

STEWARDSHIP AGREEMENT

FOR IMPLEMENTATION OF THE
SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT
TRANSPORTATION EQUITY ACT:
A LEGACY FOR USERS P. L. 109-59

BETWEEN

AND

*U.S. Department of Transportation
Federal Highway Administration
New Hampshire Division*

STEWARDSHIP AGREEMENT

This stewardship agreement is the result of the joint efforts of the New Hampshire Department of Transportation and the Federal Highway Administration, New Hampshire Division.

The purpose of this stewardship agreement is to facilitate the implementation of provisions contained Title 23, U.S.C. This stewardship agreement is a comprehensive agreement that covers all aspects associated with administering the Federal-aid Highway Program (FAHP) under Title 23, and other associated laws.

It is understood that this agreement is subject to change and modification as additional information and implementing guidance becomes available. This agreement replaces the existing agreement dated March 27, 2003, and becomes effective on the date of the last executed signature below.

Date

George Campbell
Commissioner
New Hampshire Department of Transportation

Date

Kathleen O. Laffey
Division Administrator
Federal Highway Administration – NH Division

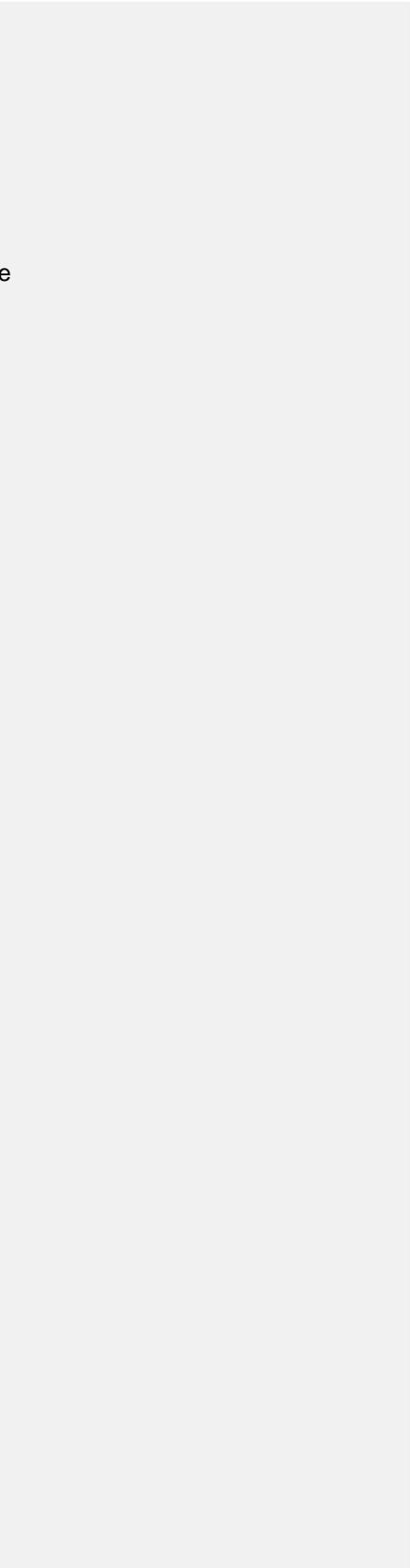


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GLOSSARY

3R:	Resurfacing, Rehabilitation, and Restoration
4R:	Resurfacing, Rehabilitation, Restoration and Reconstruction
AASHTO:	American Association of State Highway and Transportation Officials
CE:	Construction Engineering
CPIS:	Continuous Process Improvement Study
DBE:	Disadvantaged Business Enterprise Program
FAHP:	Federal-aid Highway Program
FHWA:	Federal Highway Administration
FIRE:	Financial Integrity Review and Evaluation Program
FTA:	Federal Transit Administration
HPMS:	Highway Performance Monitoring System
HSIP:	Highway Safety Improvement Program
HSP:	Highway Safety Program
I:	Interstate
IM:	Interstate Maintenance
ISTEA:	Intermodal Surface Transportation Efficiency Act of 1991
ITS:	Intelligent Transportation Systems
LPA:	Local Public Agency
MPO:	Metropolitan Planning Organization
N/A:	Not Applicable
NBIS:	National Bridge Inspection Standards
NEPA:	National Environmental Policy Act of 1969
NHDOT:	New Hampshire Department of Transportation
NHS:	National Highway System
NHTSA:	National Highway Traffic Safety Administration
PE:	Preliminary Engineering
PR/PE:	Process Review/Product Evaluation
PS&E:	Plans, Specifications and Estimate
SAFETEA-LU:	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005
SHSP	Strategic Highway Safety Plan
SPR:	Statewide Planning and Research
STIP:	State Transportation Improvement Program
STP:	Surface Transportation Program
TEA-21:	Transportation Equity Act for the 21st Century of 1998
TS&L:	Type, Size, and Location
USCFR:	United States Code of Federal Regulations
USEPA:	United States Environmental Protection Agency
VE:	Value Engineering
VECP:	Value Engineering Change Proposal

TERMS AND DEFINITIONS

3R Project – A type of project typically intended to extend the service life of existing highways, bridges, and related appurtenances; and/or restore safe, efficient travel on an existing facility. 3R projects are typically constructed within existing right-of-way, or require only minor acquisitions necessary to enhance safety.

Betterment (Emergency Relief Program) – With respect to Emergency Relief projects, a betterment is defined as (i) added protective features or upgrades to existing features, such as the rebuilding of roadways at a higher elevation, the lengthening of bridges, and increasing the size of a drainage structure, or (ii) changes which modify the function or character of a highway facility from what existed prior to the disaster or catastrophic failure, such as additional lanes or added access control.

Change Order – An order covering changes in the plans or quantities or both, within the scope of the contract, and establishing the basis of payment and time adjustments for the work affected by the changes.

Construction Engineering – For funding purposes, the phase of a project following the Preliminary Engineering phase that begins at the time of Construction Award through project completion.

Control Documents – Applicable standards, policies, and standard plans and specifications that FHWA accepts for application in the geometric and structural design of highways.

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

Exempt Projects – Projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way appraisal and acquisition, contract awards, inspections, and final acceptance of Federal-aid projects on a project-by-project basis. FHWA oversight has been delegated to the State for these tasks.

Extra Work Order – A document that amends the contract and identifies work to be paid for by the force account method.

Final Voucher - A final voucher represents the final claim, submitted by the State for a single completed project accepted by the FHWA. The approval of the final voucher does not eliminate the FHWA's right to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return or request any additional funds due as a result of later refunds, corrections, or other transactions.

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

GARVEE (Grant Anticipation Revenue Vehicles) – A designation applied to a debt financing instrument that has a pledge of future Federal-aid for debt service and is authorized for Federal reimbursement of debt service and related financing costs. This financing mechanism generates up-front capital for major highway projects that the state may be unable to construct in the near term using traditional pay-as-you-go funding approaches.

ITS Project – As defined in 23 CFR 940, an ITS project is any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

Inactive Project – Is considered a project where:

No billing activity for a one year period has occurred on a project with an unexpended balance >500K.

No billing activity for a two year period has occurred on a project with an unexpended balance of >50K.

No billing activity for a three year or greater period of time.

Major ITS Projects – Any ITS project that implements part of a regional ITS initiative that is multi-jurisdictional, multi-modal, or otherwise affects regional integration of ITS systems.

Major Projects – Projects with an estimated total cost greater than \$500 million (in year of expenditure dollars), or projects approaching \$500 million with a high level of interest by the public, Congress, or the Administration. The NEPA decision for each project or program of projects defines the project scope, limits and cost for each project.

Major or Unusual Structure – A major or unusual structure involves difficult or unique foundations, longer than usual spans, or design practices that depart from current practice. Examples include segmental concrete, arch, suspension, cable stayed, movable, and bridges with individual spans exceeding 500'.

National Highway System (NHS) - The National Highway System, as defined in 23 CFR 470 which includes the Interstate Highway System.

New or Reconstruction (4R) Project – A type of highway-oriented project that is designed to add capacity, modify and/or create new access points, reconstruct existing pavements and structures, or create new facilities on new location. 4R (resurfacing, rehabilitation, restoration and reconstruction) 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.

Oversight – A subset of stewardship, defined as the act of ensuring that the Federal-Aid Highway Program is delivered consistent with Federal laws, regulations and policies. FHWA oversight is conducted through a wide range and variety of mechanisms. These include stewardship reviews, risk assessments, program management activities, and project involvement activities.

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

Preliminary Engineering – For funding purposes, preliminary engineering is defined as the phase of a project beginning with project initiation through award of the construction contract.

Preservation Projects – Projects employing planned, cost effective strategies to an existing roadway system and its appurtenances that preserve the system, retards future deterioration, and maintains or improves the functional condition of the system without increasing structural capacity.

Project – The scope of the project is defined in the Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion document (CE) and includes all work and phases associated with implementing the project. Multiple contracts developed for bidding by the Owner for contract administration purposes or due to funding shortfalls are generally not considered to be operationally independent. The termini for a "project" shall be as defined in the NEPA document. It is understood that in the case of large NEPA corridors that the corridor may be split into smaller projects for construction. These are termed "construction projects".

Reconstruction – Projects that rebuild infrastructure, such as a bridge or section of roadway in or close to current location.

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

Scope Change - a programmatic change in the work to be performed under a grant or cooperative agreement that is outside the range of work contemplated at the time of award.

Stewardship – The efficient and effective management of the public funds that have been entrusted to FHWA and subsequently to the NHDOT and through NHDOT to subrecipients, such as Local Public Agencies (LPAs) and Metropolitan Planning Organizations (MPOs). FHWA's stewardship involves all activities necessary to deliver the Federal-Aid Highway Program, such as leadership, technology deployment, technical assistance, problem solving, program administration and oversight. Stewardship efforts include oversight and approval actions, as well as many day-to-day actions that are routinely performed by either FHWA or NHDOT to ensure that the FAHP is administered appropriately. FHWA stewardship activities, beyond oversight, include continuous

process improvement initiatives, technical assistance, technology deployment, performance measurement, project involvement activities, and sharing best practices.

Supplemental Agreement – A written agreement between the Contractor and the Engineer for the performance of work by the Contractor at agreed prices under items not originally included in the contract.

Value Engineering – The systematic application of recognized techniques by a multi-disciplined team to identify the function of a product or service, establish a worth for that function, generate alternatives through the use of creative thinking, and provide the needed functions to accomplish the original purpose of the project, reliably, and at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental attributes of the project.

Value Engineering Change Proposal (VECP) Clause – This is a construction contract provision which encourages the contractor to propose changes in the contract requirements which will accomplish the project's functional requirements at less cost or improve value or service at no increase or a minor increase in cost. The net savings of each proposal is usually shared with the contractor at a stated reasonable rate.

BACKGROUND AND INTRODUCTION

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

The FHWA and the NHDOT have jointly administered the FAHP with a strong sense of partnership for many years. These parties have administered the FAHP efficiently and effectively to help accomplish national, state and local goals—to develop and maintain a national highway network, improve its operation and safety, and provide for national security and commerce while protecting and improving the environment. Stewardship efforts include oversight and approval actions, as well as many day-to-day actions that are routinely performed by either or both of the parties to ensure that the FAHP is administered in compliance with established laws and regulations and in ways that reflect responsible use of the program funds authorized by Congress. The Stewardship/Oversight Agreement formalizes these delegated responsibilities to address how the FAHP will be administered in the State of New Hampshire.

Several years ago when Stewardship Agreements were first introduced and developed in response to ISTEA provisions, the documents principally addressed how the State DOT and FHWA would handle the delegation of authority for certain project actions. Since that time, and with the passage of SAFETEA-LU, the overall program has evolved requiring a more comprehensive Agreement that covers all aspects of the FAHP. This new Agreement provides a framework to effectively and efficiently execute the Federal-aid program in a financially responsible manner.

PURPOSE

Section 106 of Title 23, United States Code, requires that the FHWA and the State enter into an agreement documenting the extent to which the FHWA delegates its responsibilities to the State under Title 23. This Agreement formalizes these delegated responsibilities and provides a written document setting forth standards and procedures adopted by the NHDOT and the FHWA. This document will be used for the planning, design, construction, operations, maintenance, and administration of Federal-aid projects as well as programs and systems which meet the requirements of SAFETEA-LU.

This Stewardship Agreement provides an approach consistent with the May 8, 2006 guidance issued by FHWA headquarters for developing future Agreements with State DOTs throughout the country. It requires a risk-based approach where FHWA and the NHDOT agree on how the FAHP will be administered within NH, with specific actions to be taken by one or both parties. This Agreement outlines the basic stewardship concepts and approaches as well as mandatory specific procedures. It also addresses the delegation of certain project actions to New Hampshire with specified exceptions for special interest projects. Notwithstanding the Agreement, FHWA retains overall responsibility for all aspects of Federal-aid programs and this Agreement does not preclude FHWA's access to and review of a Federal-aid project at any time and does not replace the provisions of Title 23, USC.

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

The Agreement is signed by both the NHDOT and FHWA Division Office to signify it as a Memorandum of Agreement regarding how the FAHP will be administered in New Hampshire.

STATE AND DIVISION ROLES AND RESPONSIBILITIES

This Agreement implements the oversight provisions in SAFETEA-LU and Section 106 of Title 23 and describes the stewardship and oversight responsibilities. This Agreement references a list of actions and procedures that are required or needed to administer the FAHP. These specific actions are broken out by functional area under the section of this Agreement titled “Delegated Program and Project Responsibilities”.

Through the implementation of the program efficiencies provided for in SAFETEA-LU and Section 106 of Title 23, FHWA and NHDOT have agreed, in general, that NHDOT will assume FHWA’s former responsibility for project level review and oversight for all Federal-aid projects with the exception of projects \$1 million or greater on the Interstate System and those projects of \$30 million or greater on the remainder of the NHS. FHWA will also retain oversight for NHS EIS projects, Bi-state projects ≥ \$1 million, ITS projects and major or unusual bridges. The FHWA and the NHDOT may agree at any time that select other NHS or non-NHS high priority projects or portions thereof will retain full FHWA oversight (See Table below).

FHWA Federal-aid Project Oversight Responsibilities For the State of New Hampshire				
Highway System Type	Project Type	FHWA Approval (Full Oversight)	NHDOT Approval (Delegated)	Standards
Interstate Projects	New/Reconstruction ≥ \$1 million	X		Meet or Exceed AASHTO
	New/Reconstruction < \$1 million		X	Meet or Exceed AASHTO
	3R & Other		X	Meet or Exceed AASHTO
	Turnpike ²		X	Meet or Exceed AASHTO
Non-Interstate/ NHS Projects	>\$30 million	X		Meet or Exceed AASHTO
	Major or unusual structures	X		
	EIS Projects ¹	X		
	All Others		X	Meet or Exceed AASHTO or FHWA Approved Standards
Non-NHS Projects	Major or unusual structures	X		Meet or Exceed AASHTO
	All Others		X	
Bi-State Projects	All projects > \$1M	X		Meet or Exceed AASHTO
ITS Projects	Major ITS Projects	X		FHWA Approved Standards and 23 CFR 940
	All Others	X		

*Note: FHWA and NHDOT may agree at any time that select other NHS or non-NHS high priority corridors or portions thereof will retain full FHWA oversight.

¹ These projects will be reviewed for full oversight for final design and construction pending completion of the Record of Decision.

² Interstate Turnpike Projects are defined as projects on Interstate signed toll sections of the NH Turnpike system, including concurrent sections of the Interstate System which are not built with federal funds. The NHDOT agrees to provide FHWA with a set of half sized plans of projects with construction estimates greater than \$1M (for informational purposes only). NHDOT agrees to notify FHWA if design exceptions are being contemplated for the 13 controlling geometric elements.

³ Including Federal-aid projects on the Turnpike System.

Furthermore, it is agreed that NHDOT and FHWA will meet at least once per year, preferably in the month of September to specifically review the current list of full oversight projects and select additional projects to be designated as full oversight in order to meet FHWA or NHDOT goals, objectives and identified risk areas. For example, this may involve the selection of locally administered projects or other types of projects not typically designated as full oversight to be designated as full oversight.

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

LOCAL PUBLIC AGENCY PROGRAM AND PROJECTS

Local Public Agency (LPA) administered Federal-aid projects are those which are, at a minimum, managed through design or construction or both, by an entity other than a State Transportation Agency (STA). In many cases, the LPA may also manage environmental studies and documentation, appraisal and acquisition of right-of-way, the bid and award process, and the billing process.

NHDOT retains its responsibilities under Federal law and regulations for delegated activities. NHDOT will provide the necessary processes, approvals, oversight, and review to ensure delegated projects receive adequate supervision and inspection, and are completed in conformance with approved plans and specifications and applicable federal requirements. As resources allow, NHDOT will offer training, advice, or other assistance as may be needed by a local public agency to aid it in successfully completing its Federal-aid project.

By written agreement with the local agency, NHDOT may delegate all or some project activities to local agencies, whether or not Federal-aid is used for the activity. Those activities include, but are not limited to:

- Environmental studies
- Surveying
- Procurement of consultant services
- Preliminary design
- Right-of-way acquisition
- Work by local forces or utility companies
- Preparation of plans, specifications and estimates
- Preparation of bid proposal package
- Advertisement for letting
- Contract administration
- Construction inspection

NHDOT is responsible under Federal law and regulations for all delegated activities. NHDOT will provide the necessary processes, approvals, oversight, and review to ensure that delegated projects receive adequate supervision and inspection, and that they are completed in conformance with approved plans and specifications and applicable Federal requirements. The following activities will not be delegated to local agencies:

- NEPA review and approval
- Design exception approval
- Sole source justification approval
- Plan, specification, and estimate approval
- Right-of-way certification
- DBE Goals
- Labor compliance enforcement
- Final inspection and acceptance

Title 23, U.S.C. does not recognize local entities as direct recipients of Federal-aid funds. Accordingly, local agencies cannot take the place of NHDOT in the context of the FAHP. NHDOT is responsible for all requirements of the Federal-aid program whether these requirements stem from Title 23 or non-Title 23 statutes.

The language of 23 USC 106, as amended by Section §1904 of SAFETEA-LU, is clear in its assignment of responsibility for locally administered projects to the States. This amendment to Section 106 specifically charges the States with the responsibility for determining that sub-recipients of Federal funds have adequate project delivery systems for projects approved under this section; and sufficient accounting controls to properly manage such Federal funds. NHDOT shall ensure that all applicable state and Federal requirements are met, and the work is accomplished efficiently. The same Section also states, that FHWA shall periodically review the monitoring of subrecipients by the States.

METHODS OF OVERSIGHT

FHWA will utilize various approaches to accomplish oversight activities, including: process reviews, sampling/testing of program and/or project compliance, project-by-project involvement, telephone contacts, participation in meetings, participation on task forces and committees, and similar types of activities. As appropriate, a variety of the following techniques may be used to provide stewardship and oversight to the FAHP:

Program Assessments – This technique includes joint risk assessments, self-assessments and program assessments. All of these tools are based on the common concepts of identifying strengths, weaknesses and opportunities and the identification and sharing of “best” practices to continually improve the program.

Program Reviews – These reviews are a thorough analysis of key program components and the processes employed by the NHDOT in managing the program. The reviews are conducted to 1) ensure compliance with Federal requirements; 2) identify opportunities for greater efficiencies and improvements to the program; and/or 3) identify exemplary practices. They can be referred to, or known as, program improvement reviews, program assessments, program accountability and results reviews, process reviews, program/product evaluations, or CPIS. NHDOT agrees that the product evaluation portion of these reviews may sample from all Federal-aid projects without regard to system or extent of FHWA oversight in this agreement.

Program Management – This includes the daily stewardship of Federal-aid programs, including project and program oversight and program assistance. Program management ensures Federal program requirements are met while proactively seeking opportunities to add value in the course of routine program approval actions, participating on joint task forces, joint committees and joint quality improvement teams, and aiding and assisting the NHDOT and other transportation stakeholders with answering questions on program issues. In monitoring the program, various techniques can be used to help determine which reviews are to be conducted including risk assessments, and pre-determined schedules for regular reviews of specific programs or components. The incorporation of the Division Office Financial Integrity Review and Evaluation (FIRE) Program may also be used as a means to assess the financial aspects of programs and projects.

The FHWA, NHDOT, or both may initiate process and program evaluations of the FAHP. All evaluations are intended to assess procedures and policies used in delivering the FAHP, along with identifying deficiencies and opportunities for improvement. FHWA will employ a risk management framework in consultation with the NHDOT to take into consideration available staffing and funding resources, as well as the NHDOT's Transportation needs. The NHDOT may work collaboratively with FHWA to identify risks and make resources available to address the risk assessment findings.

Process Reviews – This will be accomplished using a team approach. NHDOT will be fully involved with selecting review areas, developing review guidelines, conducting the actual reviews, and resolving issues resulting from the reviews. Within the FHWA, an individual having responsibilities associated with the particular review areas will generally be assigned as the team leader. FHWA Resource Center personnel will be made aware of the process review areas and may be offered an opportunity to participate. A report will be prepared for each review and the agreed upon resolution of all findings or recommendations will be documented. The report will also identify best practices both nationwide and as implemented in New Hampshire. An electronic copy of the final report will be submitted to the Resource Center for inclusion in the Resource Center Process and Program Review Library.

Review Team Leaders will have the responsibility to follow-up to ensure that review findings are satisfactorily resolved. When necessary, the status of resolution of findings will be discussed in periodic meetings held with the NHDOT. Team Leaders will maintain an updated status of all reviews performed by them and/or their Team Members and implementation actions will be documented in a "Status Report."

Financial Integrity Review and Evaluation Program – The New Hampshire Division has implemented the Financial Integrity Review and Evaluation (FIRE) program to ensure that Federal-aid funds are properly managed and effectively used in accordance with Federal policies, and that safeguards are in place to minimize fraud, waste, and abuse. In addition, the FIRE program ensures that proper internal controls are established and followed, with objectivity and a separation of financial duties in conducting the Agency's day-to-day operations. The Division's Financial Management Team is responsible for completing the FIRE activities on an annual basis, and they coordinate with NHDOT personnel and Division staff, as necessary.

The FIRE activities consist of the following:

- 1) Financial Quality Improvement Reviews
- 2) Improper Payment Reviews
- 3) Inactive Federal-aid projects Reviews
- 4) Single Audit Review
- 5) Other Federal Audit Findings Review (as applicable)
- 6) Annual Certification & Certification Validation
- 7) Administrative Reviews [Fund Authority; Purchase Orders & Administrative Contracts; Travel-Related Transactions; Credit Cards & Convenience Checks; Property Inventories & Capitalized Assets; and Collections & Sensitive/Controlled Documents].

NHDOT conducts various financial audits (involving respective program staff, as applicable) of external agencies receiving Federal-aid funds to ensure the proper use of these funds and that Federal and State requirements are met.

CONTROL DOCUMENTS/STANDARDS

In assuming certain program/project-level responsibilities under 23 USC 106 and SAFETEA-LU, the NHDOT agrees to comply with FHWA-approved standards in accordance with 23 CFR 625.4, 655.603 and related Federal regulations and policies. The FHWA Division Office may approve or accept NHDOT policies or standards that expand on, amplify, or amend these standards. These control documents include definitions not included elsewhere in this Agreement. Additional control documents will be added to this list as they are developed, jointly approved and implemented. The following are control documents for NH.

Applicable State Standards approved or accepted by FHWA for use on Federal-aid projects:

NHDOT Bridge Design Manual (pending update to include LRFD)
NHDOT Highway Design Manual
NHDOT Right-of-way Manual
NHDOT Drainage Manual
NHDOT Consultant Selection and Service Agreement Procedures
NHDOT Utility Accommodation Manual
NHDOT supplements to the MUTCD
NHDOT Standard Specifications for Road and Bridge Construction
NHDOT Supplemental Specifications
NHDOT Special Provisions
NHDOT Standard Plans for Road and Bridge Construction
NHDOT Work Zone Traffic Control Standard Plans
NHDOT Construction Manual
NHDOT Quality Assurance Program
Strategic Highway Safety Plan
Policy for the Permitting of Driveways and Other Accesses to the State Highway System
Work Zone Safety & Mobility Policy and Procedures
NHDOT Guidelines for Temporary Erosion and Sediment Control and Stormwater Management
The Transportation Enhancement & Congestion Mitigation and Air Quality Programs
– Manual for the Development of Projects
FHWA NH Division Policy for Implementation of ITS Projects (pending)
Policy on Flagger and Uniformed Officer Use in Work Zones (pending)

Operating Agreements:

Memorandum of Understanding, State of New Hampshire Department of Transportation and the US Department of Transportation Federal Highway Administration – Project Estimate Reviewing & Processing Procedures
Programmatic Categorical Exclusion Approvals
Programmatic Wetland Finding for Categorical Exclusions
Programmatic Floodplain Findings for Categorical Exclusions

Programmatic Section 4(f) Agreements
Guidance for Determining DeMinimis Impacts to Section 4(f) Resources
Programmatic Section 106 Process Agreement (Pending)
STIP Revision Procedures
List of Recurring Planning Activities and Statistical Reporting Requirements
Memorandum of Agreement Between the Federal Highway Administration Division
Offices in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island
and Vermont and the Federal Transit Administration, Region I
Supplemental STIP Procedures – Post-Authorization Revisions
Memorandum of Agreement Regarding New Hampshire's Transportation
Enhancement (TE) Program (Pending)
Memorandum of Agreement Regarding New Hampshire's Congestion Mitigation and
Air Quality (CMAQ) Program (Pending)
State of New Hampshire Memorandum of Understanding - GARVEE Funding (Pending)

PERFORMANCE/COMPLIANCE INDICATORS

This section of the Agreement identifies performance/compliance indicators that will be an integral part of the joint Federal/State stewardship/oversight agreement (See Table below). FHWA and the NHDOT jointly developed a broad set of performance/compliance indicators that both parties will use to gauge the effectiveness of the FAHP. These indicators should be used to track performance trends and to implement countermeasures/actions when the data is not moving in the desired direction. For example, countermeasures may include raising the attention level of the issue, instituting additional data and trend analysis, developing new processes or procedures, initiating additional targeted oversight activities, or implementing additional program review activities.

The NHDOT will generally provide the performance/compliance indicator data to the FHWA on at least a semi-annual basis (1/31 & 7/31), although some indicator data may be provided less frequently as agreed. The agreed upon performance/compliance indicators are identified in the table below:

Performance/Compliance Indicators for New Hampshire		
Program Area	Indicator	Description
Planning	STIP	% of construction projects (including Grouped Projects) listed in the baseline Statewide Transportation Improvement Program (STIP) which is advanced.
Environment	Environmental Document Tracking System	Number of EIS's & EA's being delayed. Delays will be measured against the baseline established for timeframes negotiated with applicable interested parties or scheduled dates for consultant contract deliverables.
Right-of-Way (R/W)	Clear R/W Certifications	% of Federal-aid construction projects with clear R/W certifications at time of construction authorization.
Design & Construction	Project Cost Growth	% of advertised projects > \$1million that are within 10% of the low bid amount at time of contract award. For all Federal-aid construction projects > \$1 million closed during the FY, calculate the aggregate percent of project cost change by subtracting the project cost at time of letting (low bid amount) from the project contract cost at the time of final project closeout and dividing that number by the project low bid amount.
	Construction Duration	% of Federal-aid construction projects with work completed by established contract completion date at time of award.
Safety & Operations	Roadway Departure Fatality Rate	Roadway departure fatalities per 100 million vehicle miles traveled.
	Highway Fatalities	# of highway related fatalities.
	Motorcycle Crash Fatalities	# of Motorcycle Crash Fatalities per year.
System Preservation	3R & Pavement Preservation Projects	% of Total Program dollars authorized for System Preservation type projects on the Interstate.
		Ride Comfort Index by roadway system

Performance/Compliance Indicators for New Hampshire

Program Area	Indicator	Description
Finance	Inactive Obligations	% of obligated but unexpended balance for all inactive projects compared to total annual apportionments.
Civil Rights	DBE Goal	% DBE goal met for all completed Federal-aid construction projects.
Stewardship/Oversight	CPIS Recommendations	# of Process Reviews completed.
		# of Process Review recommendations agreed upon for implementation. # of Process Review recommendations implemented.
Structures	Inspection Reporting	% of bridge inspection reports entered in state inventory in 90 days for state bridges and 180 days for non-state bridges
	Bridge Inspections	Number of past due bridge inspections at 8, 12, and 24 month frequencies.
	Red List Bridges	# of Red Listed bridges and % of deficient bridges.

DELEGATED PROGRAM AND PROJECT RESPONSIBILITIES

The method for selecting “full” oversight versus exempt “delegated” projects (i.e. state oversight) is discussed in the *State and Division Roles and Responsibilities* section of the Agreement. FHWA retains authority for the following actions on full oversight projects in addition to those noted under Division Office Responsibilities:

- a. Plan, Specifications & Estimates Approval
- b. Approval of Design Exceptions
- c. Contract Concurrence in Award
- d. Contract Change Order Approval
- e. Approval of Contract Claims Settlement
- f. Final Inspection
- g. Project Acceptance
- h. Consultant Agreement Approval
- i. Time Extensions
- j. Liquidated Damages or Penalties

On delegated projects, NHDOT is responsible for the above noted project approval actions. The determination of whether a project is full oversight or delegated is generally governed by the type of work, route designation (Interstate, NHS, and non-NHS), and cost; not by the category of Federal funds used. Delegated projects are not subject to further approvals by FHWA, unless it is jointly agreed with the NHDOT that FHWA should be involved. However, nothing prevents FHWA from reviewing any project. That decision may be based on the project having unique features, high-risk elements, unusual circumstances, or if the project is included in a program or process review. FHWA and NHDOT agree to work cooperatively as necessary to develop ad hoc arrangements to address responsibilities for new or evolving areas such as design-build, Public Private Partnership (PPP) agreements, and GARVEE projects. On delegated projects, a courtesy copy of all Contract Claims Settlements should be provided to FHWA within 2 weeks of the settlement.

NHDOT Responsibilities

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

For all delegated projects, the NHDOT shall assure that right-of-way approval, utility approval, environmental approvals, railroad approval and related activities, consultant agreement approval, design approval, design exceptions (NHS), PS&E approval, concurrence in award, and construction-related activities are performed in accordance with State policies, practices and standards, and in accordance with all requirements of Title 23, USC. For all projects receiving Federal-Aid funds, NHDOT will ensure adequate documentation is available to document such compliance and

retain such documentation until at least 3 years after the final voucher of the final contract or activity is approved. The termini for a "project" shall be as defined in the NEPA document.

When NHDOT assumes project approval responsibilities, it must have mechanisms in place to assure that all project actions will be carried out on FHWA's behalf, according to laws, regulations, and policies and be able to produce evidence of compliance at any time. This applies to both projects administered by NHDOT as well as those administered by Municipalities or other subrecipients. These mechanisms include the Project Agreement required under Section 106, Title 23, United States Code, processes, procedures, and program manuals. The NHDOT is responsible for determining that sub-recipients of Federal funds have adequate staffing, project delivery systems, and sufficient accounting control. The NHDOT is ultimately accountable to FHWA for ensuring compliance with Federal-aid requirements on such projects.

FHWA Division Office Responsibilities

For delegated projects, FHWA retains authority for the following actions and approvals:

- a. All Federal responsibilities for planning and programming oversight specified in 23 USC 134 and 135.
- b. Federal air quality conformity determinations required by the Clean Air Act and as amended.
- c. Obligation of funds.
- d. Waivers to Buy America requirements
- e. SEP-14/SEP-15 methods (FHWA HQ approval required for experimental contracting/project delivery methods).
- f. Civil Rights program approvals.
- g. Environmental approvals except those specifically delegated under Sections 6004 and 6005 of SAFETEA-LU. (23 use 326)
- h. Addition/Modification of access points on the Interstate System.
- i. Use of Interstate airspace for non-highway-related purposes.
- j. Hardship acquisition and protective buying.
- k. Modifications to project agreements.
- l. Final vouchers.

FHWA will periodically conduct activities to verify that NHDOT's implementation of the FAHP conforms to applicable laws, regulations and policies; that NHDOT is appropriately carrying out its roles and responsibilities accordingly; and that any subrecipients also meet these requirements. FHWA will evaluate the risks/benefits in the implementation of federally funded programs and establish activities and reviews to develop confidence that NHDOT's mechanisms and activities are sufficient.

To the extent possible, regardless of project approval and oversight responsibilities in this agreement, the FHWA agrees to provide technical assistance to NHDOT on any aspect of an eligible Title 23 project when requested.

Program Specifics/Exceptions

Inherently Low-Risk Oversight Projects on the Interstate System

Inherently low risk oversight projects include those that are routine and generally non-controversial in which the NHDOT has documented procedures and processes in place for ensuring compliance with Federal requirements. This section is only applicable to NHDOT and does not apply to those projects administered by, overseen by, or performed in cooperation with other agencies or entities (for example, NH Department of Public Works). These projects would not include complex or unique engineering features, would meet design standards, and would not substantially affect safety or traffic operations on the Interstate System. Complex projects that are classified as “major projects,” or involve new partners (public/private partnerships), or involve new, innovative contracting methods, or are viewed as high risk, are not inherently low risk oversight projects. For purposes of this agreement, inherently low risk oversight projects meet the conditions outlined above and generally include Interstate projects over \$1,000,000 and under \$10,000,000. In addition, the following types of projects are considered to be inherently low risk oversight projects:

1. Projects on the Interstate which do not affect traffic such as landscaping, rest area construction, park and ride facilities, fencing, and signing projects.
2. Improvements to safety appurtenances on existing mainlines and frontage roads. Work is limited to roadside safety, shoulder texturing, refurbishing existing signing and pavement markings, maintenance or replacement of existing impact attenuators, and installation, repair or replacement of longitudinal barrier. The roadway typical section is not changed. Design is in accordance with established department safety criteria and standards.
3. Projects on the Interstate, which involve culvert slip lining, drainage-related work, rumble strip installations, bridge painting, and roadside work that has minimal impact on traffic.

For the projects listed in the above paragraph, FHWA will grant its approval in advance. These advance approvals are not deemed to occur until after the completion of the National Environmental Policy Act (NEPA) process and the satisfaction of other related environmental laws and procedures. All ROW must be cleared (i.e. no exceptions or reserve dates) and a ROW certificate issued prior to advertisement of the construction project. It is understood that FHWA's approval of funds for these projects at either the preconstruction or construction phase constitutes a determination that the project in question is eligible for Federal-aid and that the appropriate Federal requirements have been met. Notwithstanding this determination, FHWA continues to retain overall responsibility for all aspects of Federal-aid programs and, as such, shall be granted full access to review any aspect or record of a Federal-aid project at any time.

For the projects listed above deemed to be inherently low-risk oversight projects on the Interstate system, FHWA's oversight will be satisfied by a risk management framework and process/program reviews.

Major Projects

Major projects as defined in SAFETEA-LU are divided into two categories: Total Cost from \$100 million to \$500 million and those with a total cost over \$500 million. The NEPA decision for each project defines the project scope, limits and cost for each category of project.

Projects Costing \$100 - \$500 million – For projects which NHDOT may wish to use Federal funds that have estimated total cost (in the year of expenditure dollars) between these thresholds, NHDOT must develop an Initial Financial Plan prior to commencing with construction, regardless of funding source, demonstrating how these projects will be funded. NHDOT must update the Initial Finance Plan annually and be able to provide the plan upon request at any time. These projects will be designated as FHWA oversight projects regardless of the system on which they occur. Any amount of federal funding used to reach the project threshold amount, such as federal earmarks would invoke the Initial Financial Plan requirement.

Projects Costing greater than \$500 million – For projects which NHDOT may wish to use Federal funds that have estimated total cost (in the year of expenditure dollars) greater than \$500 million, NHDOT must develop Project Management Plans (PMP) for each phase of the project. In addition, NHDOT must develop an Initial Financial Plan prior to commencing with construction and update the Initial Financial Plan annually and submit these plans to FHWA for approval. These projects will be designated as FHWA oversight projects regardless of the system on which they occur.

Preventive Maintenance and System Preservation

The following types of Federal-aid projects shall be excluded from the established dollar thresholds shown in the table entitled *FHWA Federal-aid Project Oversight Responsibilities for the State of New Hampshire* and, therefore, remain State Oversight.

NHS Preventive Maintenance

This type of project includes all NHS roadways, including Interstate Highways. Preventive Maintenance projects consist of work proposed to preserve, rather than improve, the structural integrity of the pavement and/or structure. Examples of preventive maintenance activities include ACP overlays (maximum 2" thick, excluding level-up); seal coats; cleaning and sealing joints and cracks; shoulder repair; scour countermeasures; cleaning and painting steel members to include application of other coatings; steel beam repair, repair or replacement of slopes

and/or riprap, restore drainage systems; cleaning and sealing bridge joints; microsurfacing; bridge deck protection; milling or bituminous level-up; pavement inlay; clean, lubricate and reset bearings; clean rebar/strand and patch structural concrete and seal cracks. Projects that increase the capacity of a facility or address major deficiencies along a facility are not considered preventive maintenance.

In general, all preventive maintenance projects should consider appropriate ways to maintain or enhance the current level of safety and accessibility. Isolated or obvious deficiencies should always be addressed. Safety enhancements such as the installation or upgrading of bridge and guardrails and end treatments, installation or replacement of traffic signs and pavement markings, removal or shielding of roadside obstacles, mitigation of edge drop offs, the addition of paved or stabilization of unpaved shoulders, or installation of milled rumble strips should be included in projects where they are determined to be a cost effective way to improve safety. To maintain preservation program flexibility, and in accordance with 23 U.S.C. 109(q), safety enhancements can be deferred and included within an operative safety management system or included in a future project in the STIP. In no way shall preventive maintenance type projects adversely impact the safety of the traveled way or its users.

NHS Safety Projects

This type of project includes improvements to safety appurtenances on existing mainlanes and frontage roads of all NHS roadways, including Interstate Highways. Work is limited to roadside safety, shoulder texturing, refurbishing existing signing and pavement markings, maintenance or replacement of existing impact attenuators, and installation, repair or replacement of longitudinal barrier. The roadway typical section is not changed. Design is in accordance with established department safety criteria and standards.

Research, Development, and Technology Program

The purpose of the program is to implement the provisions of 23 U.S.C. 307 for research, development and technology transfer programs and studies undertaken with FHWA planning and research funds.

State Planning and Research (SPR) Program

The main requirements under 23 CFR 420 are to create a SPR Work Program, monitor planning and research activities, submit performance and expenditure reports, conduct peer reviews, develop and maintain an FHWA approved research and development manual, and maintain program certification. The SPR Work Program consists of two parts: (1) Part I, Planning, which is prepared by NHDOT's Bureau of Planning and Community Assistance and (2) Part II, Research, which is prepared by NHDOT's Research Section of the Bureau of Materials and Research.

New Hampshire DOT prepares the Work Program biennially. FHWA provides pre-program guidance, draft review comments, if any, approves the Work Program, and authorizes SPR funds. FHWA monitors the work throughout the year using day-to-day involvement as appropriate. New Hampshire DOT submits Annual Accomplishments and Expenditure Reports to FHWA.

SPR Part I

Title 23 CFR, Part 420, Planning and Research Program Administration contains the policies and procedures for administering activities and studies undertaken by States and Metropolitan Planning Organizations (MPOs) funded through their respective Work Program or as separate projects not included in a Work Program.

SPR Part II

NHDOT is responsible for preparation and overall coordination of the Work Program in accordance with 23 CFR 420. The SPR program operates on a biennial state fiscal-year basis. NHDOT considers how to address research needs and may, at its option, 1) conduct research with in-house personnel or contracted researchers including university, federal or private organizations, 2) conduct research through a transportation pooled fund project wherein NHDOT or another state DOT or FHWA is the lead agency, or 3) participate in one of the regional or national cooperative transportation research programs.

FHWA exercises its oversight responsibilities through review and approval of the biennial SPR Work Program prior to approval actions, review of SPR Work Program amendments prior to approval, and ongoing participation of its technical specialists in study technical panels. As appropriate, FHWA personnel participate in peer exchanges.

The FHWA Division Research and Technology Specialist oversees the administrative aspects and coordinates with the Division Office specialists for technical aspects.

FHWA reviews and approves an updated version of the *NHDOT RD&T² Primer - Official Manual of the Research, Development and Technology Transfer Program* when there are significant changes in the management process or new Federal regulation/policy are enacted.

PLANNING: Statewide Transportation Improvement Program (STIP)

New Hampshire DOT prepares the STIP and STIP revisions including amendments and updates requiring FHWA approval. Sometimes FHWA approval will be provided jointly with the Federal Transit Administration (FTA) consistent with terms of approval identified in the current Memorandum of Agreement between the Federal Highway Administration Division Offices in Connecticut, Maine, Massachusetts, New

Hampshire, Rhode Island and Vermont and The Federal Transit Administration, Region I. STIP revisions will be processed and approved by FHWA (and FTA) as necessary consistent with current approved STIP Revision Procedures.

PLANNING: Work Programs

Title 23 CFR, Part 420, Planning and Research Program Administration contains the policies and procedures for administering activities and studies undertaken by States and Metropolitan Planning Organizations (MPOs) funded through their respective Work Program or as separate projects not included in a Work Program.

NHDOT agrees to coordinate the Interagency Consultation and Unified Planning Work Program (UPWP) Review Meeting processes with FHWA assistance:

- Interagency Consultation refers to a collaborative process between organizations (typically including MPOs, the State transportation agency, State air quality/ environmental agency, USDOT (FHWA/FTA), and US EPA) on key elements of transportation and air quality planning (40 CFR 93.105). Interagency consultation is required in all non-attainment and maintenance areas, formally integrated into a SIP and legally enforceable by a state court. In New Hampshire, the required interagency consultation occurs via a monthly meeting or conference call with all organizations consistent with the transportation conformity rule.
- MPO UPWPs and amendments are reviewed and approved by USDOT (FHWA/FTA) consistent with the current Memorandum of Agreement between the FHWA New Hampshire Division Office and FTA Region I. A UPWP is the MPO's transportation planning work program, including all activities supported by FHWA and FTA planning funds. The purpose of having UPWP Review Meetings with each New Hampshire MPO is to help enhance interagency coordination and communication, and as such, they are attended by staff from the MPO, NHDOT, FHWA and FTA. The meetings provide MPOs with an opportunity to highlight accomplishments from the current UPWP cycle, and present goals and activities that are planned for the upcoming UPWPs. Typically review of any comments on the draft UPWPs from the federal agencies or NHDOT occur at these meetings and this also provides FHWA and FTA an opportunity to discuss planning emphasis areas and answer questions. Issues discussed range from the more practical aspects of funding eligibility and billing to actual planning activities listed in the UPWP documents. As the UPWPs in New Hampshire are on a 2 year update cycle, the UPWP Review Meetings also occur on a 2 year cycle, 2 months before UPWP adoption, during the update process.

Local Technical Assistance Program (LTAP)

LTAP was created to provide training and technical assistance to rural, small urban, governments, and contractors that do work for local agencies on roads, bridges, and public transportation. The LTAP program is regulated under 23 U.S.C. 504(b). The Technology Transfer (T2) Center at the University of New Hampshire was established in 1986. T2 Center is the local entity that works with NHDOT and FHWA to administer LTAP to communities and organizations throughout the state.

The T2 Advisory Committee determines the direction for the New Hampshire LTAP. The Committee, consisting of UNH personnel, federal, state, and local government representatives, typically meets quarterly. The Quarterly Committee meetings review, modify, and approve the content of New Hampshire's annual local training and assistance plan and monitor progress, discuss opportunities and needs, develop plans for future programs and associated budget needs. New Hampshire's LTAP annual training schedule typically consists of more than ten courses. T2 Center coordinates with NHDOT and the FHWA to adapt an LTAP Management Plan based on a calendar year.

FHWA exercises its oversight responsibilities through the Planning and Environmental Team Leaders review and approval of the annual work plan prior to approval actions, review of work plan amendments prior to approval, participation in the T2 Steering Committee, and participation or planning of various LTAP-related activities.

NHDOT, T2 Center and FHWA coordinate to process amendments to LTAP. FHWA also coordinates with NHDOT for program development, eligibility and fiscal issues.

Experimental Features

The Research Section acts as coordinator to NHDOT units that incorporate experimental features and "problem solving" research into their projects. The Section also acts as a clearinghouse to disseminate the information learned from the use of experimental features. FHWA will work with NHDOT, as appropriate; to disseminate information and encourage the implementation of successfully used experimental features.

FHWA exercises oversight for experimental features through review of the project applications prior to approval actions.

The FHWA Division Research and Technology Specialist oversee the administrative aspects and coordinates with the Division Office specialists for technical aspects.

Safety Programs

The safety program area includes the Highway Safety Improvement Program (HSIP), the Strategic Highway Safety Plan (SHSP), and the Safe Routes to School (SRTS) Program.

FHWA exercises its oversight responsibilities for the HSIP program through the cooperative development with the NHDOT, review and approval of the State HSIP project selection and development criteria, including that for projects using High Risk Rural Road (HRRR) funds. FHWA NH Division will also review and take approval action on all HSIP annual reports including the HSIP Report, the Rail Highway Crossing Report, and the "5% Report".

FHWA will participate in the development and revisions to the SHSP. The FHWA NH Division will take acceptance action of the SHSP as being in compliance with all Federal laws, regulations and FHWA policies. The FHWA NH Division will work cooperatively with the NHDOT in implementing the accepted plan.

FHWA will participate in the development and approval of the NHDOT SRTS program policies, procedures and guidance and development actions. FHWA may also choose to participate in the local SRST project application process.

FHWA will maintain oversight of the various Federal-aid safety programs' implementation actions until such time as the NHDOT has developed and refined policies, procedures and guidance for these actions and FHWA and NHDOT agree that Federal oversight is no longer necessary.

ITS

FHWA exercises its oversight responsibility on ITS projects and project elements by assuming oversight of all ITS projects and project elements according to the FHWA NH Division Policy for Implementing ITS Projects, until such time that the NHDOT has established acceptable policies, procedures and/or guidance for meeting the requirements of 23 CFR 940 in regards to project development and implementation. At that time, FHWA and NHDOT will reevaluate the level of Federal project oversight that is necessary and desirable.

Emergency Relief Projects

Congress authorized in Title 23, United States Code, Section 125, a special program from the Highway Trust Fund for the repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause. This program, commonly referred to as the emergency relief or ER program, supplements the commitment of resources by States, their political subdivisions, or other Federal agencies to help pay for unusually high expenses resulting from extraordinary

conditions. See the Emergency Relief Manual (Federal-aid Highways) for more detail on the ER program.

1. The FHWA and NHDOT agree to each have a person/position (collateral duty) identified as the point of contact and emergency coordinator for ER events. Should an event occur, these individuals would be responsible for organizing and carrying through the appropriate agency responses and documentation.
2. The NHDOT will complete a reasonable survey of the damage (Damage Survey Summary Report) with associated estimates of cost within 4 to 6 weeks of the event. This may vary depending on the area of impact of the disaster.
3. NHDOT is responsible for identifying; inspecting, documenting and assuring that all Emergency Relief (ER) Projects comply with all Federal and State requirements. ER projects for permanent repairs are subject to the project oversight criteria found in this agreement and to the following two conditions:
 - a. Any “betterment” to be incorporated into the project, for which ER funding is requested, must receive prior FHWA approval.
 - b. With two weeks advance notice, the FHWA Division Office should be notified and invited to all final inspections on ER Projects.
 - b. The FHWA Division Office reserves the right to conduct independent final inspections on all ER projects.

Value Engineering (VE)

As a minimum, NHDOT will perform Value Engineering Analyses on Federal-aid projects estimated to cost \$25 million or more, and for Federal-aid bridge projects expected to exceed \$20 million. The FHWA Division Administrator – or NHDOT at its discretion - may designate other projects for which a Value Engineering Analysis is needed. In the case of a Federal-Aid design-build project meeting the above criteria, NHDOT shall fulfill the value engineering analysis requirement by performing a value engineering analysis prior to the release of the Request for Proposals document.

NHDOT will include a Value Engineering Change Proposal (VECP) clause in their construction contracts to encourage contractors to propose changes in contract requirements which will:

1. Reduce project cost(s) or improve value or service at no increase or a minor increase in cost, and
2. Provide New Hampshire with innovative contractor ideas or techniques to be considered when preparing plans, specifications, and estimates on future projects.

The net savings of each proposal will be shared with the contractor at a stated reasonable rate. Reimbursement for such share is eligible for pro-rata reimbursement with Federal-aid funds. NHDOT retains the right to accept or reject all proposals and

acquire all rights to use accepted VE proposals in current and future projects without restriction.

For maximum benefit, VE should be employed as early as possible in the project development/design process so valid VE recommendations can be implemented without delaying the progress of the project or causing significant rework of completed designs.

Obligation of Funds

FHWA has the sole authority to authorize Federal-aid projects since Authorization of a Federal-aid project is a contractual obligation of the Federal government under 23 U.S.C. 106. On all Federal-aid projects, with FHWA oversight or not, the New Hampshire Division will authorize the project by execution of the Project Agreement contained in the FHWA's Fiscal Management Information System (FMIS (current version)).

- Funds for all projects will be obligated on a project-by-project basis for all types and sizes of projects and for all classes of funds
- NHDOT will enter all necessary information into FMIS (current version).
- The requested amount for authorization of a specific phase of work must be at or below the cost thresholds established for STIP amendments in the STIP Revision Procedures. Refer to the STIP Revision Procedures for more information.
- NHDOT must include appropriate justification for additional funds being requested as part of the modification to existing project agreements. No additional Federal funds will be authorized without proper justification.
- No Preliminary Engineering costs should be charged or requested against the project once the project has gone to the Construction Engineering phase. Construction support items that occur solely during the Construction Engineering phase but outside of the Construction contract (review of hazardous materials, retaining walls, signals, etc.) should be coded as "CE." Eligible items of work that are not construction per se should be coded as "Other." For example: equipment purchases, maintenance contracts, printing of brochures, etc. The FHWA Finance Team may be consulted for further explanation.
- NHDOT will make every effort to close PE and ROW projects in FMIS within 90 days of the award of the construction project.
- NHDOT will make every effort to close accounts within 90 days of final voucher for the project.

Public Interest Finding

- A public interest finding of cost effectiveness (or a determination that an emergency exists) must be made as required by 23 U.S.C. 112, when construction by some method other than competitive bidding is to be used.
- A public interest finding of cost effectiveness must be made for any Federal-aid participating State force account work, except for routine minor work (≤\$20,000) performed by State forces (i.e. Bureau of Traffic signs, pavement markings, signals; minor eligible maintenance work).
- A public interest finding must be made for any Federal-aid participating proprietary products and State Furnished equipment or materials.

FHWA Final Inspection/Final Acceptance

Once a Federal-aid project is completed, it must have Final Acceptance by the FHWA before it may be closed. This process involves two actions:

- 1) Reporting final costs on a PR47 form by the Division Office engineer overseeing the project, and
- 2) "Closing" the account for the project in the financial system by the Division Office financial clerk.

NHDOT has been delegated the responsibility for final inspection and acceptance on NHDOT Oversight Projects, and is highly encouraged to utilize the basic form for completing Final Acceptance, FHWA Form 1446B – Final Acceptance Report.

FHWA will perform final inspections and final acceptance of FHWA Oversight Projects.

Contracting: Change Orders, Supplemental Agreements and Extra Work Orders

Pursuant to 23 CFR 1.9, Federal funds shall not be paid on account of any cost incurred prior to authorization by the Administrator to the State highway department to proceed with the project or part thereof involving such cost. As such, NHDOT will consult, coordinate and seek concurrence from FHWA on oversight projects when contemplating scope changes necessary during the engineering phase of a contract. Formal written approval for such changes during the engineering phase will be required prior to exceeding previously authorized contract amounts. This approval must be in writing and supported by the necessary documentation needed to make the approval. This provision applies to all types of contracts and work performed by State or others acting on behalf of the State regardless of the phase of the project.

Furthermore, in accordance with 23 CFR 635.109, when a major item of work is increased in excess of 125% or decreased below 75% of the original contract

quantity, an adjustment excluding anticipated profit will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. For purposes of the above, the FHWA and NHDOT agree to work together to come to agreement on a definition for "major item of work" by January 1, 2009, and will work with the Specification Committee for formal adoption.

No FHWA approval is required for Supplemental Agreements, Extra Work Orders, or Change Orders on projects exempted from FHWA oversight.

On projects with FHWA oversight, FHWA's prior verbal or written approval will be sought for contract changes (including item variances), supplemental agreements, and extra work orders for those actions or independent items in excess of \$10,000 (increase or decrease to the contract). Formal written approval by FHWA of the executed document is also required. In addition, if changes to the contract could potentially impact commitments made in the approved NEPA document, FHWA's approval should be obtained regardless of the dollar value. Informational copies of all Change Orders, Supplemental Agreements, and Extra Work Orders on projects with FHWA oversight will be transmitted to FHWA. Project personnel are encouraged to engage in open and timely communication throughout the life of the project, and in particular when such actions occur.

Comment [J1]: While not a direct quote from the regs, the rationale for this is similar to the comment above J3, and is consistent with other guidance to be consistent for both increases and decreases

On projects with FHWA oversight, the FHWA must formally approve in writing all change orders, supplemental agreements, and extra work orders prior to the work being performed (regardless of the dollar value) when the change has an impact on:

- a) The scope of the project
- b) Material modifications
- c) Adding a feature to the project
- d) Designer's intent, assumptions, calculations, etc.
- e) The original contract bid amount

For purposes of the above, the FHWA and NHDOT agree to work together to come to agreement on a definition for the five above listed changes by January 1, 2009.

Appropriate independent government analysis and review should occur on all actions to ensure a basis for comparison and determination of reasonableness is justified and documented. Actions on all projects should be reviewed by the appropriate NHDOT personnel and compared to average unit prices for similar work prior to approval.

Interstate Access

In accordance with Title 23, USC, Section 111, “the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary.” (Secretary refers to the Secretary of the US Department of Transportation.) Interstate Access Requests may take the form of either an Interstate Justification Report (IJR) or an Interstate Modification Report (IMR). An IJR is a request for approval to add a new interchange, new partial interchange, or new ramps to-from frontage roads on the Interstate System. An IMR is a request for approval to add or modify access points to an existing Interstate interchange. The NHDOT will prepare an Interstate Access Request for FHWA’s approval for the following actions:

1. New Interchange
2. Major modification of an existing interchange
 - a. Adding new ramp(s)
 - b. Removing ramp(s)
 - c. Changing the interchange configuration
 - d. Completing basic movements at a partial interchange
3. New partial interchanges or new ramps to-from frontage roads
4. Instituting locked gate access
5. Abandonment or closure of ramps or interchanges

An access point is defined as each entrance to or exit from the Interstate mainline including “locked gates.”

All Interstate Access Requests should demonstrate good design practice, constructability, and operational and safety acceptability. The formal request must come from the NHDOT with supporting documentation commensurate with the scope of the proposed access approval.

All Interstate Access Requests must address the eight policy points below:

1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design year traffic demands while at the same time providing the access intended by the proposal.
2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.
3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include analysis of sections of Interstate to

and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.

4. The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.
5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.
6. In areas where the potential exists for future multiple interchange additions; all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.
7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.
8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

Record Retention

NHDOT will retain project records to support all activities including the estimated cost of construction. Such records shall be available for review and retained for a period of 3 years after payment of the final project costs in accordance with 23 CFR 17.5. The scope of the project is defined in the Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion document (CE) and includes all work and phases associated with implementing the project. It is understood by NHDOT that multiple contracts developed for bidding by the Project Sponsor for contract administration purposes or due to funding shortfalls are generally not considered to be operationally independent and the records for all phases/contracts must be kept until 3 years after final voucher of the final phase/contract.

Designations

The oversight arrangement at the time of project authorization appropriate entries will be made in the designated fields of FMIS (current version).

Revisions

This Oversight Agreement is structured as a working document that can be modified to incorporate additional legislative, regulatory or policy requirements, and other processes or changes that impact the oversight responsibilities. The FHWA Division Administrator or the NHDOT Commissioner can initiate changes to the Oversight Agreement. Both parties, NHDOT and FHWA, must mutually agree upon all future changes.

Dispute Resolution

The FHWA New Hampshire Division and NHDOT work as partners in delivering the Federal-aid transportation program in New Hampshire. It is recognized, however, that there may be times when consensus cannot be achieved between the two agencies. Whenever these situations arise, the FHWA New Hampshire Division and NHDOT agree to work together to resolve disputes in a timely manner. In those cases where a solution cannot be identified, NHDOT and the FHWA New Hampshire Division may elevate the issue to the next level in the “chain of command.”

It has been agreed that only the NHDOT Commissioner or NHDOT Assistant Commissioner/ Chief Engineer will make NHDOT appeals to FHWA Headquarters’ offices.

Summary of Responsibilities by Program Area

The table below summarizes State versus Federal responsibilities for full oversight and delegated projects within the following categories:

- | | |
|------------------------|--------------|
| Programming | Environment |
| Financial Management | Right-of-Way |
| Preliminary Design | Construction |
| Final Design | Civil Rights |
| PS & E and Advertising | |

PROJECT ACTION RESPONSIBILITY

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
PROGRAMMING			
Verify project in STIP	FHWA	FHWA	FHWA
Verify eligibility for proposed funding category	FHWA	NHDOT	NHDOT
FINANCIAL MANAGEMENT			
Obligate funds	FHWA	FHWA	FHWA
Approve vouchers	FHWA	FHWA	FHWA
Approve Federal-aid Project Agreement (PR-2)	FHWA	FHWA	FHWA
PRELIMINARY DESIGN			
Rationale Report	NHDOT ⁽¹⁾	NHDOT ⁽¹⁾	NHDOT
Consultant Selection	NHDOT	NHDOT	NHDOT
Consultant Contract Approval (23 CFR 172.9)	FHWA	NHDOT	NHDOT
Approve exceptions to design standards for 13 controlling geometric elements [23 CFR 625.3(f)]	FHWA	NHDOT ⁽²⁾	NHDOT
Interstate System Access Change	FHWA	FHWA	NA
Engineering Report	NHDOT ⁽¹⁾	NHDOT	NHDOT
Value Engineering (23 CFR 627)	FHWA	NHDOT	NHDOT
Public interest finding with respect to airport-highway clearance (23 CFR 620.104)	FHWA	NHDOT ⁽³⁾	NA ⁽³⁾
FINAL DESIGN			
Approve preliminary plans for major and unusual structures [23 USC 109(a)]	FHWA	FHWA	FHWA
Approve retaining right-of-way encroachments	NHDOT	NHDOT	NHDOT
Consultant Contract Approval (23 CFR 172.9)	FHWA	NHDOT	NHDOT
Approve use of publicly owned equipment (23 CFR 635.106)	FHWA	NHDOT	NHDOT
Approve the use of proprietary products, processes (23 CFR 635.411)	FHWA	NHDOT	NHDOT
Approve Design Exceptions (23 CFR 625.3)	FHWA	NHDOT ⁽²⁾	NHDOT
Concur in use of publicly furnished materials (23 CFR 635.407)	FHWA	NHDOT	NHDOT

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
PS&E AND ADVERTISING			
Approve plans, specifications and estimates (23 CFR 630.205)	FHWA	NHDOT	NHDOT
Authorize advance construction and conversions (23 CFR 630.703 & 709)	FHWA	FHWA	FHWA
Authorize utility or railroad force account work (23 CFR 645.113 & 646.216)	FHWA	NHDOT	NHDOT
Approve utility and railroad agreements (23 CFR 645.113 & 646.216)	FHWA	NHDOT	NHDOT
Approve use of consultants by utility companies [23 CFR 645.109(b)]	FHWA	NHDOT	NHDOT
Approve exceptions to maximum railroad protective insurance limits (23 CFR 646.111)	NHDOT	NHDOT	NHDOT
Exempt bridge from Coast Guard permit requirements (23 CFR 650.805)	FHWA	NHDOT	NHDOT
Authorize advertising for bids (as part of the PS&E package submitted to FHWA) (23 CFR 635.112)	FHWA	FHWA	FHWA
Approve hiring of consultant to serve in a "management" role [23 CFR 172.5(a)]	FHWA	NHDOT	NHDOT
Consultant Contract Approval (23 CFR 172.9)	FHWA	NHDOT/FHWA ⁽⁵⁾	NHDOT
ENVIRONMENT			
All approval actions required by Federal laws and regulations	FHWA	FHWA	FHWA
RIGHT-OF-WAY			
Authorize Right-of-Way activities (23 CFR 712.204) (If a Federal-aid project)	FHWA	FHWA	FHWA
Accept Right-of-Way certificate as a condition of PS&E approval [23 CFR 635.309(b)(c)]	FHWA	NHDOT	NHDOT
Approve Hardship and Protective Buying [23 CFR 712.204(d)] (If Federal-aid project)	FHWA	FHWA	FHWA
Approve air space agreements [23 CFR 713.204]	FHWA	FHWA	NA ⁽³⁾
Approve non-highway use and occupancy [23 CFR 713.203B]	FHWA	FHWA	NA ⁽³⁾
Approve disposal of Federally funded right-of-way [23 CFR 713.305]	FHWA	FHWA	NA ⁽³⁾

APPROVAL ACTION	AGENCY RESPONSIBLE		
	NHS PROJECTS (Oversight by FHWA)	NHS PROJECTS (Delegated Projects)	Non-NHS PROJECTS
CONSTRUCTION			
Approve cost effectiveness and emergency determinations for contracts awarded by other than competitive bidding (23 CFR 635.104 & 204)	FHWA	NHDOT	NHDOT
Approve construction engineering by local agency (23 CFR 635.105)	FHWA	NHDOT	NHDOT
Approve advertising period less than three weeks (23 CFR 635.112)	FHWA	NHDOT	NHDOT
Approve addenda during advertising period (23 CFR 635.112)	FHWA	NHDOT	NHDOT
Concur in award of contract (23 CFR 635.114)	FHWA	NHDOT ⁽²⁾	NHDOT
Concur in rejection of all bids (23 CFR 635.114)	FHWA	NHDOT ⁽²⁾	NHDOT
Approve changes and extra work (23 CFR 635.120)	FHWA ⁽⁴⁾	NHDOT	NHDOT
Approve contract time extensions (23 CFR 635)	FHWA	NHDOT	NHDOT
Concur in use of mandatory borrow/disposal sites (23 CFR 635.407)	FHWA	NHDOT	NHDOT
Accept materials certification (23 CFR 637.207)	NHDOT	NHDOT	NHDOT
Concur in settlement of contract claims (23 CFR 635.124)	FHWA	NHDOT ⁽²⁾	NHDOT
Concur in termination of contracts (23 CFR 635.125)	FHWA	NHDOT ⁽²⁾	NHDOT
Approve liquidated damages rates (23 CFR 635.127)	FHWA	FHWA	NHDOT
Waive Buy America provisions (23 CFR 635.410)	FHWA	FHWA	FHWA
Final inspection/acceptance of completed work [23 USC 114(a) and 23 USC 121]	FHWA	NHDOT	NHDOT
CIVIL RIGHTS			
All approval actions required by Federal laws and regulations	FHWA	FHWA	FHWA
Footnotes:			
(1) Informational copy to FHWA for projects over \$2,000,000.			
(2) Informational copy to FHWA (record keeping and reporting).			
(3) Approvals, if any, will be those required by State laws, regulations, policies, and procedures. However, this does not relieve the NHDOT from responsibility for these areas, nor from compliance with non-Title 23 Federal requirements, which may remain applicable.			
(4) Over \$10,000 and in accordance with Subsection "Contracting: Change Orders, Supplemental Agreements and Extra Work Orders" of this document.			
(5) FHWA will be given the opportunity to review and approve consultant contracts prior to their award for special programs and high technology consultant contract approvals.			