

Arizona Department of Transportation Assignment of FHWA Environmental Review Responsibilities

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What is Environment Review?

- ❑ All environmental investigations, reviews, and consultations coordinated as a single process in compliance with all applicable environmental requirements and reflected in an environmental document
- ❑ The over-arching federal environmental review law is the National Environmental Policy Act (NEPA)
 - There is a myriad of other federal environmental laws that typically apply to transportation project
 - Federal funding is the primary nexus for States to follow the federal environmental review process

What is NEPA Assignment?

- It is the transfer of the Federal Highway Administration (FHWA) environmental review responsibilities under the National Environmental Policy Act (NEPA) and other applicable environmental laws to the Arizona Department of Transportation (ADOT)
 - It is an assignment of legal responsibility vs. delegation of approval authority
 - FHWA - ADOT Programmatic Categorical Exclusion Agreement prior to Assignment
 - Makes ADOT the NEPA decision-maker for assigned projects

What is NEPA Assignment?

- ❑ ADOT is the Lead Federal Agency for environmental review and consulting with agencies
- ❑ Applies to assigned Federal-aid “highway projects” only (not transit & rail)
- ❑ Applies to all NEPA classes of action:
 - Categorical Exclusions (CE)
 - Environmental Assessments (EA)
 - Environmental Impact Statements (EIS)
- ❑ ADOT is responsible for complying with all environmental laws, regulations under the “NEPA Umbrella”
- ❑ FHWA retains an oversight role of Assignment states

What is NEPA Assignment?

- ❑ Categorical Exclusion (CE) Assignment Program (23 U.S.C. 326)
 - FHWA and ADOT entered into a Memorandum of Understanding (MOU) January 2018 and first renewal in January 2021
 - Three-year renewal period that will change to five years
 - Covers listed CEs under 23 CFR 771.117 [paragraphs (c) and (d)]

- ❑ Surface Transportation Project Delivery Program (23 U.S.C. 327)
 - FHWA and ADOT entered into an MOU April 2019
 - Five-year renewal period that will change to ten years
 - Covers Individual (documented CEs), Environmental Assessments (EA) and Environmental Impact Statement (EIS)

Other NEPA Assignment States

- Alaska
- California
- Texas
- Ohio
- Florida
- Utah
- Nebraska (CEs only)

NEPA Assignment Responsibilities

□ ADOT must:

- Maintain appropriate technical and managerial expertise
- Maintain adequate financial and staff resources
- Demonstrate the capacity to perform the responsibilities
- Report CE determinations and NEPA decisions
- Manage MOU changes or renewal
- Perform QA/QC and self-assessments
- Document all decisions
- Maintain records
- Coordinate with FHWA monitoring and audits

NEPA Assignment Responsibilities

- ❑ FHWA Retains
 - Project level air quality conformity determinations for 327 MOU projects
 - Individual CEs, EA and EIS
 - Government-to-Government Tribal consultation (if requested)
 - Provision to exclude certain projects from assignment
 - Audit and Monitoring role of Assignment program
 - Four annual audits for 327 projects (first four years of the program)
 - Switch to monitoring after first 327 MOU renewal
 - Monitoring of CE projects per 326 MOU
 - Program Level Responsibilities

NEPA Assignment Responsibilities

- In order for the State DOT to assume NEPA Assignment certain legal requirements had to be met
 - Consent to accept the jurisdiction of the Federal courts - Limited waiver of sovereign immunity (Arizona Revised Statutes: 28-334 amended March 22, 2017)
 - Authority to enter into the Memorandum of Understanding (MOU) for each program (ARS 28-334)
 - Certify that Freedom of Information Act (FOIA) equivalents are in place

Agreements Status

1. 326 MOU (CE Assignment) second renewal
 - The current MOU expires January 4, 2024
 - Draft MOU in the Federal Register for review September 28, 2023
 - Comments can be made through the Federal Register
 - 30-day comment period through October 28th
 - Approval anticipated in early January 2024

2. 327 MOU (NEPA Assignment) first renewal
 - The current MOU expires April 19, 2024
 - Draft MOU will be in the Federal Register for review (2023)
 - ADOT will put out notifications when the draft MOU is in the Federal Register
 - Comments can be made through the Federal Register
 - Approval anticipated in mid-April 2024

Contact Information

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