

Potential Project Impacts

Section 106 and Section 4(f) Historic Properties. The proposed build alternatives will be evaluated for potential adverse impacts to historic properties (*i.e.*, properties that are eligible for or listed in the National Register of Historic Places) within the study area.

Environmental Justice (EJ). The proposed build alternatives will be evaluated for potential adverse impacts to EJ communities due to anticipated relocations as well as other impacts such as access, noise, and visual aesthetics. Additional analysis and public involvement will be conducted during the National Environmental Policy Act process to assess if the project would result in any disproportionately high and adverse effects on low-income and minority communities.

Air Quality. The project is located in the El Paso Moderate Nonattainment area for Particulate Matter (PM) 10, Attainment/Maintenance Area for Carbon Monoxide (CO), and the 2015 Marginal Nonattainment area for Ozone (O3). As such, the proposed build alternatives will be evaluated for potential adverse impacts to air quality and will be subject to a project level conformity determination.

The EIS will evaluate the potential impacts and benefits to the resources/communities identified above as well as the following other subject areas: Limited English Proficiency communities, land use, right-of-way, social and community resources, traffic noise, wildlife and threatened and endangered species, water resources, hazardous materials sites, and visual resources.

It is anticipated that the following would be required: Texas Antiquities Code permit and concurrence, Section 106 historic/archeological resources concurrence, Section 4(f) evaluation approval, U.S. Army Corp of Engineers Nationwide Permit(s), and conformity determination under the Clean Air Act.

Tentative Schedule

Agency Scoping Meeting: November 30, 2022

Public Scoping Meeting: November 30, 2022

In addition to the public scoping meeting, a public hearing will be held after the Draft EIS is prepared. Public notice will be given of the time and place of the hearing. After the public hearing and end of Draft EIS comment period, issuance of the Final EIS/Record of Decision is anticipated. If a build

alternative is selected, all permits and authorization decisions would occur before construction. TxDOT will issue a single Final EIS and Record of Decision document pursuant to 23 U.S.C. 139(n)(2), unless TxDOT determines statutory criteria or practicability considerations preclude issuance of a combined document.

In accordance with 23 U.S.C. 139, cooperating agencies, participating agencies, and the public will be given an opportunity for continued input on project development. An in-person public scoping meeting is planned for Wednesday, November 30, 2022, from 4 p.m. to 7 p.m. MT at the El Paso Convention Center (Juarez Room) One Civic Center Plaza, El Paso, Texas, 79901. A virtual option will go live at 4 p.m. MT on November 30, 2022. Additional information on both options will be provided at <https://www.txdot.gov/> by searching for “El Paso Downtown 10—Virtual Public Scoping Meeting with In-Person Option”.

The public scoping meeting will provide an opportunity for the public to review and comment on the draft coordination plan and schedule, the project’s purpose and need, the range of alternatives, and methodologies and level of detail for analyzing alternatives. It will also allow the public an opportunity to provide input on any expected environmental impacts, anticipated permits or other authorizations, and any significant issues that should be analyzed in depth in the EIS. In addition to the public scoping meeting, a public hearing will be held after the draft EIS is prepared. Public notice will be given of the time and place of the hearing.

The public meeting will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend and participate in the public meeting, please contact Lauren Macias-Cervantes, Public Information Officer, El Paso District, at Lauren.MaciasCervantes@txdot.gov or please call (915) 790-4341 no later than 4 p.m. MT, Monday, November 21, 2022. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

The public is requested to identify in writing potential alternatives, information, and analyses relevant to this proposed project. Such information may be provided in writing by mail to the TxDOT El Paso District Office, Attn: Downtown 10/Hugo Hernandez, 13301 Gateway Boulevard West, El Paso, Texas 79928-5410. Electronic comments may also be submitted by email to Downtown10@txdot.gov or through the virtual site. Additionally, members of the public may also call (915) 209-0027 and leave recorded comments. Comments must be received by January 11, 2023.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2022-23917 Filed 11-2-22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-2021-0020]

Surface Transportation Project Delivery Program; Arizona Department of Transportation Draft FHWA Audit Report

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

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act 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 is the second audit of the Arizona Department of Transportation’s (ADOT) performance of its responsibilities under the Surface Transportation Project Delivery Program (NEPA Assignment Program). This notice announces and solicits comments on the second audit report for ADOT.

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590. You may also submit comments electronically at www.regulations.gov. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Neel Vanikar, Office of Project Development and Environmental Review, (202) 366-2068, neel.vanikar@dot.gov, Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or Mr. Patrick Smith, Office of the Chief Counsel, (202) 366-1345, patrick.c.smith@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.

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 ADOT published its application for NEPA assumption on June 29, 2018, and solicited public comment. After considering public comments, ADOT submitted its application to FHWA on November 16, 2018. The application served as the basis for developing a memorandum of understanding (MOU) that identifies the responsibilities and obligations that ADOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on February 11, 2019, at 84 FR 3275, 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 ADOT considered comments and proceeded to execute the MOU. Effective April 16, 2019, ADOT 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. This notice announces and solicits comments on the second audit report for ADOT.

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

Stephanie Pollack,

Deputy Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

Draft FHWA Audit #2 of the Arizona Department of Transportation

Executive Summary

This is Audit #2 of the Arizona Department of Transportation's (ADOT) assumption of National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of Title 23 United States Code (U.S.C.) Section 327, ADOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on April 16, 2019, to memorialize ADOT's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for highway projects in Arizona. This 23 U.S.C. 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA),

environmental impact statements (EIS), and non-designated individual categorical exclusions (CE). A separate MOU between FHWA and ADOT, pursuant to 23 U.S.C. 326, authorizes environmental review responsibilities for other CEs. This audit does not cover the CE responsibilities and projects assigned to ADOT under the 23 U.S.C. 326 MOU.

The FHWA conducted an audit of ADOT's performance according to the terms of the MOU from March 29 to April 1, 2021. Prior to the audit, the FHWA audit team reviewed ADOT's environmental manuals and procedures, NEPA project files, ADOT's response to FHWA's pre-audit information request (PAIR), and ADOT's NEPA Assignment Self-Assessment Report. During the March 2021 audit, the audit team conducted interviews with staff from ADOT Environmental Planning (EP) and the Arizona Attorney General's Office (AGO) and prepared preliminary audit results. The audit team presented these preliminary results to ADOT EP leadership on April 1, 2021. The audit team conducted a completely virtual site visit rather than its traditional onsite visit due to national health emergency travel restrictions.

Overall, the audit team found that ADOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and ADOT's application. The ADOT continues to develop, revise, and implement procedures and processes required to deliver its NEPA Assignment Program. This report describes several observations and successful practices. Through this report, FHWA is notifying ADOT of two non-compliance observations that require ADOT to take corrective action. By addressing the observations in this report, ADOT will continue to assure successful program assignment.

Background

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the second audit in Arizona and ADOT's progress towards meeting the program review

objectives identified in the MOU. Following this audit, FHWA will conduct two additional annual NEPA Assignment Program audits in Arizona.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). The definition of an audit is one where an independent, unbiased body makes an official and careful examination and verification of accounts and records, especially of financial accounts. Auditors who have special training with regard to accounts or financial records may follow a prescribed process or methodology in conducting an audit of those processes or methods. The FHWA considers its review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about ADOT's assumption of environmental responsibilities.

The audit team consisted of NEPA subject matter experts (SME) from FHWA Headquarters, Resource Center, Office of the Chief Counsel, and staff from FHWA's Arizona Division. This audit is an unbiased official action taken by FHWA, which included an audit team of diverse composition, and followed an established process for developing the review report and publishing it in the **Federal Register**.

The audit team reviewed six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); performance measures; legal sufficiency; and training. The audit team considered two additional focus areas for this review: the procedures contained in 40 CFR part 93 for project-level conformity and the procedures contained in Section 4(f) of the U.S. Department of Transportation Act of 1966, codified in 49 U.S.C. 303 and 23 U.S.C. 138 (otherwise known as Section 4(f)). This report concludes with a status update for FHWA's observations from the first audit report.

The audit team conducted a careful examination of ADOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of ADOT's project files. Other documents, such as ADOT's PAIR responses and ADOT's Self-Assessment Report, also informed this review. In addition, the audit team interviewed ADOT staff via videoconference.

The timeframe defined for this second audit includes highway project environmental approvals completed between January 1, 2020, and December

31, 2020. During this timeframe, ADOT completed NEPA approvals and documented NEPA decision points for nine projects. Due to the small sample size, the audit team reviewed all nine projects. This consisted of three EAs with a Finding of No Significant Impact, two EAs initiated with scoping completed, three EA re-evaluations, and one individual CE.

The PAIR submitted to ADOT contained 24 questions covering all 6 NEPA Assignment Program elements. The audit team developed specific follow-up questions for the interviews with ADOT staff based on ADOT responses to the PAIR. The audit team conducted a total of 13 interviews. Interview participants included staff from ADOT EP and the Arizona AGO.

The audit team compared ADOT manuals and procedures to the information obtained during interviews and project file reviews to determine if ADOT's performance of its MOU responsibilities is in accordance with ADOT procedures and Federal requirements. The audit team documented individual observations and successful practices during the interviews and reviews and combined these under the six NEPA Assignment Program elements. The audit results are described below by program element.

Overall Audit Opinion

The audit team found ADOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and ADOT's application. FHWA is notifying ADOT of two non-compliance observations that require ADOT to take corrective action. By addressing the observations cited in this report, ADOT will continue to ensure a successful program.

Successful Practices and Observations

Successful practices are practices that the team believes are positive and encourages ADOT to consider continuing or expanding those programs in the future. The audit team identified numerous successful practices in this report.

Observations are items the audit team would like to draw ADOT's attention to, which may improve processes, procedures, and/or outcomes. The team identified four observations in this report.

Non-compliance observations are instances where the audit team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or

maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. FHWA expects the State to develop and implement corrective actions to address all non-compliance observations. The audit team identified two non-compliance observations in this report.

The audit team shared initial results during the closeout meeting with ADOT and shared the draft audit report with ADOT to provide them the opportunity to clarify any observation, as needed, and/or begin implementing corrective actions to improve the program. FHWA will consider actions taken by ADOT to address these observations as part of the scope of the third audit.

Successful Practices and Observations Program Management

Successful Practice #1

ADOT EP continues to maintain several guidance manuals for implementing NEPA Assignment and evaluating environmental resources. These manuals are readily available online at ADOT's environmental website. ADOT continuously updates its manuals and ensures staff are informed of updates. Staff noted the benefit of utilizing the guidance manuals and having better defined procedures.

Successful Practice #2

During interviews with staff, the audit team learned that ADOT EP has increased internal communication and coordination by holding monthly meetings with the NEPA Assignment Program managers and technical area program managers, and by holding biweekly meetings with program managers. ADOT EP's internal communication efforts also included emails and informal staff interactions.

Successful Practice #3

During interviews with staff, the audit team learned that staff felt a benefit of NEPA Assignment has been an increased sense of ownership and responsibility for the program and decisions. Program managers indicated that staff at all levels within ADOT had become more engaged in the NEPA Assignment Program.

Observations

Observation #1: Deficiencies and Gaps in ADOT's Manuals and Procedures

The audit team reviewed ADOT's manuals and procedures as part of the evaluation of ADOT's performance of its MOU responsibilities. Section 4.2.4 of the MOU specifies that ADOT must implement procedures to support appropriate environmental analysis and

decisionmaking under NEPA and associated laws and regulations. The audit team identified the following deficiencies in ADOT's manuals and procedures which may result in incomplete project documentation or analysis and increase the risk for non-compliance:

- The ADOT CE Checklist Manual and the ADOT EA/EIS Manual contain different procedures for completing re-evaluations and the process for re-evaluations for EA/EISs is not well-defined. During interviews, staff described variations in the procedures for completing and documenting re-evaluations.

- The ADOT Section 4(f) Manual, documentation forms, and desk reference/matrix contain information inconsistent with FHWA guidance and regulation, as identified below:

- The manual, desk reference/matrix, "Section 4(f) Applicability/Exceptions" form, and "No Section 4(f) Property/Use" form incorrectly state that the exception for archaeological sites applies only to Section 106 adverse effect findings. The archaeological exception can be applied to both no adverse effect and adverse effect findings. Moreover, resources resulting in either finding must still be evaluated for Section 4(f) applicability and potential uses. The incorrect information in ADOT's materials creates the risk of inadequately evaluating archaeological sites with a finding of no adverse effect for Section 4(f) purposes, and not consulting with the official with jurisdiction when the archaeological exception is applied.

- The manual, desk reference/matrix, and "No Section 4(f) Property/Use" form incorrectly state that a Section 106 no adverse effect finding equates to a Section 4(f) "no use." While it is possible for a Section 4(f) "no use" to apply in cases of no adverse effect findings, this is not automatic, and resources should be evaluated on an individual basis to determine potential uses. The project file should include information demonstrating that a "no use" determination is appropriate and the factors that support that decision. The incorrect information in ADOT's materials creates the risk of inadequately evaluating all eligible historic properties for potential uses.

- The "Section 4(f) *De Minimis* Impact on Public Parks, Recreational Areas and Wildlife/Waterfowl Refuges" form incorrectly indicates that meeting minutes alone can be used to document written concurrence from the official with jurisdiction. Meeting minutes can be used to demonstrate that communicating potential impacts and

coordinating with the official with jurisdiction occurred, but written concurrence should be documented through formal correspondence (e.g., signed letter or form, or email responses).

Documentation and Records Management

Successful Practice #4

During interviews, staff indicated increased efforts to coordinate with the ADOT Communications Office and the ADOT Civil Rights Office on public involvement activities conducted for projects.

Successful Practice #5

ADOT continues to implement its standard folder structure for consistent record keeping and assistance with QA reviews. Staff commented that the standard folder structure was a helpful tool and improved process for maintaining project files.

Successful Practice #6

ADOT EP has developed standard templates (checklists, forms) for various decision-points and processes. Staff noted that using the standard templates during the environmental review process has increased the consistency of project documentation.

Observations

Section 4.2.4 of the MOU specifies that ADOT must implement procedures to support appropriate environmental analysis and decisionmaking under NEPA and associated laws and regulations. The audit team identified several inconsistencies between ADOT's procedures for documenting project decisions (as identified in the ADOT CE Checklist Manual, ADOT EA/EIS Manual, ADOT Section 4(f) Manual, ADOT QA/QC Plan, and ADOT Project Development Procedures Manual) and the project file documentation provided. ADOT was provided an opportunity during the audit, and during their opportunity to comment on the draft audit report, to clarify inconsistencies identified by the audit team and provide additional information regarding the project documentation. ADOT provided explanations to the audit team's questions and indicated where specific information was located in the project files but did not submit additional documents or files. FHWA did not consider this supplemental information to be sufficient for four audited projects.

Non-Compliance Observation #1: Deficiencies in Section 4(f) Evaluation of Archaeological Resources

ADOT's Section 4(f) Manual (Sections 3.3 and 3.4.2) and FHWA regulations, policies, and guidance provide information on determining the applicability of Section 4(f) to archaeological resources and determining if there is an exception or potential use. ADOT's Section 4(f) Manual (Sections 5.2 and 5.3) specifies procedures for documenting Section 4(f) uses of archaeological sites, exceptions per 23 CFR 774.13(b), and "no use" determinations. During Audit #1, FHWA identified inconsistencies with ADOT's Section 4(f) evaluation and documentation of archaeological sites which were included as an observation in the Audit #1 Report. The audit team observed similar inconsistencies during the project file reviews for this audit and identified the following procedural deficiencies relating to ADOT's Section 4(f) evaluation and documentation:

- One project file included a Section 106 adverse effect determination for two archaeological sites, indicating the presence of Section 4(f) resources and potential Section 4(f) uses. The consultation letter sent to the Arizona State Historic Preservation Officer did not state ADOT's intent to apply the archaeological exception to these sites or include other Section 4(f) information regarding these sites. No other consultation letters or other information was provided in the project file or NEPA document as to how these two sites were evaluated for Section 4(f).

Non-Compliance Observation #2: Deficiencies in Analysis of Right-of-Way Impacts

ADOT's procedures (ADOT EA/EIS Manual) and FHWA's regulations, policies, and guidance provide information on how to consider right-of-way impacts in the NEPA analysis. FHWA's regulations, policies, and guidance provide additional information on how early property acquisitions should be considered with the right-of-way impacts analysis. After completing the project file review, the audit team identified the following procedural deficiencies relating to ADOT's evaluation of right-of-way impacts:

- One project file did not demonstrate that early acquisition of properties and previous relocations were adequately addressed in the impact analysis in the NEPA document. The NEPA document stated that ADOT had acquired properties within the project corridor during previous planning and

environmental studies and that ADOT intended to incorporate these early acquisitions into the right-of-way needed for the current project. CEs previously completed for some of these early acquisitions included a complete NEPA evaluation. However, several CEs previously completed for early acquisitions were only for title transfer of the properties (per 23 CFR 771.117(d)(12)) and did not evaluate demolition, relocations, or other potential environmental impacts. The audit team requested additional information from ADOT regarding the NEPA analysis of these properties. ADOT responded that the project files and NEPA document contained a complete record and no additional documentation was available. Since the properties acquired as early acquisitions were incorporated into the right-of-way needed for the current project, these properties should have been included in the NEPA analysis, even though the properties were acquired during other planning and environmental studies. Based on the information provided in the project file and the NEPA document, it does not appear that all of the early acquisitions were fully evaluated in the NEPA analysis for the current project, nor were they accounted for in the total number of acquisitions required for the project (per 23 CFR 771.119(b)). The land use, environmental justice, community impacts, and indirect and cumulative impacts sections provided conflicting information regarding the impact analyses of these properties. Therefore, it is unclear how all the early property acquisitions were considered in the overall right-of-way impacts analysis in the NEPA evaluation.

Observation #2: Deficiencies in Section 4(f) Documentation of *de Minimis* Impact to Historic Properties

ADOT's procedures (ADOT Section 4(f) Manual Sections 5.1 and 5.4.2 and ADOT QA/QC Plan Section 5.1.1) specify completing the "Section 4(f) *De Minimis* Impact for Historic Properties Form" in addition to obtaining written concurrence from the official with jurisdiction.

After completing the project file review, the audit team found that two project files did not include the "Section 4(f) *De Minimis* Impact for Historic Properties Form" for *de minimis* impacts to historic properties.

Observation #3: Inconsistencies in Interagency Consultation Documentation

After completing the project file review, the audit team found several inconsistencies with ADOT's

documentation of compliance with interagency consultation requirements (per 40 CFR 93.105). It is unclear if interagency consultation occurred for some projects since the project files did not include information on agency responses, concurrence, and the comment resolution process. Therefore, it is unknown if the interagency consultation agencies had an opportunity to participate in consultation or if ADOT provided them an opportunity to review and comment on the materials as required by 40 CFR 93.105 and MOU Section 7.2.1.

The audit team is aware that ADOT has increased efforts to follow up with agencies throughout interagency consultation and include email responses with consultation documentation and acknowledges ADOT's progress toward improving their processes.

Quality Assurance/Quality Control

The audit team verified that ADOT has procedures in place for QA/QC which are described in the ADOT QA/QC Plan and the ADOT Project Development Procedures. No observations were identified during this audit.

Performance Measures

Observations

Observation #4: Incomplete Development and Implementation of Performance Measures To Evaluate the Quality of ADOT's Program

The audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). ADOT's QA/QC Plan, PAIR response, and self-assessment report identified several performance measures, but all included limited reporting data for the review period. ADOT's reporting data primarily dealt with increasing efficiencies and reducing project delivery schedules rather than on measuring the quality of relationships with agencies and the general public, and decisions made during the NEPA process. The metrics ADOT has developed are not being utilized to provide a meaningful or comprehensive evaluation of the overall program. Additionally, ADOT's performance measures indicate a disconnect between its metrics and availability of reportable data. Staff indicated during interviews that performance measures are not an effective or useful tool in evaluating the program.

Legal Sufficiency

Through information provided by ADOT and interviews by the FHWA Office of Chief Counsel with two Assistant Attorneys General (AAGs) assigned to ADOT's NEPA Assignment Program, the auditors determined ADOT had not completed formal legal sufficiency reviews of assigned environmental documents during the audit period. Currently, ADOT retains the services of two AAGs for NEPA Assignment reviews and related matters. The assigned AAGs have received formal and informal training in environmental law matters.

Successful Practice #7

Through the interviews, the audit team learned ADOT seeks to involve its lawyers early in the environmental review phase, with AAGs participating in project coordination team meetings and reviews of early drafts of environmental documents. The AAGs will provide legal guidance at any time ADOT requests it throughout the project development process. For formal legal sufficiency reviews, the process includes a submittal package containing a request for legal sufficiency review. A letter finding of legal sufficiency would be included in the project file.

Training

The audit team reviewed ADOT's 2021 Training Plan and ADOT's PAIR responses pertaining to its training program. ADOT continues to maintain a strong training program by providing training opportunities to staff and dedicating time, effort, and resources toward its training program. To further support the training program, ADOT EP employs a dedicated training coordinator within the environmental section.

Successful Practice #8

During staff interviews, the audit team learned that the staff provides input on the training plan and that program managers meet quarterly to discuss training needs. Staff remarked on the availability of training offered to them and considered this to be a benefit to ADOT's NEPA Assignment Program. The audit team commends ADOT for adjusting to a virtual environment and offering online training opportunities for staff.

Status of Observations From the Audit #1 Report

This section describes the actions ADOT has taken (or is taking) in response to observations made during the first audit.

Non-Compliance Observation #1: Incomplete Project Files Submission

During Audit #1, ADOT submitted incomplete project files to FHWA by not uploading all files requested by FHWA to the file sharing website. For Audit #2, ADOT provided FHWA direct access to the project files requested for the project file review. ADOT has stated it intends to continue to utilize this method for sharing files with FHWA. ADOT also indicated it will continue to identify improvements in technology to increase efficiencies in file sharing. FHWA appreciates ADOT's efforts towards increasing the transparency and communication during the audit process, and better utilizing available technologies.

Non-Compliance Observation #2: Project-Level Conformity Compliance Issues

During Audit #1, the audit team found that ADOT's protocols do not provide for the appropriate consultation, coordination, and communication with FHWA and other agencies to ensure the projects meet the project-level conformity requirements where required. The audit team found documentation for two projects showing that ADOT staff did not coordinate with FHWA on the application of conformity requirements and found multiple projects that did not demonstrate ADOT's compliance with interagency consultation requirements (per 40 CFR 93.105). As part of Audit #2, the audit team learned that ADOT has made progress toward addressing these issues. ADOT and FHWA established a joint working group that resulted in developing draft coordination procedures and identifying increased communication methods, including monthly coordination meetings. During the file review for Audit #2, the audit team identified additional inconsistencies in the project files as described in the observations above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

Observation #1: Use of the Federal Infrastructure Permitting Dashboard

ADOT is responsible for inputting project information for assigned projects into the Federal Infrastructure Permitting Dashboard, per MOU Section 8.5.1 and in accordance with the Federal Permitting Dashboard Reporting Standard. During Audit #1, the audit team found that the dashboard did not include information for any of the applicable projects assigned to ADOT.

ADOT has since obtained access to the dashboard, designated staff responsible for entering project data, and has updated the dashboard with relevant project information.

Observation #2: Inconsistencies and Deficiencies Based on the Review of Project File Documentation

After completing the project file review for Audit #1, the audit team identified several procedural deficiencies relating to the MOU, ADOT's procedures, and FHWA's regulations, policies, and guidance. To address this issue, ADOT has developed standard templates (forms, checklists) to increase consistency in project file documentation and has informed staff of documentation requirements. The audit team identified additional procedural deficiencies during Audit #2 as identified in the observations described above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

Observation #3: Incomplete Development and Implementation of Performance Measures

During Audit #1, the audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). The Self-Assessment Report did not include reporting data for any of the performance measures. Due to the lack of performance measure data, the audit team determined that ADOT had not fully established and initiated data collection as it relates to performance metrics per the MOU. For Audit #2, the audit team reviewed ADOT's performance measures and reporting data submitted for the review period. ADOT has made progress toward developing and implementing its performance measures, though FHWA continues to identify this program objective as an area of concern, described in the observations above, and will continue to evaluate this area in subsequent audits.

Finalizing This Report

FHWA provided a draft of the audit report to ADOT for a 14-day review and comment period. ADOT provided comments which the audit team considered in finalizing this draft audit report. The audit team acknowledges that ADOT has begun to address some of the observations identified in this report and recognizes ADOT's efforts toward improving their program. FHWA is publishing this notice in the **Federal Register** for a 30-day comment period in

accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will address all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Subsequently, FHWA will publish the final audit report in the **Federal Register**. FHWA will consider the results of this audit in preparing the scope of the next annual audit. The next audit report will include a summary that describes the status of ADOT's corrective and other actions taken in response to this audit's conclusions.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0298]

Hours of Service of Drivers: Application for Exemption; Motion Picture Association

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew an exemption from the electronic logging device (ELD) requirements for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. The exemption requested by the Motion Picture Association (MPA), formerly known as the Motion Picture Association of America, allows these drivers to complete paper records of duty status (RODS) instead of using an ELD. The exemption renewal is for five years.

DATES: This renewed exemption is effective January 19, 2023, and expires on January 19, 2028. Comments must be received on or before December 5, 2022.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0298 using any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-