

PROGRAMMATIC AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION IOWA DIVISION
AND THE IOWA DEPARTMENT OF TRANSPORTATION
REGARDING THE PROCESSING OF
CERTAIN CATEGORICAL EXCLUSION ACTIONS

WITNESSETH:

Whereas, the Iowa Department of Transportation (Iowa DOT) proposes highway projects and desires to apply Federal-aid funding for those projects and in doing so, the Federal Highway Administration Iowa Division (FHWA) must comply with National Environmental Policy Act (NEPA) and;

Whereas, FHWA is responsible for making all NEPA decisions and Iowa DOT has considered and decided not to assume responsibilities for Categorical Exclusions (CE) pursuant to 23 U.S.C. § 326 and;

Whereas, FHWA may establish procedures to expeditiously and efficiently process actions that are excluded from the requirements to prepare either an environmental impact statement or an environmental assessment, including the use of programmatic agreements with States and;

Whereas, approximately 95% of the highway projects proposed by Iowa DOT for Federal-aid funding typically qualify as a CE and Iowa DOT seeks to assist in reducing the paperwork and processing time for certain Federal actions that do not have significant impacts on the human and natural environment pursuant to 40 CFR 1500.5(k) and;

Whereas, FHWA may delegate the task of analyzing environmental impacts and preparing environmental documentation for NEPA compliance pursuant to 42 U.S.C. 4332(2)(D) and;

Whereas, the Iowa DOT wishes to certify that certain highway projects do not have significant impacts on the human and natural environment and in doing so will reduce the paperwork and processing time for FHWA NEPA approvals in accordance with this agreement and applicable law. To certify or to provide certification means the Iowa DOT determined the action meets the criteria set forth in this agreement;

Now, therefore, the FHWA and Iowa DOT enter into this Programmatic Agreement (Agreement) for the processing of projects under NEPA subject to the following terms and conditions:

SECTION I. DEFINITION OF ACTIONS THAT DO NOT HAVE SIGNIFICANT IMPACTS ON THE HUMAN AND NATURAL ENVIRONMENT

- A. Projects processed under this Agreement must be actions listed in this Section I that meet the definitions in 40 CFR 1508.4 and 23 CFR 771.117 for “categorical exclusions,” are not excluded from processing under this Agreement by its terms, and are actions which do not individually or cumulatively have a significant effect on the human environment

and for which neither an environmental assessment nor an environmental impact statement is required.

B. For a proposed action that Iowa DOT concludes qualifies for a CE under 23 CFR 771.117, Iowa DOT shall certify to FHWA that the action meets the requirements of this Section I and Section II, including that 23 CFR 771.117(a) is satisfied and the project and is one that:

1. Does not induce significant impacts to planned growth or land use for the area,
2. Does not require the relocation of significant numbers of people,
3. Does not have a significant impact on any natural, cultural, recreational, historic, or other resource,
4. Does not involve significant air, noise or water quality impacts,
5. Does not have significant impacts on travel patterns, and
6. Does not otherwise, either individually or cumulatively, have any significant environmental impacts.

C. Iowa DOT shall limit its processing of projects under this Agreement to:

1. Actions listed in 23 CFR 771.117(c).
2. The following actions consistent with 23 CFR 771.117(d):
 - a.) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).
 - b.) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.
 - c.) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.
 - d.) Transportation corridor fringe parking facilities.
 - e.) Construction of new truck weigh stations or rest areas.
 - f.) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.
 - g.) Approvals for changes in access control.
 - h.) Construction of new bus storage and maintenance facilities as per 23 CFR 771.117 (d)(8).

- i.) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
- j.) Acquisition of land for hardship or protective purposes as per 23 CFR 771.117 (d)(12).
- k.) Approvals for borrow sites, waste sites, or staging sites when the clearance occurs after the approval of the original decision document.
- l.) Approvals for state funded projects; meeting the criteria of Section I and II of this agreement, that are attached to Federal funded project.

SECTION II. CONSIDERATION OF UNUSUAL CIRCUMSTANCES

- A. For each project processed under this Agreement, Iowa DOT shall consider whether circumstances exist where a normally categorically excluded action may have a significant environmental effect.
- B. Iowa DOT shall evaluate as part of its processing of a project whether the action meets 23 CFR 771.117(a) and is one that does not involve unusual circumstances that might require the preparation of an EA or EIS and will certify its findings to FHWA. This consideration of unusual circumstances includes consideration whether the action might result in:
 - 1. Significant environmental impacts.
 - 2. Substantial controversy on environmental grounds
 - 3. Significant impacts on properties protected by section 4(f) of the DOT Act (49 U.S.C § 303) or section 106 of the National Historic Preservation Act.
 - 4. Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

SECTION III. CONDITIONS, OR DETERMINATIONS THAT EXCLUDE ACTIONS FROM THIS AGREEMENT

- A. Notwithstanding any other provision of this Agreement, any action that does not satisfy the criteria for a CE described in Sections I-II of this Agreement is excluded from processing under this Agreement. Exclusion also may occur at any time during the environmental process if Iowa DOT or FHWA determines that the project fails to meet the CE criteria.
- B. Other conditions that exclude a project that otherwise may qualify as a CE from processing under this Agreement are as follows:
1. The action involves use of properties protected by Section 4(f) evaluation or programmatic section 4(f) evaluation. (This does not include de minimis findings or negative declarations.)
 2. The action involves use of properties protected by or Section 6 (f) of the Land and Water Conservation Act.
 3. The action has a determination of “Adverse Effect” on properties protected by Section 106 of the National Historic Preservation Act.
 4. The action adversely affects species or critical habitat as per written correspondence with the United States Fish and Wildlife Service.
 5. The action requires more than minor amounts of new right of way or temporary easement, more than minor access changes, or has significant relocations of people.
 6. The action has high risk of hazardous materials involvement.
 7. The action involves more than minor placement of fill into Waters of the United States (33 CFR 328).
 8. The action involves more than a minimal encroachment into a floodplain.
 9. The action impacts more than minor amounts of wetlands or stream channelization.
 10. The action is a type I project in accordance with 23 CFR 772 and will significantly impact noise levels.
 11. The action will significantly impact air quality or would cause federal ambient air quality standards to be exceeded.
 12. The action is controversial. (In cases when controversy is anticipated, Iowa DOT will discuss the potential for controversy with FHWA to determine if the project can be processed as a PCE or needs to be elevated to a higher level of documentation.)

SECTION IV. NEPA APPROVALS

- A. FHWA will use the certification and related project information in determining whether to approve a CE processed under this Agreement.

- B. Iowa DOT shall ensure that the certifications and records for each CE project processed under this Agreement will be made available prior to or at the time FHWA makes its decision.
- C. In general, the parties contemplate that FHWA shall consider the outcome of the certifications and any records provided by Iowa DOT prior to the request of any federal approval.
 - 1. If FHWA determines the CE applies, approval of the request for notice to proceed will also be the FHWA's NEPA decision for that project.
 - 2. If the certification and related project information are inadequate or incomplete, FHWA shall request more detailed information.
 - 3. If FHWA does not approve the request to proceed, the FHWA also does not approve the NEPA determination. FHWA shall inform Iowa DOT of the reasons for its decision not to approve the request.

SECTION V. STATE PERFORMANCE REQUIREMENTS

- A. Processing projects under this Agreement: identification, record keeping, and review of effects. For projects that Iowa DOT determines meet the criteria specified in Section I of this Agreement, Iowa DOT shall:
 - 1. Institute a process to identify and review the environmental effects of the proposed project.
 - a) Non-evaluated Programmatic CE – Based on past experience these action types have no potential for significant environmental effect (attachment A). The action types are non-construction actions, or construction actions within the previously disturbed right-of-way.
 - b) Evaluated Programmatic CE – Action types listed in 23 CFR 771.117 (c) and (d), but not included as a Non-evaluated Programmatic CE.
 - (1) The Project Review Summary Part A (attachment B) will be used for construction actions as described in 23 CFR 771.117(d) that will be within previously disturbed ROW, will transfer the use rights of a property, and for disposal of excess right-of-way.
 - (2) The Project Review Summary Part B (attachment B) will be used to document all other construction actions that meet the criteria of 23 CFR 771.117(c) or (d) and will require minor amounts of ROW.
 - 2. Record its certification that a project meets the conditions specified in Sections I(B) and II(B), specifying the action from Section 1(C) that applies to

the project and including, at a minimum, the printed name, title, and date of the State official approving the certification.

3. Include the following certification when recording the CE findings:
“Iowa DOT has determined that this project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, or involve unusual circumstances as defined in 23 CFR 771.117(b), such that it is excluded from the requirements to prepare an environmental assessment or environmental impact statement.”
4. Record in the project file,
 - a) the specific categorically excluded activity,
 - b) the CE findings,
 - c) the outcome of any environmental studies conducted to consider unusual circumstances (23 CFR 771.117(b)) and to determine if the CE classification is proper, as appropriate,
 - d) Any document used in decision making.
5. Iowa DOT shall re-evaluate its certifications for projects to ensure that all certifications are still valid prior to requesting any major approvals or grants to establish whether the CE designation remains valid. Iowa DOT shall consult with FHWA and document the re-evaluation (when necessary) pursuant to 23 CFR 771.129.
 - a) A re-evaluation must occur when there is a change in the scope or location of the project such that new impacts may occur that were not previously considered.
 - b) A re-evaluation must occur when at least 3 years have passed since the date the project was certified. These must be in writing and shall be included in the project record.

B. Required resources, qualifications, expertise, standards, and training.

1. Iowa DOT must maintain adequate organizational and staff capability and expertise to effectively carry out the provisions of this Agreement. This includes, without limitation:
 - a) Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement; and
 - b) Devoting adequate financial and staff resources to carry out the certification and processing of projects under this Agreement.

2. The State may procure through consultant services some or all of the environmental and other technical expertise needed to carry out its processing and certifications under this Agreement.
3. At a minimum, all individuals who make certifications shall:
 - a) Have completed Introduction to NEPA and Transportation Decision - making web-based course FHWA-NHI-142052.
 - b) Have adequate experience addressing NEPA compliance for transportation projects or until such time, have their work reviewed by staff having the necessary experience.
4. All individuals participating in the processing and certification of projects under this Agreement shall be familiar with and follow the appropriate subsections 23 CFR 771 and Iowa DOT procedures for environmental analysis and NEPA processing.

C. State quality control.

1. Iowa DOT agrees to carry out regular quality control activities to ensure that its CE certifications are made in accordance with applicable law and this Agreement.
2. At a minimum, Iowa DOT shall monitor its processes relating to project certifications, environmental analysis, and project file documentation, and check for errors and omissions. Iowa DOT shall take corrective action as needed. Iowa DOT shall document its quality control activities and any needed corrective actions taken.
3. If Iowa DOT implements training to meet the capability requirements of this Agreement or as a corrective action, FHWA and Iowa DOT shall cooperate to bring environmental training courses, from time to time, to the Iowa DOT Office of Location and Environment.

D. Documentation and recordkeeping for CE certifications for individual projects.

1. Iowa DOT will create a project record for each action it certifies under the terms of this Agreement. This project record shall be available to FHWA for review upon request. This record shall include at a minimum:
 - a) A description of the project and which CE Iowa DOT concluded applies to the project including federal project number.
 - b) The certification and findings to be part of the record listed in Section V(A)(4).
 - c) Any checklists, forms, or other documents that summarize the consideration of project effects and unusual circumstances.

- d) Any stakeholder correspondence, consultation, public meeting or involvement documentation.
2. Iowa DOT shall notify FHWA of Iowa DOT's certification that a project has met the conditions set forth in this Agreement as part of Iowa DOT's request to proceed. The request to proceed shall indicate the project has been certified as a project that does not have significant impacts on the human or natural environment and specify the CE for which Iowa DOT concluded the project qualifies. This notification may occur on form FHWA-37, item 18. For projects certified in this manner, no further NEPA documentation should be sent to FHWA unless specifically requested by FHWA. Notification to FHWA from Iowa DOT of the CE certification may occur earlier than the request to proceed authorization.
3. At the beginning of each Federal fiscal quarter, Iowa DOT shall post on its web site, a list of the CE certifications it has made in the preceding 3 months. The information will be provided within 15 business days after each quarter.
4. The Iowa DOT shall maintain electronic and/or paper project records and records pertaining to Iowa DOT administration of its certification process for individual projects. Iowa DOT shall provide the FHWA with copies of any project records the FHWA may request. Iowa DOT shall retain those records, including all letters and comments received from governmental agencies, the public, and others for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve Iowa DOT of its project or program recordkeeping responsibilities under 49 CFR 18.42 or any other applicable laws, regulations, or policies.
5. Iowa DOT shall ensure that project records are available to the public consistent with requirements applicable to Federal agencies under 5 U.S.C. § 552 [the Freedom of Information Act (FOIA), as amended in 2002], IA Code §22.1-22.14 et seq State of Iowa FOIA, NEPA, and consistent with applicable FHWA regulation, policy, and guidance.

E. State monitoring and reporting on its performance of the agreement. The FHWA and Iowa DOT shall cooperate in monitoring performance under this agreement and each party shall modify its practices as needed to assure quality performance by Iowa DOT and the FHWA.

1. Iowa DOT shall submit to the FHWA (electronically or in hard copy) a report summarizing its performance under this Agreement annually from the effective date of this Agreement. The report will identify any areas where improvement is needed and what measures Iowa DOT is taking to implement those measures. The report will include actions taken by Iowa DOT as part of its quality control efforts under Section V(C). A copy of this report will also be available for public review as requested.

2. FHWA and Iowa DOT shall schedule a follow-up meeting at which the parties will discuss the report, Iowa DOT's performance of this Agreement, and the FHWA's monitoring activities.

SECTION VI. FHWA OVERSIGHT ACTIVITIES

Monitoring by the FHWA and Iowa DOT will include consideration of the technical competency and organizational capacity of Iowa DOT, as well as Iowa DOT's performance of its CE processing functions. Performance considerations will include, without limitation, the quality and consistency of Iowa DOT's project certifications, adequacy and capability of the resources applied by Iowa DOT, and the quality and consistency of Iowa DOT's administration of its processing of projects under this agreement.

- A. At a minimum, FHWA will conduct one program/process review as part of its oversight activities, for each 18 month period. The results of that review shall be considered at the time this Agreement is considered for renewal. A copy of this report shall be made available for public review as requested.
- B. Nothing in this Agreement shall prevent the FHWA from undertaking other monitoring or oversight actions, including audits, with respect to Iowa DOT's performance under this Agreement. The FHWA, in its sole discretion, may require Iowa DOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.
- C. Iowa DOT agrees to cooperate with the FHWA in all oversight and quality assurance activities.

SECTION VII. PROCESSING OF PROJECTS EXCLUDED FROM THIS AGREEMENT

Any action excluded by this Agreement that is still an action that does not require the preparation of either an EA or EIS shall be subject to the applicable NEPA process and documented in a Countersigned Categorical Exclusion (CE).

SECTION VIII. TERM, RENEWAL, AND TERMINATION

- A. This Agreement shall have a term of five (5) years, beginning on the date of the last signature. Iowa DOT shall maintain an executed copy of this Agreement and make it available to the public.
- B. This Agreement is renewable for additional terms of five (5) years each if Iowa DOT requests renewal and the FHWA determines that Iowa DOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, the FHWA will evaluate the effectiveness of the Agreement and its overall impact on the environmental review process.

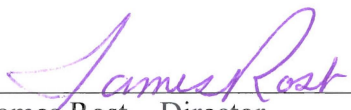
- C. At least six (6) months prior to the end of each five year term, Iowa DOT and the FHWA shall meet to discuss the results under the Agreement and consider amendments to this Agreement. This meeting may be combined with a meeting to discuss performance under the monitoring provisions in Section V(D) of this agreement.
- D. With written concurrence from both parties the terms of this agreement may be continued an additional 6 months until such time as this agreement is renewed or an amendment or new agreement can be developed.
- E. Either party may terminate this Agreement at any time by giving at least 30 days notice to the other party.

SECTION VIII. AMENDMENTS AND ADMINISTRATIVE MODIFICATIONS

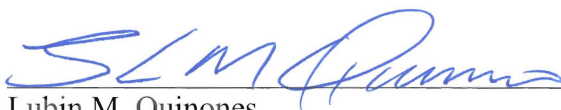
- A. Either party to this Agreement may request that it be amended or administratively modified to reflect non-substantive changes, whereupon the parties shall consult to consider such an amendment.
- B. If the parties agree to amend this Agreement, then the FHWA and the Iowa DOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement shall remain unchanged unless otherwise expressly stated in the amended Agreement.

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

Iowa Department of Transportation


 _____ Date 2-14-12
 James Rost – Director
 Office of Location and Environment
 Iowa Department of Transportation

Federal Highway Administration


 _____ Date 2/16/12
 Lubin M. Quinones
 Division Administrator
 FHWA Iowa Division

Non-Evaluated Programmatic Categorical Exclusion

1. Non-Construction Actions - These actions do not directly lead to construction activity that would cause ground disturbance or right-of-way acquisition. *

- State Planning and Research Funds Projects
- Intelligent Transportation Systems (ITS)/ Seatbelt Incentive Projects
- Funding for Planning Studies, Corridor Management Plans, and Preliminary Engineering
- Research and Development
- Publications
- Local Technical Assistance Program (LTAP)
- Urban Youth Corps
- Technology Transfer
- Pooled Fund Studies (TPF)
- On The Job Training (OJT)/ Supportive Services
- Motor Carrier Safety Assistance Program (MCSAP)
- Maintenance Vehicles (Trail Groomer)

2. Construction Actions - These action types are completed within the previously disturbed right-of-way limits. *

- Traffic Signalization, Signing, and Lighting
- Railroad warning devices
- Landscaping (Tree Plantings or Seeding)
- Emergency Relief funds projects, Emergency Repairs
- Roadway or trail way Patching
- Median Guardrail and Guardrail Installation
- Railroad bed and track maintenance
- Rest Area repair
- Bridge Deck Overlay or Repairs

* In some cases, these action types may require right-of-way acquisition. If so, the action will require additional environmental review, and a project summary will be completed.

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ENVIRONMENTAL REVIEW SUMMARY

This Environmental Review is in accordance with the Programmatic Agreement (PCE Agreement) between the Federal Highway Administration, Iowa Division and the Iowa Department of Transportation dated _____.

PART A:

This section of the review summary is only for actions that meet the criteria of 23 CFR 771.117(d) and the action will be completed within the previously disturbed right-of-way. The signature below indicates the review is complete. Actions that do not meet the criteria of Part A will use **PART B** of this form for the environmental review documentation.

County: Choose a County

Project #:

Parcel:

1. This action/project meets the criteria of Part A (**if not go to Part B**):
 - a. Action type identified in 23 CFR 771.117 (d) Choose an item.
 - b. This action will be completed within the previously disturbed right-of-way or is a hardship/early acquisition.
2. The action/project has been reviewed for cultural resources.
 Comments: This project was cleared for cultural resources with a notice dated [Click here to enter a date](#) with a Categorical No Historic Properties Affected determination.
3. The action/project does not involve more than a minimal amount of wetlands or stream channelization.
4. The action/project does not impact high-risk regulated material sites.
5. The action/project does not involve an adverse effect to a threatened or endangered species.
6. The action/project does not involve more than a minimal effect on floodplain or floodway.
7. The action/project does not involve more than a minor impact on noise, air quality, or water quality.
8. **LAND DISPOSALS ONLY:** The action/project does not impact active planning studies.

Iowa DOT has determined that this action/project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, or involve unusual circumstances as defined in 23 CFR § 771.117(b), such that it is excluded from the requirements to prepare an environmental assessment or environmental impact statement.

Office of Location and Environment

Prepared by: Choose an item.

Date: [Click here to enter a date](#).

Action: Certified as PCE

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PART A: This project did not meet the criteria of Part A

PART B:

This section of the review summary is for actions that meet the criteria of 23 CFR 771.117(c) or (d) and will require minor amounts of right-of-way. All other actions not meeting the criteria of PART A, PART B, or Section V. A.1.a) of the PCE Agreement, will be recommended for a Countersigned Categorical Exclusion or higher level NEPA classification.

County: Choose a County

Project #:

1. Action type identified in 23 C.F.R §771.117 Choose an item. yes or no
Project type description: Choose an item.

2. Project description addressed by Programmatic Agreement? yes or no
Comments:

If either 1 or 2 are no, an individual categorical exclusion action (CE) must be completed.

3. Does the project require more than a minor amount of right of way? yes or no
Comments:

If the answer to 3 is yes, an individual CE must be completed.

4. Involve acquisition of homes or businesses? yes or no
If yes:
a) number of homes businesses
b) is there adequate available replacement housing/commercial buildings to absorb this number of displacements? yes or no
Comments:

If the answer to 4b) is no, Office of Right of Way Relocation Assistance Agent must be contacted, and an individual CE must be completed.

5. Involve land that has not been previously disturbed? yes or no
Comments:

If the answer to 5 is yes, a cultural resource survey needs to be completed and submitted for SHPO and Tribal comments/concurrence.

6. Involve acquisition of a house, building or structure more than 50 years old? yes or no
Comments:

If the answer to 6 is yes, a cultural resource survey needs to be completed and submitted for SHPO comments/concurrence.

7. Affect an NRHP listed or eligible historic structure, district, and/or yes or no

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archaeology site, which warrants preservation in place?

If yes, does it involve use of the property?

yes or no

Comments:

8. Affect a public park?

yes or no

If yes, does it involve:

a) use of the property?

yes or no

b) land and Water Conservation Act funds?

yes or no

Comments:

If the answer of 8 b) is yes, this constitutes 6(f) involvement.

9. Affect a wildlife or waterfowl refuge?

yes or no

If yes, does it involve use of the property?

yes or no

Comments:

If the answers to 7, 8, or 9 are yes for a use of the property, an individual CE must be completed and begin consultation with FHWA on 4(f) applicability.

10. Involve an adverse effect to a threatened or endangered species?

yes or no

Comments:

If the answer to 10 is yes, an individual CE must be completed.

11. Involve more than a minimal amount of wetlands or stream channelization?

yes or no

Comments:

If the answer to 11 is yes, an individual CE must be completed.

12. Involve more than a minimal effect on a floodplain or floodway?

yes or no

Comments:

If the answer to 12 is yes, an individual CE must be completed.

13. Involve an impact to a high-risk regulated material site?

yes or no

Comments:

If the answer to 13 is yes, an individual CE must be completed.

14. Involve more than a minor impact on:

a) a noise sensitive area?

yes or no

b) air quality?

yes or no

c) water quality?

yes or no

Comments: This project will not result in any meaningful changes in traffic volumes, vehicle mix, location of the existing facility, or any other factor that would cause an

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increase in emissions impacts relative to the no-build alternative. As such FHWA has determined that this project will generate minimal air impacts for Clean Air Act criteria pollutants and has not been linked with any special MSAT concerns. Consequently, this effort is exempt from analysis for MSATs.

If any answer to 14 is yes, an individual CE must be completed.

15. Involve the acquisition of more than five acres of farmland in any one-mile (or less) length of project? yes or no

If yes, has form AD-1006, Farmland Conversion Impact Rating been completed? yes or no

Comments:

Prepared by: Choose an item.

Date: Click here to enter a date.

Office of Location and Environment

Reviewed By: Choose an item.

Date Reviewed: Click here to enter a date.

Action: Certified as PCE

Note:

Iowa DOT has determined that this project does not individually or cumulatively have a significant impact on the environment as defined by NEPA, or involve unusual circumstances as defined in 23 CFR § 771.117(b), such that it is excluded from the requirements to prepare an environmental assessment or environmental impact statement.