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Federal-aid Highway Program

# **Stewardship/Oversight Agreement Guidance**

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## **GLOSSARY**

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**Control Document** – Applicable standards, policies, and standard specifications that are acceptable to FHWA for application in the geometric and structural design of highways.

**Core Functions** – Activities that make up the main elements of the Division’s Federal-aid oversight responsibilities based on regulations and national policies. Core functions in the Division Office are Planning, Environment, Right-of-Way, Design, Construction, Finance, Operations, System Preservation, Safety, and Civil Rights.

**Delegated Projects** – Projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, inspections, and final acceptance of Federal-aid projects on a project by project basis.

**Full Oversight Projects** – Projects that require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, inspections, and final acceptance of Federal-aid projects on a project by project basis.

**Major Projects** – Projects with an estimated total cost greater than \$500 million, or projects approaching \$500 million with a high level of interest by the public, Congress, or the Administration.

**Oversight** – The act of ensuring that the Federal highway program is delivered consistent with laws, regulations and policies.

**Performance/Compliance Indicators** – These indicators track performance trends, health of the Federal-aid Highway Program, and compliance with Federal requirements.

**Risk Management** – The systematic identification, assessment, planning, and management of threats and opportunities faced by FHWA projects and programs.

**Stewardship** – The efficient and effective management of the public funds that have been entrusted to the FHWA.

# FEDERAL-AID HIGHWAY PROGRAM STEWARDSHIP/OVERSIGHT AGREEMENT GUIDANCE

## I. BACKGROUND AND INTRODUCTION

Congress has charged the Federal Highway Administration (FHWA) with administering the Federal-Aid Highway Program (FAHP) under Title 23, and other associated laws. In addition, FHWA's responsibility for administering the FAHP has been clearly outlined in the following legislation: the *Intermodal Surface Transportation Efficiency Act* (ISTEA) of 1991; the *Transportation Equity Act for the 21st Century* (TEA-21) of 1998; and, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) of 2005. These laws allow States to assume certain delegated responsibilities for FHWA in certain *National Environmental Policy Act* approvals and in the design, construction award and inspection of certain Federal-aid projects.

The FHWA and the State Departments Of Transportation (SDOTs)/other highway program funds recipients have jointly administered the FAHP for many years. These parties have been tasked with carrying out the FAHP efficiently and effectively to help accomplish national and mutual or local goals—to maintain a national highway network, improve its operation and safety, and provide for national security while protecting and improving the environment. Stewardship efforts include oversight and approval actions, as well as many day-to-day actions that are routinely performed by either or both of the parties to ensure that the FAHP is administered in regulatory compliance and in ways that enhance the value of the program funds authorized by Congress. The Stewardship/Oversight Agreement formalizes these delegated responsibilities and agreements to address how the FAHP will be administered in the State.

Initially, when Stewardship Agreements were first introduced and developed several years ago in response to ISTEA provisions, the documents that were produced principally addressed how the SDOT and FHWA division office would handle the delegated authorities for certain project actions. Since that time, and with the passage of SAFETEA-LU, the overall program has evolved requiring a more comprehensive Agreement that covers all aspects of the FAHP. This new Agreement provides a road map to effectively and efficiently execute the Federal-aid program relating to programs/project delivery to include financial integrity. **This guidance addresses the comprehensive approach to FAHP stewardship and the associated delegated responsibilities to the SDOTs.**

## II. PURPOSE

The purpose of this Stewardship/Oversight Agreement Guidance is to provide a consistent approach for developing future Agreements with the SDOTs. It requires a risk-based approach where FHWA and the SDOT agree on how the FAHP will be administered in a State, with specific actions to be taken by one or both parties. This guidance outlines the basic stewardship concepts and approaches rather than mandatory specific procedures. It also addresses how the Agreement needs to provide for the delegation of certain project actions to the State with specified exceptions for special interest projects. Notwithstanding the Agreement, FHWA

retains overall responsibility for all aspects of Federal-aid programs and an Agreement does not preclude FHWA's access to and review of a Federal-aid project at any time and does not replace the provisions of *Title 23*, USC.

On the broader program level, FHWA will continue to provide stewardship and oversight of the FAHP through a rigorous risk management process and through general actions and conferences in its day-to-day activities, including improvements to program procedures, training, technical assistance, and development and deployment of new technologies, as well as routine program/project approval. Each of these activities contributes to the intent that the FAHP operates with integrity and for the public's maximum benefit. The Agreement should acknowledge that FHWA, and, by extension, the SDOTs (including sub-recipients), are responsible for the effective and efficient use of Federal funds.

The Agreement should be signed by the SDOT and FHWA division office to signify it as a Memorandum of Agreement regarding how the FAHP will be administered in the State including any programs conducted jointly with the Federal Transit Administration (FTA). (See Appendix A for an example of proposed template.)

### **III. STATE AND DIVISION ROLES AND RESPONSIBILITIES**

The Agreement should clearly describe the stewardship and oversight responsibilities, including those that are delegated to the SDOT, along with those that are retained by FHWA. The Agreement should also make reference to a list of the actions and procedures that are required or are needed to administer the FAHP. These can be broken out by functional area, or be general statements that apply to all FAHP areas.

Also, the Agreement specifically needs to address how delegated authorities will be carried out (see later section addressing Delegated Program and Project Responsibilities). It should include the reports, reviews, data, staffing information, performance assurances, etc., that will provide documented assurance that the SDOT and division office are properly carrying out their respective responsibilities in accordance with this Agreement.

The Agreement should explain that the provisions of the agreement do not modify the FHWA's non-*Title 23* program oversight and project approval responsibilities for activities such as required under the *Clean Air Act*; the *National Environmental Policy Act of 1969 (NEPA)* and other related environmental laws and statutes; the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*; and the *Civil Rights Act of 1964* and related statutes, unless expressly permitted by SAFETEA-LU Section 6004 and 6005.

If a State assumes delegated environmental responsibility under Sections 6004 and 6005 of SAFETEA-LU, specific separate documents are required to spell out the terms of the delegations; they may be referenced in the Agreement.

Also note that under *Title 23*, planning functions cannot be delegated and for major projects, the Agreement should describe the relative role and responsibilities of the parties.

#### IV. METHODS OF OVERSIGHT

The Agreement should document the key processes to be used by the SDOT and the division office in monitoring the FAHP. At a minimum, it should include how the division office and/or SDOT will develop and implement process/program reviews/evaluations. A discussion of oversight methods is provided below.

In monitoring the program, various techniques can be used to help determine which reviews are to be conducted including risk assessments, and pre-determined schedules for regular reviews of specific programs or components. The reviews can be conducted by individuals or teams and can be performed using FHWA division office staff, SDOT staff or using combinations of other peers from other FHWA or State agencies, or other stakeholder groups or organizations. The incorporation of the division office Financial Integrity Review and Evaluation (FIRE) Program should be referenced as the means to assess the financial aspects of programs and projects.

The SDOT, FHWA, or both may initiate process and program evaluations of the FAHP. All evaluations are intended to evaluate procedures and policies used in delivering the FAHP, along with identifying deficiencies and opportunities for improvement. FHWA will employ a risk management framework in consultation with the SDOT to evaluate program areas to balance risk with consideration of staffing resources, funding within FAHP and highway needs within the State. The SDOT may work collaboratively with FHWA to identify risks and make practical resources available to address FHWA's risk assessment findings. The following techniques may be used to provide stewardship and oversight to the FAHP:

- a. Program Assessments – This technique may take many forms including joint risk assessments, self-assessments and program assessments. All of these tools are based on the common concepts of identifying strengths, weaknesses and opportunities and the identification and sharing of “best” practices to continually improve the program.
- b. Program Reviews – These reviews are a thorough analysis of key program components and the processes employed by the SDOT in managing the program. The reviews are conducted to 1) ensure compliance with Federal requirements; 2) identify opportunities for greater efficiencies and improvements to the program; and/or 3) identify exemplary practices. They can be referred to, or known as, program improvement reviews, program assessments, process reviews, program/product evaluations, or continuous process improvement initiatives.
- c. Program Management – This includes the daily stewardship of Federal-aid programs, including project and program oversight and program assistance. Program management ensures Federal program requirements are met while proactively seeking opportunities to add value in the course of routine program approval actions, participating on joint task forces, joint committees and joint quality improvement teams, and aiding and assisting the State and other transportation stakeholders in answering questions on program issues. FHWA division offices manage programs by completing required program level activities, promoting new program initiatives and concepts and continually assessing the program through routine involvement in program activities.

## **V. CONTROL STANDARDS**

The Agreement should reference applicable control documents and explain the SDOT's agreement to comply with specific control standards. In assuming certain program/project-level responsibilities under 23 USC 106, SAFETEA-LU – Sections 1904, 6001, 6003, and 6004, the State agrees to comply with FHWA-approved standards in accordance with 23 CFR 625.4, 655.603 and related federal regulations and policies. The FHWA division office shall approve SDOT policies or standards that expand on, amplify, or amend these standards.<sup>1</sup> (See Appendix B for an example.)

## **VI. PERFORMANCE/COMPLIANCE INDICATORS**

The Agreement should identify performance/compliance indicators that will be an integral part of the joint Federal/State stewardship/oversight business plan. It is greatly desired that an agreement be reached on a broad set of performance/compliance indicators that both parties will use to track the health of the FAHP. These indicators should be used to track performance trends and to implement countermeasures/actions when the data is not moving in the desired target direction. For example, countermeasures may include raising the attention level of the issue, instituting additional data and trend analysis, developing new processes or procedures, initiating additional targeted oversight activities, or implementing additional program review activities.

As a minimum, when a SDOT assumes FHWA approval responsibilities, FHWA shall work jointly with the State to develop performance/compliance indicators that periodically gauge the health (effectiveness) of the delegated responsibility. For example, the SDOT and the division office may elect to use indicators addressing project cost escalation, level of oversight, or project delivery. It is envisioned that the SDOT will provide the performance/compliance indicator data to the division office on a predetermined schedule.

## **VII. DELEGATED PROGRAM AND PROJECT RESPONSIBILITIES**

A clear description and understanding of the roles and responsibilities of the SDOT and the division office are key to developing a successful stewardship/oversight agreement. Accordingly, the Agreement must clearly describe State versus Federal responsibilities for each of the following program areas.

- a. Environment
- b. Right-of-Way (ROW)
- c. Safety
- d. System Operations and Preservation
- e. Design and Construction

The Agreement should clearly define the method for selecting “full” oversight projects and the approval and oversight responsibilities of the division office on “full” oversight projects. For example, the FHWA retains authority for the following actions on full oversight projects in addition to those noted under Division Office Responsibilities on page 10:

- a. Plan, Specifications & Estimates Approval

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<sup>1</sup> Approved documents may be listed under this section.



- b. Approval Of Design Exceptions
- c. Contract Concurrence In Award
- d. Contract Change Order Approval
- e. Approval Of Contract Claims Settlement
- t. Final Inspection
- g. Project Acceptance

The Agreement should include the following applicability narrative and clearly explain the roles and responsibilities of the SDOT and the division office on delegated projects.

FHWA delegates to the SDOT project approvals for the following Federal-aid project categories:

- a. SDOT shall assume responsibilities on all non-National Highway System (NHS) projects.
- b. SDOT may assume responsibilities on all non-Interstate NHS projects.
- c. SDOT may assume responsibilities on all Interstate new or reconstruction projects with an estimated construction cost less than \$1,000,000.
- d. SDOT may assume responsibilities on all Interstate 3R (resurfacing, rehabilitation, and restoration) and preventive maintenance projects.

These delegations are governed by the type of work, route designation (Interstate, NHS, and non-NHS) and cost. Delegations are not governed by the category of Federal funds used. Based on a risk approach, individual division office/State Agreements can increase the level of delegation to the SDOTs, as appropriate. Based on a representative-sample risk approach, individual division office/State Agreements may delineate an alternate mix of direct Federal involvement projects so that the overall level of FHWA direct project involvement does not increase.

Projects for which defined approval authority is delegated to the SDOT are not subject to further approvals by FHWA, unless it is jointly agreed with the SDOT that FHWA should be involved. However, nothing in the Agreement shall prohibit FHWA from reviewing any projects that have unique features; high-risk elements; unusual circumstances; or if the project is included in a program or process review. (See Appendix C, which illustrates delegation of project level approvals and responsibility.)

#### SDOT Responsibilities

The Agreement should describe the SDOT's approval and oversight responsibilities on all delegated elements of the program and, as a minimum, contain the following concepts:

- a. For all delegated projects or programs, the SDOT shall comply with *Title 23* and certain non-*Title 23*, USC Federal-aid program requirements, such as metropolitan and statewide planning, environment, procurement of engineering and design related service contracts, Title VI of the *Civil Rights Act*, participation by disadvantaged business enterprises, prevailing wage rates, and acquisition of right-of-way, etc.

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<sup>2</sup> The Agreement should include a detailed definition of 3R as an appendix.

- b. For all delegated projects or programs, the SDOT shall assure that right-of-way approval; utility approval; environmental approvals; railroad approval and related activities; design approval; design exceptions (NHS); PS&E approval; concurrence in award; and construction-related activities are performed in accordance with State policies, practices and standards, and in accordance with all requirements of *Title 23, USC*.
- c. For delegated projects or programs that are developed and administered by local agencies, the SDOT shall provide the necessary review and approval to assure compliance with Federal requirements. The States will be responsible for determining that sub-recipients of Federal funds have adequate staffing, project delivery systems, and sufficient accounting control. The Agreement should note that the SDOT is ultimately accountable to FHWA for ensuring compliance with Federal-aid requirements on such projects.

#### Division Office Responsibilities

The Agreement should describe FHWA's roles and responsibilities on "Delegated Projects." For example, for projects or programs delegated to the SDOT, per above, FHWA retains authority for the following actions and approvals:

- a. All Federal responsibilities for planning and programming oversight specified in 23 USC 134 and 135.
- b. Federal air quality conformity determinations required by the *Clean Air Act*.
- c. Obligation of funds.
- d. Waivers to Buy America requirements (FHWA Washington Headquarters (HQ) approval required as noted in Mr. Horne's July 3, 2003 memorandum).
- e. SEP 14/SEP-15 methods (FHWA HQ approval required for experimental contracting/project delivery methods).
- f. Civil Rights program approvals.
- g. Environmental approvals except those specifically delegated under Sections 6004 and 6005 of SAFETEA-LU.
- h. Addition of access points on the Interstate System.
- i. Use of Interstate airspace for non-highway-related purposes.
- j. Hardship acquisition and protective buying.
- k. Modifications to project agreements.
- l. Final vouchers.

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<sup>3</sup> This section should list or describe project related approval authority that will be retained by FHWA. The list shown above should be included as a minimum.

## **APPENDICES**

Appendix A: Outline Template for a typical Stewardship/Oversight Agreement.

Appendix B: Example of FHWA/State Manuals and Operating Agreements.

Appendix C: Chart illustrating a Division Office Example of Project Action Responsibility.  
(Some of the delegated actions shown were results of negotiations with SDOT and some of them may not be appropriate in every State.)

**Appendix A: Stewardship/Oversight Agreement Template**  
*(Based on Guidance Document)*

**Purpose**

Purpose of Agreement  
Cite Authority for Delegation  
Stewardship Expectations

**State and Division Office Roles and Responsibilities**

Role/Expectations of the State  
Role/Expectations of the Division Office

**Methods of Oversight**

Program Assessment – Joint Risk Assessment, Self-assessment, FIRE, Data Analysis, etc.  
Program Reviews – Process Reviews, Program/Product Evaluations, Peer Reviews, etc.  
Program Management – Address daily Stewardship of the Federal aid Programs

**Control Documents**

List State Approved Manuals, Procedures, etc.  
List AASHTO Manuals  
List Federal Regulations or Policies

**Performance Indicators**

Address Metrics and Reporting Frequency to be used by Division Office and State

**Delegated Program and Project Responsibilities**

Address Core Program Areas  
State Responsibilities  
Division Responsibilities

**Appendix (Customized Operating Procedures)**

## **Appendix B: State/FHWA Manuals & Operating Agreements**

### **State Manuals (approved by FHWA for use on Federal aid projects)**

State Design Manual  
Right of Way Manual  
Utility Manual  
Access Policy  
Materials Manual  
Local Public Agency (LPA) Guidelines  
Contract Administration Manual  
Traffic Operations Manual (e.g. MUTCD supplement)  
Supplemental and Standard Specifications  
Standard Drawings  
Financial Services Manual  
Bridge Manual  
Environmental Process Manual  
Contract Compliance Plan  
Consultant Selection Process  
Disadvantaged Business Enterprise (DBE) Plan  
Title VI Plan  
Affirmative Action Plan

### **Operating Agreements**

NEPA/404  
*Endangered Species Act* Section 7  
*Endangered Species Act* Informal Consultation

**Appendix C: Division Office Example (Project Action Responsibility)**

**PROJECT ACTION RESPONSIBILITY**

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
<b>PROGRAMMING</b>			
Verify project in STIP	FHWA	WisDOT	WisDOT
Verify eligibility for proposed funding category	FHWA	WisDOT	WisDOT
<b>FINANCIAL MANAGEMENT</b>			
Obligate funds	FHWA	FHWA	FHWA
Approve vouchers	FHWA	FHWA	FHWA
Approve Federal-aid Project Agreement (PR-2)	FHWA	FHWA	FHWA
<b>PRELIMINARY DESIGN</b>			
Concept Definition Report [FDM 3-5-1]	WisDOT <sup>(1)</sup>	WisDOT <sup>(1)</sup>	WisDOT
Consultant Selection [FDM 8-30-1]	WisDOT	WisDOT	WisDOT
Approve exceptions to design standards [23 CFR 625.3(f)]	FHWA	WisDOT <sup>(2)</sup>	WisDOT
Interstate System Access Change	FHWA	FHWA	NA
Design Study Report [FDM 3-25-25]	WisDOT <sup>(1)</sup>	WisDOT	WisDOT
Public interest finding with respect to airport-highway clearance (23 CFR 620.104)	FHWA	WisDOT <sup>(4)</sup>	NA <sup>(4)</sup>
<b>DETAILED DESIGN</b>			
Approve preliminary plans for major and unusual structures [23 USC 109(a)]	FHWA	WisDOT <sup>(2)</sup>	WisDOT
Approve retaining right-of-way encroachments [FDM 12-1-1, 12-30-1]	WisDOT	WisDOT	WisDOT
Approve use of negotiated contracts [FDM 3-20-11,12]	FHWA	WisDOT	WisDOT
Approve use of publicly owned equipment (23 CFR 635.106)	FHWA	WisDOT	WisDOT

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
Approve the use of proprietary production processes (23 CFR 635.411) [FDM19-1-5]	FHWA	WisDOT	WisDOT
Concur in use of publicly furnished materials (23 CFR 635.407)	FHWA	WisDOT	WisDOT
<b>PS&amp;E AND ADVERTISING</b>			
Approve plans, specifications and estimates (23 CFR 630.205)	FHWA	WisDOT	WisDOT
Authorize advance construction and conversions (23 CFR 30.703 & 709)	FHWA	FHWA	FHWA
Authorize utility or railroad force account work (23 CFR 645.113 & 646.216)	WisDOT	WisDOT	WisDOT
Approve utility and railroad agreements (23 CFR 645.113 & 646.216)	WisDOT	WisDOT	WisDOT
Approve use of consultants by utility companies [23 CFR 645.109(b)]	WisDOT	WisDOT	WisDOT
Approve exceptions to maximum railroad protective insurance limits (23 CFR 646.111)	WisDOT	WisDOT	WisDOT
Exempt bridge from Coast Guard permit requirements (23 CFR 650.805)	FHWA	FHWA	FHWA
Authorize advertising for bids (23 CFR 635.112)	FHWA	FHWA	FHWA
Approve hiring of consultant to serve in a "management" role [23 CFR 172.5(a)]	WisDOT	WisDOT	WisDOT
Approve consultant agreements (23 CFR 172.7 - 172.9)	WisDOT	WisDOT	WisDOT
<b>ENVIRONMENT (no change)</b>			
All approval actions required by Federal laws and regulations	FHWA	FHWA	FHWA
<b>RIGHT-OF-WAY</b>			
Authorize Right-of-Way activities (23 CFR 712.204) (If a Federal-aid project)	FHWA	FHWA	FHWA
Accept Right-of-Way certificate as a condition of PS&E approval [23 CFR 635.309(b)(c)]	FHWA	WisDOT	WisDOT
Approve Hardship and Protective Buying [23 CFR 712.204(d)] (If Federal-aid project)	FHWA	FHWA	FHWA
Approve air space agreements [23 CFR 713.204]	FHWA	FHWA	NA <sup>(4)</sup>
Approve non-highway use and occupancy [23 CFR 713.203.3]	FHWA	FHWA	NA <sup>(4)</sup>
Approve disposal of federally funded right-of-way [23 CFR 713.305]	FHWA	FHWA	NA <sup>(4)</sup>

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
<b>CONSTRUCTION</b>			
Approve cost effectiveness and emergency determinations for contracts awarded by other than competitive bidding (23 CFR 635.104 & 204)	FHWA	WisDOT	WisDOT
Approve construction engineering by local agency (23 CFR 635.105)	WisDOT <sup>(2)</sup>	WisDOT	WisDOT
Approve advertising period less than three weeks (23 CFR 635.112)	FHWA	WisDOT	WisDOT
Approve addenda during advertising period (23 CFR 635.112)	FHWA	WisDOT	WisDOT
Concur in award of contract (23 CFR 635.114)	FHWA	WisDOT <sup>(2)</sup>	WisDOT
Concur in rejection of bids (23 CFR 635.114)	FHWA	WisDOT <sup>(2)</sup>	WisDOT
Approve changes and extra work (23 CFR 635.129) (C&M Manual, Chapter 2)	FHWA	WisDOT	WisDOT
Approve contract time extensions (23 CFR 635) (C&M Manual, Chapter 2)	WisDOT	WisDOT	WisDOT
Concur in use of mandatory borrow/disposal sites (23 CFR 635.407)	FHWA	WisDOT	WisDOT
Accept materials certification (23 CFR 637.207)	FHWA	WisDOT	WisDOT
Concur in settlement of contract claims (23 CFR 635.124) (C&M Manual, Chapter 2)	WisDOT	WisDOT	WisDOT
Concur in termination of contracts (23 CFR 635.125)	FHWA	WisDOT <sup>(2)</sup>	WisDOT
Waive Buy America provisions (23 CFR 635.410)	FHWA	FHWA	FHWA
Final inspection/acceptance of completed work [23 USC 114(a) and 23 USC 121]	FHWA	WisDOT	WisDOT
<b>CIVIL RIGHTS</b>			
All approval actions required by Federal laws and regulations	FHWA	FHWA	FHWA
Footnotes:			
(1) Informational copy to FHWA for projects over \$2,000,000.			
(2) Informational copy to FHWA (record keeping and reporting).			
(3) Exceptions for vertical clearance are subject to coordination with the Military Traffic Management Command for the "26,000 mile priority network" (mainly; the Interstate). See FDM 11-44-1. Coordination may be accomplished through the FHWA.			
(4) Approvals, if any, will be those required by State laws, regulations, policies, and procedures. However, this does not relieve the WisDOT from responsibility for these areas, nor from compliance with non-Title 23 Federal requirements, which may remain applicable.			