

Frequently Asked Questions CE Assignment and NEPA Assignment

What is NEPA Assignment?

Congress allows States to assume Federal Highway Administration (FHWA) environmental review responsibility under the National Environmental Policy Act (NEPA) under two programs:

- 23 U.S. Code § 326 - State assumption for categorical exclusions (CEs) – “CE Assignment”
- 23 U.S. Code § 327 - Surface transportation project delivery program – “NEPA Assignment”
- ADOT has assumed responsibility for NEPA under both programs

What does this cover?

- Arizona Department of Transportation (ADOT) acts as the Lead Federal Agency for environmental review and consulting with Agencies and Tribes
- Applies to all Federal-aid highway projects
- Applies to all NEPA classes of action:
 - CEs, “listed” - CE Assignment
 - CEs, “unlisted” – NEPA Assignment
 - Environmental Assessments (EA) – NEPA Assignment
 - Environmental Impact Statements (EIS) – NEPA Assignment
- NEPA Assignment does not change federal environmental protection standards and ADOT is responsible for complying with all federal environmental laws, rules and orders under the “NEPA Umbrella”
- ADOT is solely legally responsible for environmental decisions under these programs
 - Arizona Revised Statutes 28-334(C) has been amended to reflect this
- 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 for unlisted CEs, EAs and EISs
 - ADOT has conformity for CE Assignment – listed CE projects
 - Tribes retain the ability to request Government-to-Government consultation
 - Statewide and metropolitan planning
 - Excluded projects (some existing large studies and those that cross international or state lines)

Why Did ADOT seek NEPA Assignment?

- The federal government has recognized that environmental compliance can be delivered faster and with less cost with “one doer and decision-maker” over federal “project-level” oversight
- To deliver ADOT improvement projects more efficiently to the public while preserving environmental quality

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 currently under one or both of the programs:

- California (326 & 327)
- Alaska (327)
- Texas (327)
- Ohio (327)
- Florida (327)
- Utah (326 & 327)
- Nebraska (326 - pursuing 327)

How does this change the environmental process?

- Federal, State and Local Agencies, land management agencies and Tribes experience no change in environmental review and compliance
 - Before “assignment” ADOT had already approved CEs under programmatic agreement for years
- ADOT takes the lead on all consultation and coordination (i.e. ADOT letterhead is the biggest discernable difference)

What are the requirements for DOT’s entering into NEPA Assignment?

- NEPA Assignment
 - ADOT submitted a formal application to FHWA Headquarters including scope of assignment; current and proposed information regarding staffing and organization; current and proposed environmental review procedure tools; new role under assignment; training; and resource requirements. A notice of the availability of the ADOT application was published in the Federal Register for public review for a 30-day comment period and posted on the ADOT website.
 - ADOT prepared a draft Memorandum of Understanding (MOU) and a notice was published in the Federal Register that allowed for 30-day public review of the draft MOU.

When did ADOT begin NEPA Assignment?

- CE Assignment – MOU signed by the FHWA Arizona Division and ADOT Deputy Director for Transportation on January 3, 2018
- NEPA Assignment – MOU signed by the FHWA Deputy Administrator and ADOT Director on April 16, 2019

What existing agreements need to be amended or updated?

In addition to updating multiple internal ADOT environmental guidance and procedures, the following agreements need to be or have been amended:

- Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act between ADOT, the Arizona State Historic Preservation Office (SHPO), FHWA and many signatories
- Memorandum of Understanding between ADOT, FHWA and the U.S. Forest Service
- Memorandum of Agreement between ADOT, FHWA and the Bureau of Land Management

How does this affect the certified Local Public Agencies (LPAs)?

- ADOT continues to oversee the NEPA approval process on Federal-aid Local Agency Projects.
- LPAs work directly with ADOT for project NEPA decisions instead of ADOT as an intermediary with FHWA.
- Letters are on ADOT letterhead instead of FHWA letterhead and NEPA approvals come from ADOT.

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 ADOT is the “decision maker” and acts as the lead federal agency in the environmental process for federal-aid highway projects.
- There are a few excluded projects, whereby FHWA remains the lead federal agency, defined in the NEPA Assignment MOU:
 - I-11 Tier 1 EIS
 - Sonoran Corridor Tier 1 EIS
 - Future projects that cross State or International boundaries