

# **STEWARDSHIP AND OVERSIGHT AGREEMENT**

**Federal Highway Administration  
DelMar Division, Delaware Office**

**&**

**Delaware Department of Transportation**

**June 13, 2007**

## Forward to the Stewardship Agreement

A joint FHWA/DelDOT multi disciplinary team was instrumental in developing this Stewardship Agreement. The Team worked diligently to review legislation, identify process improvements, and develop a consensus Agreement. This Agreement accomplishes a major goal of our respective agencies, in partnership, to further improve the program and project delivery in the State of Delaware. The responsibilities and accountabilities are outlined in many of the tables to clarify expectations.

The Agreement is conceived as a living document that could be modified at the request of either FHWA or DelDOT.

## **AGREEMENT**

DelDOT and FHWA enter into this Agreement for administering the Federal-aid Highway Program in accordance with this Stewardship and Oversight Agreement. The Agreement has been jointly agreed upon to fulfill the Federal program requirements.

The Agreement outlines responsibilities and accountability for DelDOT and FHWA. The purpose of the Agreement is to clarify actions, prevent misinterpretations, and avoid time delays. The Agreement is intended to be a living document that can be modified when needed to incorporate additional legislation, additional processes, or other changes to improve program and project delivery in the State of Delaware. DelDOT and FHWA agree to use a broad set of performance and compliance indicators, as identified in Section 3 of the Agreement, to track performance trends and to implement countermeasures/actions when the data is not moving in the desired target direction. Performance and compliance indicators will be reported to the FHWA Division Office on the times specified in the Agreement. DelDOT and the FHWA Division Office will work together to compile the information and develop these reports.

At a minimum, the Agreement will be reviewed annually by DelDOT and the FHWA Division Office on or around the second week of November.

The Delaware Department of Transportation Secretary or the Division Administrator of the FHWA DelMar Division, Delaware Office may initiate amendments to the Agreement should essential modifications become apparent to either party.

Original Signed 6-13-07  
Carolann Wicks Date  
Secretary,  
Delaware Department of Transportation

Original Signed 6-13-07  
Hassan Raza Date  
Division Administrator,  
FHWA, DelMar Division, Delaware Office

## **Table of Contents**

Acronyms

Page

v

### **Section 1 – INTRODUCTION**

1.1 Purpose, Authority and Scope

7

1.2 Definitions

11

1.3 Delegation of Authority to Local Agencies

15

### **Section 2 – STEWARDSHIP AND OVERSIGHT OF FEDERAL-AID PROJECTS**

2.1 FHWA Responsibilities

16

2.2 DelDOT Responsibilities

19

### **Section 3 – STEWARDSHIP ROLES AND RESPONSIBILITIES FOR SPECIFIC FUNCTIONAL PROGRAM AREAS**

3.1 Planning Program

21

3.2 Environment Program

26

3.3 Design Monitoring Program

30

3.4 Construction Monitoring Program

33

3.5 Financial Management Program

39

3.6 Bridge Program

49

3.7 Safety and Traffic Program

54

3.8 Civil Rights Program

62

3.9 Right-of-Way Program

72

3.10 Intelligent Transportation System Program

76

3.11 Materials Quality Assurance Program

78

3.12 Pavement Design and Management Program

81

3.13 Preventive Maintenance Program

83

3.14 Research, Development and Technology Transfer (RD&T)

85

3.15 Miscellaneous Program

87

### **Section 4 – APPENDIX**

88

Attachment 1 – List of Full Federal Oversight Projects (to be attached at a later date)

Attachment 2 – FHWA Authorization to Advertise Checklist

## ACRONYMS

2R	Resurfacing and Restoration
3R	Resurfacing, Restoration, and Rehabilitation
4R	Resurfacing, Restoration, Rehabilitation and Reconstruction
AASHTO	American Association of State Highway and Transportation Officials
ADA	Americans with Disabilities Act
CEI	Construction Engineering and Inspection
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CMAQ	Congestion Mitigation and Air Quality
CPI	Continuous Process Improvement
DBE	Disadvantaged Business Enterprise
DBE/SS	Disadvantaged Business Enterprise Supportive Services
DDETFP	Dwight David Eisenhower Transportation Fellowship Program
DelDOT	Delaware Department of Transportation
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
FIRE	Financial Integrity Review and Evaluation
FMCSA	Federal Motor Carrier Safety Administration
FONSI	Finding of No Significant Impact
FTA	Federal Transit Administration
HPR	Highway Planning and Research
HPMS	Highway Performance Monitoring System
HSIP	Highway Safety Improvement Program
HSP	Highway Safety Program
ISTEA	Intermodal Surface Transportation Efficiency Act
IM	Interstate Maintenance
ITS	Intelligent Transportation Systems
LEP	Limited English Proficiency
LPA	Local Public Agency
MIHE	Minority Institutions of Higher Education
MPO	Metropolitan Planning Organization
NBIS	National Bridge Inspection Standards
NEPA	National Environmental Policy Act
NHS	National Highway System
NHSD	National Highway System Designation Act of 1995
NHTSA	National Highway Traffic Safety Administration
NSTI	National Summer Transportation Institute
OJT	On the Job Training
OJT/SS	On the Job Training Supportive Services
PD	Project Development
PE	Preliminary Engineering
PR/PE	Process Review/Program Evaluation

PS&E	Plans, Specifications, and Estimate
ROD	Record of Decision
R/W	Right-of-Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SHSP	Strategic Highway Safety Plan
SOP	Standard Operating Procedure
SRTS	Safe Route to School
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TEA-21	Transportation Equity Act for the 21st Century
TIP	Transportation Improvement Program
TRAC	AASHTO/Transportation and Civil Engineering
USC	United States Code
UYC	Urban Youth Corps

## **Section 1 – INTRODUCTION**

### **1.1 Purpose, Authority and Scope**

Pursuant to 23 U.S.C. 106 (c), the Delaware Department of Transportation (DelDOT) and the Federal Highway Administration (FHWA) DelMar Division, Delaware Office agree to follow the procedures set forth in this Stewardship and Oversight Agreement (Agreement) to carry out their respective stewardship/oversight responsibilities in the delivery of Federal-aid Programs and Projects. This Agreement supersedes all past agreements and plans, including the Stewardship Plan signed April 14, 2004 and shall become effective on the date listed below and remain in effect until superseded.

The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) of 1998, and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005 provided flexibility to the States in how to ensure project actions are carried out in accordance with applicable laws, regulations, and policies. TEA-21, Section 1305 (a) requires that FHWA and the State enter into an agreement showing the extent of the State's assumption of the Transportation Secretary's responsibilities. ISTEA and TEA-21 altered FHWA's role from full project oversight and approval of every project or activity funded with FHWA funds to program oversight and some targeted project level approval. The program and project assumptions made possible under Section 1016 of ISTEA and Section 1305 of TEA-21 require that DelDOT accept these assumed responsibilities and provide greater program accountability due to lesser Federal involvement. With the passage of SAFETEA-LU, the overall program has evolved requiring a more comprehensive agreement that covers all aspects of the Federal-aid Highway Program that provides a road map to effectively and efficiently execute the Federal-aid program relating to programs/project delivery to include financial integrity.

By signing this Agreement, DelDOT and FHWA agree to adhere to the provisions and responsibilities included herein. DelDOT and FHWA further agree to carry out their responsibilities in a true spirit of cooperation. Prior to the beginning of each Federal Fiscal Year, FHWA will collaborate with DelDOT in the development of FHWA's annual performance plan. FHWA will accomplish its stewardship and oversight responsibilities by implementation of the annual performance plan in conjunction with this Agreement.

DelDOT agrees that where it assumes FHWA's Title 23 oversight role and approval responsibilities, it is responsible for ensuring that projects are developed and constructed in full compliance with current approved specifications, standards, manuals, and Federal codes. DelDOT will ensure that necessary corrective action is taken when actions and approvals are found to be in non-compliance with these requirements. FHWA is available for consultation in such matters or may unilaterally become involved in determining corrective action.

DelDOT further understands that nothing contained herein shall relieve it from ultimate accountability for compliance with Federal laws and regulations with respect to the expenditure of Federal-aid highway funds in the State of Delaware, including those funds passed through to local governments. This Agreement does not preclude FHWA access to and review of Federal-aid projects at any time, and does not replace the provisions of Title 23 United States Code (U.S.C.).

This Agreement serves as a continuing plan of project and program stewardship and oversight responsibilities for FHWA and DelDOT covering the Federal-aid Program including the following functional areas:

- Planning
- Environment
- Design
- Construction
- Financial Management
- Bridge
- Safety and Traffic
- Civil Rights
- Right-of-Way
- Intelligent Transportation System (ITS)
- Materials Quality Assurance
- Pavement Design & Materials Quality
- Maintenance
- Research & Technology Transfer

**Project Performance**

In general, FHWA will use Process Review/Product Evaluation (PR/PE) techniques to assess the capability and capacity of DeIDOT in those areas where DeIDOT has assumed FHWA's responsibilities. FHWA will also use these techniques to monitor and evaluate DeIDOT's fulfillment of the responsibilities outlined in this Agreement. In cases where project level activity is still an integral part of FHWA's stewardship and oversight efforts, early involvement in project decisions combined with an assessment of the quality of the products produced during the project development process will be the primary focus.

**Program Performance**

As specified above, this Agreement includes stewardship responsibilities for various programs/functional areas with identified actions by each agency. FHWA will use Performance/Compliance Indicators as defined later in this Agreement to monitor and evaluate program performance and effectiveness. This Agreement incorporates the concept of Mutual Service Standards that include agreed upon formats, procedures and targeted timeframes for DeIDOT and FHWA actions, including submissions, comments, and approvals. This Agreement also takes into account DeIDOT and FHWA resources and capabilities, and the Federal requirements where FHWA has a mandated role in the oversight process. This Agreement forms the principal basis for monitoring and evaluating the quality of DeIDOT's Federal-aid program, and the continued disbursement of Federal funds based upon DeIDOT policies, practices, and staffing resources.

### **Non-transferable Title 23 Requirements**

While DeIDOT can assume the responsibility for FHWA in many Title 23 U.S.C. actions, some Title 23 U.S.C. requirements remain FHWA responsibilities. These program elements include, but are not limited to:

- All Federal responsibilities for planning and programming oversight specified in 23 USC 134 and 135.
- Waivers to Buy America requirements.
- Environmental approvals.
- Civil Rights program approvals.
- Special Experimental Project (SEP) methods (FHWA HQ approval required for experimental contracting/project delivery methods)
- Federal air quality conformity determinations required by the Clean Air Act.
- Obligation of funds.
- Addition/modification of access points on the Interstate System.
- Use of Interstate airspace for non-highway-related purposes.
- Hardship acquisition and protective buying.
- Modifications to project agreements.
- Final vouchers.

FHWA will annually perform risk assessments of various program areas for the purpose of prioritizing its program level oversight activities for the coming year. The objective of these risk assessments is to focus the limited resources of the FHWA Division Office on those activities that represent the greatest risk to FHWA in fulfilling its stewardship responsibilities. A portion of the risk assessments will involve an evaluation of DeIDOT's internal controls, operating procedures, and staffing. By this process, it is expected that the greatest possible confidence level will be achieved for the resources committed. DeIDOT will be invited to participate in these risk assessments; however, FHWA will make all final determinations of risk categories. Both agencies will work together to develop a mitigation plan for identified risk statements.

## 1.2 Definitions:

For the purposes of this Agreement, the following definitions apply:

**Advanced Construction (A/C)** – A technique which allows a State to initiate a project using non-federal funds while preserving eligibility for future Federal-aid funds. Eligibility means that FHWA has determined that the project technically qualifies for Federal-aid; however, no present or future Federal funds are committed to the project. After an advance construction project is authorized, the State may convert the project to regular Federal-aid funding provided Federal funds are made available for the project. This can be accomplished as one action, or the project may be partially converted over time.

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

**Construction Cost** - The cost of a specific project based on the engineer's estimate amount. The construction cost does not include: construction engineering and inspection, preliminary engineering, right-of-way, and utility adjustments.

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

**Force Account** - The direct performance of highway construction work by a State transportation department, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control. 23 CFR 635.203(c)

**Full Oversight Projects (Non-Exempt 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.

**Functional Replacement** – When publicly owned real property, including land and/or facilities, is to be acquired for a Federal-aid highway project, in lieu of paying the fair market value for the real property, the State may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility.

**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.

**Mutual Service Standards** - These standards as agreed upon by both parties, identify quality and timeliness expectations and cover services and products involving program delivery. These standards go into better detail on the level of coordination between FHWA and the state DOT than this Stewardship and Oversight Agreement.

**New Construction** – Projects on new alignment or major reconstruction projects on existing alignment where significant horizontal and vertical changes are included in the scope of work and funded.

**Oversight** – The act of ensuring that the Federal-aid 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.

**Preventive Maintenance** - The lowest level of 2R work. In general, any work that 1) prevents the intrusion of water into the pavement or pavement base (crack or joint sealing, under drains, restoration of drainage systems); 2) prevents deterioration of bridges including painting, scour protection, deck repair, deck drain cleaning, and seismic retrofit; 3) restores pavement rideability by profiling, milling, overlaying, or replacing a portion of the pavement structure.

**Process Review/Product Evaluation (PR/PE)** – A comprehensive review of DelDOT's procedures and controls.

**Reconstruction** - Typical reconstruction means the demolition and full depth replacement of the pavement structure, rubblization or crack-and-seal of existing pavement combined with full depth overlay, removal and replacement of any significant part of the substructure or the superstructure, and total replacement of highway signs, highway lighting, or drainage systems.

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

**State Administered Projects (Exempt 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.

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

**2R Project (DE specific term)** - A project intended to extend the service life of existing highways, bridges, and related appurtenances and/or restore safe, efficient travel on an existing facility. 2R (resurfacing and rehabilitation) work includes the placement of additional surface material and other work necessary to return an existing roadway to a condition of structural or functional adequacy. 2R projects are typically constructed within existing right-of-way, or require only minor acquisitions necessary to enhance safety.

**3R Project** - A project intended to extend the service life of existing highways, bridges, and related appurtenances; and/or restore safe, efficient travel on an existing facility. 3R (resurfacing, rehabilitation, and restoration) work includes the placement of additional surface material and other work necessary to return an existing roadway to a condition of structural or functional adequacy. This may include improving geometric features such as flattening curves, improving sight distance and minor roadway and/or shoulder widening. 3R projects are typically constructed within existing right-of-way, or require only minor acquisitions necessary to enhance safety.

**4R Project** - A project that goes beyond extending the service life of existing highways, bridges, and related appurtenances. This project type includes reconstruction and all necessary upgrades to improve operations and restore safe, efficient travel on an existing facility. 4R (resurfacing, rehabilitation, restoration and reconstruction) work includes improving geometric features such as flattening curves, improving sight distance and roadway and/or shoulder widening if necessary. 4R projects may require additional right-of-way to enhance operations and safety.

### **1.3 Delegation of Authority to Local Agencies**

DelDOT may, pursuant to 23 CFR 1.11 and 635.105, delegate certain Federal-aid project authorities to a well-qualified and suitably equipped local public agency (LPA). DelDOT is responsible for ensuring that appropriate procedures and guidelines are in place to facilitate the compliance of local public agency administered Federal-aid projects. FHWA will review and approve these practices and procedures for Federal-aid projects.

DelDOT will determine if the local agency is well qualified and adequately staffed to administer projects before delegation of any activities. DelDOT will review the local agency's ability to administer Federal-aid projects or specific activities on a case-by-case basis, and the extent of delegation will be dependent on their current staffing level and experience, and past performance. An Agency Agreement will be executed between DelDOT and the local agency to outline the responsibilities of both DelDOT and the local agency. The agreement will require FHWA concurrence.

DelDOT retains responsibility under Federal law and regulations for all delegated activities. DelDOT will have written procedures established for the local agency that provide the necessary processes, approvals, oversight and review that ensures the delegated projects receive adequate supervision and inspection, and are completed in conformance with approved plans and specifications and applicable Federal requirements. While DelDOT will offer any training, advice, or other assistance as may be needed by a local agency to aid it in successfully completing its Federal-aid project, it is understood that the project is controlled by the local agency. As such, if the local agency is not following prescribed requirements, DelDOT's recourse would be to remove Federal-aid funds from the project.

Prior to the initiation of any LPA roadway project, DelDOT, FHWA, and the Local Agency performing the work will meet to determine the level of oversight that will be required.

**Section 2 – STEWARDSHIP AND OVERSIGHT OF FEDERAL-AID PROJECTS**

**2.1 FHWA Responsibilities:**

FHWA is ultimately accountable for all Federal-aid highway projects. FHWA will fulfill its stewardship role at a project level as follows:

- Full Oversight Projects – Projects meeting certain criteria (see table below) will be subject to full FHWA oversight unless FHWA determines otherwise. The DelDOT Chief Engineer and FHWA Assistant Division Administrator will meet by August 31<sup>st</sup> of each year to review and identify all full oversight projects. This list of full oversight projects will be added to this Stewardship Agreement as an attachment. Changes to this list will not have to be approved by the Delaware Secretary of Transportation nor the FHWA DelMar Division, Delaware Office Administrator. Therefore this Agreement will not have to be revised if changes are made to the list of full oversight projects:

Route	Type or Work	Minimum Estimated Cost (Million)
Interstate	New Construction/ Reconstruction	\$1
NHS (Non-Interstate)	New Construction/ Reconstruction	\$5

FHWA reserves the right to make any Federal-aid highway project subject to full oversight or state administered. In making this determination, FHWA will consider factors such as: location of the project, congressional interest, unique contract procedures such as Design/Build projects, innovative financing, construction of unusual bridges or structures, or projects of national significance. Other FHWA Programs that may be full oversight include, but are not limited to: CMAQ, SPR, LTAP and Bridge. FHWA will retain full oversight on all ITS projects.

- Involvement on Other Projects – FHWA may become involved with any Federal-aid project, including those for which DelDOT has assumed oversight responsibility. FHWA oversight of State administered projects will be through program level activities, such as Process Review/Program Evaluation (PR/PE), attendance at Task Force meetings, etc. Additionally,

DelDOT may request FHWA involvement. The extent of FHWA involvement will be defined by DelDOT's request. FHWA will provide engineering support for project development activities and technical assistance on major unique and/or unusual structures and on non-Federally funded Interstate reconstruction projects. FHWA will also provide engineering support for project development and/or construction activities on other projects when requested by DelDOT.

- Technical Assistance – FHWA is prepared to provide technical assistance to DelDOT or local agencies on any aspect of an eligible Title 23 project including intermodal transportation projects. Technical assistance activities will be decided on a case-by-case basis in consultation with DelDOT, other partners, and FHWA. FHWA will continue to focus their time and effort on improving processes and procedures, in cooperation with DelDOT.
  
- Non-Title 23 Responsibility – FHWA will continue to be responsible for the oversight of applicable non-Title 23 requirements. Such oversight will be conducted through a combination of both project and program level activities. Applicable non-Title 23 requirements include, but are not limited to:
  - National Environmental Policy Act (NEPA) of 1969
  - Section 4 (f) of the DOT Act of 1966
  - Civil Rights Act of 1964
  - Uniform Relocation Assistance and Real Properties
  - Acquisition Policies Act of 1970
  - Disadvantaged Business Enterprise Program (DBE)
  - Clean Air Act Amendments of 1990

FHWA will manage and provide oversight of DelDOT's Federal-aid programs in various ways.

The methods used will be:

- Routine day-to-day program actions and other interaction.
- FHWA participation on DelDOT task forces, teams, implementation committees, reviews, attendance at DelDOT meetings, etc.
- PR/PE reviews activities on program areas as needed and determined in accordance with the FHWA's risk assessment process and/or other high importance program areas. PR/PE reviews activities will be utilized as one of the primary methods of program oversight. PR/PE reviews comprise the process of comprehensively reviewing and evaluating State and or local agency policies, procedures, practices and controls for the development and implementation of Federal-aid projects and programs. Annual PR/PE's program will be jointly developed in accordance with the current Process Review/Product Evaluation Guidelines which will be included in the FHWA Division Office's annual performance plan.
- FHWA's Financial Integrity Review and Evaluation (FIRE) Program to assess the financial aspects of programs and projects.

To aid DelDOT in meeting all of the Federal requirements in this Agreement, a meeting will be held within two months of the signing of this Agreement between the appropriate DelDOT and the FHWA Division Office representatives to ensure the most current forms specified in the Agreement are being used for reporting. FHWA will provide any forms determined to be non-current within 15 days of this meeting. FHWA will also provide DelDOT with any new or updated forms when they become available.

## 2.2 DeIDOT Responsibilities:

DeIDOT hereby advises FHWA that it wishes to assume project oversight responsibilities in accordance with the following:

- Interstate Projects – DeIDOT assumes oversight responsibility for the right-of-way approval, utility approval, railroad approval and related activities, design approval, plans, specifications, estimates, contract award, and inspection of the following projects on the Interstate System designated as State Administered projects by FHWA: (1) all 2R and 3R projects and (2) all reconstruction/new construction projects with an estimated construction cost of less than \$1 million. All Interstate projects must comply with all Title 23 U.S.C. and non-Title 23 U.S.C. requirements.
- Other NHS Projects (not on the Interstate System) – DeIDOT assumes oversight responsibility for the right-of-way approval, utility approval, railroad approval and related activities, design approval, design exceptions, plans, specifications, estimates, contract award, and inspection for the non-Interstate NHS projects (2R, 3R, reconstruction and new construction) designated as State Administered projects by FHWA with an estimated construction cost of less than \$5 million. All NHS projects must comply with all Title 23 U.S.C. and non-Title 23 U.S.C. requirements.
- Non-NHS Projects – DeIDOT assumes oversight responsibility for the right-of-way approval, utility approval, railroad approval and related activities, design approval, design exceptions, plans, specifications, estimates, contract award, and inspection of projects not on the NHS. Non-NHS projects are required to be designed, constructed, operated, and maintained in accordance with State law, regulations, directives, safety standards, design standards, and construction standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to, transportation planning, procurement of professional services, Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions and other requirements. All non-NHS projects must also comply with all non-Title 23 U.S.C. requirements.

- Local Agency Projects – In the event that DeIDOT wishes to allow a local agency to administer a Federal-aid project, DeIDOT is responsible for assuring compliance with all applicable Federal and State requirements. DeIDOT is not relieved of this responsibility even though the project may be delegated to the local agency. In accordance with 23 CFR 1.11 and 635.105, DeIDOT is responsible for ensuring that the local agency is qualified and equipped to administer the project and has processes in place to ensure compliance with Federal requirements.

For those projects that DeIDOT has agreed to assume oversight responsibility, DeIDOT will follow all applicable FHWA policies, regulations, Title 23, and non-Title 23 requirements as if FHWA were involved.

## **Section 3 – STEWARDSHIP ROLES AND RESPONSIBILITIES FOR SPECIFIC FUNCTIONAL PROGRAM AREAS**

### **3.1 PLANNING PROGRAM**

#### **Background**

States are required to conduct continuing, comprehensive and collaborative planning processes that facilitate the effective and efficient movement of goods and people in all areas of the States including the metropolitan and local areas. FHWA's role includes policy and program guidance as well as information and advice on FHWA, State, Regional, and Local transportation planning and program matters in Delaware.

The planning program is divided into five main categories: statewide; urban; highway information; air quality, and miscellaneous. The statewide and urban planning activities are performed jointly with the Federal Transit Administration (FTA). The statutory and regulatory references for the statewide and metropolitan functions are 23 U.S.C. 134, 23 U.S.C. 135, 49 U.S.C. 5303-5305, 23 CFR Part 450 (Subparts B and C), and 49 CFR Part 613 (Subparts B and C)

#### **Operating Procedures**

FHWA provides technical expertise and assistance through participation in committees and teams set up by DelDOT and the MPOs that address planning topic areas including: (1) Long Range Transportation Plans; (2) Statewide and Metropolitan areas Transportation Improvement Programs; (3) Unified Planning Work Programs; (4) Congestion Management, (5) Air Quality Conformity Determination, and (6) Data Collection and Reporting.

## **Program Oversight**

In all program areas FHWA and FTA will work with the State, MPOs, and Local agencies to review, approve, and comment on planning programs to ensure consistency with Federal laws and regulations. In addition, FHWA will provide the State and the MPOs with examples of best practices to enhance their planning products such as Long Range Transportation Plans, Transportation Improvement Programs, and Unified Planning Work Programs.

The following Table provides background information on the authority, action, and frequency for a variety of recurring planning-related activities in the five core areas.

## Planning Program Summary Table

	Activity	DeIDOT/ MPO Action	FHWA Action	Product
<b>A</b>	<b>Statewide Planning</b>			
1	20 yr Statewide Transportation Plan, (23 CFR 450.214)* (As updated)**	Prepare	R for C	Statewide Transportation Plan
2	4 yr State Transportation Improvement Program (STIP) & amendments, (23 CFR 450.216, 220)* (State submit it annually, amendment as requested)**	Prepare	R & A w/FTA	State Transportation Improvement Program
3	Statewide Planning & Research Part I, ((23 CFR 420)* (Annually August 15)**	Prepare	R & A	Statewide Annual Work Program
4	State Certification of their Planning Process, (23 CFR 450.220 (a))* (In conjunction with STIP approval)**	Prepare	R for C	Planning Process
5	Public Involvement for the State Planning Process, (23 CFR 450.212)* (As needed or revised by State)**	Prepare	R for C	Public Involvement Plan
6	Functional Classification of Highways, (23 CFR 105(b))* (As needed or revised by State)**	Prepare	R & A	Functional Classification Highways System and Maps
7	Urban Area Boundaries, (23 CFR 470.105(a))* (As needed or revised by State)**	Prepare	R & A	Urban Area Boundaries
8	National Highway System, (23 CFR 470.111, 115(a))* (As needed or revised by State)**	Prepare	R and Recommend action to HQ	National Highway System
<b>B</b>	<b>Metropolitan Planning</b>			
1	Unified Planning Work Program, 23 CFR 450.314 (a))* (Annually by June 30)**	Prepare	R & A	Unified Planning Work Program
2	Transportation Plan for non-attainment Metropolitan Areas, (23 CFR 450.322)* (Every 4 yrs)**	Prepare	R & A	Transportation Plan
3	Transportation Plan for Attainment Areas, (23 CFR 450.322)* (Every 5 yrs)	Prepare	R for C	Transportation Plan
4	Transportation Improvements Program (TIP) amendments for Non-attainments areas, (23 CFR 450.324-330 (b))* (As requested by MPO at least every four years)**	Prepare	R & A	Transportation Improvements Program
5	TIP amendments for attainments areas, (23 CFR 450.334 -330 (a))* (As requested by MPO at least every four years)**	Prepare	R & A	TIP amendments
6	FHWA/FTA TMA Planning Certification, (23 CFR 450.334)* (Every 4 yrs)**	Prepare	Conduct w/FTA	Certification of TMA Planning Process
7	Metropolitan Planning area Boundary Changes, (23 CFR 450.308)* (As needed/revised by MPO/State)**	Prepare	R for C	Boundary Changes

	<b>Activity</b>	<b>De/IDOT/ MPO Action</b>	<b>FHWA Action</b>	<b>Product</b>
8	MPO/State certification of MPO Planning Process, (23 CFR 450.334)* (In conjunction with TIP approval)**	Prepare	R for C	Certification of State/MPO Planning Process
<b>C</b>	<b>Highway Information</b>			
1	HPMS data submission, FHWA HPMS Field Manual (Annually by June 15)**	Prepare	R for C	Annual HPMS Data Report
2	HPMS data review, FHWA HPMS Field Manual (Annually by Nov 1)**	Prepare	R & submit report to HQ	HPMS Review Report
3	Public road mileage certification, (23 CFR 460.3)* (Annually June 1)**	Prepare	R for C	Public Road Miles Data
4	Traffic Monitoring System, (23 CFR 500.203)* (As needed)*	Prepare	R for C	Part of HPMS Review Report
5	Heavy Vehicle Use Tax Payment Proof of Payment, (23 CFR 669.7)* (Annually by July 1)**	Prepare	R for C	Certification of HVUT
6	Heavy Vehicle Use Tax Payment review, (23 CFR 669.21)* (Every 3 years)**	Prepare	R	Process Review
7	Vehicle Size & Weight enforcement certification, (23 CFR 657. 13)* (Annually by January 1)**	Prepare	R & A w/evaluation Report	Certification of VS&WE Program
8	Vehicle Size & Weight enforcement plan, (23 CFR 657.11)* (Annually by July 1)**	Prepare	R & A w/ Evaluation	Vehicle Size & Wt enforcement plan
9	FHWA Form 500 Series, Guidance on Highway Statistics Report (See Guidance for specific due date)*	Prepare	R & I	FHWA Form 500
<b>D</b>	<b>Air Quality</b>			
1	Transportation Plan Conformity Determination for non-attainment Area, (23 CFR 450.322(d))* (After receipt of MPO Determination)**	Prepare	R & A	Conformity Report
2	TIP Conformity Determination for non-attainment Area, (23 CFR 450.322(b)) (After receipt of MPO Determination)**	Prepare	R & A	Conformity Report
3	CMAQ funds Report ,(23 USC 149, 104(b) (2), 126(c), 04/28/HQ CMAQ guidance memo)* (Annually February 1)	Prepare	R for C	CMAQ Report
4	CMAQ fund Eligibility , 04/28/HQ CMAQ guidance memo (As requested by State)	Prepare	R & A	Eligibility Determination Report/Letter
5	MPO/State air quality agency agreements, (23 CFR 450.310 (h))* (As needed or revised by MPO/State)**	Prepare	R for C	MOU/Agreements
<b>E</b>	<b>Miscellaneous</b>			
1	Transportation & Community & System Preservation Pilot Program (TCSP), (SAFETEA-LU:1117)* (Annually)**	Prepare	R	Grant Report
2	Value Pilot Pricing Program (VPPP), (SAFETEA-LU:1604)* (As needed)**	Prepare	R	Process Review

\* Denotes Authority/Regulation Action: A = Approve, C = Compliance, I = Information, P = Prepare, R = Review \*\* Denotes Submission Date/Frequency

**Planning Program Performance/Compliance Indicators:**

Objective: To deliver the planning program in accordance with applicable laws, regulations and policies and enhance the delivery of the process.

Indicators:

- 1) Percent of projects in STIP implemented during year 1
- 2) Certification of planning process does not include any significant findings
- 3) Number of STIP amendments during the reporting year
- 4) STIP submitted date verses targeted submittal date
- 5) Number of areas in conformity lapse
- 6) Progress on including freight in the planning process

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

## **3.2 ENVIRONMENT PROGRAM**

### **Background**

FHWA is the lead federal agency in integrating the full range of environmental requirements under a single, unified process that results in efficient and timely transportation decisions in accordance with Section 6002 of SAFETEA-LU. These laws and regulations include the National Environmental Policy Act (NEPA) and implementing regulations CEQ 40 CFR 1500-1508 and FHWA 23 CFR 771 (proposed 23 CFR 1420); Section 4(f) of the Department of Transportation Act and implementing regulations 23 CFR 771 (proposed 23 CFR 1430); Section 106 of the National Historic Preservation Act and implementing regulations 36 CFR 800; Section 404 of the Clean Water Act; and Section 7 of the Endangered Species Act, as well as others. Furthermore, FHWA has a commitment to the “protection and enhancement of communities and the natural environment” as outlined in the USDOT Strategic Goals.

### **Project Oversight**

For all projects, FHWA and DelDOT work together in the project planning phase to ensure compliance with NEPA and other applicable laws before FHWA selects an alternative (location approval). The level of involvement is commensurate with the level of the environmental impacts or project complexity and follows a set procedure depending on environmental documentation class.

For Programmatic Categorical Exclusions (level c), DelDOT prepares a checklist documenting eligibility in accordance with the criteria outlined in previous FHWA/DelDOT agreements. DelDOT files the form and sends an informational copy to the FHWA Division Office. Categorical Exclusions, Programmatic Section 4(f) Evaluations and Section 4(f) Evaluations are prepared by DelDOT and submitted to the FHWA for review. FHWA’s goal is to respond to all submissions within timeframes shown in the table below. Coordination on Environmental Assessments/Findings of No Significant Impacts and Environmental Impact Statements are conducted following the “Mid-Atlantic Transportation and Environmental Streamlining Process” guidelines and include interagency field meetings, concurrence points, reviews and approval procedures.

The Programmatic Memorandum of Agreement for Minor Projects between FHWA, DeIDOT, Delaware State Historic Preservation Office, and the Advisory Council of Historic Preservation for carrying out the responsibilities of Section 106 of the National Historic Preservation Act is in the process of being updated.

FHWA is also an active member of individual project teams and help guide the project development process planning study. All documents requiring legal sufficiency review (the final EIS and Section 4(f) Evaluation) will be sent to the Offices of Chief Counsel (OCC) in Head Quarters by the FHWA Division Office to the FHWA Eastern Legal Services Office of the Office of Chief Counsel (ELS) for the legal sufficiency review by Counsel with summary comments prior to issuing these documents. Pre-Draft Section 4(f) documents will be submitted to OCC ELS for comment regarding potential for legal sufficiency. The OCC's ELS' goal is to provide legal sufficiency review comments to the FHWA Division Office within 30 days after receipt of the document. Environmental Re-evaluations are conducted through informal consultation and formal written documentation.

**Environment Program  
Summary Table  
(State Administered and Full Oversight Projects)**

<b>Activity</b>	<b>DelDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
Programmatic Categorical Exclusions	Prepare, Approve, and File	A Process Review will be done every 5 years.	Final Report
Categorical Exclusions	Prepare, request classification, request Location Approval	Comments or Concur with CE classification within 30 days of receipt. Comments or grant location approval within 30 days of receipt.	Approved CE
Preliminary Environmental Assessment	Prepare, request classification	Provide comments, concur with classification (within 30 days of receipt)	Comments
Environmental Assessment (EA)	Prepare	Comments or Approve (within 20 days of receipt)	Signed EA
Preliminary Finding of No Significant Impacts (FONSI)	Prepare, may identify preferred alternative	Provide comments (within 30 days of receipt)	Comments
Finding of No Significant Impacts	Prepare	Comments or Concur with Finding determination, grant location approval (within 20 days of receipt)	Signed FONSI
Major Project* Draft Environmental Impact Statement (DEIS) Cost	Prepare Major Project Cost Estimate for DEIS Alternatives.	Review cost estimate	DeIDOT's DEIS Major Project Cost Estimate Report.

<b>Activity</b>	<b>DeIDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
Estimate			
Preliminary DEIS	Prepare, request classification	Provide comments, concur with classification (within 30 days of receipt)	Comments
DEIS	Prepare	Comments or Approve (within 30 days of receipt)	Signed DEIS
Preliminary Final Environmental Impact Statement (FEIS)	Prepare, may identify preferred alternative	Provide comments (within 30 days of receipt)	Comments
Major Project* FEIS Cost Estimate	Prepare Major Project Cost Estimate for the preferred alternate.	Review cost estimate	DeIDOT's FEIS Major Project Cost Estimate Report.
FHWA Major Project* Independent Cost Review (For DEIS and/FEIS)	Provide cost estimates and documentation for the project, provide project personnel to answer questions concerning all parts of the estimate	Perform independent cost estimate review prior to releasing DEIS /FEIS.	FHWA independent DESI/FEIS cost estimate review report.
FEIS	Prepare	Acquire Legal Sufficiency or comment, determine prior concurrence requirement, approve (within 30 days of receipt)	Signed FEIS
Record of Decision (ROD)	Prepare	Consult Legal Counsel, select alternative, comment or issue ROD (within 30 days of receipt), grant location approval	ROD
Preliminary Re-evaluations	Prepare	Provide comments within 30 days of receipt	Comments
Re-evaluations	Prepare, recommend action	Concur or deny that existing document is still valid (within 20 days of receipt)	Concurrence
Preliminary Programmatic Section 4(f) Evaluations	Prepare, may recommend alternative	Provide comments (within 30 days of receipt)	Comments
Programmatic Section 4(f) Evaluations	Prepare	Comments or Approve (within 20 days of receipt)	Signed Prog. 4(f)
Preliminary Draft Section 4(f) Evaluations	Prepare	Provide comments (within 45 days of receipt)	Comments
Draft Section 4(f) Evaluations	Prepare	Comments or Approve (within 20 days of receipt)	Signed Draft 4(f)
Preliminary Final Section 4(f) Evaluations	Prepare, may recommend alternative	Provide comments (within 30 days of receipt)	Comments
Final Section 4(f) Evaluations	Prepare	Comments or Acquire Legal Sufficiency, approve (within 30 days of receipt)	Signed Final 4(f)
Advisory Council on Historic Preservation (ACHP) Invitation Letter	Prepare	Review, Revise and Forward to ACHP within 30 days	Final Letter
Public Hearing Transcripts	Prepare	Review and concur (within 15 days of receipt)	Concurrence letter
Project Initiation Letter	Prepare	Review	Project File Documentation

<b>Activity</b>	<b>DeIDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
Notice of Intent	Prepare	Review, revise and sent to Federal Register (within 15 days of receipt)	Federal Register Notice
Draft Coordination Plan	Prepare	Review and comment (within 30 days of receipt)	Coordination Plan for agency review
Draft Federal Cooperating/Participating Agency Letters	Prepare	Review, revise and forward (within 30 days of receipt)	Final Agency Letters
* A project with a total estimated cost of \$500 million (including PE and R/W) or more that is receiving Federal financial assistance is designated as a Major Project. Refer to FHWA Major Project Guidance for further discussion.			

**Environment Program Performance/Compliance Indicators:**

Objective: To meet timeliness targets for Environmental Impact Statements (EIS) and Environmental Assessments (EA).

Indicators:

- 1) EIS and EA completion timeline targets established in FHWA's Environmental Document Tracking System (EDTS)
- 2) Reduction in the processing time for completion of EISs (from Notice of Intent to ROD) from established targets in EDTS (Baseline: As established in EDTS)
- 3) Reduction in the processing time for EAs from project initiation to FONSI (2005 Baseline- 29 months)

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### 3.3 DESIGN MONITORING PROGRAM

The purpose of a design monitoring program is to establish procedures for assuring that Federal-aid projects are constructed in accordance with 23 CFR Part 625 Design Standards for Highways, 626 Pavement Policy, 627 Value Engineering, 630 Pre-construction Procedures, 633 Required Contract Provisions, 636 Design-Build Contracting, 645 Utilities, 646 Railroads, 650 Bridges, 652 Pedestrian and Bicycle Accommodations and Projects, 655 Traffic Operations, 771 Environmental Impact and Related Procedure, and 772 Noise. It is FHWA policy that FHWA personnel make sufficient reviews of full oversight Federal-aid projects to assure they are designed in accordance with applicable standards and in consideration of appropriate cost-effectiveness strategies.

All projects on the NHS, regardless of funding source, must follow FHWA approved AASHTO design standards except for non-freeway 2R and 3R projects where DelDOT may request FHWA approval to use State developed standards.

For full oversight Federal-aid projects on the NHS, including the Interstate System, the primary objectives of the design monitoring program are:

- To ensure compliance with all applicable Federal regulations
- To promote improved safety through appropriate use of design standards and guidelines.
- To make value added input at appropriate points in the project development process, with emphasis on early involvement in the project decision making process.
- To maintain a close working relationship between FHWA and DelDOT project development personnel.
- To ensure the integrity of the Interstate System through the review and approval of Interstate access point additions or modifications.
- To promote context sensitive solutions concepts
- To ensure that environmental commitments are incorporated into contract documents.

The types of design reviews that will be undertaken by FHWA include:

Early Planning Reviews: Early involvement maximizes FHWA's opportunity to participate in design decisions with the goals of promoting safety and preserving human and natural environment. FHWA's participation in developing possible transportation solutions at concept

development meetings, prior to any public meetings, should be included on Federal-aid projects of a scope that is likely to require an Environmental Assessment or Environmental Impact Statement, and for all FHWA full oversight projects.

Intermediate Plan Reviews: These reviews are appropriate during the time when design concepts and major design features are being developed and finalized. The purpose of intermediate reviews is to assure that appropriate design considerations are used during project development, to ensure that environmental commitments are observed, to ensure cost-effective designs are considered, to maintain effective communication between FHWA and DeIDOT, and to evaluate the quality of the product. FHWA will participate in intermediate reviews on full-oversight projects following the DeIDOT plan development review process at: Preliminary Construction, Semi-Final Construction and Semi-Final Right-of-Way.

Plans, Specifications and Estimate (PS&E) Review: This is the final step in attesting that the plans have been designed in accordance with applicable standards. This step is required to allow authorization to advertise. The reviews may utilize the FHWA Authorization to Advertise Checklist (attached) and should generally not involve a design review if there was adequate FHWA involvement during the intermediate reviews leading up to the final plans. These reviews are required on all FHWA oversight projects to assure that the project complies with all Federal requirements before Federal funding authorization is approved.

Design Process Reviews/Program Evaluations (PR/PE): These reviews evaluate the processes and procedures used by DeIDOT on design activities. Process reviews can be broad in scope, covering a major design activity such as conceptual studies, preliminary plan development, or PS&E preparation, or they can be more specific, covering such elements as geometrics, pavement design, safety, structures, etc. All process reviews should include a sufficient sampling of actual products and/or projects to assure that the process is producing the intended results. As appropriate, both Federal oversight and State administered projects will be included in the sample of projects inspected as a part of process reviews.

Design and Operation Reviews: These reviews are undertaken for recently completed projects to evaluate the effectiveness of current design policy and detect design features that can be improved. The reviews should be conducted using a team approach with representatives from various functional areas. Projects should be open to traffic before being considered as candidates for a design and operation review.

On State administered Federal-aid projects (where DelDOT has the delegated authority to act for FHWA in design monitoring), DelDOT has a Project Development Process that includes reviews at each milestone during plan development. State administered projects are subject to joint FHWA-DelDOT process reviews and inspections and must comply with applicable Federal requirements.

Along with the general items listed above for FHWA project review, the following are specific requirements for bridge projects:

- For new or reconstruction bridge projects on the Interstate System (bridges that carry Interstate traffic and interchange bridges), preliminary bridge plans as well as final plans, specifications and estimates (PS&E) will be submitted to FHWA for review.
- For new or reconstruction bridge projects that carry traffic over the Interstate Highway regardless of funding source, preliminary bridge plans will be submitted to FHWA for the purpose of evaluating horizontal and vertical clearances on the Interstate System.
- FHWA may elect to retain full-oversight on Federal-aid projects involving unusual structures. Unusual structures may include tunnels, structures featuring new or complex wall systems, structures that involve complex stream stability countermeasures or designs that are atypical or unique. Unusual bridges may include unique foundation problems, complex designs with unique features, bridges with exceptionally long spans, or bridges being designed with procedures that depart from currently recognized acceptable practices.
- FHWA will be available for technical assistance on all Federal-aid and non-Federal-aid bridge projects.

### 3.4 CONSTRUCTION MONITORING PROGRAM

In general DelDOT has responsibility for the construction of all Federal-aid projects and for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans & specifications. The primary objectives of the FHWA construction-monitoring program are:

- To evaluate DelDOT's control of the projects and the quality and progress of work.
- To maintain a close working relationship with DelDOT construction staff.
- To promote quality improvements.
- To promote work zone safety.
- To assure that projects are completed in reasonably close conformance with the approved plans and specifications and approved changes.
- To ensure compliance with environmental commitments.

FHWA will use the following types of inspections to obtain these objectives:

- Construction Process Review/Product Evaluation (PR/PE) - A comprehensive review of DelDOT's procedures and controls. The purpose of a PR/PE is to provide oversight of DelDOT construction and materials management activities and to determine compliance with Federal-aid requirements on a statewide or region wide basis.
- Inspection-In-Depth - A thorough on-site review to evaluate a specific contract item, combination of items, or major phase of a project. Inspections-in-depth may be accomplished on an individual project basis or on several projects with the findings summarized as a Region wide or statewide review.
- Project Inspection - An on-site review to evaluate DelDOT's activities, the quality and progress of the work, compliance with environmental commitments, and if appropriate, to follow up on findings from previous inspections.

- Final Inspection - A review to determine the extent to which DelDOT has exercised its control to assure that the project has been completed in reasonably close conformance with the plans, specifications, and authorized changes, including implementation of environmental commitments.
- Operational Review – A review of a recently completed project with a multi-disciplinary team to identify opportunities for improvement that may be incorporated in future projects. These reviews also provide the opportunity to identify highly successful or noteworthy practices in addition to noting deficiencies.

## Design & Construction Programs

### Summary Table

WORK ACTIVITY	FULL OVERSIGHT PROJECTS			STATE ADMINISTERED PROJECTS	
	Authority	DelDOT Action	FHWA Action	DelDOT Action	FHWA Action
Interstate Access Point Approval	23 USC 111	Prepare (PD)	Approve (10 days)	Prepare	Approve (10 days)
Project Management Plan (PMP) for Major Projects*	23 USC 106	Prepare (PD)	Approve (30 days)	N/A	N/A
Major Project Finance Plan Cost Estimate review if needed. {This would depend on the time gap between FHWA Major Project FEIS Cost Estimate Review (see Environment program) and Finance Plan submittal, and changes to the project since the ROD}*	23 USC 106, FHWA Guidance	Prepare Major Project Cost Estimate for the selected alternate. (PD)	Review cost estimate	N/A	N/A
FHWA Major Project* Independent Cost Review (see above)*	23 USC 106, FHWA Guidance	Provide cost estimates and documentation for the project, provide project personnel to answer questions concerning all parts of the estimate. (PD)	Perform independent cost estimate review prior to accepting Initial Finance Plan (IFP)	N/A	N/A
Financial Plan for Major Projects (Initial and Annual)*	23 USC 106	Prepare (PD)	Approve (30 days)	N/A	N/A
Financial Plan for other projects (w/ estimated cost >\$100M and <\$500M) (Initial and Annual)*	23 USC 106	Prepare (PD)	Information	Prepare	Info.
Consultant Services/Agreements	23 CFR 172.9	Approve	None	Approve	None
Coordination for Projects Near Airports	23 CFR 620.104	Prepare (PD)	Approve (10 days)	Approve	None
Public Interest Finding with respect to airport-highway clearance	23 CFR 620.104	Prepare (PD)	Approve (10 days)	Approve	None
Highway Facility Relinquishment	23 CFR 620.203	Prepare	Approve (10 days)	Approve	None
Design Exception	23 CFR 625.3(f)	Prepare (PD)	Approve (10 days)	Approve <sup>(1)</sup>	None
Use of Publicly Owned Equipment	23 CFR 635.106	Prepare (PD)	Approve (10 days)	Approve	None
Use of mandatory borrow/disposal sites	23 CFR 635.407	Prepare	Approve (10 days)	Approve	None
Use of publicly furnished materials	23 CFR 635.407	Prepare (PD)	Approve (10 days)	Approve	None

WORK ACTIVITY	FULL OVERSIGHT PROJECTS			STATE ADMINISTERED PROJECTS	
	Authority	DelDOT Action	FHWA Action	DelDOT Action	FHWA Action
Buy America waiver (all projects)	23 CFR 635.410	Prepare (PD)	Approve (10 days)	Prepare	Approve (10 days)
Use of proprietary products, processes	23 CFR 635.411	Prepare (PD or Construction)	Approve (10 days)	Approve	None
Warranties	23 CFR 635.413	Prepare (PD)	Approve (10 days)	Approve	None
Use of Convict Produced Material (all projects)	23 CFR 635.417	Prepare (PD)	Approve (10 days)	Prepare	Approve (10 days)
Use of consultants by utility companies	23 CFR 645.109(b)	Prepare (Utility)	Approve (10 days)	Approve	None
Exceptions to maximum railroad protective insurance limits	23 CFR 646.111	Prepare	Approve (10 days)	Approve	None
TS&L (Type, Size, and Location)	23 USC 109	Prepare (Bridge )	Approve (10 days)	Approve	None
Experimental Features	23 CFR 635.411	Prepare (PD)	Approve (10 days)	Approve	None
Value Engineering Studies <sup>(2)</sup>	23 CFR 627	Prepare (PD)	Concur	Approve	None
Public Interest Finding	23 CFR 635	Prepare (PD)	Approve (10 days)	Approve	None
Use of negotiated contracts	23 CFR 113	Prepare	Approve (10 days)	Approve	None
New/revised standard drawings (programmatic)	23 CFR 625	Prepare (Quality)	Approve (10 days)		
New/revised standard specifications (programmatic)	23 CFR 625	Prepare (Quality)	Approve (10 days)		
PS&E	23 CFR 630.205(c)	Prepare (PD)	Approve (10 days)	Approve	None
R/W Certification (Include in PS&E Package)	23 CFR 635	Prepare (R/W)	Approve (10 days)	Approve	None
Utility PS&E	23 CFR 645	Prepare (Utility)	Approve (10 days)	Approve	None
Utility Certification (Include in PS&E Package)	23 CFR 635	Prepare (Utility)	Approve (10 days)	Approve	None
Utility Agreement (Include in PS&E Package)	23 CFR 645.113	Prepare (Utility)	Approve (10 days)	Approve	None
Railroad Agreement (Include in PS&E Package)	23 CFR 646.216	Prepare (Quality)	Approve (10 days)	Approve	None
Exempt bridge from Coast Guard permit requirements	23 CFR 650.805	Prepare (PD)	Approve (10 days)	Prepare	Approve (10 days)
Advanced Construction (all projects)	23 CFR 630.705	Prepare	Approve (10 days)	Prepare	Approve (10 days)
Deviation from competitive bidding	23 CFR 635.104 23 CFR 635.204	Prepare (PD and Contract Admin)	Approve (10 days)	Approve	None
Design-Build Request for Technical Proposal (RFQ) <sup>(4)</sup>	23 CFR 635.112 23 CFR 636	Prepare (PD)	Approve (10 days)	N/A	N/A
Design-Build Request for Proposal (RFP) <sup>(4)</sup>	23 CFR 635.112 23 CFR 636	Prepare (PD)	Approve (10 days)	N/A	N/A
Authorization to Advertise for	23 CFR 635.309	Prepare	Approve	Prepare	Approve

WORK ACTIVITY	FULL OVERSIGHT PROJECTS			STATE ADMINISTERED PROJECTS	
	Authority	DelDOT Action	FHWA Action	DelDOT Action	FHWA Action
bids (all projects)	23 CFR 635.112	(Finance)	(10 days)		(10 days)
Project Authorizations (all projects)	23 CFR 630.106	Prepare (Contract Admin)	Approve (10 days)	Prepare	Approve (10 days)
Advertising period less than three weeks	23 CFR 635.112	Prepare (Contract Admin)	Approve (5 days)	Approve	None
Addenda	23 CFR 635.112	Prepare (PD)	Approve (5 days)	Approve	None
Consultant Selection	23 CFR 172	Approve	None	Approve	None
Concurrence in Contract Award	23 CFR 635.114 23 USC 112(d)	Prepare (PD)	Concur (3 days)	Approve	None
Rejection of all bids	23 CFR 635.114	Recommend (PD and Contract Admin)	Concur (5 days)	Approve	None
Supplemental Agreements/Consultant Services	23 CFR 172	Approve	None	Approve	None
Change Orders <sup>(3)</sup>	23 CFR 635.120	Approve (Construction)	Approve (10 days)	Approve	None
Claims Settlements	23 CFR 635.124	Prepare (Quality and Construction)	Approve (10 days)	Approve	None
Time Extensions & Suspension of Work <sup>(3)</sup>	23 CFR 635.121	Prepare (Construction)	Approve (10 days)	Approve	None
Termination of contracts	23 CFR 635.125	Prepare (Construction)	Approve (10 days)	Approve	None
Authorize utility or railroad force account work	23 CFR 645.113 23 CFR 646.216	Prepare (Utility or Quality)	Approve (10 days)	Approve	None
Final inspection/acceptance of completed work	23 USC 114(a) 23 USC 121	None (Construction and M&O)	Conduct	Conduct	None
State Maintenance Engineer Letter of Final Acceptance		Prepare (M&O)	Accept	Approve	None
Materials Certification	23 CFR 637.207	Prepare (M&R)	Approve	Approve	None
<b>*These activities apply only to a major project. A project with a total estimated cost of \$500 million (including PE, R/W, and construction) or more that is receiving Federal financial assistance is designated as a Major Project. Refer to FHWA Major Project Guidance for further discussion.</b>					

All days unless otherwise specified are working days

- (1) FHWA approves all design exception on Interstate projects.
- (2) Required only for NHS projects with a total cost (R/W + PE + construction) greater than \$25 million and NHS Bridge projects with a total cost greater than \$20 million.
- (3) Refer to current FHWA Change Order MOA.
- (4) Full oversight/exempt status of Design-Build projects will be decided in the same manner as for the design-bid-build projects. See sections 2.1 and 2.2.

**Design and Construction Program Performance/Compliance Indicators:**

Objective: To deliver and provide stewardship to the Federal-aid highway program with high performance and integrity.

Indicators:

- 1) Construction cost growth of award value on Federal-aid projects greater than \$1 million. (Awarded contract cost compared to the final constructed cost.)
- 2) Percent of Federal-aid projects greater than \$1 million award value, completed within 30 contract days of contract completion date. (Both initial contract time and any time extensions.)
- 3) Number of joint process reviews conducted on design and construction issues and findings implemented. (Joint reporting by FHWA & DeIDOT)

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

## **3.5 FINANCIAL MANAGEMENT PROGRAM**

### **Background**

Passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provided specific guidance regarding financial integrity in the administration of the Federal-aid highway program. One requirement is that FHWA shall establish an oversight program to monitor the effective and efficient use of funds and be responsive to all areas relating to financial integrity and project delivery. Another SAFETEA-LU provision provides that the State shall be responsible for the monitoring of sub-recipients of Federal funds and determine that sub-recipients have sufficient accounting controls to properly manage Federal funds awarded. Previous legislation such as the Chief Financial Officer Act, Cash Management Improvement Act, Federal Managers' Financial Integrity Act (FMFIA), Improper Payments Information Act, remain in place. Finance core functions are discussed below.

Federal legislative changes including annual Federal Appropriation Laws are the responsibility of FHWA and DelDOT. These legislative changes may include financial management directives, for example converting older apportionments, legislated rescissions and congressional reporting requests. As applicable, templates will be provided to DelDOT by FHWA for Rescissions, Discretionary requests, August Redistribution etc.

### **Operating Environment**

The accuracy and priority of Federal-aid reimbursement are the primary responsibility of DelDOT whether the primary cost documentation originates within DelDOT or with a third party. DelDOT fulfills this responsibility by maintaining adequate operating policies and procedures, a sound accounting system with proper internal controls, and suitable audit activities. It is FHWA's responsibility to assure that such processes are in place and providing desired results, as well as, to provide technical assistance and advice in funding and financial areas. FHWA provides assistance and maintenance to DelDOT for the electronic data sharing and Electronic Signature environment.

## **Oversight Responsibilities**

### **1. Project Agreements and Modifications**

Initial project authorization and agreement and amended authorizations reviews are the responsibility of the pertinent FHWA program officer. Pursuant to 23 CFR 630, Subpart C, the reviewer will review and approve plans, specifications and estimates, as appropriate. DelDOT enters pertinent statistical, descriptive, and financial information in the FMIS and the project is signed electronically by both DelDOT and FHWA. The electronic signature process for FHWA Project Authorizations and Agreements (23 CFR 106) allows DelDOT and FHWA to electronically create and sign Project Authorizations, Agreements, and Modifications. This process allows faster approvals and permits better control of funds on Federal-aid projects.

Requests for amended agreement modifications are the responsibility of DelDOT. Costs incurred based on DelDOT's billing history report or other approved costs such as extra work orders, support additional obligations, or the conversion of advance construction. DelDOT enters the pertinent financial information and justification in FMIS and the agreement modifications are signed electronically by both DelDOT and FHWA.

Advance construction (A/C) (23 U.S.C. 115; 23 CFR Subpart G) has been an effective tool in innovative financing to advance a project's construction time line. Projects approved for A/C must meet the same Agreement requirements and proceed in the same manner as a regular Federal-aid project, except for the following: FHWA authorization does not constitute any commitment of Federal funds; A/C authorizes a date that eligible Federal-aid costs may be incurred. After the conversion of A/C to eligible funding, DelDOT will submit for and be reimbursed for eligible expenses that have been incurred. Conversion of A/C projects requires an amended Agreement which is electronically signed by both DelDOT and FHWA.

The time frames for processing amended project authorizations agreements are 7 to 10 work days for Full Oversight projects; and 3 to 5 work days for State Administered projects.

## 2. Federal-aid Reimbursement of Eligible Expenditures

Federal-aid reimbursement may be made to DeIDOT for eligible expenditures incurred as identified in 23 U.S.C. 121. In accordance with 23 CFR 1.9(a), Federal-aid funds shall not participate in any costs which are not incurred in conformity with applicable Federal and State Law, the regulations in 23 CFR, and policies and procedures prescribed by FHWA. The FHWA Division Office provides oversight of Cost Reimbursable Contracts, pursuant to 23 CFR Part 140, 49 CFR Part 18, and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Likewise, FHWA must comply with the requirements of the FMFIA.

A reimbursement request to DeIDOT is processed electronically via FHWA Rapid Approval and State Payment System (RASPS) and disbursed via U.S. Department of Treasury to Delaware State Treasury. The Single Audit Act does not preclude FHWA from performing program reviews and these activities are undertaken by FHWA to facilitate oversight of the Current Billing process. These routine financial management reviews may be conducted on DeIDOT's accounting systems and records to assure conformance with applicable laws, regulations, and government-wide accounting principles and standards. Also, to maintain an adequate system of management control and to promote effective program delivery and efficiency, FHWA promotes the conduct of joint FHWA-DeIDOT Quality Financial Management Initiatives. The employment of these mechanisms will provide reasonable assurance that only allowable costs are reimbursed, thus ensuring the integrity of the Federal-aid program. Further these joint cooperative efforts between FHWA and DeIDOT will help to establish opportunities for continuous improvements, specifically in areas with any potential compliance weaknesses.

## 3. Cash Management

The Cash Management Improvement Act of 1990 (31 CFR Part 205), prescribes rules and procedures for the transfer of funds between the federal government and the states for federal grant and other programs. The U.S. Treasury and the State of Delaware have entered into an agreement to describe its funds transfer procedures. FHWA's involvement is to provide assistance and guidance to DeIDOT to facilitate compliance and to assist in the implementation of cash management improvements. FHWA and DeIDOT have implemented electronic signature processes for reimbursement of the State's Current Bill and Project Authorizations and Agreements. The RASPS provides DeIDOT with same day reimbursement.

#### 4. Fiscal Management Information System (FMIS)

The FMIS is FHWA's Federal aid project financial information system. It contains data related to all highway projects financed with Federal-aid highway funds. FHWA uses this information for planning and executing program activities, evaluating program performance, and depicting financial trends and requirements related to current and future funding. Electronic data sharing allows DelDOT to transmit their FMIS data electronically to the FMIS warehouse database until FHWA reviews and approves the data. This process provides faster approvals and better control of funds. Both DelDOT and FHWA have the ability to access FMIS information to obtain current funding and project related reports.

#### 5. Federal-aid Funding

The Federal-aid Highway Program is made up of a series of separately funded program categories, each having its own specific and separate funding as described in 23 U.S.C. Each of the programs has certain activities for which that funding may be used and is described in law. When an Authorization Act establishes a program, it defines certain ground rules under which the program operates. These rules include the amounts of funds available to the program for each fiscal year; period of availability; Federal participation ratio; fund source; type of authority; and eligibility activities. In order to be more responsive to Federal budget policy, a limit is placed on total funds that can be obligated during the fiscal year (obligation limitation). The FHWA Division Office, in their role of administering and delivering the Federal-aid highway program, has a responsibility to provide information, guidance, and assistance to DelDOT. Although this oversight is ongoing, when a new Authorization Act modifies existing programs, or adds or eliminates programs, then FHWA has a responsibility to advise DelDOT that significant changes in the program have been made and that appropriate financing procedures are implemented by DelDOT.

#### 6. Discretionary Funding Applications

Legislation provides for a Discretionary funding program to be used for specific Federal-aid projects. Program areas include Interstate Maintenance, Bridge, Public Lands, etc. The FHWA Headquarters' Office of Program Administration issues instructions on an annual basis. Based on the type of call for applications, DelDOT must submit applications for projects that are either

designated in the current legislation, or projects that are ready to be obligated. Instructions are provided to DelDOT for the discretionary application process and electronic submittal. The FHWA Division Office will review and evaluate the applications submitted to assure that the candidate projects meet the eligibility and submission requirements. The FHWA Division Office will then electronically submit the State's applications to the FHWA Headquarters Office of Program Administration for a determination.

#### 7. Transfer of Funds

SAFETEA-LU provided greater flexibility for the transfer of funds, specifically to other Federal agencies or to other States. (23 U.S.C. 104(k)(3) and 23 U.S.C. 132) Guidance and submission instructions for the various types of transfers allowable are provided by the FHWA Headquarters' office. DelDOT must initiate the request for transfers to other agencies, or the transfer among their unobligated program funds. Transfers of High Priority Projects will require an agreement between the receiving agency (i.e. National Park Service) and DelDOT. All requests for transfer are reviewed by the FHWA Division Office for adherence to the Federal requirements prior to submission to the FHWA Office of the Chief Financial Officer (CFO).

#### 8. Financial Integrity Review and Evaluation Program (FIRE)

The Financial Integrity Review and Evaluation Program (FIRE) (FHWA Order 4560.1A) requires each FHWA Division Office to establish an effective oversight program to ensure that Federal funds are properly managed and effectively used in accordance with Federal policies. Under this program, each FHWA Division Office is required to submit annual certifications of internal and financial controls to support the financial statements. To support the certifications, activities outlined in FIRE must be accomplished, annually. A grant financial management review in response to the performance of an annual risk assessment is required. [The purpose of the grant financial management process review is to assess one key State process to determine that (1) the process complies with Federal requirements, (2) the process complies with generally accepted accounting principles and standards and internal controls, and (3) areas of opportunity are identified for process improvement.]

The FIRE also requires a review of randomly selected billing transactions, as well as transactions selected by the CFO for the Improper Payment Review. The review of the transactions is to review

documentation in order to verify the eligibility of the costs billed to FHWA by DeIDOT, local governments, etc.

The FIRE also requires the FHWA Division Office and the State to perform reviews of inactive Federal-aid projects and release any unneeded obligations.

#### 9. Improper Payments Review (IPR)

Improper Payments Review is to determine the extent to which improper payments were made in the Federal-aid Highway program. An improper payment is any payment that should not have been made or was made in an incorrect amount (overpayment and underpayments), payments to an ineligible recipient, payment for ineligible services, duplicate payments, payment or services not received, etc. Payments for review are selected at random from an identified time period. The random sampling process will be carried out by the Headquarters' CFO and involves two phases. In the first phase, the CFO will select a sample of payments from the RASPS and provide it to the FHWA Division Office. The FHWA Division Office will obtain DeIDOT's billing detail (object codes) that will support each payment in the sample. In Phase two, the CFO will identify the specific billing detail to test. Instructions and worksheets are also provided to the FHWA Division Office who will document the testing. Verifications will include the eligibility and accuracy of costs billed to FHWA; that costs were incurred after FHWA approval; that costs were charged to the correct project; costs were approved by the appropriate State/local official; and that DeIDOT has sufficient supporting documentation to substantiate the billing. The final report and worksheets are reported to the CFO. IPR's are directed by the CFO twice a year.

#### 10. Inactive Federal-aid Project Reviews

The FHWA Division Office will work with DeIDOT to conduct and document the results of quarterly reviews of inactive projects in accordance with 23 CFR 630, Subpart A, Project Authorizations and Agreements. The FHWA Division Office shall work with the State to determine the validity of the amount obligated for each project. Once excess obligations are identified, DeIDOT is required to take action to promptly deobligate the funds. This action will require a modification of the project agreement. The FHWA Strategic Plan has established a goal of inactive projects as 5% of the State's annual apportionments. Results of the inactive projects

reviews shall be recorded by the FHWA Division Office in FHWA's standard work papers and submitted to the CFO.

DeIDOT is responsible for establishing a funds management program that will ensure that funds are being used effectively and lapsable funds are limited. This would also include a review of older projects that have had no activity for possible release of funds for use on other eligible federal projects. Annually, FHWA will evaluate the effectiveness of DeIDOT's funds management program.

#### 11. Finance Plan for Major Projects

Major projects are those projects receiving Federal financial assistance with an estimated cost of \$500 million or more. Other projects may be identified by DeIDOT's Secretary as Major projects as a result of special interest. In accordance with SAFETEA-LU Section 1904, part (h) DeIDOT is responsible for assuring that they have a Financial Plan for Major Projects. Finance Plans for Major Projects shall continue to be developed by DeIDOT and submitted to the FHWA Division Office, and are updated annually. The FHWA Division Office will review (and approve if applicable) finance plans prior to authorization of Federal-aid funds for construction.

#### 12. Audits

The Office of Management and Budget (OMB) Circular No. A-133 was issued pursuant to the Single Audit Act of 1984 [P.L. 98-502] and Amendments of 1996 [P.L. 104-156] for the purpose of setting forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. The U.S. DOT Office of Inspector General (OIG) is the cognizant agency for audit responsibilities for DeIDOT. Since FHWA is the Federal awarding agency to DeIDOT, the FHWA Division Office is administratively cognizant and has certain responsibilities in this area.

DeIDOT is responsible for ensuring that its operations are audited. FHWA is responsible for ensuring that audits are completed and reports are received in a timely manner, assuring that findings are resolved, and corrective actions are taken in a timely manner. Further FHWA has a responsibility to provide technical advice and assistance to DeIDOT and auditors as appropriate,

and advise DelDOT of requirements imposed by Federal laws, regulations or provisions of contracts.

### 13. Record Requirements/Retention

DelDOT maintains the official records for Federal projects. Supporting documentation will be retained by DelDOT for three years after the final voucher has been accepted and will include (but not limited to): the final contractor pay estimate, material certification, projects' agreement/modification, statement of overruns and under runs, and final Right of Way certificate in accordance with current requirements. Supporting documentation retained by DelDOT will be available upon request to FHWA.

### **Reports**

FIRE certifications are required to be submitted by the FHWA Division Administrator June 8<sup>th</sup> and September 23<sup>rd</sup> of each fiscal year.

## Financial Management Program Summary Table

Activity	DeIDOT Action	FHWA Action	Product
Project Authorizations and Agreement (include provisions of Drug Free Workforce)	DeIDOT submits approved request using Electronic Signature. PS&E data for full oversight projects submitted as required.	Project reviewed & approved by FHWA engineers. Time frame is 3 to 5 work days for State administered projects and 7 to 10 work days for full oversight projects. Obligations/fiscal data processed by FHWA	An Electronic Signed Project Authorization/ Agreement has been executed between DeIDOT and FHWA. Federal funds have been obligated. FS-1 documents for full oversight projects will continue to be approved/signed by FHWA until the DeIDOT FACTS project electronic database replacing the FS-1 is active with FHWA concurrence.
Amended Project Authorization and Agreements (Modifications)	DeIDOT submits approved request electronic signature; documentation; documentation for full oversight projects supporting modifications is submitted as needed.	Amended authorization approved by FHWA Program Managers Amended Agreements approved by Financial Manager. Amended authorizations for Full oversight projects time frame is 7 to 10 working days; all other amendments processed within 3 to 5 working days.	Executed Electronic Signed Amended Authorization/ Agreement. Federal funds have been obligated. FS-1 documents for full oversight projects will continue to be approved/signed by FHWA until the DeIDOT FACTS project electronic database replacing the FS-1 is active with FHWA concurrence.
Federal-aid Billing Reimbursement	DeIDOT submits current billing to FHWA electronically; as often as desired.	FHWA Financial Manager approves current billing electronically the same day.	EFT payment received by State Treasury on the same day requested.
OIG Audit Report issued and forwarded to DeIDOT for review/action	DeIDOT comments to audit findings within 30 days of receipt.	FHWA staff reviews/concurs in DeIDOT's response and forwards resolution to OIG.	OIG Audit Report is closed.
Discretionary Funding Requests	DeIDOT submits Application(s) within the time frame, and format requested.	FHWA notifies DeIDOT of Discretionary funding call for applications. Once received from DeIDOT, applications reviewed, and concurrence made when forwarded to the HQ office for consideration.	Successful applications are allocated discretionary funds.

<b>Activity</b>	<b>DeIDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
Improper Payments Reviews	Assure that adequate controls are in place to detect improper payments.	FHWA notifies DeIDOT of the transactions to be reviewed; IPIA; IPIA worksheets are completed as directed by FIRE.	IPR worksheets are completed.
Project Funds Management/Monitoring of Inactive Obligations	Compliance with Final Rule, 23 CFR Part 630. Review inactive projects for potential release of funds	FHWA provides listing of projects to DeIDOT for review based on FIRE criteria. Once DeIDOT and FHWA reviews completed, a report is sent to HQ CFO.	DeIDOT reviews project listing to determine if obligations are valid. Invalid obligations are de-obligated with the time frame requested by the FHWA Division Administrator
Major Project Financial Plans	Requirement for the State to submit annual Financial plans for major projects (\$500M or more) to FHWA	DeIDOT submits Financial Plans to FHWA for review and appropriate approval	FHWA reviews Plans, coordinated with HQ program office, and provides response to DeIDOT.

**Financial Management Program Performance/Compliance Indicators:**

Objective: To deliver and provide stewardship for the Federal-aid highway program with high performance and integrity.

Indicators:

- 1) Reduction in the unexpended balance of projects with no expenditure changes for one year, and unexpended balances of \$500,000 or more as required by FIRE. Baseline defined in FHWA's FMISQ40A report.
- 2) Reduction in the number of findings from external reviews such as OIG, single audit, DeIDOT audits.
- 3) Development and implementation of FIRE Plans based on new guidance.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

## **3.6 BRIDGE PROGRAM**

### **Background**

23 CFR Part 650, Subpart C establishes National Bridge Inspection Standards (NBIS) that apply to all bridges carrying vehicular traffic that are greater than 20 feet in length and located on a public road.

23 CFR Part 650, Subpart D establishes the procedures for administering the Highway Bridge Program (HBP). The program was established to replace, rehabilitate and preserve deficient bridges.

23 USC 503(b) establishes the Innovative Bridge Research and Deployment Program (IBRD) to demonstrate the application of innovative material technology in the construction of bridges and other structures.

SAFETEA-LU Section 1804 continues the National Historic Covered Bridge Program (NHCBP) by providing funds to assist the States in the rehabilitation, repair, or preservation of the Nation's historic covered bridges.

### **Oversight Activities for the NBIS**

Each year FHWA will conduct a NBIS compliance review of DelDOT. The reviews will look at the following major NBIS elements: inspection procedures, frequency of inspection, qualifications of personnel, quality of reports, quality of inventory data, load ratings and postings, scour program, quality assurance and procedures established to review, prioritize and track recommendations for repairs. The review includes discussion with DelDOT staff, a random sampling of bridge inspection reports and records, field reviews of selected bridges and quality assurance checks of inventory data.

FHWA will also review the State's management of the bridge inspection program for the Counties, Cities and other bridge owners (local public agencies) including their oversight of inspection procedures, maintaining the inventory data and providing technical assistance. DelDOT will conduct a formal review of each local public agency at least every four years. FHWA will participate in the reviews of selected local public agencies.

FHWA prepares an annual report on the DeIDOT NBIS review. The report will establish if DeIDOT is compliant with the NBIS and include recommendations for improvement. DeIDOT will prepare a report on the NBIS review of each local public agency. FHWA will furnish comments to be included in the DeIDOT report.

### **Oversight Activities for the HBP**

Eligibility for this program is based on bridge condition and inventory data that DeIDOT submits annually to FHWA. FHWA reviews the data and furnishes DeIDOT with a selection list of eligible structures. DeIDOT also annually submits bridge construction unit cost data which is reviewed by FHWA. The HBP funds apportioned to each State are based on the relative area of deficient bridges and the relative bridge construction unit costs. Not less than 15 percent of the apportioned funds shall be expended for projects located off the Federal-aid system. DeIDOT and the local governments may select any bridge on the selection list for replacement or rehabilitation under this program. A waiver request must be approved by FHWA for all projects that do not meet the eligibility requirements for rehabilitation or replacement based on bridge sufficiency rating. As well a waiver request must be made for all rehabilitation and replacement projects that do not address all conditions that classify a bridge as structurally deficient or functionally obsolete. In addition, subject to the approval of FHWA, preventive maintenance activities and installation of scour countermeasures may be performed on bridges regardless if on the selection list. Refer to Maintenance Program section of this Stewardship Agreement for preventive maintenance requirements.

### **Oversight Activities for the Innovative Bridge Research and Deployment Program (IBRD)**

Grants are distributed annually based on competitive application. DeIDOT in coordination with FHWA identifies potential projects, prepares application and submits to FHWA Division Office. The FHWA Division Office reviews the application and submits it to FHWA Headquarters with endorsement. If grant is awarded, the FHWA Division Office handles it as a non-exempt project. DeIDOT prepares and submits report to FHWA on evaluation of the innovative technology.

**Oversight Activities for the National Historic Covered Bridge Preservation Program  
(NHCBP)**

Grants are distributed annually based on competitive application. DeIDOT in coordination with FHWA identifies potential projects, prepares application and submits to FHWA Division Office. The FHWA Division Office reviews the application and submits it to FHWA Headquarters with endorsement. If grant is awarded, the FHWA Division Office handles as a non-exempt project.

**BRIDGE PROGRAM  
Summary Table**

<b>ACTIVITY</b>	<b>DeIDOT ACTION</b>	<b>FHWA ACTION</b>	<b>PRODUCT</b>
Bridge Inspection Program (State)	Update inventory data and submit to FHWA HQ by April 1.	Process data, furnish error listing, and resolve errors with DeIDOT.	An accurate and current inventory is maintained to support decision making and funding.
Bridge Inspection Program (State)	Manage inspection program.	Conduct review and prepare report by February 1.	Annual report.
Bridge Inspection Program (local public agencies)	Conduct review of each local public agency at least every four years and prepare report.	Participate in reviews and furnish comments to DeIDOT.	Report for each local public agency.
Highway Bridge Program (State)	Submit unit cost data to FHWA Division Office 10 business days prior to April 1.	Review unit cost data and submit to FHWA HQ by April 1, provide list of eligible projects, resolve questions concerning eligibility.	DeIDOT receives their share of HBP funds and bridges are selected for rehabilitation, replacement or preventive maintenance.
Highway Bridge Program (State)	Design and construct projects.	Review and approve full oversight projects.	Rehabilitation, replacement or preventive maintenance projects constructed.
Highway Bridge Program (local public agencies)	Distribute funds to locals, provide list of eligible projects.	Resolve questions concerning eligibility.	Locals receive their share of HBP funds and bridges are selected for rehabilitation, replacement or preventive maintenance.
Highway Bridge Program (local public agencies)	Review and approve local agency projects that are State administered.	Provide assistance.	Rehabilitation, replacement or preventive maintenance projects constructed.
Highway Bridge Program (State and local public agencies)	Request project specific waivers if scope of work (rehab versus replace) does not satisfy bridge sufficiency rating eligibility requirement	Approve within 10 days	Project funded

Highway Bridge Program (State and local public agencies)	Request project specific waivers for replacement and rehabilitation projects that do not address conditions that classify bridge as structurally deficient or functionally obsolete	Approve within 10 days	Project funded
Innovative Bridge Research & Deployment Program	Submit annual application to FHWA Division Office 10 business days prior to due date (date varies), prepare evaluation report.	Assist with application, review, endorse & submit application to FHWA HQ, review project design, const. and evaluation report.	Innovative technology is evaluated and implemented
National Historic Covered Bridge Program	Submit annual application to FHWA Division Office 10 business days prior to due date (date varies).	Assist with application, review, endorse & submit application to FHWA HQ, review project design and construction.	Historic covered bridge is repaired, rehabilitated or preserved.
Revisions to bridge design policies and standards	Prepare	Approve within 10 days.	DelDOT follows AASHTO Guidelines

Leads: FHWA - Division Bridge Engineer

DelDOT – Bridge Management, Bridge Design

## **Bridge Program Performance/Compliance Indicators**

Objective 1: Effectively use the Bridge Management Program to manage and allocate resources to improve performance of Delaware's bridges.

Indicators:

- 1) Replacement, rehabilitation, preventive maintenance and routine maintenance needs systematically classified and prioritized according to need and benefit and activities selected.
- 2) All Highway Bridge Program funds distributed and expended among replacement, rehabilitation and preventive maintenance activities.
- 3) Reduction in deficient bridge deck area on Delaware NHS compared to annual and long-range strategic performance goals. (2006 Baseline: 21.2%)
- 4) Reduction in deficient bridge deck area on Delaware non-NHS compared to annual and long-range strategic performance goals. (2006 Baseline: 27.2%)

Objective 2: Provide longer lasting highway infrastructure through improved research, design, and quality of construction, system preservation, and size and weight enforcement.

Indicators:

- 1) Existence of documented and state-of-the-technology policies, procedures, standards and specifications to assure compliance with federal requirements and standards for design, construction, safety inspection, maintenance, load rating, quality assurance, etc.
- 2) Reduction in deficient bridge deck area on Delaware NHS compared to annual and long-range strategic performance goals. (2006 Baseline: 21.2%)
- 3) Reduction in deficient bridge deck area on Delaware non-NHS compared to annual and long-range strategic performance goals. (2006 Baseline: 27.2%)

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### **3.7 SAFETY AND TRAFFIC PROGRAM**

Section 1401 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) includes the program and policy language for implementing the new “core” Highway Safety Improvement Program (HSIP), which is codified as the new Section 148 of Title 23 of the United States Code (23USC148).

DelDOT has the responsibility for carrying out the State’s Highway Safety Improvement Program in accordance with Section 148 of Title 23 of the United States Code (23USC148). The FHWA Delaware Division Office exercises its oversight responsibilities through review of the annual programs, review of program processes, and review of annual reports. FHWA and DelDOT will work together on safety issues related to geometric design, roadside safety, safety appurtenances, the highway safety improvement program, work zone safety and traffic control, pedestrian safety and bicycle safety, Safe Routes to School program (SRTS), and the Strategic Highway Safety Plan. In each instance, sharing of knowledge occurs through discussions, meeting/committee/task force participation, and by performing periodic reviews. The FHWA Delaware Safety Engineer currently participates with the State on the following task forces and teams:

Delaware Traffic Records Coordinating Committee  
Strategic Highway Safety Plan Steering Committee  
Section 402 Grant Review Committee  
Highway Safety Improvement Program Committee

The following is a general description of the new “core” Highway Safety Improvement Program (HSIP) codified in 23 USC 148 that identifies program requirements.

**Highway Safety Improvement Program (HSIP):** The purpose of the HSIP shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads. To obligate “core” safety funds DelDOT must have in effect an HSIP under which the State: 1) develops and implements a Strategic Highway Safety Plan (SHSP) that identifies and analyzes highway safety problems and opportunities to reduce fatalities and serious injuries, 2) produces a program of projects or strategies to reduce identified safety problems, 3) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements, 4) submits an annual report to the FHWA Division.

In accordance with 23 USC 148, the SHSP means a plan developed by DelDOT that:

- analyzes and makes effective use of state, regional or local crash data
- addresses engineering, management, operation, education, enforcement, and emergency medical services in evaluating highway projects
- considers safety needs, and high fatality segments of all public roads in the State
- considers results of State, regional or local transportation and highway safety planning processes
- describes a program of projects or strategies to reduce or eliminate hazards
- is approved by the Governor or responsible State agency
- is consistent with the requirements of the Statewide planning process, sec. 135(g)

As part of the SHSP, the State shall:

- have in place a crash data system with the ability to perform safety problem identification and countermeasure analysis
- identify hazardous locations sections or elements that constitute a danger to motorists, bicyclists, and pedestrians
- establish the relative severity of these locations
- identify and adopt achievable strategic and performance-based goals
- advance the capabilities of the State for traffic records data collection, analysis, and integration
- determine priorities for the correction of hazardous road locations, sections, and elements as identified through crash data analysis
- establish an evaluation process to assess results achieved by improvement projects

As a condition for obligating HSIP funds, under Section 148(c)(1)(D), DelDOT will prepare an annual report, in addition to the HSIP and rail-highway crossing safety report that describes not less than 5 percent of their public road locations exhibiting the most severe safety needs (5 Percent Report). SAFETEA-LU requires that the 5 Percent Reports include an assessment of potential remedies at the locations identified, the estimated costs of the remedies, and impediments to their implementation other than costs

**High Risk Rural Roads Program (HRRP):** SAFETEA-LU introduced a new set-aside provision known as the High Risk Rural Roads Program (HRRRP), codified as 23 U.S.C. §148 (f). This program is a component of the HSIP and is set-aside after HSIP funds have been apportioned to the States. Projects may be selected on any public HRRR to correct or improve hazardous road locations or features. The State's HSIP, including the HRRR element, shall consider the safety needs on all public roads, whether state or locally owned. DeIDOT is required to identify HRRR roadways (and expend the HRRR funds) according to the following definition:

"...any roadway functionally classified as a rural major or minor collector or a rural local road –

- on which the accident rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway”

**Highway-Rail Crossing Safety:** Under SAFETEA-LU, highway-rail grade crossing safety (elimination of hazards and the installation of warning devices at railway-highway crossings) remains a component of the HSIP and is set-aside after HSIP funds have been apportioned to the States. The purpose of this program is to reduce the number of fatalities and injuries at public highway-rail grade crossings through the elimination of hazards and/or the installation/upgrade of warning devices at crossings. Most requirements of the program remain unchanged, including the requirement that the State must conduct and systematically maintain a survey of all highway-rail crossings to identify those that may require separation, relocation, or additional warning devices, and establish and implement a schedule of projects for this purpose.

Additionally, FHWA has oversight responsibility for the following Highway Safety-related activities.

**Safe Routes to School Program:** Section 1404 of SAFETEA-LU includes the program language for the Safe Routes to School Program. This program is managed by the DeIDOT Planning Section. The purpose of the program shall be to enable and encourage children in primary and middle schools, including those with disabilities, to walk and bicycle to school; to make walking and bicycling to school safe and more appealing; and to facilitate the planning, development and implementation of projects that will improve safety, and reduce traffic, fuel consumption, and air pollution in the vicinity of schools. For infrastructure related projects, eligible activities are the planning, design, and construction of projects that will substantially improve the ability of students to walk and bicycle to school. These include sidewalk improvements, traffic calming and speed

reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bike parking, and traffic diversion improvements in the vicinity of schools (within approximately 2 miles). Such projects may be carried out on any public road or any bicycle or pedestrian pathway or trail in the vicinity of schools.

DelDOT must set aside from its Safe Routes to School apportionment not less than 10 percent and not more than 30 percent of the funds for non-infrastructure related activities to encourage walking and bicycling to school. These include public awareness campaigns and outreach to press and community leaders, traffic education and enforcement in the vicinity of schools, student sessions on bicycle and pedestrian safety, health, and environment, and training, volunteers, and managers of safe routes to school programs. In order to receive program funds, DelDOT must use a sufficient amount of the funds to fund a full-time position for coordinator of the State's safe routes to school program.

**159 Certification (Drug Offender's Driver's License Suspension)** [Authority: 23 U.S.C. 159 and 315, 23 CFR 192]. Encourages States to enact and enforce drug offender's driver's license suspensions. States must comply with 23 U.S.C. 159 in order to avoid the withholding of Federal-aid highway funds. By January 1 of each year, the Governor shall submit written notification to FHWA Division Administrator whether the State has enacted and is enforcing a law or whether the State opposes such a law as per 23 U.S.C. 159. The DelDOT Finance Section submits this certification to the FHWA Division Office.

**Work Zone Review of Conformance (Work Zone Safety and Mobility)** [Authority: 23 U.S.C. 105, 106, 109, 115, 315, 320, 402(a) / Source 43 FR 47140, 10/12/78, 23 CFR 630 Subpart J Final Rule, 09/09/2004]. Provides guidance and establishes requirements for systematically addressing the safety and mobility impacts of work zones, and developing strategies to help manage these impacts on all Federal-aid highway projects. DelDOT shall work in partnership with the FHWA in the implementation of its policies and procedures to improve work zone safety and mobility. FHWA and DelDOT will review the State's policies and procedures for conformance with 23 CFR 630 Subpart J Final Rule. The State shall comply with all provisions of the 23 CFR 630 Subpart J Final Rule no later than October 12, 2007. FHWA is also responsible for performing an annual work zone self-assessment by June 1. The FHWA Division Office shall coordinate this effort with the appropriate personnel of DelDOT.

**NCHRP 350 (Standards, Policies, and Standard Specifications)** [Authority: 23 U.S.C. 109, 315, and 402, Sec. 1073 of Pub. L. 102-240, 105 Stat. 1914, 2012; 49 CFR 1.48 (b) and (n); 23 CFR 625.4(a) Chapter 5.1 - Performance Requirements, 7/93 & 8/28/98 FHWA Policy Memos]. The National Cooperative Highway Research Program (NCHRP) Report 350 established crash testing requirements for highway hardware in both permanent and in work zone applications. States must comply with NCHRP Report 350 criteria and the subsequent AASHTO/FHWA agreements dated July 1, 1998.

**MUTCD (Manual on Uniform Traffic Control Devices)** [Authority: 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a) ; Source: 48 FR 46776, 10/14/83; 23 CFR 655 Subpart F]. The MUTCD, approved by FHWA, is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). Where state or other Federal agency MUTCD's or supplements are required, they shall be in substantial conformance with the national MUTCD.

The following activities do not involve an FHWA oversight role with the State. Rather, this is a specific list of activities that FHWA Delaware Division and DelDOT needs to be aware of, either for funding purposes or for general information.

**154 Certification** (Open Container Laws) [Authority: 23 U.S.C. 154, 23 CFR 1270, 3/31/00 NHTSA/FHWA Guidance Memo] States must comply with 23 U.S.C. 154 in order to avoid transfer of Federal-aid highway funds. The State of Delaware currently does not comply with this law so each year 3% of the NHS, STP and IM funds apportioned to the State are transferred to the 402 Highway Safety Program that is administered by the Office of Highway Safety.

**164 Certification** (Repeat Intoxicated Driver Laws) [Authority: 23 U.S.C. 164, 23 CFR 1275, 3/31/00 NHTSA/FHWA Guidance Memo]. States must comply with 23 U.S.C. 164 in order to avoid transfer of Federal-aid highway funds. The State complies with this requirement. Reporting requirement is to NHTSA by the Office of Highway Safety.

**Section 163:** 0.08 Blood Alcohol Concentration (BAC) Incentives/Penalties. TEA-21 instituted an incentive program to encourage States to establish 0.08 percent BAC as the legal limit for drunk driving offenses. States may use these grant funds for any project eligible under Title 23. Beginning in FY 2004, States not having passed a 0.08 BAC law will be subject to a penalty equal

to 2.0% of their Federal-aid apportionments. The penalty increases by an additional 2.0% in each subsequent year to a maximum of 8.0%. The State complies with this requirement.

**Section 157:** Seat Belt Use Incentives. TEA-21 instituted an incentive program to encourage States to increase seat belt use rates. States must establish their seat belt use rates in accordance with guidelines issued by the Secretary of Transportation. States may use these grant funds for any safety project eligible under Title 23.

**Performance/Compliance Indicators:**

Given the emphasis on the safety program through SAFETEA-LU, it is important that FHWA be able to demonstrate that the program is being effectively carried out, and that the projects being implemented are achieving results. The ultimate measure of the success of this program is a significant statewide decline, in real terms, in the number of fatalities and serious injuries. To ensure that the program is being implemented as intended and that it is achieving its purpose, DelDOT will provide annual progress reports on the HSIP implementation and effectiveness in accordance with and as required by 23 U.S.C. §148(g). Since the HRRR Program is a component of the HSIP, information on the HRRR Program will be provided through this provision. The report should provide information on the HRRR Program in three parts: basic program implementation information, methods used to select HRRR, and detailed information assessing the HRRR Program. While 23 U.S.C. §148(g) also includes a requirement to address railway-highway crossings, this information should be collected in a separate report required under 23 U.S.C. § 130(g). At the option of the State, the three reports required under Section 148 (the HSIP report including High Risk Rural Roads, the railway-highway crossing report and the 5 Percent Report (Section 148 (C) (1) (D)) may be submitted separately, or combined into one report with three distinct sections. DelDOT will prepare these reports in conformance with FHWA guidance and submit to the FHWA Division Office by August 31. The FHWA Division Office will forward these reports to the FHWA Office of Safety (HSA) by September 30 of each year. The 5 Percent Reports will then be made available to the public via posting on the USDOT web site as required by Section 148(g)(3). These reports will be submitted to the FHWA Division Office electronically.

## Safety Programs Summary Table

Work Activity	DeIDOT Action	FHWA Action	Outcome
HSIP Report (including HRRP) Rail-Highway Crossing Report 5 Percent Report	Prepare annual program and report, and Submit to FHWA (no later than by 8/31) Annually	Review and comment on the program and annual report within 14 days. Submit to HQ by Sept. 30	HSIP Program Approval and Report
DE Strategic Highway Safety Plan (SHSP)	Evaluate annually and update bi-annually beginning in September 2007	Review and comment within 14 days.	Updated SHSP ensuring accuracy of data and priority of proposed improvements
159 Certification (Drug Offender's License Suspension Certification)	Prepare annual certification and Send to FHWA (no later than 1/1)	Review certification, and Forward to FHWA HQ. Take appropriate action	Law enacted, opposition stated, or funds withheld
Work Zone Safety and Mobility Process Review	Conduct Process Review every two years <sup>1</sup>	Conduct review for conformance of 23 CFR 630 Subpart J Final Rule ongoing	Assessment of work zone procedures
NCHRP 350 (NCHRP 350 Testing Criteria)	Comply with NCHRP 350 and AASHTO/FHWA agreement	Actions and Process reviews ongoing	Crashworthy devices
MUTCD (Traffic Control Devices on all public roads)	DeIDOT practices comply with MUTCD	Actions and Review of MUTCD issues ongoing	Uniformity of Traffic Control Devices

<sup>1</sup>Prior to 2008, DeIDOT will conduct review annually.

### **Safety and Traffic Program Performance/Compliance Indicators:**

Objective 1: To implement comprehensive, integrated and data-driven safety programs at the State and local-level that covers all public roadways.

Indicators:

- 1) Number of strategies implemented to improve the quality and timeliness of the Safety data.
- 2) Continued implementation of the Strategic Highway Safety Plan
- 3) Implementation of the new core Highway Safety Improvement Program

Objective 2: To implement countermeasures to reduce highway-related fatalities.

Indicators:

- 1) Reduction in fatalities and/or fatality rate compared to annual and long-range strategic performance goals. (2005 baseline: 134 fatalities/1.42 per HMVMT)
- 2) Reduction in pedestrian fatalities and/or fatality rate compared to annual and long-range strategic performance goals. (2005 baseline: 11 fatalities/.1164 per HMVMT)
- 3) Reduction in intersection fatalities and/or fatality rate compared to annual and long-range strategic performance goals. (2005 baseline: 30 fatalities/.3175 per HMVMT)
- 4) Reduction in run off the road fatalities and/or fatality rate compared to annual and long-range strategic performance goals. (2005 baseline: 95 fatalities/1.0 per HMVMT)

Objective 3: Mitigate congestion and improve system reliability in work zones through actions targeted at key causes of congestion in Delaware.

Indicators:

- 1) Compliance with the requirements of the work zone final rule
- 2) Improvement on Work Zone Self Assessment scores (2003 baseline 33.33)

Reporting: Annually by October 31 for the previous Federal FY ending September 30 or when the data becomes available.

## **3.8 CIVIL RIGHTS PROGRAM**

### **Background**

The FHWA Division Office is committed to working with DelDOT to effectively implement and enforce the Civil Rights Program within the design, planning, construction, and management of the multimodal transportation system which receives Federal funding or assistance from the FHWA in Delaware. DelDOT is obligated to ensure nondiscrimination in all programs and activities, and in the provision of all services and benefits, as a basis for continued receipt of FHWA funds according to Title VI of the Civil Rights Act and codified Federal regulations that outline these acts.

The Civil Rights Specialists, on behalf of the FHWA Division Office, review and approve all Civil Rights program documents, and provide comments and recommendations to DelDOT. The FHWA Division Office Civil Rights Specialists provide training, technical assistance and interpretation, as needed, on the laws, executive orders, civil rights authorities, and regulatory requirements.

### **Operating Environment**

The objectives of the FHWA Division Office's Civil Rights Program are to: (1) perform scheduled program reviews with the State; (2) provide technical assistance and guidance to DelDOT; (3) ensure that program documents and other required reports are accurate, completed in a timely manner, and when appropriate, approved; and (4) serve as a resource to DelDOT in its civil rights program and policy development meetings. Successful implementation of the civil rights activities will require support from the FHWA Division Administrator and Assistant FHWA Division Administrator. Technical assistance may be required from the Resource Center and the Washington Office of Civil Rights. The civil rights program elements are required through a collection of regulations, laws, and executive orders, and approval actions are outlined in these elements.

DelDOT has developed a Civil Rights Program with responsibilities in the following program areas:

- Nondiscrimination - Title VI, Environmental Justice and Limited English Proficiency (LEP)
- Section 504 of the Rehabilitation Act and Americans with Disabilities Act (Section 504/ADA)
- State Internal Equal Employment Opportunity and Affirmative Action Program
- State External Contractor Compliance Program

- On the Job Training (OJT) Program and OJT Supportive Services (OJT/SS)
- Disadvantaged Business Enterprise (DBE) and DBE Supportive Services (DBE/SS)

Guided by laws (such as Title VI of the Civil Rights Act of 1964), statutes, regulations (essentially 49 CFR Part 21 and 26 and 23 CFR 200 and 230), policies, executive orders and other related instruments, the FHWA Division Office will perform oversight on DelDOT's Civil Rights activities in the respective program areas.

**Applicable Guidelines:**

- 23 CFR 230 Subpart D; 23 USC 140; FHWA Order 4710.8
- FHWA-1391/1392, Federal Aid Highway Construction Contractor's Annual EEO Report: 23 CFR 230.121, FHWA Notice N 4720 dated 8-27-91
- DBE Program: 49 CFR 26
- DBE Supportive Services (DBE/SS): 49 CFR 26; 23 USC 140(c); 23 CFR 230.201-207
- On the Job Training (OJT) Program: 23 CFR 230 Subpart A
- OJT Supportive Service (OJT/SS): SAFETEA-LU Section 5204(e); 23 CFR 230.113; 23 USC 140(b)
- Title VI Program: 23 CFR 200; 23 USC 324; Age Discrimination Act of 1975
- Environmental Justice in Minority Population & Low Income Population: Executive Order 12898
- Limited English Proficiency (LEP): Executive Order 13166
- Affirmative Action and State Internal EEO Program: 23 USC 140(a)-(d); Federal-aid Highway Act of 1968; Federal-aid Highway Act of 1970; 23 CFR 230 Subpart C; 23 CFR 1.9; 23 CFR 1.36
- Americans with Disabilities Act (ADA): Section 504 of the Rehabilitation Act of 1973; 49 CFR 27; 29 CFR USC 794 and Americans with Disabilities Act of 1990; 28 CFR 35; 42 USC 12101
- Indian Outreach Program: 23 USC 140(c); 23 CFR 230.201-207
- Minority Institutions of Higher Education (MIHE): Presidential Executive Order 12667; 13021; 12900.
- AASHTO/Transportation and Civil Engineering (TRAC) Program: 23 USC 140(b); FHWA Notice N 4720.9 dated 9/16/97; SAFETEA-LU Section 5204(e);
- Dwight David Eisenhower Transportation Fellowship Program (DDETFP): Established by

Public Law 102-240, Section 6001 (ISTEA) & re-authorized in TEA-21; Executive Orders 12667; 13021; 12900.

- Garrett Morgan Transportation Futures Program: Educational initiative of the U.S. Department of Transportation under the authority of the Secretary: SAFETEA-LU Section 5204(d)
- Urban Youth Corps (UYC): TEA-21 Section 1108(g); 42 USC 12572; 42 USC 12656
- Welfare to Work: SAFETEA-LU Section 5204(e)
- National Summer Transportation Institute (NSTI): SAFETEA-LU Section 5204(e)
- SAFETEA-LU: Section 1904(g)(4); 23 USC 106 (g)(4)

### **Oversight Activities**

As an essential component of FHWA, the FHWA Division Office is deeply committed to ensuring that our customers and partners enjoy discrimination, as well as foster equal opportunity and affirmative action in all their programs, practices and activities. We will endeavor to ensure that our immediate customer, DelDOT, is in compliance with all the nondiscrimination, equal opportunity, and equal employment opportunity requirements. This will be achieved through collaborative, proactive and preventive measures, to include leadership, partnering, open communication, frank discussions, reviews, constructive feedback, technical assistance, and training.

The FHWA Division Office will perform oversight on DelDOT and Civil Rights activities in the respective program areas. The FHWA Division Office will analyze civil rights reports submitted by DelDOT to help identify trends and will provide feedback and recommendations. The FHWA Division Office will periodically monitor DelDOT's oversight responsibility regarding the administration of projects by sub-recipients for determining that sub-recipients of Federal funds have adequate project delivery systems for projects and sufficient accounting control to properly manage Federal funds.

## Civil Rights Program

<b>Title VI, Environmental Justice and Limited English Proficiency Program</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DeIDOT's Roles and Responsibilities</b>
1. Conduct nondiscrimination reviews (process and on-site in both the central office and districts) to determine program impact, effectiveness, and to ascertain compliance;	1. Submit signed Title VI Assurances;
2. Interpret and clarify Title VI laws and related authorities including Executive Orders and directives;	2. Establish a civil rights unit with adequate staff; and, designate a Title VI coordinator empowered to establish, implement, and enforce policies and procedures ensuring they have direct access to the head of DeIDOT;
3. Review and approve DeIDOT's Title VI Program document and annual updates;	3. Develop procedures for prompt processing and disposition of Title VI complaints;
4. Ensure that DeIDOT's Program adheres to the requirements of the prevailing implementation approach (e.g., the systematic, interdisciplinary approach) and directives;	4. Ensure that civil rights personnel are trained in compliance investigations;
5. Take lead and/or participate in activities related to controversial issues of alleged discrimination;	5. Collect statistical data (race, color national origin, sex) of participants in and beneficiaries of State highway programs, (i.e. relocates, impacted citizens, and affected communities);
6. Participate in compliance reviews of recipients, sub-recipients, including MPO's; conduct desk reviews on select compliance reviews conducted by DeIDOT;	6. Conduct annual reviews of all pertinent programs and Title VI reviews of sub-recipients, (cities, counties, consultants, universities, etc.);
7. Perform evaluations on select program areas;	7. Conduct training programs on Title VI and related statutes;
8. In coordination with the Headquarters Office of Civil Rights, investigate, process, and assist in the resolution of Title VI complaints;	8. Prepare a yearly Title VI Accomplishment Report; and, submit an annual updated Title VI Implementation Plan to FHWA Division office;
9. Provide training, technical assistance and guidance on Title VI issues and requirements;	9. Develop Title VI information for dissemination to the general public, where appropriate, in languages other than English;
10. Ensure that DeIDOT accomplishes its previous year's goals;	10. Establish procedures for pre-grant and post-grant approval reviews;
11. Review and provide comments on Title VI issues in EIS's, and EA' s.	11. Establish procedures to identify and eliminate discrimination; promptly resolve deficiencies and reduce remedial actions to writing.

<b>Internal Equal Employment Opportunity/Affirmative Action Program (AAP)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DeIDOT's Roles and Responsibilities</b>
1. Ensure that DeIDOT has an approved EEO Program that is being implemented in accordance with regulations;	1. Administer an EEO program and develop an affirmative action plan;
2. Review and approve DeIDOT's affirmative action plan;	2. Conduct an annual workforce analysis to assess progress and shortfalls;
3. Ensure that DeIDOT's annual updates of its AAP plan are submitted;	3. Submit an annual update to the FHWA Division office for approval;
4. Monitor DeIDOT's progress in meeting its hiring goals and target dates for underutilized areas;	4. Process discrimination complaints, investigate and resolve complaints;

<b>Internal Equal Employment Opportunity/Affirmative Action Program (AAP)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DelDOT's Roles and Responsibilities</b>
5. Participate in state program reviews (on-site as well as process) for impact, effectiveness and compliance;	5. Conduct an annual program evaluation to monitor the EEO program and to assess goals and objectives and results accomplished;
6. Ensure that DelDOT administers a complaint process that is effective and efficient;	6. Secretary of Transportation should: (1) Issue a firm statement of personal commitment, legal obligations and importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager, and supervisor.
7. When necessary or requested, provide technical assistance on the development of compliance and process review guidelines;	7. Evaluate and monitor progress in meeting its hiring goals and target dates for underutilized areas;
8. Ensure that DelDOT demonstrates that their own employment policies and practices are nondiscriminatory and representative of the local civilian labor force;	8. Coordinate, facilitate, and promote partnerships with external entities that represent the inclusion and promotion of the minority and female population (e.g., Historically Black Colleges and Universities, Minority Institutions of Higher Education, etc.).
9. Provide guidance on interpretation of regulations and other EEO laws (such as Title VII of the Civil Rights Act of 1964);	
10. In cooperation with DelDOT, process, address, or resolve complaints of EO/EEO discrimination filed by external customers (contractors, associations, etc.) against DelDOT;	
11. Provide or coordinate training on how to conduct effective program and onsite compliance reviews, develop affirmative action plans and analyze statistical data;	
12. Coordinate activities or provide guidance on programmatic initiatives such as Summer Internships and Institutes, Welfare to Work, Urban Youth Corps, Garrett A. Morgan Technology and Transportation Futures;	
13. Coordinate, facilitate, and promote partnerships with external entities that represent the inclusion and promotion of the minority and female population (e.g., Historically Black Colleges and Universities, Minority Institutions of Higher Education, etc.).	

<b>Contract Compliance Program</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DelDOT's Roles and Responsibilities</b>
1. Annually participate in contract compliance reviews with DelDOT;	1. Develop and implement a program to ensure that contractors comply with equal opportunity requirements;
2. Monitor, review, and approve all DelDOT's contract compliance reports;	2. Ensure that the required contract provisions are included in all Federal-aid contracts valued at \$10,000 or more (FHWA 1273);
3. Review and approve DelDOT's Contract Compliance Program;	3. Conduct compliance reviews of prime and subcontractors;
4. Ensure that annual Contract Compliance Program updates are submitted;	4. Enforce nondiscrimination clauses in required contract provisions as needed;

<b>Contract Compliance Program</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DelDOT's Roles and Responsibilities</b>
5. Ensure that DelDOT accomplishes its previous year's goals and/or that good faith efforts are demonstrated;	5. Prepare annual update on goals and accomplishments of the contractor compliance program to include OJT;
6. Provide technical assistance to DelDOT on the development of contract compliance and process review guidelines;	6. Provide training on how to conduct effective program and onsite compliance reviews;
7. Provide guidance on interpretation of regulations, Executive Orders, EEO laws, and other related instruments;	7. Investigate complaints of alleged discrimination filed by contractor employees or other external customers such as subcontractors, contractors, contractor organizations, etc.;
8. Provide or coordinate training on how to conduct effective program and onsite compliance reviews;	8. Establish procedures in setting annual OJT goals for FHWA approval;
9. Coordinate activities or provide guidance on programmatic initiatives such as Women in Highway Construction, Urban Youth Corps and Welfare to Work;	9. Promote partnerships among and with a variety of external partners and customers such as State DOT's, contractor organizations, minority firms and organizations, etc.
10. In cooperation with DelDOT investigate complaints of alleged discrimination filed by contractor employees or other external customers such as subcontractors, contractors, contractor organizations etc.;	
11. Encourage and promote partnerships among and with a variety of external partners and customers such as State DOT's, Contractor organizations, minority firms and organizations; etc.	

<b>Disadvantaged Business Enterprise Program (DBE)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DelDOT's Roles and Responsibilities</b>
1. Provide interpretation and clarification on provisions of the new DBE Regulation and other related instruments;	1. Develop and implement a DBE Program that achieves its goals and objectives;
2. Review and approve DelDOT's DBE Program;	2. Carry out all administrative requirements; and, maintain a signed and dated policy statement expressing commitment to the DBE program;
3. Monitor the implementation of the DBE Program through continual involvement, to ensure the stated objectives and program requirements are observed;	3. Employ a DBE Liaison Officer to implement all aspects of the DBE program to ensure compliance with the regulations;
4. Review and approve DelDOT's proposed DBE goals and methodology;	4. Establish prompt payment mechanisms and incorporate them into the DBE program;
5. Monitor on a quarterly basis, DelDOT's activities toward accomplishing its DBE goal including Race Neutral and Race Conscious accomplishments;	5. Develop and maintain a bidders list;
6. Review DelDOT's semi-annual reports on DBE awards and commitments for accuracy and completeness;	6. Develop monitoring and enforcement mechanisms to ensure that the work committed to DBE firms at contract award is actually performed by DBEs;
7. Participate in on-site reviews of selected Federal-aid projects to determine DBE program compliance on the part of the DBE prime and/or sub and non-DBE prime;	7. Develop an annual overall goal for DBE participation on Federally assisted contracts;

<b>Disadvantaged Business Enterprise Program (DBE)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DeIDOT's Roles and Responsibilities</b>
8. Monitor DBE hearings and certification appeals held on contractors;	8. Administer or participate in statewide Unified Certification Program to ensure that "only firms that fully meet" the eligibility standards participate in the program;
9. Perform program review and/or evaluation of a selected program element;	9. Develop and implement certification procedures that include on-site reviews, decisions within 90 days, due process in removal of eligibility, hearing and appeals process, etc.;
10. Provide technical assistance, training, guidance, information, best practices, and other resources on the DBE program as requested by DeIDOT personnel;	10. Develop and implement mechanisms to ensure that program participants (i.e. contractors, subcontractors, sub-recipients, consultants, etc.) comply with DBE requirements;
11. Investigate or participate in investigations of allegations of discrimination;	11. Develop and implement a DBE Program that achieves its goals and objectives.
12. Provide interpretation and clarification on provisions of the new DBE Regulation and other related instruments.	

<b>DBE and On the Job Training (OJT) Supportive Services Program (SS)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DeIDOT's Roles and Responsibilities</b>
1. Review and approve detailed DBE Supportive Services (DBE/SS) and OJT/SS work statements;	1. Develop DBE/SS and OJT/SS work statements and submit to FHWA for approval;
2. Evaluate the impact of supportive services on DBEs in terms of work activity, success/failure, and proficiency;	2. Ensure that DBE/SS and OJT/SS provider(s) develop and achieve performance goals and objectives;
3. Review DeIDOT's progress report on Supportive Services, offer constructive comments and feedback when necessary;	3. Continually monitor and evaluate Supportive Services programs so that needed improvements can be identified and instituted;
4. When applicable conduct investigations of alleged complaints of discrimination;	4. Collect data on participants and submit progress reports and annual accomplishments reports to FHWA;
5. Continually monitor and evaluate supportive services programs so that necessary improvements can be identified and instituted;	5. Monitor training opportunities on FHWA projects ensuring that these training opportunities are provided in a nondiscriminatory manner;
6. Ensure that DeIDOT is providing training opportunities on FHWA projects and that these training opportunities are provided in a nondiscriminatory manner;	6. Monitor training goals; and, evaluate the contractor's efforts for addressing any contract violations that may occur.
7. Ensure that DeIDOT has approved procedures for assigning training goals, monitoring and evaluating the contractor's efforts, and for addressing contract violations that may occur;	
8. Conduct periodic process reviews/evaluations to identify areas where process improvements/changes are needed;	
9. Provide technical assistance, training, guidance, information, best practices, and other resources on the program as maybe requested by DeIDOT personnel.	

<b>Section 504/American with Disabilities Act Program (ADA)</b>	
<b>FHWA Division Office Roles and Responsibilities</b>	<b>DelDOT's Roles and Responsibilities</b>
1. Ensure that recipients/sub-recipients of Federal funds are informed of their responsibilities to provide reasonable accommodation in their employment practices; and provide accessibility in their programs, activities, and facilities (e.g., public rights-of-way);	1. Develop and implement a Transition Plan that outlines which structural modifications must be made to those programs and services that are not accessible (including a curb ramp installation schedule for pedestrian facilities that DelDOT owns, operates, or maintains);
2. Ensure that recipients/sub-recipients of Federal funds are applying appropriate accessibility standards to all transportation facilities;	2. Conduct self-evaluations of current services, policies, and practices and analyze the effects thereof to determine needed modifications to achieve program accessibility;
3. Investigate/process ADA complaints; and ensure that all complaints filed under Section 504 or the ADA are processed in accordance with established complaint procedures;	3. Make reasonable accommodation and ensure existing facilities are accessible;
4. Provide technical assistance, training, guidance, information, best practices, and other resources on the ADA program as requested by DelDOT personnel.	4. Investigate/process ADA complaints; and, administer the DelDOT internal complaint procedure to resolve proven complaints in a timely fashion;
	5. Ensure the wide dissemination of a non-discrimination notice stating that DelDOT does not discriminate on the basis of disability regarding admission and access to its programs and activities, and regarding its employment practices;
	6. Ensure compliance with Title II of ADA and Section 504 of all sub-recipients;
	7. Identify essential functions of the position of ADA Coordinator, employ an ADA Coordinator, and make the ADA Coordinator's name, office address and telephone number available to interested persons;
	8. Install curb ramps when roadways or crosswalks are newly constructed or altered;
	9. Ensure that facilities and equipment are readily accessible, and meet accessibility standards for new construction or alterations;
	10. Provide auxiliary aids (e.g., sign language interpreters, readers, Braille, large print text) upon request for participation in DelDOT programs and services;
	11. Ensure that pedestrian overpasses, underpasses, ramps, and rest areas on interstate highways meet accessibility standards;
	12. Provide training on the ADA program to personnel of DelDOT and sub recipients of Federal funds.

## Civil Rights Program Summary Table

Activity*	DeIDOT Action	FHWA Action**	Product
Annual Contractor Employment Report – 1391/1392 (Established with the State, usually one year after the last plan approval)	Prepare/Submit	Review/File Submit to U.S. DOT within 10 days	Report submitted to U.S. DOT
State Internal EEO/AA Program Plan (Established with the State, usually a five year plan)	Prepare/Submit	Review/Approve within 10 days	Approved EEO/AA Program Plan
State Internal EEO/AA Program Plan Updates, accomplishments and next years goals (Established with the State, one year after the last plan approval)	Prepare/Submit	Review/Approve within 10 days	Approved EEO/AA Program Plan Updates
State Internal Employment Practice EEO-4 Report (due to FHWA on August 1 <sup>st</sup> )	Prepare/Submit	Review/File Submit to U.S. DOT within 10 days	Report submitted to U.S. DOT
Contractor Compliance Program Plan*** (Established with the State, usually a five year plan)	Prepare/Submit	Review/Approve within 10 days	Approved Contractor Compliance Program Plan
Contractor Compliance Program Plan Updates, accomplishments and next year's goals (Established with the State, one year after the last plan approval)	Prepare/Submit	Review/Approve within 10 days	Approved Contractor Compliance Program Plan Updates
Contractor Compliance Review Schedule and Reports (Within 15 <sup>th</sup> day after the completion of the review)	Prepare/Submit	Review/Approve within 10 days	Approved review report
OJT Goals and Accomplishments (due to FHWA on January 30 <sup>th</sup> )	Prepare/Submit	Review/Approve within 10 days	Approved OJT Goals
OJT Classifications (As submitted by State)	Prepare/Submit	Review/Approve within 10 days	Approved OJT Classification
Title VI Program Plan (Established with the State, usually a five year plan)	Prepare/Submit	Review/Approve within 10 days	Approved Title VI Program Plan
Title VI Program Plan Updates, accomplishments and next year's goals, (Established with the State, one year after the last plan approval)	Prepare/Submit	Review/Approve within 10 days	Approved Title VI Program Plan updates
Title VI Complaints and Investigative Reports (60 days from the date complaint was received)	Prepare/Submit	Review/File Submit to U.S. DOT within 10 days	Report on file
Title VI Compliance Reviews (Quarterly)	Prepare/Submit	Review/Approve within 10 days	Approved review report
DBE Program Plan (On an annual basis when there are program revisions or changes)	Prepare/Submit by DeIDOT	Review/Approve within 10 days	Approved DBE Program Plan

Activity*	DelDOT Action	FHWA Action**	Product
DBE Program Goals and Methodology (due to FHWA on August 1 <sup>st</sup> )	Prepare/Submit by DelDOT	Review/File Submit to U.S. DOT within 10 days	DBE program Goals and Methodology on file
DBE Semi-Annual Report Awards/Commitment;(June 1 <sup>st</sup> (Oct 1 <sup>st</sup> – Mar. 31 <sup>st</sup> ), Dec. 1 <sup>st</sup> (Apr. 1 <sup>st</sup> – Sept. 30 <sup>th</sup> ))	Prepare/Submit	Review/Approve & Submit to U.S. DOT within 10 days	Approved DBE report and submitted to U.S. DOT
DBE and OJT Supportive Services Work statements (Annually – established by DelDOT)	Prepare/Submit	Review/Approve Submit to U.S. DOT for funding approval	DBE and OJT Supportive Services Work statements submitted to U.S. DOT
DBE/SS and OJT/SS Reports (Quarterly (15 <sup>th</sup> day after the quarter ends))	Prepare/Submit	Review/Approve	Approved DBE/SS and OJT/SS reports
Historically Black College/Minority Institution of Higher Education Report (Annually – established by DelDOT)	Prepare/Submit	Review/File Submit to U.S. DOT	Report submitted to U.S. DOT

\* Text in ( ) denotes due date to FHWA.

\*\* Action refers to comments and/or approvals; working days.

\*\*\* Accomplishments for the On-the-Job Training program are included in the contractor compliance plan.

### **Civil Rights Program Performance/Compliance Indicators:**

Objective: To deliver and steward Federal-aid highway program with high performance and integrity.

Indicators:

- 1) State Internal/Affirmative Action Program - Number and % of minority and female representation in DelDOT workforce in each EEO Category and net changes compared from previous two years.
- 2) DBE Program – Percentage of DBE participation compared to the statewide goal.
- 3) Contractor Compliance Program – Number of contractor compliance reviews and reduction in significant findings from previous three years.
- 4) Title VI (EJ, LEP, and ADA) Program – Number of complaints filed under all sections of the Civil Rights program and reduction in complaints findings from previous three years.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### **3.9 RIGHT-OF-WAY PROGRAM**

All Federal, State, and Local public agencies (and others receiving Federal financial assistance for public programs and projects requiring the acquisition of real property) must comply with the policies and provisions set forth in the Uniform Act and its amendments. The current regulations implementing the Uniform Act were first published in the Federal Register of March 2, 1989, and are codified in the Code of Federal Regulations, Title 49, Part 24. These regulations contain the standards and procedures that acquiring agencies must follow in their appraisal, acquisition, and relocation assistance programs.

Additionally, state and local public agencies using federal funds for transportation programs administered under Title 23 U.S.C. must adhere to the regulations contained in Title 23 U.S.C. 710 in the administration of their Right-of-Way (R/W) programs.

The following oversight functional areas involving the Federal-aid R/W program are covered under 49 CFR (24), which has no provision for exemptions under Title 23 U.S.C.:

- Appraisal
- Acquisition
- Relocation

The work activities listed below are covered under 23 CFR (parts are listed in parenthesis) and require specific approval and/or oversight by FHWA:

- State R/W operations manual (710.201)
- R/W authorization (710.307)
- Air rights on the interstate (710.405) & NHS (710.201)
- Airspace leases/joint use agreements (710.407)
- Sale/transfer of excess R/W (710.409)
- Early acquisition, protective buying, and hardship (710.501 & 503)
- Functional replacement (710.509)
- Federal land transfers (710.601)
- Highway beautification (750)
- Indirect costs (part 710.203 (d) subpart B)

The work activities listed below are covered in 23 CFR and do not require specific program or project approvals, but are not exempted from FHWA oversight under Title 23 U.S.C.:

- Direct eligible costs including administrative, legal and court settlements (710.203 (b))
- Real property donations (710.505)

Even though there are no exemptions under the law for any functions covered in 49 CFR 24, for practical purposes there are two levels of review of those elements. One level depends on whether the project involves R/W acquisition and has Federal-aid in other phases of work but none in R/W. The second level depends on whether there is Federal-aid in the R/W project phases. Although the R/W regulations must be followed under both levels, there is less concern about the reasonableness of the actual dollar expenditures in those projects containing no Federal-aid in the R/W. The primary concerns with these projects are to protect the rights of property owners and displaced persons.

For the second level of projects, there is a dual concern for the rights of property owners and displaced persons and the stewardship of the Federal dollars. Continuous review of the State's activities has proven to be an effective means of assuring that the rights of owners and displaced persons are protected as well as monitoring the expenditure of Federal funds. This will be continued under this stewardship plan. Process reviews and program evaluations will be conducted when needs or trends are identified at either of the above project levels. The reviews will be conducted jointly with DelDOT personnel whenever possible.

Local Public Agencies (LPAs), i.e., cities and counties, are required to comply with the Uniform Act and its governing regulations found in 49 CFR 24 in the same manner as DelDOT. As stipulated in 23 CFR 710.201(b), State Transportation Agencies are responsible for assuring that R/W acquisitions by LPAs are made in compliance with Federal and State laws and regulations.

Attached Right-of-Way Program Summary Table identifies the agencies responsible for each R/W program area activity, approving action, and product under this Agreement. If any problems are identified, a process review may be scheduled. Periodic product evaluations will be conducted to ensure that the current process is producing a quality product in conformance with policy. Process

reviews will be the method for evaluating compliance and effectiveness in each of the program areas.

Certain R/W activities are not covered specifically by either 49 or 23 CFR but are a combination of sound business practice and the occasional national emphasis areas, which affect the R/W program.

Joint reviews of these topics and their application will be conducted as needed.

### **Right-of-Way Program Summary Table**

<b>Activity</b>	<b>DelDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
R/W Authorizations and Agreements (23 CFR 635.309)	Requests	Electronic Signature and or Stamp– All Projects (5 days)	Authorization & Agreements (1240)
R/W Certification (23 CFR 710.311)	Approval Non-NHS & Exempt Projects	Review and approve Interstate & NHS Projects within (5 days)	Certificates
Air Rights (23 CFR 710.405)	Request on NHS	Review and Approve (15 days)	Airspace Agreement
Leases/joint use agreements (23 CFR 407)	NHS – Request to FHWA	Review and Approve – NHS (10 days)	Lease/Agreements
Disposal of Excess R/W (23 CFR 710.409)	NHS & Less than fair market value – Request to FHWA	Review and Approve – NHS & Less Than Fair Market Value (10 days)	Property Sale and Revenue to Transportation Fund
Access Control – Disposal and Changes Transfer (23 CFR 710.401)	Request (Interstate)	Review and Approve - Interstate (10 days)	Disposition/Change
Federal Land Transfer (23 CFR 710.601)	Prepare Request	Review and Approve (60 days)	Transfer Deeds
Early Acquisition, Hardship, Protective Buying (23 CFR 710.501, (23 CFR 710.503)	Request Approval	Review, Approve, and Authorize (10 days)	Property Ownership
R/W Operations Manual Changes resulting from FHWA HQ (23 CFR 710.201)	Draft and Submit changes/revisions within 60 days of notification from FHWA	Review and Approve (15 days)	Updated Manual
R/W Operations Manual Changes not directed by FHWA HQ (23 CFR 710.201)	Notify FHWA of proposed change/revisions	Review and Approve (10 days)	Updated Manual
Highway Beautification Operations Manual (23 CFR 750.304)	Prepare Manual	Review and Approve (15 days)	Manual
Functional Replacement	Request Approval	Authorization & Oversight within (10 days)	Functional Replacement

All days are working days unless otherwise specified.

**Right-of-Way Program Performance/Compliance Indicators:**

Objective: To deliver and provide stewardship of the Federal-aid highway program with high performance and integrity.

Indicators:

- 1) Number of relocation offers accepted with and without administrative settlements.
- 2) Effectiveness of incentive payments for clearing the R/W.
- 3) Percentage of R/W acquisition cases filed for condemnation
- 4) Percentage of appraisal accepted without need for update.
- 5) Number of violations issued for illegal signs.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### **3.10 INTELLIGENT TRANSPORTATION SYSTEMS (ITS) PROGRAM/PROJECTS**

TEA-21 directed changes in the stewardship responsibilities for the Intelligent Transportation Systems (ITS) program and projects. TEA-21 clarified the use of Federal-Aid categories for ITS. NHS and Surface Transportation Program (STP) Funds may be spent on infrastructure-based ITS capital improvements while Congestion Mitigation Air Quality (CMAQ) Funding may be spent on programs and projects that implement ITS strategies.

The applicable legislation for ITS projects is 23 CFR 940 Intelligent Transportation System Architecture and Standards. This section of 23 CFR describes the regulations that must be followed for ITS projects and regular Federal-aid projects that contain ITS components.

ITS Regional Architecture - 23 CFR 940.9 An ITS regional architecture shall be developed to guide the development of specific projects and programs.

Systems Engineering Analysis - 23 CFR 940.11 All ITS projects shall be based on a systems engineering analysis. The applicable regional ITS architecture shall be used in the development of ITS projects. The analysis should be on a scale commensurate with the project scope.

Project Administration - 23 CFR 940.13 Prior to authorization of Federal-aid funds for construction or implementation, DeIDOT shall demonstrate that ITS projects conform to the system engineering and conformity requirements provided in 23 CFR 940.11 and that there is a commitment to the operations, management and maintenance of the overall system.

## Intelligent Transportation System Program/Projects Summary Table

ACTIVITY	DeIDOT ACTION	FHWA ACTION	OUTCOME
Systems Engineering Requirements	Prepare/Review and Submit	Full Federal Oversight: Approve (10 days)	Systems Engineering Requirements Form or work plan that describes the systems engineering process
Update of Statewide Architecture	Prepare and Approve Ready for Use	Concurrence (15 days)	Updated Statewide Architecture
Task Order/FS-1 Approval	Prepare/Review and Submit	Concurrence (3 days)	Projects Implemented

Note: FHWA will retain full oversight for all ITS projects.

### **Intelligent Transportation System Program/Projects Performance/Compliance Indicators**

#### ITS Architecture

- 1) DeIDOT will submit a bi-annual report that details the ITS elements and information flows that have been added to the Delaware Statewide ITS Architecture. The first report will be submitted beginning September 30, 2009.

Objective: Mitigate the impacts of congestion and improve system reliability.

#### Indicators:

- 1) Percent of ITS projects in STIP implemented.
- 2) Reduction in travel time delay. (2006 Baseline 12.2% in a.m., 14.7% in p.m.)

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

## **3.11 Materials Quality Assurance Program**

### **Background**

The FHWA Division Office's Quality Assurance (QA) monitoring program is structured around 23 CFR 637. The overall purpose of the QA monitoring program is to assure the quality of materials and construction in all Federal aid highway projects on the National Highway System.

For Federal-aid projects on the NHS, the primary objectives of our QA monitoring program are:

1. Maintain a close working relationship with DeIDOT's materials and construction staff.
2. Promote improvements when new approaches or technologies are developed and where deficiencies are identified.
3. Assure that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing are in conformity with the approved plans, specifications, special provisions, and the Materials and Construction Manuals.
4. Provide oversight of construction materials, and compliance with federal requirements on a state-wide basis.
5. Assure adequate and qualified staff to maintain Quality Assurance and Independent Assurance (IA) program.

### **Operating Environment**

Section 106 of Transportation Equity Act for the 21<sup>st</sup> Century further enhances flexibility on Project Approval and Oversight from that provided under ISTEA of 1991. FHWA will monitor DeIDOT's Quality Assurance Program for materials used in Construction on non-exempt Federal-aid projects. Details of oversight provided for monitoring DeIDOT's Materials QA Program for Construction are included in the Materials Manual. For exempt NHS projects, DeIDOT will monitor the QA Program for Construction as if FHWA were fully involved except DeIDOT does not need to send materials certification to FHWA.

## **Oversight Activities**

The FHWA Division Office will review and approve DelDOT's Materials Quality Assurance Program as included in the Materials Manual on an on-going basis. The Materials Quality Assurance Program includes Acceptance Program, Independent Assurance Program, Materials Certification of non-exempt projects, AASHTO Accreditation Inspection Reports, Qualified Laboratory Program and Qualified Sampling & Testing Personnel Program. Additionally, by being a member of the individual task forces/teams/committees, FHWA will have an ongoing involvement in the development and implementation of the Materials Quality Assurance Program.

In general, the FHWA Division Office will monitor the implementation and effectiveness of the Quality Assurance Program through process reviews. Individual process reviews will be identified in the State Division Office's annual Strategic Plan. Additionally, FHWA Division Office Pavement & Materials Engineer will accompany area engineers for project inspections of non-exempt projects.

## Materials Quality Assurance Program Summary Table

Activity/Item	NHS Full oversight & NHS Exempt		Exempt	
	DelDOT Action	FHWA Action	DelDOT Action	FHWA Action
Quality Assurance Program Materials test methods and updates, Materials quality assurance manual, Sampling and testing frequency guide	Prepare (on going) and submit to FHWA	Approve within 14 working days	DelDOT prepares and approves.	Accepted based on approval for full oversight projects
Qualified Technician Program	Develop/ implement and submit to FHWA	Approve within 14 working days	Required by DelDOT	Accepted based on approval for full oversight projects
Qualified Laboratory Program	Develop/ implement and submit to FHWA	Approve within 14 working days	Required by DelDOT	Accepted based on approval for full oversight projects
AASHTO accreditation inspection reports	Maintain accreditation, submit inspection report	Review, make recommendations for consideration (as necessary) within 14 working days	Required by DelDOT	Accepted based on approval for full oversight projects
Independent Assurance Program (system-based approach)	Prepare annual report and submit to FHWA	Review, Comment, recommendations for consideration (annual) within 14 working days	DelDOT prepares and approves	Accepted based on approval for full oversight projects
Public Interest Findings (PIF) with respect to materials (if applicable)	Prepare and submit to FHWA	Approve within 14 working days	Prepare and submit	Approve in 14 working days
Qualified Product List (QPL) (if applicable)	Develop and submit to FHWA	Review and make recommendations within 14 working days	Prepare and approve	Review and make recommendations within 14 working days

*Note: FHWA will approve Materials Certification for NHS full oversight projects. Materials certification for NHS exempt projects will be prepared and approved by DelDOT.*

### Materials Quality Assurance Performance/compliance Indicators:

Objective: Improve pavement smoothness on NHS

- 1) Improve pavement smoothness on NHS compared to annual and long-range strategic performance goals of DelDOT and FHWA. DelDOT Materials & Research will start recording data in Federal FY Year 2008.
- 2) Compliance with requirements of 23 CFR, subpart B.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

## **3.12 Pavement Management and Design Program**

### **Background**

Pavement Management: Title 23 U.S.C. 303(a) directs the U.S. Secretary of Transportation to issue regulations for State development, establishment and implementation of system for managing highway pavements; Pavement Management System (PMS), bridges on and off federal-aid highways; Bridge Management System (BMS), highway safety; Safety Management System (SMS), traffic congestion; Congestion Management System (CMS), public transportation facilities and systems; Information Management System (IMS) and traffic monitoring system (TMS) for highways and public transportation facilities and equipment. If DeIDOT elects to implement one or more of the systems, it will cooperate with Metropolitan Planning Organizations (MPO) for urbanized areas of the State in implementing and developing a management system.

DeIDOT has an operational PMS. This system is operated by the Pavement Management Section, within Maintenance and Operations.

Pavement Design: 23 U.S.C. 109 requires that pavement be designed in accordance with current and predicted traffic needs in a safe, durable and cost effective manner. The regulations do not specify the procedures to be followed to meet this requirement. Rather each State Highway Agency is expected to use a design procedure, which is appropriate for their conditions. DeIDOT follows the design procedure that is outlined in the AASHTO Guide for Design of Pavement Structures.

### **Oversight Activities**

The FHWA Division Office through participation in various task forces meetings will ensure that pavement-related activities, including new and rehabilitated pavement design and construction, pavement management, research, technology transfer, HPMS, vehicle weight enforcement program, etc., are well coordinated among functional/administrative areas of the FHWA Division Office.

The FHWA Division Office will review and provide comments on DeIDOT's pavement design/rehabilitation procedures, policy and guidelines on an ongoing basis. Additionally, by being a member of the individual task forces, teams, and committees, FHWA will have an ongoing involvement in the development, update and implementation of pavement design procedures.

In general, the FHWA Division Office will monitor the implementation, operation and effectiveness of the PMS and DelDOT's pavement design process through reviews. The FHWA Division Pavement & Materials Engineer will conduct oversight of the Pavement Management System.

### **Pavement Management and Pavement Design Program Summary Table**

<b>Activity/Item</b>	<b>DelDOT Action</b>	<b>FHWA Action</b>	<b>Product</b>
Pavement Management System (PMS)	Develop and submit plan to FHWA, including updates (Pvmt Mgmt)	Review, Comment, Make Recommendations for Consideration (on going basis)	Pavement Management Manual
Annual Rehabilitation Project List	Provide candidate locations and final location list to FHWA (Pvmt Mgmt)	Review and provide comments as needed within 14 working days	List of Projects
Conduct joint review of design and recommendations	Provide necessary documentations to FHWA (Pvmt Mgmt and/or M&R)	Review, Comment, Make Recommendations for Consideration (annual) Process reviews	Report
Pavement design guide, policy and procedures as per AASHTO Design Manual.	Develop and submit to FHWA (M&R)	Review, Comment, Make Recommendations for Consideration (on going basis) Approve originals and updates within 14 working days	Pavement Manual

**Pavement Management and Pavement Design Program Performance/Compliance Indicators:**

- 1) Adoption of mechanistic-empirical pavement design procedures and progress compared to annual and long-range strategic performance of DelDOT and FHWA.
- 2) Accomplishment of objectives established in the yearly system preservation program budget allocation plan.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### **3.13 Preventive Maintenance Program**

Section 116 of 23 U.S.C. requires States to maintain, or cause to be maintained any project constructed as part of a Federal-aid system (Interstate system and NHS). FHWA is responsible for maintenance of all Federal-aid projects.

FHWA staff will observe Delaware's highway conditions during their routine travel activities. Also, the staff may perform in-depth maintenance reviews when appropriate. All significant maintenance deficiencies observed during official travel will be called to the attention of the appropriate DelDOT personnel. Follow-up actions, if necessary, will be taken by FHWA Division Office staff to ensure maintenance issues are properly addressed. The oversight activities of DelDOT's routine maintenance program will apply to NHS and non-NHS routes.

A Preventive Maintenance (PM) activity shall be eligible for Federal assistance if the State demonstrates to FHWA that the activity is a cost-effective means of extending the useful life of a Federal-aid highway. FHWA staff will assist DelDOT in developing PM programs, identify eligible activities, and provide information on best practices and technologies. The preventive maintenance (PM) will include all eligible maintenance activities within Federal-aid R/W. DelDOT should develop statewide PM programs for eligible activities and submit to FHWA for review and comment, if Federal funds are to be used for statewide maintenance activities. In the absence of a statewide program, DelDOT will seek FHWA's approval on case by case or by activity basis. The FHWA Division Office would review the activities and provide its determination on effectiveness.

The oversight activities of the State's preventive maintenance program will apply equally to NHS and non-NHS routes. The FHWA Division Office will review and monitor DelDOT's program and projects for preventive maintenance and Federal-eligibility.

FHWA Preventive Maintenance monitoring activities will be a continuous process and will be done mostly on programmatic basis. Annual process reviews may be developed and conducted. The items for process reviews will be influenced by either FHWA Division Office's or DelDOT's observations of perceived strengths and/or weaknesses in the State's preventive maintenance program or activities. Deficiencies observed will be reported to the appropriate DelDOT personnel. Follow-up activities, if necessary, will be performed by the FHWA Division Office.

## Preventive Maintenance Program Summary Table

Activity	DelDOT Action	FHWA Action	Outcome
Routine Maintenance of Federal-aid Highways	Adequately maintain highways	Conduct windshield & in-depth inspections, report findings to DelDOT personnel	Deficiencies reported
Preventive Maintenance (individual activities)	Identify individual PM activities in various areas	Review & provide recommendations within 15 days	PM activities defined
Preventive Maintenance (program)	Develop a PM Program and update annually	Review & provide recommendations within 15 days  Assist DelDOT in developing and implementing PM	Develop a PM Program
Monitor Federally funded PM & rehabilitation accomplishments	Prepare annual accomplishment report	Review & recommend changes to plan, information	Annual report & improved program
PM Technology Transfer	Identify and propose Technology Transfer activities	Assist DelDOT with identification, marketing, and implementation	Improved PM program

### Preventive Maintenance Program Performance/Compliance Indicators

Objective: Provide longer lasting highway infrastructure through systematic preservation program that is based on the sound management practices (e.g. asset management)

Indicators:

- 1) Number of assets/areas with preventive maintenance programs
- 2) Number of projects implemented based on the preventive maintenance programs
- 3) Conformity with the FHWA Preventative Maintenance Eligibility memo dated 10/8/2004

Reporting: Annually by October 31 for the previous Federal FY ending September 30. It is anticipated that a more formalized preventive maintenance program will be in place sometime in Federal FY 2008 and that DelDOT will begin reporting in October, 2009 provided the plan is in place.

### **3.14 Research, Development and Technology Transfer (RD&T) Program**

The purpose of the program is to implement the provisions of 23 U.S.C. Chapter 5 for research, development, and technology transfer programs, and studies undertaken with FHWA planning and research funds. The primary requirements of the program as provided in section 420 of 23 CFR include development and maintenance of an FHWA approved program manual, development of annual work program, oversight of program activities, submission of performance and expenditures reports, conducting peer reviews, and maintenance of program certification.

The FHWA Division currently has full oversight responsibility of the RD&T program. This oversight is both administrative and technical. Such oversight responsibility requirements are typically fulfilled by FHWA Division Office staff by proactively participating in the development of the annual program, thoroughly reviewing the annual program prior to its approval, thoroughly reviewing individual proposals prior to approval, and thoroughly reviewing the annual report. The FHWA Division Office diligently participates in ongoing program activities such as DeIDOT Research Advisory Board meetings, LTAP Advisory Board meetings, routine technical and policy meetings, peer review meetings, and technology transfer events, etc. DeIDOT fully exercises its flexibility in the use of funds and determination of eligible activities that meet the requirements of Section 420 of the CFR.

## Research, Development and Technology Transfer (RD&T) Program Summary Table

<b>Activity</b>	<b>DeIDOT Action</b>	<b>FHWA Action</b>	<b>Outcome</b>
DeIDOT Research Manual	Prepare in coordination with FHWA as noted in 23 CFR 320.209	Review/approve	Research Manual
Annual Work program	Prepare & Submit by 6/1	Review and approve within 20 days	Annual research work program
Amendments to work program	Submit to FHWA as needed	Review and approve within 10 days	Modified Work program
LTAP	Review, approve, and submit to FHWA for approval by 6/1	Review and approve within 10 days	Annual LTAP work program
Pooled Fund Studies	Select and request authorization of funds in FMIS	Authorize funds within 5 days	Partnership established
NCHRP	Request authorization of funds in FMIS	Authorize funds within 5 days	NCHRP sponsored
TRB	Request Authorization of funds	Authorize funds in 5 days	TRB sponsored
UTC Annual Work program	Submit for comments	Provide comments in 10 days	UTC Annual Work program
Peer Exchange	Sponsor/host	Participate/support	Report submitted for information
Annual Performance & Expenditures report	Prepare and submit within 90 days after the end of reporting period	Review	Annual Report
Certification of Research Management Process	Prepare and submit with annual work program	Review and approve with annual work program within 20 days	Certified compliance with 23 CFR
New Products/Experimental Features	Evaluate/recommend	Approve/provide technical assistance	Reports due within 90 days of completion

### RD&T Program Performance/Compliance Indicators

Objective 1: To adopt innovations and new technologies meeting DeIDOT's strategic goals and objectives and/or supporting FHWA's strategic goals and objectives.

Indicators:

- 1) Number of innovative technologies implemented through either research or technology transfer that meet DeIDOT's and/or support FHWA's strategic goals and objectives
- 2) Percent of research studies/activities that support FHWA and/or DeIDOT's priorities
- 3) Number of technology transfer training courses/workshops conducted, including those through UTC T2 Center.

Reporting: Annually by October 31 for the previous Federal FY ending September 30.

### 3.15 Miscellaneous Program

This section summarizes miscellaneous programs and activities that may not be covered under other sections.

<b>Activity</b>	<b>DeIDOT Action</b>	<b>FHWA Action</b>	<b>Outcome</b>
Emergency Relief (ER) Program	Conduct site review and prepare application for ER funds. (DeIDOT response lead section)	Conduct site review (10 days)	Site approval and ER fund allocation
Requests under SEP-14 and SEP-15 Program (Still experimental)	Prepare request	Review/forward request with recommendation to HQ	Request approved/disapproved
Warranty Projects (NHS projects only)	Prepare request on case by case or program basis (DeIDOT lead section)	Review and approve specifications	Warranty specifications
Emergency Preparedness	Prepare program/plans	Information	EP program/plan

**Miscellaneous Program Performance/Compliance Indicators:**

Not Applicable

**Section 4 – APPENDIX**



