



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0019]

Renewal Package from the State of Arizona to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Federal Highway Administration's Environmental Review Responsibilities to the State

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

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed a renewal package from the Arizona Department of Transportation (ADOT) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with ADOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on ADOT's renewal package, which includes the draft renewal MOU that describes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA–2024–0019, by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the means below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

- Federal eRulemaking Portal: Go to www.regulations.gov and follow the online instructions for submitting comments.
- Facsimile (Fax): 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to www.regulations.gov, including any personal information provided.

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’s normal business hours are 8:00 a.m. to 4:30 p.m. (Arizona Time), Monday-Friday, except for Federal Holidays.

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

Arizona Department of Transportation's normal business hours are 8:00 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 U.S. Government Publishing Office's database at: www.GovInfo.gov. An electronic version of the proposed renewal MOU may be downloaded by accessing the DOT DMS docket, as described above, at www.regulations.gov.

Background

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The ADOT entered the Program on April 16, 2019, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (23 CFR part 773).

On June 29, 2018, prior to submittal of its application to FHWA, ADOT published in the Federal Register and solicited public comment on its draft application to participate in the Program. After considering and addressing public comments, ADOT submitted its application to FHWA on November 16, 2018. The application served as the basis for developing the MOU identifying the responsibilities and obligations ADOT would assume. The FHWA published a notice of the draft MOU in the Federal Register

on February 11, 2019, soliciting the views of the public and Federal Agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and ADOT considered comments and proceeded to execute the MOU (2019 MOU). Effective April 16, 2019, ADOT assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements.

On October 19, 2023, after coordination with FHWA, ADOT submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. The ADOT's completed renewal package was submitted on March 5, 2024. In order to complete the public involvement process and finalize the renewal MOU, FHWA has indicated ADOT may retain temporarily its assigned and assumed responsibilities under a MOU after the expiration of the MOU in accordance with 23 CFR 773.115(h).

Under the proposed renewal MOU, FHWA would assign to the State, through ADOT, and ADOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all the DOT Secretary's responsibilities for compliance with the NEPA of 1969, 42 U.S.C. 4321, et seq., with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal-aid highway projects, 23 U.S.C. 139, 40 CFR parts 1500—1508, DOT Order 5610.1C, and 23 CFR part 771, as applicable.

Excluded from assignment are:

- Any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and Section 1123 of the Fixing America's Surface Transportation Act, unless such projects will be designed and constructed by ADOT.
- Any project that crosses or is adjacent to international boundaries.
- Any highway project that crosses State boundaries.

- South Mountain Freeway Environmental Impact Statement until the notices of limitation of claims issued by FHWA pursuant to 23 U.S.C. 139(l) have expired. The ADOT agrees to be responsible for any re-evaluations needed under 23 CFR 771.129 or other environmental reviews needed for the South Mountain Freeway Project thereafter.
- Interstate 11 (I-11) Corridor Tier 1 EIS, Nogales to Wickenburg until resolution of the complaint filed against FHWA (Coalition for Sonoran Desert Protection et al v. Federal Highway Administration et al., Case No. 4:22-cv-00193-JCH), any re-evaluations or other actions not ordered by the court, and any subsequent appeals.
- I-11, I-10 to US 93 Tier 2 EIS in Maricopa County until the notice of limitation of claims issued by FHWA pursuant to 23 U.S.C. 139(l) for the Record of Decision has expired.
- Projects advanced by direct recipients of Federal assistance other than ADOT, including but not limited to competitive grant programs and Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program.

The assignment does not alter the scope and terms of Section 326 MOU signed on January 3, 2018, renewed on January 4, 2021, and subsequently on December 20, 2023, between ADOT and FHWA. As applicable, ADOT will conduct all environmental reviews authorized under the terms of that MOU.

The assignment also would give ADOT the responsibility to conduct the following environmental review, consultation, and other related activities:

Air Quality

- Clean Air Act, 42 U.S.C. 7401–7671q, with the exception of project level conformity determinations

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11593, Protection and Enhancement of the Cultural Environment

- E.O. 11988, Floodplain Management (except approving design standards determinations that a significant encroachment is the only practicable alternative under 23 CFR parts 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- E.O. 13007, Indian Sacred Sites
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- Other Executive Orders not listed, but related to highway projects

FHWA-Specific

- Efficient Project Reviews for Environmental Decisionmaking, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675

- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675

Historic and Cultural Resources

- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)-(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C.1170
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108

Noise

- Noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901–4918

Parklands and Other Special Land Uses

- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302-200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387
- Section 319, 33 U.S.C. 1329
- Section 401, 33 U.S.C. 1341
- Section 402, 33 U.S.C. 1342
- Section 404, 33 U.S.C. 1344
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921

- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR part 777
- Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, and 408
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- Wetlands Mitigation, 23 U.S.C. 119(g)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287

Wildlife

- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668–668c
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536.

The proposed renewal MOU would allow ADOT to continue to act in the place of FHWA in carrying out the environmental review-related 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 listed laws and E.O.s. The ADOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The ADOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The ADOT also will not assume FHWA’s responsibilities for conformity

determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects ADOT's desire to continue its participation in the Program. The FHWA and ADOT have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects excluded from assignment; designate a Senior Agency Official at ADOT consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on ADOT's Website at <https://azdot.gov/business/environmental-planning-ce-assignment-and-nepa-assignment>. The FHWA Arizona Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

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

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101-139; 23 CFR 773.115; 40 CFR 1507.3; and 49 CFR 1.85.

Shailen P. Bhatt,

Administrator,

Federal Highway Administration.

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