



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2023–0032]

Proposed Second Renewed Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of Arizona, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: The FHWA and the State of Arizona, acting by and through its Department of Transportation (State), propose a second renewal of the State’s participation in the State Assumption of Responsibility for Categorical Exclusions program. This program allows FHWA to assign to States its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed Memorandum of Understanding (MOU), are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act. This MOU would renew and continue the State’s participation in the program. The renewed MOU will amend the existing MOU by incorporating the following changes: Including language to reference the State’s responsibility to report project impacts to environmental justice populations; clarifying that this assignment applies to any action to which a CE is applicable including non-highway projects; and adding a reference to the *Final April 2020 Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona* (September 2020).

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION].

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA–2023-0032], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

Web site: www.regulations.gov/. Follow the instructions for submitting comments on the DOT electronic docket site.

Facsimile (Fax): 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

Hand Delivery: 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to www.regulations.gov/ at any time or to 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Rebecca Yedlin, Environmental Program Manager, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012; by email at rebecca.yedlin@dot.gov or by telephone at 602-382-8979. The FHWA Arizona Division Office normal business hours are 8 a.m. to 4:30 p.m. (Arizona Time), Monday-Friday, except for Federal Holidays.

For State: Mr. Steve Olmsted, NEPA Assignment Manager, Arizona Department of Transportation, 205 S. 17th Ave., Mail Drop EM02, Phoenix, AZ 85007; by email at solmsted@azdot.gov or by telephone at 602-712-6421. The Arizona Department of

Transportation normal business hours are 8 a.m. to 4:30 p.m. (Arizona Time), Monday-Friday, except for State and Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access: Internet users may reach the Office of the Federal Register's home page at: www.federalregister.gov and the Government Printing Office's database: www.GovInfo.gov. An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at www.regulations.gov/.

Background:

Section 326 of title 23, United States Code (U.S.C.), creates a program that allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). In addition, this program allows the assignment of other environmental review requirements applicable to these actions. The FHWA is authorized to act on behalf of the Secretary with respect to these matters. Through an amended MOU, FHWA would renew Arizona's participation in this program for the second time. The original MOU became effective on January 3, 2018, for an initial term of three (3) years. The first renewal became effective on January 4, 2021, for a second term of three (3) years. The second renewal is set to supersede the first renewal MOU prior to its expiration date on January 4, 2024.

Stipulation I(B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c) and those listed as examples in 23 CFR 771.117(d). In addition to the NEPA CE determination responsibilities, the MOU would

assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

- 1) Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Including determinations for project-level conformity if required for the project.*
- 2) Noise Control Act of 1972, 42 U.S.C. 4901-4918; Compliance with the noise regulations in 23 CFR part 772 (except approval of the State noise requirements in accordance with 23 CFR 772.7).
- 3) Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and 1536.
- 4) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- 5) Migratory Bird Treaty Act, 16 U.S.C. 703–712
- 6) Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108
- 7) Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa, et seq.
- 8) Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR part 774
- 9) Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508
- 10) Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170
- 11) American Indian Religious Freedom Act, 42 U.S.C. 1996
- 12) Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209
- 13) Clean Water Act, 33 U.S.C. 1251–1377.
- 14) Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
- 15) Rivers and Harbors Act of 1899, 33 U.S.C. 403

- 16) Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- 17) Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- 18) Flood Disaster Protection Act, 42 U.S.C. 4001–4128
- 19) FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- 20) Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774
- 21) Land and Water Conservation Fund (LWCF), Pub. L. 88-578, 78 Stat. 897 (known as Section 6(f))
- 22) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- 23) Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9671 – 9675
- 24) Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- 25) Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319
- 26) E.O. 11990, Protection of Wetlands
- 27) E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- 28) E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- 29) E.O. 11593, Protection and Enhancement of Cultural Resources
- 30) E.O. 13007, Indian Sacred Sites
- 31) E.O. 13112, Invasive Species
- 32) Planning and Environmental Linkages, 23 U.S.C. 168, except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135

- 33) Programmatic Mitigation Plans, 23 U.S.C. 169 except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- 34) E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- 35) E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- 36) E.O. 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- 37) E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation. This assignment includes transfer to the State of Arizona the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the proposed MOU but that have not been completed as of the effective date of the MOU. The FHWA may terminate the State's participation in this program if FHWA provides the State a notification of noncompliance, and a period of not less than 120 days to take corrective action as FHWA determines necessary, and if the State fails to take satisfactory corrective action as determined by FHWA.

The FHWA will consider the comments submitted on the proposed MOU when making its decision on whether to execute this second renewal MOU. A copy of the

proposed draft MOU is also posted on the Arizona Department of Transportation website <https://azdot.gov/business/environmental-planning/ce-assignment-and-nepa-assignment> for review. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Karla Petty,
Division Administrator,
Phoenix, Arizona.

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