

NEPA Assignment: What to Expect

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Navajo Nation and Arizona Transportation Partnership
Annual Partnership Meeting
April 27, 2018



NEPA Assignment

TEA-21 signed into law in 1998 (Highway Act)

- ❑ Section 1309 - Environmental review delegation pilot program in House Bill

SAFETEA-LU signed into law in 2005 (Highway Act)

- ❑ Section 6003 - Pilot program for full NEPA responsibility (AK, **CA**, OH, OK, TX)
- ❑ Section 6004 - allowed States to assume responsibility for CEs
 - Alaska, Texas, Utah and California

MAP-21 – 2012 (Highway Act)

- ❑ Section 1313 : Pilot program made permanent program (NEPA Assignment Program)



What is NEPA Assignment?

- ❑ Complete or partial transfer of FHWA's environmental review responsibilities under NEPA to ADOT
- ❑ ADOT acts as the *Lead Federal Agency* for environmental review and consulting with agencies for Federal-aid highway projects
 - An assignment of legal responsibility vs. delegation of approval authority from FHWA to ADOT
 - Makes ADOT the “decision-maker” (environmental review decisions)
 - *No change* to any existing environmental laws



What is NEPA Assignment?

❑ CE Assignment Program (326)

- Covers “listed” CEs (listed in the regulations by description)
- Limited Impacts - Preservation/modernization/rehabilitation type projects

❑ NEPA Assignment Program (327)

- Covers unlisted CEs, Environmental Assessments (EA), & Environmental Impact Statements (EIS)
- More complex & greater impacts - expansion type projects



NEPA Assignment Responsibilities

- ❑ ADOT will assume:
 - Section 106 Consultation (Historic – National Historic Preservation Act)
 - Section 7 Consultation (Biology – Endangered Species Act)
 - Section 4(f) Determinations (Parks, recreation lands, wildlife refuges and historic sites) – USDOT Act of 1966
 - Section 404 (Water Resources – Clean Water Act)
 - All other environmental regulations, Executive Orders, etc. covered by the “NEPA Umbrella”
- ❑ ADOT acts as the lead agency for environmental review
 - Cannot ask the FHWA for project-specific help with NEPA issues
 - Interagency coordination without Federal participation



NEPA Assignment Responsibilities

- ❑ ADOT must:
 - Maintain appropriate technical and managerial expertise
 - Maintain adequate financial and staff resources
 - Demonstrate the capacity to perform the responsibilities
 - Document all decisions and maintain records
 - Report CE determinations and NEPA decisions to FHWA
 - Perform QA/QC and self-assessments
 - Coordinate with FHWA monitoring and audits



NEPA Assignment Responsibilities

□ FHWA retains:

- Project level air quality conformity determinations (unlisted CE/EA/EIS)
 - State can make a conformity determination for listed CE projects under the 326 MOU
- Government-to-Government Tribal consultation (if requested)
- USDOT responsibilities for statewide and metropolitan planning (23 CFR 450)
 - ADOT Multimodal Planning Division responsibilities
- Projects that cross international or State lines
- Projects excluded from Assignment in the MOU
- Auditing and monitoring role for Assignment program



Next Steps

□ Schedule

- CE Assignment MOU – January 2018
- NEPA Assignment MOU – September 2018

□ Ongoing Projects

- “Listed” CEs are already the responsibility of ADOT under the 326 MOU
- Under the 327 MOU all “unlisted” CEs, EA and EIS projects become the responsibility of ADOT unless specifically excluded in the MOU
 - Consideration used by some other Assignment states: Excluded some projects from assignment if past Draft EA/EIS upon execution of the MOU



Navajo DOT: What to Expect

- ❑ NEPA Assignment only applies to Federal Aid projects that are funded through the Arizona Division of FHWA
- ❑ Projects funded through the Tribal Transportation Program are not included in either CE or NEPA Assignment programs

