To: New York State Department of Transportation

ENGINEERING BULLETIN

Title: INTERPRETIVE GUIDANCE FOR THE NEPA ASSESSMENT CHECKLIST

Distribution:

☑ Manufacturers (18) ☑ Surveyors (33)
☒ Local Govt. (31) ☑ Consultants (34)
☒ Agencies (32) ☑ Contractors (39)

Approved:

/s/Daniel P. Hitt

Daniel P. Hitt, RLA
Director, Environmental Science Bureau

ADMINISTRATIVE INFORMATION:

• Effective Date: This Engineering Bulletin (EB) is effective upon signature.
• Superseded Issuances: None
• Disposition: The guidance transmitted by this EB will reside in The Environmental Manual (TEM).

PURPOSE: To transmit interim guidance that provides clarifications to NYSDOT’s National Environmental Policy Act (NEPA) Assessment Checklist.

TECHNICAL INFORMATION: NYSDOT, in consultation with FHWA, identified the most problematic questions, issues and concerns associated with the Department’s NEPA Assessment Checklist. The attached guidance was developed to provide clarifications to the identified issues to the existing NEPA Assessment Checklist without altering the language or intent of the original questions. A new NEPA Assessment Checklist, which incorporates these clarifications and will supersede this issuance when completed, is currently under development.

TRANSMITTED MATERIALS: Attached are NYSDOT’s NEPA Assessment Checklist clarifications, February 22 and June 18, 2010 letters to FHWA, and March 17 and July 19, 2010 letters from FHWA stating concurrence.

BACKGROUND: The FHWA New York Division approved a Programmatic Categorical Exclusion (CE) and Instructions for a NEPA Assessment Checklist on July 15, 1996. The Checklist and Instructions, revised on July 26, 1996, explain the procedure for processing Automatic and Programmatic CEs, and CEs with Documentation under the National Environmental Policy Act for projects that are funded or permitted by the Federal Highway Administration. The Checklist and Instructions comply with the FHWA’s regulations (23CFR771) that implement NEPA. Based upon experience utilizing the Checklist it was determined that clarification of certain questions and an update to technical references, would assist NYSDOT and FHWA staff in responding in a consistent fashion to the NEPA Assessment Checklist without altering the intent of the original questions. The NEPA Assessment Checklist, Instructions and additional background information can be found in the Department’s Environmental Procedures Manual (EPM) Chapter 2.2 at the following link: https://www.nysdot.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm/chapter-2.

CONTACT: Contact Carl Kochersberger, (518) 457-0103, (ckochersberger@dot.state.ny.us) or Shengxin Jin, (518) 485-1406, (sjin@dot.state.ny.us) with questions regarding this issuance.
NEPA Assessment Checklist Clarifications

Purpose

In response to requests from preparers and reviewers of NEPA documentation, NYSDOT, in consultation with FHWA, identified the most problematic questions, issues and concerns associated with the NEPA Assessment Checklist. After review and discourse, the following guidance was developed to provide clarification to the identified issues to the extent possible without altering the language or intent of the original questions as established in the existing 1996 Agreement.

Background

NYSDOT and FHWA-NY Division recognize three types of Categorical Exclusions (CEs); Automatic CEs listed in 23 CFR 771.117(c) [AKA “C List”], Documented CEs listed in 23 CFR 771.117(d) [AKA “D List”], and Programmatic CEs as defined in the 1996 Memorandum of Agreement between the agencies found in Chapter 2.2 of the Environmental Procedures Manual. The intent of Sections I-III of the NEPA Assessment Checklist is to determine a project’s CE type (Automatic, Programmatic or CE with Documentation).

A project is classified as a CE because, after review, it has been determined that there is no potential for significant impacts under NEPA that would require the preparation of an EA or EIS. Classification as a CE does not exempt the project from environmental review under other Federal or State Statutes, Executive Orders (EO’s), or regulations including, but not limited to the State Environmental Quality Review Act (SEQRA), the National Historic Preservation Act, the Endangered Species Act, the Clean Water Act, Coastal Consistency, and EO’s 11990 and 13112. Refer to The NYSDOT Environmental Manual (TEM) to determine the requirements for such compliance.

Interpretations

The following interpretations will help clarify several NEPA Assessment Checklist questions:

**Question 1:** “Does the project involve unusual circumstances as described in 23 CFR §771.117(b)?”

No changes.

**Question 2:** “Is the project an action listed as an Automatic Categorical Exclusion in 23 CFR §771.117(c) (C List) and/or is the project an element specific project classified by FHWA as a Categorical Exclusion on July 22, 1996?”

For further guidance on determining whether or not the project is “an element-specific project classified by FHWA as a Categorical Exclusion on July 22, 1996,” please refer to the Project Development Manual, Appendix 7, Scoping & Design Approval Documents, Exhibits 7-4 and 7-5.

Link: [https://www.nysdot.gov/divisions/engineering/design/dqab/dqab-repository/PDM%20Appendix%207%20-%20Intro.doc](https://www.nysdot.gov/divisions/engineering/design/dqab/dqab-repository/PDM%20Appendix%207%20-%20Intro.doc)

**Question 3:** “Is the project on new location or does it involve a change in the functional classification or added mainline capacity (add through-traffic lanes)?”

No changes.

**Question 4:** “Is this a Type I project under 23 CFR 772, Procedures for Abatement of Highway Traffic Noise and Construction?”

No changes.

**Question 5:** “If the project is located within the limits of a designated sole source aquifer area or the associated stream flow source area, is the drainage pattern altered?”

A “yes” response means that at least some part of the project is within the limits of the sole source aquifer, its recharge area, or the associated stream flow source area for the sole source aquifer and has the potential to affect such.
Guidance on assessing potential impacts to Aquifers can be found in the Environmental Procedures Manual (EPM) Chapter 4.4 Groundwater Resources – Aquifers.


**Question 6:** “Does the project involve changes in travel patterns?”

No changes.

**Question 7:** “Does the project involve the acquisition of more than minor amounts of temporary or permanent right-of-way (a minor amount of right-of-way is defined as not more than 10% of a parcel for parcels under 4 ha (10 acres) in size, 0.4 ha (1 acre) of a parcel 4ha to 40.5 ha (10 to 100 acres) in size and 1% of a parcel for parcels greater than 40.5 ha (100 acres) in size?”

No changes.

**Question 8:** “Does the project require a Section 4(f) evaluation and determination in accordance with the FHWA guidance?”

"Yes" should be checked for all 4(f) evaluations, including programmatic.

**Question 9:** “Does the project involve a commercial or residential displacement?”

No changes.

**Question 10:** “If section 106 applies, does FHWA’s determination indicate an opinion of adverse effect?”

No changes.

**Question 11:** “Does the project involve any work in wetlands requiring a Nationwide Wetland Permit # 23?”

“Yes” must be checked for projects in which a Nationwide Permit # 23 is being pursued. For such projects, a Categorical Exclusion with Documentation must be approved by FHWA to satisfy the U.S Army Corps of Engineers NEPA responsibilities. Also, note that the Nationwide Permit # 23 considers impacts to all waters of the U.S. and is not limited to wetlands. The Design Report should include all necessary documentation on working in waters of the U.S.

**Question 12:** “Does the project involve any work in wetlands requiring an individual Executive Order 11990 Wetland Finding?”

"Yes" would be checked when both of the following are true: 1) the project involves work in wetlands that is subject to EO11990 and 2) the FHWA NY-Division Programmatic Wetland Finding does not apply.

**Question 13:** “Has it been determined that the project will significantly encroach upon a flood plain based on preliminary hydraulic analysis and consideration of EO 11988 criteria as appropriate?”

No changes.

**Question 14:** “Does the project involve construction in, across or adjacent to a river designated as a component proposed for or included in the National System of Wild and Scenic Rivers?”

The response to this question should indicate whether the project has the potential to impact the features and attributes of the River that result in its classification as a Designated, Studied or Inventoried river segment.

Additional guidance can be found in EPM Chapter 4.6 Wild, Scenic, and Recreational Rivers.
Question 15: “Does the project involve any change in access control?”

A “Yes” response should only be made when the project results in a change in access control to an interstate highway or freeway.

Access Control is defined in Highway Design Manual Section 2.6.15 and guidance is found in the Project Development Manual, Appendix 8.

Question 16: “Does the project involve any known hazardous materials sites or previous land uses with potential for hazardous materials remains within the right-of-way?”

A “Yes” response to this question should only be made when the project involves a known hazardous waste site, or previously identified land uses that would potentially involve the disposal of hazardous waste(s) at the site. In order to properly answer this question, it is important to distinguish between hazardous materials, non-hazardous industrial wastes, hazardous wastes, and other categories of materials. It is also important to remember that having a USEPA Generator ID# does not, in itself, make a site a “Hazardous Waste Site”.

Additionally, asbestos is not a hazardous waste.

For additional guidance on this matter, refer to EPM Chapter 5.1.

Question 17: “Does the project occur in an area where there are Federally listed, endangered or threatened species or critical habitat?”

A “yes” response to this question should only be made when, based on a screening and assessment of habitat, it is determined that there are Federally-listed endangered or threatened species or critical habitat present within the project Action Area and that such species and/or habitat may be affected. Of the three possible effect determinations (“no effect,” ”may affect - not likely to adversely affect,” or ”may affect - likely to adversely affect”) the latter two would require an answer of ”yes” to this question.

Additional guidance is provided at the following location: https://www.nysdot.gov/divisions/engineering/environmental-analysis/water-ecology/wildlife

Question 18: “Is the project, pursuant to EPM Chapter 1A and Table 2 and Table 3 of 40 CFR Parts 51 and 93, non-exempt or does it exceed any ambient air quality standard?”

There is no Chapter 1A. Please refer to EPM Chapters 1.1 (sections 9 and 15) and 1.2 (sections 4, 6, and 7) in addition to the above-referenced tables.

Question 19: “Does the project lack consistency with the New York State Coastal Zone Management Plan and policies of the Department of State, Office of Coastal Zone Management?”

The former DOS Office of Coastal Zone Management is now the Division of Coastal Resources.

Question 20: “Does the project impact or acquire any Prime or Unique Farmland as defined in 7 CFR Part 657 of the Federal Farmland Protection Policy Act and are there outstanding compliance activities necessary? (Note: Interpret compliance activity to mean completion of Form AD 1006.)”

No changes.

Question 21: “Does the project involve the use of a temporary road, detour or ramp closure?”
No changes.

**Question 22:** “Since the project involves the use of temporary road, detour or ramp closure, will all of the following conditions be met:

i. Provisions will be made for pedestrian access, where warranted, and access by local traffic and so posted.

ii. Through-traffic dependent business will not be adversely affected.

iii. The detour or ramp closure, to the extent possible, will not interfere with any local special event or festival.

iv. The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.

v. There is no substantial controversy associated with the temporary road, detour or ramp closure.”

No changes.

**Question 23:** “Is the project section listed in 23 CFR §771.117(d) (D List) or is the project an action similar to those listed in 23 CFR §771.117(d)?”

No changes.
CORRESPONDENCE WITH FHWA
February 22, 2010

Alicia Nolan
Chief, Planning & Program Division
Federal Highway Administration
Leo W. O'Brien Federal Building, Suite 719
Clinton Avenue and North Pearl Street
Albany, NY 12207

RE: NEPA Assessment Checklist

Dear Ms. Nolan:

The purpose of this letter is to request FHWA's concurrence with Interpretive Guidance for the NEPA Assessment Checklist originally approved and adopted by FHWA and NYDOT on July 15, 1996, as attached hereto. The intent of the interpretive guidance (attached) is to help clarify what is meant by certain questions and to update certain technical references to assist NYSDOT and FHWA staff in responding in a consistent fashion to the NEPA Assessment Checklist questions.

As you know, in response to requests from preparers and reviewers, NYSDOT in consultation with FHWA identified the most problematic questions, issues and concerns associated with the checklist. After review and discourse, the attached was developed to provide clarification to the identified issues to the extent possible without altering the language or intent of the original questions as established in the existing 1996 Agreement. Staff are encouraged to utilize the guidance and to consult with the Regional Environmental Unit Supervisors below when completing the NEPA Assessment Checklist for specific projects/ actions.

We recognize this is not a long-term solution and we are committed to continuing our efforts to further evaluate and revise the Checklist.

Sincerely,

Daniel P. Hitt, RLA
Director, Environmental Science Bureau

DPH/CRK/DPN

Attachment
New York Division

March 17, 2010

Leo W. O'Brien Federal Bldg.,
Suite 719
Albany, NY 12207
518-431-4127
518-431-4121 (fax)
NewYork.fhwa@dot.gov

In Reply Refer To:
HPD-NY

Dan Hitt, Registered Landscape Architect
Director, Environmental Science Bureau, 4-1
New York State Department of Transportation
50 Wolf Road
Albany, NY 12232

Subject: NEPA Assessment Checklist

Dear Mr. Hitt:

In response to your February 22, 2010 request, we concur that the Interpretive Guidance for the NEPA Assessment Checklist is ready for distribution. We also recognize that the guidance is limited to clarification of certain questions and updating of technical references within the Checklist as originally approved by FHWA on July 15, 1996. Please copy our office on your formal notice and distribution to the entire NYSDOT organization.

We look forward to working with your office to further evaluate and revise the NEPA Checklist with the goal of making more comprehensive improvements. If you have any questions, please feel free to contact me at (518) 431-4125, extension 217; or Jeff Berna, Environmental Coordinator at (518) 431-4125, extension 220.

Sincerely,

Alicia Nolan
Chief, Planning and Program Development

RECEIVED
MAR 1Y 2010
OFFICE OF ENVIRONMENT
June 18, 2010

Alicia Nolan  
Chief, Planning & Program Division  
Federal Highway Administration  
Leo W. O’Brien Federal Building, Suite 719  
Clinton Avenue and North Pearl Street  
Albany, NY 12207

RE: NEPA Assessment Checklist

Dear Ms. Nolan:

FHWA previously concurred with changes to the Interpretive Guidance for the NEPA Assessment Checklist (please refer to NYSDOT’s February 10, 2010 letter to you regarding this subject and FHWA’s response, dated March 17, 2010). Since FHWA’s original concurrence, we have received several comments on the guidance that warranted addressing. The Final Draft Interpretive Guidance for the NEPA Assessment Checklist is attached for your review.

All changes that have been made since your concurrence are highlighted using the “track changes” feature of Microsoft Word. Substantive changes were made to the clarifications for questions 8, 12, 16, and 17 in addition to other minor changes that are highlighted throughout the document.

Thank you for your assistance in issuing this guidance as we continue our joint efforts with FHWA to further evaluate and revise the Checklist.

Sincerely,

Daniel P. Hitt, RLA  
Director, Environmental Science Bureau  

Attachment
July 19, 2010

Dan Hitt, Registered Landscape Architect
Director, Environmental Science Bureau, 4-1
New York State Department of Transportation
50 Wolf Road
Albany, NY 12232

Subject: NEPA Assessment Checklist

Dear Mr. Hitt:

In response to your June 18, 2010 request, we concur with the changes to the Interpretive Guidance for NYSDOT’s NEPA Assessment Checklist. We also recognize that the guidance is limited to clarification of certain questions, and updating of technical references within the Checklist, as originally approved by FHWA on July 15, 1996. Please copy our office on your formal notice and distribution to the entire NYSDOT organization.

We look forward to working with your office to further evaluate and revise the NEPA Checklist with the goal of making more comprehensive improvements. If you have any questions, please feel free to contact me at (518) 431-4125, extension 217; or Jeff Berna, Environmental Coordinator at (518) 431-4125, extension 220.

Sincerely,

Alicia Nolan
Chief, Planning and Program Development