

## 0-6866: NEPA Reporting Synthesis of State Practices

### Background

The Surface Transportation Project Delivery Program has authorized delegating the National Environmental Policy Act (NEPA) review and approval processes to state Departments of Transportation (DOTs). The Texas Department of Transportation (TxDOT) became the second state DOT to assume this responsibility for determinations of categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs). A memorandum of understanding (MOU) between TxDOT and the Federal Highway Administration (FHWA) assigned these responsibilities to TxDOT in December 2014. As part of the process for assuming assignment responsibility, the State of Texas waived its sovereign immunity for NEPA litigation brought under the Administrative Procedures Act.

This project aimed to identify best practices and procedures related to NEPA Assignment and documentation with the goal of recommending process revisions to TxDOT, and included the development of (i) performance measures and (ii) training materials for TxDOT staff and other NEPA professionals to communicate the roles and responsibilities for staff within TxDOT and local governments and consultants under NEPA Assignment.

### What the Researchers Did

During the sixteen-month project, the research team conducted the following program of inquiry:

- Reviewed and compared agreements between state DOTs and the FHWA related to

NEPA Assignment, including programmatic agreements.

- Identified responsibilities both assigned and retained by the FHWA to clarify the new roles and responsibilities of TxDOT following assignment, with particular emphasis on those that may cause confusion during the transition to assignment.
- Gathered, reviewed, and synthesized findings from audits of state DOTs by the FHWA to identify common causes for audit findings and challenging areas of NEPA Assignment.
- Gathered and synthesized best practices on the use of performance measures to document and manage performance, and developed recommended performance measures.
- Reviewed the initial metrics proposed by TxDOT to document performance in the four performance measures required by the MOU and proposed revisions for more meaningful and measurable measurement outcomes.

#### Research Performed by:

Center for Transportation Research

#### Research Supervisor:

Lisa Loftus-Otway, CTR

#### Researchers:

Michael Bomba, UNT

Ashley McLain, Cox|McLain Environmental Consulting

Brianna Garner Frey, CTR

Brian Miller, CTR

Duncan Stewart, CTR

Elizabeth Welch, CTR

#### Project Completed:

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- Conducted a legal review analyzing ongoing trends in NEPA litigation, particularly NEPA assignment and the waiver of sovereign immunity.
- Synthesized audit findings, MOU terms and responsibilities, and case law trends to identify training objectives for six types of NEPA professionals working internally and externally with TxDOT.
- Developed training material to educate six target audiences on the roles and responsibilities assumed by TxDOT and individual roles as a result of NEPA Assignment: environmental specialists, TxDOT management, TxDOT engineers, consultants, local government staff and sponsors, and elected officials.

### What They Found

The research team found that due to the complexity of NEPA and Assignment, TxDOT needs to stay engaged and involved in all aspects of NEPA Assignment, including continuous training of staff and other stakeholders. Audits during TxDOT’s first year of Assignment indicated that TxDOT needs to ramp up training on NEPA Assignment, improve the consistent use of the Environmental Compliance Oversight System, standardize the QA/QC procedure of reviewing documents, and reevaluate performance measures used to track compliance and progress. NEPA is a procedural law, and under the Administrative Procedures Act the court will assess whether TxDOT followed a logical, documented, and rational processes in analyzing project alternatives and making determinations on whether a project is a CE or

requires development of an EA or EIS. Continuous improvement in each of these areas will improve the consistency and quality of the administrative record and process used to develop it, and will reduce the likelihood of litigation.

Training developed during this research provides TxDOT with a process for improving the staff’s understanding of the roles and responsibilities incumbent upon the DOT under Assignment. The research team focused on defining the purpose of the NEPA documentation process, on the importance of the administrative record and precise documentation, and on emphasizing the significance of each individual role in making correct and defensible NEPA decisions under Assignment. By laying the foundation of the tenets of NEPA and individual responsibility, these materials will assist TxDOT in its transition to assignment and development of incoming staff skills.

### What This Means

TxDOT should adopt the training materials presented in this research project as a step toward standardizing NEPA Assignment training and knowledge across the state’s many districts. Despite having many highly trained professionals, audits from TxDOT and Caltrans indicate a fundamental knowledge gap in the purpose and requirements of NEPA and NEPA Assignment. Implementation of this training series through online training would serve to improve basic understanding of the responsibilities assigned not only to TxDOT as a whole, but of individual responsibilities in the NEPA process.

#### For More Information

**Project Manager:**

Joe Adams, TxDOT, (512) 416-4748

**Research Supervisor:**

Lisa Loftus-Otway, CTR, (512) 232-3072

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Research and Technology Implementation Office  
 Texas Department of Transportation  
 125 E. 11th Street  
 Austin, TX 78701-2483  
[www.txdot.gov](http://www.txdot.gov)  
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