineDOT participating in the NEPA Assignment Program?

- MaineDOT will be the decision-maker.
- To deliver MaineDOT improvement projects more efficiently to the public while preserving environmental quality.

### Is MaineDOT accountable for maintaining high environmental standards?

- MaineDOT will maintain current high standards for environmental reviews and collaboration with agencies.
- MaineDOT will continue to follow the same federal environmental laws, regulations, and Executive Orders.
- MaineDOT Environmental Office (ENV) will conduct regular program reviews.
- FHWA will regularly conduct in-depth audits of MaineDOT’s performance and adherence to environmental laws, regulations, and Executive Orders
- FHWA retains final project funding authority and may revoke the program if MaineDOT does not perform to the required standards.
- MaineDOT 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 MaineDOT assumes more risk along with more



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responsibility for the quality and outcomes of their environmental documents and decisions.

### Where has this been done before?

Originally only a pilot program, MAP-21 Section 1313 amended 23 U.S.C 327 and converted it into a permanent program in 2012. States that have assumed NEPA responsibilities:

- California
- Alaska
- Texas
- Ohio
- Florida
- Utah
- Arizona
- Nebraska

### Scope of the NEPA Assignment Program

- A Memorandum of Understanding (MOU) will define the range of project actions and environmental responsibilities that MaineDOT assumes.
- The NEPA Assignment Program includes assigning FHWA's responsibilities and consultation obligations for environmental laws under the "NEPA umbrella" to MaineDOT, such as:
  - Endangered Species Act
  - National Historic Preservation Act
  - Magnusson-Stevens Fishery Conservation and Management Act (Essential Fish Habitat)
  - U.S. Department of Transportation Act [Section 4(f)]
  - Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

### How does this change the environmental process?

- Federal, State, and Local Agencies, and Tribes experience no change in environmental review and compliance.
  - Before "assignment" MaineDOT already approved CEs under a programmatic agreement for over 20 years.
- MaineDOT takes the lead on all consultation and coordination.

### Is there Independent Environmental Decision-Making?

MaineDOT's organization supports environmental decision-making independent of administrative, political, or performance-based pressure. Under the NEPA Assignment Program, MaineDOT will assume the role of project-level environmental decision-maker with full legal responsibility, which is in addition to the traditional role of being the project sponsor. Approval for all environmental documents prepared under the NEPA Assignment Program will be independent of project design decisions. However, the MaineDOT environmental team will collaborate with project designers throughout the project development process on possible avoidance and minimization strategies when there are potential impacts on environmental resources of concern.

There are many decisions and levels of decision-making in project development. MaineDOT ENV will make the approvals under environmental review. These decisions are made by staff independent of those directly



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managing the project and those responsible for delivering the project for construction advertisement. Although the decision is independent, the “NEPA Decision” is not made before there is consensus of the project team on design and engineering solutions and consideration of agency and stakeholder input on determining cooperating agencies, purpose and need, range of reasonable alternatives, preferred alternative, and consultations with tribes and resource agencies, Section 4(f) – Officials with Jurisdiction, consulting parties, and the public.

Projects qualifying as categorically excluded from the requirement to prepare an EA or EIS will be confirmed as CEs and approved by MaineDOT ENV Team Leaders. All formal environmental documents (EISs and EAs) will be independently reviewed by the MaineDOT Senior Environmental Manager/NEPA Manager and ENV Director before their approval. ENV will also ensure legal reviews and sufficiency reviews are performed by the MaineDOT Legal Office and the Maine Attorney General’s Office.

FHWA will conduct annual audits of the MaineDOT NEPA Assignment Program for the first 4 years.

### **What are the requirements for DOTs entering into NEPA Assignment?**

- MaineDOT will submit an application to FHWA. The application identifies:
  - Scope of Assignment
  - Current & Proposed Organization
  - Current & Proposed Procedures, Tools
  - Roles and Responsibilities
  - Additional Staff and Training
- A notice of the availability of the MaineDOT application will be published for public review for a 30-day comment period and posted on the MaineDOT website.
- MaineDOT and FHWA will prepare a Memorandum of Understanding (MOU) and a notice will be published that allows for a 30-day public review of the MOU. Once executed MaineDOT will have NEPA Assignment.
- The MaineDOT Environmental Office anticipates an Executed MOU in late 2024.

### **Does NEPA Assignment affect other decisions on fed-aid projects?**

- There is no change to any federal environmental laws or regulations.
- The only difference in the process is that MaineDOT is the “decision maker” and acts as the lead federal agency in the environmental process for federal-aid highway projects instead of FHWA.

### **What can you do?**

- Let us know of any concerns you may have so that we can address them.
- MaineDOT contacts:

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