

UDOT's annual resource agency survey. These are examples of where UDOT's program may benefit from more consistent, program-level discussions with resource agencies to ensure that all parties understand their respective roles and responsibilities, as well as the provisions of the 326 and 327 programs. Stronger managerial-level communications with the resource agencies may increase their understanding of the importance of the survey and improve the response rate.

#### No Non-Compliance Observations in Audit #4

Non-compliance observations are instances where the team found UDOT was out of compliance or deficient in proper implementation of a Federal regulation, statute, guidance, policy, the terms of the MOU, or UDOT's own procedures for compliance with the NEPA process. Such observations may also include instances where UDOT has failed to maintain technical competency, adequate personnel, and/or financial resources to carry out the assumed responsibilities. Other non-compliance observations could suggest a persistent failure to adequately consult, coordinate, or consider the concerns of other Federal, State, Tribal, or local agencies with oversight, consultation, or coordination responsibilities. The FHWA expects UDOT to develop and implement corrective actions to address all non-compliance observations. The Audit Team did not identify any non-compliance observations during this audit.

#### Follow-up on the Prior Non-Compliance Observations From Audit #3

The FHWA had reported a noncompliance observation relating to UDOT not complying with the State's environmental review procedures as a part of Audit #3. *2019 Audit #3—Issuing a Document Without Final Legal Sufficiency Finding* As noted earlier, in response to the 2019 audit finding that legal sufficiency review documentation was not provided prior to approval of a project FEIS, UDOT and outside counsel implemented a more formalized system by instituting a Legal Sufficiency Review Form to be completed by UDOT's outside counsel. The form would ensure a record that the legal sufficiency review occurred. The Audit Team confirmed that UDOT developed and implemented the form for the legal sufficiency reviews during this audit period.

#### Response to Public Comments on the Draft Report and the Final Report

The FHWA received and responded to three comments on the draft audit report, pursuant to 23 U.S.C. 327(g)(2). The American Road & Transportation Builders Association (ARTBA) commented that they are in general support of UDOT's implementation of the NEPA Assignment Program to accelerate Federal-aid highway program and project delivery in Utah. The FHWA appreciates ARTBA's input. A private citizen commented that he is not supportive of UDOT's implementation of the NEPA Assignment Program, due to his experience with the Northern Corridor Highway Project in the Bureau of Land Management's (BLM) Red Cliffs National Conservation Area. The Audit Team, in conjunction with the FHWA Utah Division Office, independently reviewed and confirmed that the Federal action associated with this concern was the BLM's Federal land management decision, including BLM's NEPA approval for that Federal land management decision. It was not a NEPA approval by UDOT under the NEPA Assignment Program. Finally, an anonymous commenter raised concerns about UDOT's traffic noise abatement procedures as they apply to local public agencies. Based on FHWA's traffic noise abatement regulations in 23 CFR 772.7(b), UDOT has developed noise policies in conformance with 23 CFR part 772, and FHWA Utah Division Office approved them. The UDOT is required to apply these policies uniformly and consistently statewide, including the uniform and consistent application to the NEPA reviews of the Federal-aid highway projects administered by the local public agencies in Utah.

After reviewing the public comments, and looking into the concerns raised in the comments, FHWA determined that there is no need to revise the draft audit report. The FHWA may also consider the public comments in scoping the future NEPA Assignment monitoring reviews in Utah.

Therefore, FHWA is finalizing UDOT's fourth and final NEPA Assignment audit report with this **Federal Register** notice.

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**BILLING CODE 4910-22-P**

#### DEPARTMENT OF TRANSPORTATION

##### Federal Highway Administration

[Docket No. FHWA-2023-0023]

#### National Bridge Inspection Program Compliance Review Manual

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

**ACTION:** Notice; request for comments.

**SUMMARY:** This notice requests comments on the Performance Year (PY) 2024 Interim National Bridge Inspection Program (NBIP) Compliance Review Manual outlining the procedures FHWA Division Bridge Engineers will follow during calendar year 2023 when performing compliance reviews of State department of transportation bridge safety inspection programs. The PY 2024 Interim NBIP Compliance Review Manual incorporates revised provisions of the National Bridge Inspection Standards (NBIS), which came into effect June 6, 2022. The FHWA will consider all comments received during the comment period in developing subsequent versions of the NBIP Compliance Review Manual. However, please note that the PY 2024 Interim NBIP Compliance Review Manual is currently in effect and will be utilized by FHWA Division Bridge Engineers for the calendar year 2023 reviews.

**DATES:** Comments must be received on or before October 13, 2023. Late-filed comments will be considered to the extent practicable.

To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following means:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

- *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](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, contact Ms.

Samantha Lubkin, Safety Inspection Team Leader, FHWA Office of Bridges and Structures, (202) 366-1575, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, or via email at [samantha.lubkin@dot.gov](mailto:samantha.lubkin@dot.gov). For legal questions, please contact Mr. William Winne, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-1397, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, or via email at [william.winne@dot.gov](mailto:william.winne@dot.gov). Business hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access and Filing

A copy of the PY 2024 Interim NBIP Compliance Review Manual is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: [www.regulations.gov](http://www.regulations.gov). You may submit or retrieve comments online through the Federal eRulemaking portal at: [www.regulations.gov](http://www.regulations.gov). The website is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the website.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: [www.federalregister.gov](http://www.federalregister.gov) and the Government Printing Office's web page at: [www.GovInfo.gov](http://www.GovInfo.gov). Late comments will be considered to the extent practicable.

##### Background

For more than 45 years, FHWA has annually assessed each State's bridge inspection program to evaluate compliance with the NBIS as codified at 23 CFR 650, subpart C. Historically, the depth and scope of the reviews varied based upon FHWA's knowledge of the State's inspection program and the experience of FHWA staff. In 2009, the Office of Inspector General (OIG) issued an audit report National Bridge Inspection Program: Assessment of FHWA's Implementation of Data-Driven, Risk-Based Oversight<sup>1</sup> that summarized its review of FHWA oversight of the NBIP. One of the five OIG recommendations from this audit was for FHWA to develop and implement minimum requirements for a data-driven, risk-based process for Division Bridge Engineers to use for their annual NBIP compliance reviews.

Senate Report 110-418<sup>2</sup> supported the OIG recommendations and the need for prompt action by FHWA. In addition, Conference Report 111-366,<sup>3</sup> directed FHWA to improve its oversight of bridge safety and conditions.

In response to the OIG recommendations and congressional direction, FHWA developed a new systematic, data-driven, risk-based oversight process for monitoring State compliance with the NBIS. In 2010, FHWA initiated a pilot program using the new process in nine States. The FHWA made adjustments following the pilot in preparation for nationwide implementation in February 2011. After the nationwide implementation, in the fall of 2011, FHWA and the American Association of State Highway and Transportation Officials (AASHTO) established a joint task force to further identify possible modifications or improvements to the assessment process. As a first step, the joint task force gathered information from all States and interested Federal Agencies, including their input and feedback on the assessment process. The FHWA collected information from internal staff, and AASHTO gathered information from the States. The joint task force used the information collected to help identify and prioritize improvements to the process. The joint task force efforts resulted in FHWA implementing several improvements in April 2012.

Section 1111 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405) amended 23 U.S.C. 144(h)(3)(A)(i) to include provisions for the Secretary to establish, in consultation with the States, Federal Agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with the NBIS. The MAP-21 also amended 23 U.S.C. 144(h)(5) to establish a penalty for States determined to be in noncompliance with the NBIS.

The FHWA developed and implemented the current review process to evaluate a State's bridge inspection program for compliance with the NBIS prior to the requirements of MAP-21, section 1111. The development of the review process included consultation with stakeholders through the pilot project, the joint FHWA/AASHTO task force, as well as with individual States and Federal Agencies during the initial implementation of the process in 2011. The FHWA continued to use the risk-

based, data-driven review process that was implemented in 2011 to evaluate State compliance with the NBIS as required by 23 U.S.C. 144(h)(4)(A).

On June 7, 2013, at 78 FR 34424, FHWA published a notice requesting comment on the process FHWA uses to conduct reviews of State compliance with the NBIS and the associated penalty process for findings of noncompliance. The FHWA responded to comments received and implemented the compliance review procedures and the penalty provisions in 23 U.S.C. 144(h)(5). The FHWA later documented the process in FHWA's NBIP Compliance Review Manual.

On May 6, 2022, at 87 FR 27396, FHWA published a final rule updating the NBIS regulations as required by MAP-21. The NBIS regulations were revised to address MAP-21 requirements, incorporate technological advancements, and address ambiguities identified since the last update of the NBIS. The rule became effective June 6, 2022. Most of the revised requirements were also effective on that date, but some provisions will become effective 24 months later, June 6, 2024. In addition, some provisions of the rule relating to data submissions in accordance with the Specifications for the National Bridge Inventory will not be able to be implemented until the States have the necessary data collection and management systems in place. The timeline for the data submissions in the new format is expected to commence with the States' March 2026 data submissions.

Under 23 U.S.C. 144(h), FHWA is required to revise the compliance review criteria to address the recent changes to the NBIS. The PY 2024 Interim NBIP Compliance Review Manual incorporates the revised provisions of the NBIS, 23 CFR part 650, subpart C, that are currently in effect. The PY 2024 Interim Compliance Review Manual designates new criteria and review procedures that will be evaluated for compliance in calendar year 2023 in a bold and underlined text format. A blue and italicized font is used to indicate criteria that will be assessed for compliance beginning in the PY 2025 reviews. The intent of including the PY 2025 information is to give the States a preview of next year's criteria to aid in the States' preparation. It is anticipated that the NBIP Compliance Review Manual will need to be slightly modified in successive years to reflect changes resulting from full implementation of the updated NBIS and provisions that became effective after June 6, 2022.

<sup>2</sup> Senate Report 110-418; Link to Report.

<sup>3</sup> House of Representatives Conference Report 111-366; Link to Report.

<sup>1</sup> Report MH-2009-013; Link to OIG Report.

The FHWA welcomes comments on the PY 2024 Interim NBIP Compliance Review Manual from any interested party, including Federal, State, and local agencies; industry groups; and the public. A copy of the PY 2024 Interim NBIP Compliance Review Manual is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: [www.regulations.gov](http://www.regulations.gov). The FHWA requests that commenters cite the page number of the manual for which each specific comment to the docket is concerned, to help make the FHWA's docket comment review process more efficient. The FHWA will consider all comments received during the comment period in developing subsequent versions of the NBIP Compliance Review Manual. However, please note that the PY 2024 Interim NBIP Compliance Review Manual is currently in effect and will be utilized for calendar year 2023 reviews.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-2021-0019]

#### Surface Transportation Project Delivery Program; Alaska Department of Transportation Fourth Audit Report

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

**ACTION:** Notice.

**SUMMARY:** The Moving Ahead for Progress in the 21st Century Act (MAP-21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice makes available the final fourth audit report for the Alaska Department of Transportation and Public Facilities (DOT&PF).

**FOR FURTHER INFORMATION CONTACT:** Mr. David T. Williams, Office of Project Development and Environmental Review, (202) 366-5074, [David.Williams@dot.gov](mailto:David.Williams@dot.gov), or Michelle Andotra, Office of the Chief Counsel, (404) 562-3679, [Michelle.Andotra@dot.gov](mailto:Michelle.Andotra@dot.gov); Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at [www.regulations.gov](http://www.regulations.gov).

##### Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The Alaska DOT&PF published its application for NEPA assumption on May 1, 2016; and made it available for public comment for 30 days. After considering public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that DOT&PF would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on August 25, 2017, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU. Effective November 13, 2017, DOT&PF assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. The FHWA published a notice in the **Federal Register** at 87 FR 66352, November 3, 2022, soliciting comments

for 30 days pursuant to 23 U.S.C. 327(g). The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to the audit. The team has considered these comments in finalizing the audit report. This notice makes available the final audit report of DOT&PF's fourth audit under the program. The final audit report is available for download at [www.regulations.gov](http://www.regulations.gov) under FHWA Docket No. FHWA-2021-0019.

**Authority:** Section 1313 of Public Law 112-141; section 6005 of Public Law 109-59; 23 U.S.C. 327; 23 CFR 773.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

#### Surface Transportation Project Delivery Program, FHWA's Audit of the Alaska Department of Transportation, April 12-16, 2021

##### Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) fourth audit of the Alaska Department of Transportation and Public Facilities' (DOT&PF) assumption of FHWA's project-level National Environmental Policy Act (NEPA) responsibilities and obligations pursuant to a 23 U.S.C. 327 memorandum of understanding (MOU). The DOT&PF entered the NEPA Assignment Program after more than 8 years of experience making FHWA NEPA Categorical Exclusion (CE) determinations pursuant to 23 U.S.C. 326 (beginning September 22, 2009).

Alaska's MOU became effective on November 13, 2017, and was amended on August 20, 2020. Currently, FHWA's NEPA responsibilities in Alaska include the oversight and auditing of the DOT&PF's execution of the NEPA Assignment Program and certain activities excluded from the MOU, such as the NEPA reviews of projects advanced by direct recipients other than the DOT&PF.

The FHWA audit team began to prepare for the site visit in November 2020. The audit team reviewed DOT&PF's NEPA project files, DOT&PF's response to FHWA's pre-audit information request (PAIR), and DOT&PF's Self-Assessment Report. On April 12-16, 2021, the audit team conducted a virtual site visit for the second year due to COVID-19 pandemic safety concerns, rather than on-site visits as had been used for the first two audits.