

**FEDERAL-AID HIGHWAY PROGRAM
STEWARDSHIP AND OVERSIGHT AGREEMENT GUIDANCE:**

***DOCUMENTING STATE ASSUMPTION OF FEDERAL-AID PROJECT OVERSIGHT
AND FHWA PROGRAM OVERSIGHT MEASURES***

March 2014

I. Background and Introduction:

The Federal-aid Highway Program (FAHP) is a federally-assisted program of State-selected projects. The Federal Highway Administration (FHWA) and the State Departments of Transportation (State DOTs) have long worked as partners to deliver the FAHP in accordance with Federal requirements. In enacting Title 23, United States Code (U.S.C.), Section 106(c), as amended, Congress recognized the benefit of giving the State DOTs more authority to carry out project responsibilities traditionally handled by FHWA. Congress also recognized the importance of a risk-based approach to FHWA oversight of the FAHP, establishing requirements in Section 106(g) of Title 23, United States Code (Section 106). This “Stewardship and Oversight Agreement Guidance: *Documenting State Assumption of Federal-aid Project Oversight and FHWA Program Oversight Measures*” (S & O Agreement Guidance) provides the information the FHWA Division Offices and State DOTs need to develop implementing S&O Agreements tailored to the needs of each State and consistent with Federal requirements.

The scope of FHWA responsibilities, and the legal authority for State DOT assumption of FHWA responsibilities, developed over time. The Secretary of Transportation delegated responsibility to the Administrator of the FHWA for the FAHP under Title 23 and associated laws. (49 CFR 1.84 and 1.85) The following legislation further outlines FHWA’s responsibilities:

- Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991;
- Transportation Equity Act for the 21st Century (TEA-21) of 1998;
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and
- Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (P.L. 112-141).

In order to avoid confusion and potential legal issues¹, it is important to understand the types of actions State DOTs can assume from FHWA, and those the State DOTs cannot assume but may carry out on behalf of FHWA. Section 106 authorizes the State to assume specific project

¹ The U.S. DOT Office of Inspector General raised concerns about the scope of FHWA-State DOT Stewardship and Oversight Agreements in its report “Improvements to Stewardship and Oversight Agreements Are Needed to Enhance Federal-aid Highway Program Management” (Report MH-2013-01, October 1, 2012). One concern was that FHWA allowed States to assume project oversight responsibilities reserved to FHWA by law. This guidance is part of the FHWA initiative to address those concerns.

approvals. For projects that receive funding under Title 23, U.S.C., and are on the National Highway System (NHS) including projects on the Interstate System, the State may assume the responsibilities of the Secretary under Title 23 for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate. (23 U.S.C. 106(c)(1)) For projects under Title 23, U.S.C. that are not on the NHS, the State shall assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspections unless the State determines that such assumption is not appropriate. (23 U.S.C. 106(c)(2))

For all other project activities which do not fall within the specific project approvals listed in Section 106 or are not otherwise authorized by law, the FHWA may authorize a State DOT to perform work needed to reach the FHWA decision point, or to implement FHWA's decision. However, such decisions themselves are reserved to FHWA. This applies to eligibility and participation issues, as well as other types of activities. In those cases where the FHWA is the final decision-maker, the agency has discretion to decide how to make its determinations and how to provide oversight for State work on FHWA's behalf. The FHWA may decide whether to review the State's work on each affected project, or to assess the State's work as part of FHWA's program-level oversight activities.

This guidance document includes a list of project approvals State DOTs may assume from FHWA (see Project Action Responsibility Matrix in Appendix A). The FHWA Chief Counsel has determined existing law provides legal authority for State performance of the activities identified as available for State assumption in Appendix A. The list is likely to evolve over time, as FHWA and the State DOTs identify, with concurrence of the FHWA Chief Counsel, additional decisions and actions that States can assume under the authority of Section 106(c) or other laws.

Section 106(c)(3) requires FHWA and State DOTs to enter into an agreement relating to the extent to which the State DOT assumes project responsibilities. The S&O Agreements developed in accordance with this S & O Agreement Guidance will include information on specific project approvals and related responsibilities, and provide the requirements for FHWA oversight of the FAHP (Oversight Program), as required by 23 U.S.C. 106(g).

The S&O Agreement should be written to clearly document responsibilities of the FHWA and State DOT, ensuring adequate oversight for validating the obligation and expenditure of Federal funds. On the broader program level, the S&O Agreement should acknowledge that FHWA and the State DOT are responsible for the effective and efficient use of Federal funds. Updates to an S&O Agreement should be considered periodically on a case-by-case basis or when:

- Significant new legislation, Executive orders, or other initiatives affecting the relationship or responsibilities of one or both parties to the S&O Agreement occurs.
- Leadership, or leadership direction, changes at the State DOT or FHWA.
- Priorities shift as a result of audits, public perception, or changes in staffing at either the State DOT or the Federal-aid Division Office.

II. Stewardship and Oversight (S&O) Agreement – Assumption of Responsibilities (23 U.S.C. 106(c)):

The State DOT *may assume* the FHWA's Title 23 responsibilities for design; plans, specifications, and estimates (PS&E); contract awards; and inspections, with respect to *Federal-aid projects on the NHS* if both the *State DOT* and *FHWA* determine that assumption of responsibilities is appropriate. (23 U.S.C. 106(c)(1)) State DOTs may not assume responsibilities for high risk category Interstate projects. (See section III of this guidance.)

The State DOT *shall assume* the FHWA's Title 23 responsibilities for design, PS&E, contract awards, and inspections with respect to *Federal-aid projects off the NHS (non-NHS)* unless the *State DOT* determines that assumption of responsibilities is not appropriate. (23 U.S.C. 106(c)(2))

The Division and State DOT must enter into an agreement relating to the extent to which the State DOT assumes project responsibilities. This S&O Agreement is required by 23 U.S.C. 106(c)(3). State DOT assumption of FHWA's Title 23 responsibilities covers six areas: design; plans, specifications, and estimates; contract awards; and inspections.

Design includes preliminary engineering, engineering, and design-related services directly relating to the construction of a FAHP-funded project. Activities include engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services.

The PS&E package includes geometric standards, drawings, specifications, project estimates, and certifications relating to completion of right-of-way acquisition and relocation, utility work, and railroad work. Contract awards include procurement of professional and other consultant and construction-related services to include advertising, evaluating, and awarding contracts. Inspections include general contract administration, material testing and quality assurance, review, and inspections of Federal-aid contracts, as well as final inspection/acceptance.

Further, the Division and State DOT must reach an agreement on approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(i) and any successor regulation in 23 CFR Part 710.

An S&O Agreement must describe specific project-level actions and assign responsibilities for those actions to the Division and State DOT. The Division will document the State DOT assumption of FHWA's Title 23 responsibilities in the Project Responsibility Action Matrix (Attachment A to the S&O Agreement Template). Using the S&O Agreement Template and Matrix will ensure consistency with legal authorities and help expedite legal sufficiency review of the S&O Agreement (see Section V of this S & O Agreement Guidance).

The assumption of the Secretary's responsibilities by State DOT for designs, PS&E, contract awards, and inspections does not include any responsibilities with respect to planning,

conformity, environment, or the authorization of Federal funds. The following is a list of the most frequently-occurring approvals and related responsibilities that may not be assumed by the State DOT:

- Civil Rights Program approvals;
- Environmental approvals, except those specifically assumed under other agreements. (23 U.S.C. 326 and 327; programmatic categorical exclusion agreements);
- Federal air quality conformity determinations required by the Clean Air Act;
- Progress payments and final vouchers;
- Approval of federally-funded hardship acquisition, protective buying, and 23 U.S.C. 108(d) early acquisitions;
- Project agreements and modifications to project agreements and obligation of funds (including advance construction);
- Planning and programming pursuant to 23 USC 134 and 135;
- Special Experimental Projects (SEP-14 and SEP-15);
- Use of Interstate airspace for non-highway-related purposes;
- Any Federal agency approval or determination under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, and implementing regulations in 49 CFR Part 24;
- Waivers to Buy America requirements;
- Approval of Federal participation under 23 CFR 1.9(b);
- Provide pre-approval for preventive maintenance project (until FHWA concurs with State DOT procedures);
- Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations, or other contributions applied to a project;
- Functional replacement of property;
- Approval of a time extension for preliminary engineering projects beyond the 10-year limit, in the event that actual construction or acquisition of right-of-way for a highway project has not commenced;
- Approval of a time extension for right of way projects beyond the 20-year limit, in the event that actual construction of a road on the right-of-way is not undertaken;
- Determine need for Coast Guard Permit;
- Equal Employment Opportunity (EEO) Contract Compliance Review Approval;
- Training Special Provision – Approval of New Project Training Programs; and
- Any other activity not specifically identified in Project Action Responsibility Matrix unless otherwise approved by the FHWA, including the Office of Chief Counsel.

The “Projects of Division Interest (PoDI)/Projects of Corporate Interest (PoCI) Guidance” outlines the FHWA’s risk-based approach to identifying projects that will receive stewardship and oversight by Divisions. The PoDIs are projects where FHWA has made a risk-based decision to retain project approval actions or to conduct stewardship and oversight activities for the project as provided for in 23 USC 106. For the latest version of this document, the Division should refer to <http://www.fhwa.dot.gov/federalaid/stewardship/>.

Project-specific plans will be developed for PoDIs, or groups of PoDIs, and will be used to document projects risks and FHWA's stewardship and oversight strategies that will be implemented in response to the risks. This response could include retaining certain project approval actions. For example, the S&O Agreement could document that the State DOT assumes project approval responsibility for all projects on and off the NHS, unless the project is designated as a PoDI, or unless some other approval authority is specifically provided for within the S&O Agreement. As such, S&O Agreements should provide that project-specific plans will be developed for PoDIs under which FHWA may provide enhanced oversight activities, including FHWA exercising approval actions that State DOTs otherwise have assumed under the S&O Agreement.

The S&O Agreement does not modify the FHWA's non-Title 23 program approval responsibilities, such as approvals required under the Clean Air Act; the National Environmental Policy Act of 1969 (NEPA) and other related environmental laws and statutes; the Uniform Act; and the Civil Rights Act of 1964 and related statutes, unless expressly permitted under Federal law, such as the assumption of environmental responsibilities under 23 U.S.C. 326 and 327.

III. High Risk Categories:

Section 106 provides that the Secretary shall not assign any responsibilities to a State for projects on the Interstate System if the Secretary determines the project to be in a high risk category. Under 23 U.S.C. 106(c)(4)(B), the Secretary may define high risk categories on a national basis, State-by-State basis, or national and State-by-State basis.

The Office of Program Administration (HIPA-10) coordinates establishment of national high risk categories. Presently, the only national high risk category is for high risk grantees, pursuant to 49 CFR 18.12. A State that has been designated as a high risk grantee may not assume any of the Secretary's responsibilities for design, PS&E, contract awards, and project inspections for any project on the Interstate System.

Divisions also may establish high risk categories for projects on the Interstate System on a State-by-State basis. Divisions may establish high risk categories that are specific to a particular Interstate project or group of Interstate projects or a particular project delivery method being employed on Interstate projects. Divisions must receive concurrence from HIPA-10 prior to designating any high risk category.

The FHWA expects the designation of high risk categories to be very rare. Where a project on the Interstate System is determined to be in a high risk category, it shall be documented in accordance with the FHWA PoDI/ PoCI Interest Guide. Any changes to high risk designations must be documented with amendments to the S&O Agreement.

IV. Program Oversight (23 U.S.C. 106(g)):

The FHWA and the State DOT will structure Program Oversight activities based on national and State-specific risks and needs. The Oversight Program in a particular State may involve program-wide, programmatic, and project-specific activities. The FHWA's oversight activities

will include assessing whether the State DOT adequately carried out the approvals and related activities assumed by the State DOT under the S&O Agreement. This FHWA assessment may be done on a project-specific or program-level basis. The S&O Agreement should document the key processes and internal controls in place for ensuring the effectiveness and efficiency of operations, the reliability of financial data, and compliance with applicable laws, regulations, and policy.

Congress has defined that, at a minimum, the FAHP shall be responsive to all areas relating to financial integrity and project delivery. Ensuring financial integrity requires ongoing evaluations, monitoring, and reporting regarding the adequacy of systems of internal accounting and administrative control. The FHWA has implemented the Financial Integrity Review and Evaluation (FIRE) program (FHWA Order 4560.1B) to ensure that FAHP funds are properly managed and effectively used in accordance with laws, regulations, and Federal policies and that safeguards are in place to minimize fraud, waste, and abuse. In addition, the FIRE program is a key agency tool for assessing whether proper internal controls are established and maintained in conducting day-to-day operations.

Sound internal controls should be an integral part of performance-based management and play a significant role in managing priorities and directing limited stewardship and oversight resources. Key oversight activities such as program reviews, State DOT internal audits, as well as the Single Audit of the State DOT and sub-recipients help to ensure sound financial management and successful achievement of program objectives.

The FHWA also must periodically evaluate the State DOT's practices for estimating project costs, awarding contracts, and reducing project costs. (23 U.S.C. 106(g)(2)(B)) Under Section 106(g)(3), the FHWA is required to conduct an annual review of State DOT project delivery systems, including one or more of the project delivery phases that occur from project inception to completion.

In addition, Section 106(g)(4) requires the State DOT to be responsible for determining that sub-recipients of Federal funds under Title 23 have (1) adequate project delivery systems for projects approved under this section; and (2) sufficient accounting controls to properly manage such Federal funds. The FHWA periodically reviews the monitoring of sub-recipients by the State DOTs.

The S&O Agreement also should include, in general terms, how the Division and/or State DOT will assess the risks inherent with the program and funds management and how that assessment will be used to align resources to address those risks appropriately. The FHWA will employ a risk management framework to evaluate program areas and balance risk with staffing resources, available funding, and transportation needs. The FHWA may work collaboratively with the State DOT to identify and analyze risks and develop pertinent risk response strategies.

Techniques that a State DOT may use to identify and analyze risks and develop response strategies include:

- Program assessments;
- FIRE reviews;
- Program reviews;
- Certification reviews;
- Recurring or periodic reviews such as the Compliance Assessment Program (CAP); and
- Inspections of project elements or phases.

The State DOT, FHWA, or both may initiate program assessments and program reviews of the FAHP. All assessments and reviews are intended to evaluate procedures and policies used in delivering the FAHP, along with identifying deficiencies and opportunities for improvement. The Division also should perform reviews to evaluate compliance with the established procedures and policies.

To determine which reviews should be conducted, the Divisions can employ such techniques as risk assessments and pre-determined schedules for regular reviews of specific programs or components. The reviews can be conducted by individuals or teams and can be performed using FHWA staff, State DOT staff, or staff from other stakeholder groups and organizations. The incorporation of the Division's FIRE program and the annual FIRE certifications should be referenced as the means to assess the financial management and internal control reviews of the programs and projects.

Program reviews are one of FHWA's tools for providing oversight for assumed projects. If appropriate, program reviews should include a financial component designed to the level and adequacy of internal controls within the program intended to detect and/or prevent possible fraud, waste, or abuse of Federal-aid funds. The financial component includes documenting those internal controls and reviewing the adequacy of the documentation to support the appropriate expenditure of Federal-aid funds.

Project inspections are a valuable tool for determining adherence to applicable laws, regulations, and policies, and should also be employed by the State DOT in its oversight of locally administered projects.

Regardless of the technique used, all reviews and inspections should be documented by a report.

1. Oversight Responsibility

The FHWA maintains overall oversight responsibility for the FAHP and is ultimately responsible for ensuring financial integrity and compliance with applicable Federal laws and regulations. The FHWA remains accountable to the public and Congress for the FAHP and ensuring that it is delivered in an efficient and effective manner regardless of the approval authority or responsibility assumed by the State DOT. Though a State DOT may assume FHWA's responsibilities as described in 23 U.S.C. 106(c), nothing in Section 106 affects or discharges any responsibility of FHWA to oversee the implementation of Federal requirements. The

FHWA is responsible for all aspects of Federal-aid programs and nothing shall preclude FHWA's access to and review of a State DOT's delivery of a Federal-aid project at any time. Divisions retain the right and authority to review all aspects of the State DOT's delivery of the FAHP.

2. Projects For Which Responsibilities Are Assumed By The State DOT (State Assumed/State Administered)

The Project Action Responsibility Matrix, attached to the S&O Agreement, should clearly document the roles and responsibilities of the State DOT on NHS projects for which the State DOT has assumed Section 106(c) responsibilities for design, PS&E, contract awards, and project inspections. Project actions for which a State DOT assumes defined approval authority in Attachment A are not subject to further approvals by FHWA on those specific items, unless the State DOT requests FHWA be involved or FHWA requests involvement for a particular project.

For non-NHS projects, the S&O Agreement should clearly provide that the State DOT assumes FHWA's specific Section 106(c) responsibilities unless the State DOT determines that such assumption is not appropriate. The S&O Agreement also should clearly provide that the State DOT is to exercise the Secretary's responsibilities on these projects with the expectation that its actions will be based on Federal laws. The S&O Agreement shall provide that pursuant to 23 U.S.C. 109(o), non-NHS projects shall be designed and constructed in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards. Documentation should be provided in the project files if the State requests FHWA maintain 106(c) responsibilities on a non-NHS project.

The S&O Agreement should describe the State DOT's approval and oversight responsibilities on all assumed elements of the program and, at a minimum, contain the following concepts:

- Except as discussed below, for all projects or programs, the State DOT will comply with Title 23 and all applicable non-Title 23, U.S.C., Federal-aid program requirements, such as metropolitan and statewide planning, environment, procurement of engineering and design related service contracts, Title VI of the Civil Rights Act, participation by disadvantaged business enterprises, prevailing wage rates, and right-of-way.
- Pursuant to 23 U.S.C. 109(o), non-NHS projects shall be designed and constructed in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

The S&O Agreement should address how assumed authorities will be carried out by the State DOT. It should include the reports, reviews, data, staffing information, performance assurances, etc., that will provide documented assurance that the State DOT is properly carrying out its responsibilities in accordance with this S&O Agreement, and how this information will be shared with the Division. The S&O Agreement also can include business service standards that would provide an expectation for how long it would take to provide reports, reviews, and findings along with the expectation to implement corrective actions when necessary.

3. Projects For Which Responsibilities Are Assumed By The State DOT For Projects Locally Administered (State Assumed/Locally Administered)

The S&O Agreement should document the role of the State DOT in communicating, educating, and validating the Federal requirements with local public agencies (LPAs). Federal law requires that the State DOT be responsible for the oversight for these projects and will exercise similar judgments as FHWA based on Federal laws, regulations, and FHWA policies. Additionally, the S&O Agreement should make clear that the State DOT remains responsible for the sub-recipients' compliance with Federal requirements.

The S&O Agreement will document how a State DOT carries out its responsibilities for a sub-recipient oversight program (23 U.S.C. 106(g)(4)), sub-grantee awareness of grant requirements (49 CFR Part 18.37), management of grants and sub-grants (49 CFR 18.40), and pass through entity responsibilities (OMB Circular A-133§ .400 (d)).

The S&O Agreement should document how the State DOT determines that a sub-recipient of Federal funds is able to satisfy the following:

- The sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage projects. The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation State DOT officials maintain.
- The sub-recipient is staffed and equipped to perform work satisfactorily and cost effectively, and that adequate staffing and supervision exists to manage the Federal project(s).
- Projects receive adequate inspection to ensure they are completed in conformance with approved plans and specifications.

The S&O Agreement should document the State DOT's process to ensure that when LPA's elect to use consultants for engineering services, the LPA, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project.

The S&O Agreement should document the State DOT's approval and oversight process on LPA-administered projects, or identify where that information is found in a manual or control document approved by FHWA (such as an LPA manual). The State DOT will demonstrate in the S&O Agreement how project actions will be administered in accordance with Federal laws and regulations and approved on sub-recipient administered projects. At a minimum, oversight should cover these areas:

- Consultant selection and management;
- Environment;
- Design;
- Civil Rights;
- Financial management including audits and indirect cost allocation plans;
- Right-of-way;
- Construction monitoring, including Quality Control/Quality Assurance (QC/QA); and

- Contract administration.

(For contract administration, the S&O Agreement must include the State DOT's responsibility to approve a sub-recipient to pursue a contract procurement method other than competitive bidding.)

The S&O Agreement should describe how the State DOT documents its oversight of LPA-administered projects and how the results of this oversight are shared with the Division. It is recommended that at a minimum, the State DOT and Division exchange information on an annual basis. Specific stewardship/oversight indicators should be identified and agreed upon in the S&O Agreement. The S&O Agreement also can include business service standards that would provide an expectation for how long it would take to provide reports, reviews, and findings along with the expectation that corrective actions would be implemented when necessary.

The S&O Agreement also should include State DOT procedures for reporting requirements for certain sub-recipients in accordance with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282, as amended by P.L. 110-252).

4. FHWA Oversight of Projects of Division Interest

A significant change in the FHWA oversight program's project level S&O of the FAHP from previous years is the transition from "full-oversight" of projects to risk-based project stewardship and oversight. This approach optimizes the successful delivery of projects and assures compliance with Federal requirements. Risk-Based Project Stewardship and Oversight has three main components:

- 1) Project approval actions,
- 2) Data-driven compliance assurance, i.e., the CAP, and
- 3) Risk-based stewardship and oversight of PoDIs.

Divisions are required to develop and document criteria for identifying potential PoDIs, assessing the resulting projects, and making the final selection of PoDIs. The PoDIs are those projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives. Project selection should be risk-based, and the stewardship and oversight activities should be directed toward addressing the risks. This may require retaining certain project approval actions or directing stewardship or oversight activities to a specific phase or element of the project.

Division resources are a critical factor in determining those projects for which the FHWA will retain responsibilities. Retaining responsibilities is one tool for addressing oversight priorities and a delicate balance exists between the number of priorities addressed and the oversight technique(s) employed. It is intended that the project identification and the actual oversight activities will be risk-based.

For projects identified as PoDIs, the Division will develop project-level plans to clearly address the risks associated with the projects. The PoDIs may be either State DOT-administered projects or LPA-administered projects.

For Major Projects greater than \$500 million, the S&O Agreement should describe the relative roles and responsibilities of the parties to include the initial and annual finance plan submissions, cost estimate reviews, and the project management plan. (23 U.S.C. 106(h)) Based on the complexity of the project, as well as the State DOT's and Division's experience in administering Major Projects, a Division may consider risk in determining the level of oversight to be carried out by FHWA for such projects. For projects between \$100 million and \$500 million, the Project Action Responsibility Matrix should address the role and responsibility of the State DOT to develop a finance plan. (23 U.S.C. 106(i))

Major Projects that have been approved for Operational Independence and Non-Concurrent Construction (per FHWA Major Project Guidance) will be treated in accordance with the new dollar amounts of each approved phase. Major Projects that were exempted prior to the issuance of the Operational Independence and Non-Concurrent Construction Guidance should be documented in accordance with the FHWA PoDI/PoCI Guide and administered in accordance with the Project Management Plan for Federal Major Projects over \$500 million (23 U.S.C. 106(h)).

Oversight of projects using Federal innovative financing instruments such as TIFIA loans, GARVEE loans, or the establishment of a State DOT Infrastructure Bank with Federal-aid funds should be discussed in the S&O Agreement and/or in accordance with the FHWA PoDI/PoCI Guide.

5. Program Action Contact Information:

The S&O Agreement should also identify all relevant program actions along with State DOT and Division contacts responsible for such actions. The primary office of contact should be listed, rather than an individual or the approving official.

For information, attachment B to the S&O Agreement Template provides a Program Responsibility matrix. For the latest version that can be incorporated into the agreement or referenced as a control document, the Division should refer to <http://www.fhwa.dot.gov/federalaid/stewardship/>.

6. Manuals and Operating Agreement

The S&O Agreement should reference applicable control documents and explain the State DOT's agreement to comply with specific control standards in compliance with current laws, regulations, and other standards governing the FAHP (these documents need not be included within the body of this agreement). Divisions will approve State DOT policies or standards that expand on, amplify, or amend these standards. Attachment C to the S&O Agreement Template contains a sample listing of manuals and agreements. On non-NHS projects, certain laws, regulations and standards are determined by the State pursuant to 23 U.S.C. 109(o). In addition,

project-specific approvals (use of force account, proprietary products, etc.) should be documented in the specific project files.

7. Stewardship and Oversight Indicators

The State DOT and the Division should consider incorporating stewardship/oversight indicators as an integral part of joint Federal/State stewardship/oversight activities in the S&O Agreement. If the State DOT and Division so choose, they should work together to develop these indicators. Such indicators can help to provide documented evidence that State DOT assumption of responsibility is functioning appropriately. For example, the State DOT and Division may elect to use indicators addressing project cost escalation, level of oversight, or project delivery or for comparing assumed and PoDI projects. It is envisioned that a State DOT and Division will jointly examine and discuss such data on at least an annual basis to effectively manage and improve program delivery.

These joint stewardship/oversight indicators provide insights for improving both Federal and State DOT processes. For example, a Division's "response time for PS&E approval" may be a useful measure to assess FHWA's processes. Correspondingly, a measure that tracks "the number of significant PS&E review comments requiring resolution" may help a State DOT focus on improving its PS&E delivery process. Indicators should be risk-based and continue to evolve to meet the needs of all involved parties. It is envisioned that the State DOT and FHWA will exchange and discuss stewardship/oversight indicator data on a predetermined schedule.

The indicators should be used to set targets, track trends, and implement countermeasures/actions when the data is not moving in the desired target direction. For example, countermeasures may include raising the attention level of the issue, instituting additional data and trend analysis, developing new processes or procedures, initiating additional targeted stewardship/oversight activities, or implementing additional program review activities. A number of State DOTs and Division have implemented periodic meetings where trend data is jointly assessed and process improvement strategies are jointly initiated.

It is important to note that these "stewardship/oversight indicators" are distinct from the more comprehensive "performance measures" required under MAP-21 that are being developed through the rulemaking process.

Examples of Effective Stewardship/Oversight Indicators	
Area of Focus	Indicator
Selection and Management of Consultants	<ul style="list-style-type: none"> Maintenance of schedule Maintenance of budget Construction change orders attributed to design work by consultant Percentage of consultant design work versus total design budget
Civil Rights	<ul style="list-style-type: none"> DBE project goal versus actual payment Cumulative progress toward statewide DBE goal Number of ADA formal complaints Number of formal Title VI complaints EEO compliance reviews completed
Financial Management	<ul style="list-style-type: none"> Use of obligation authority vs. time of year Advanced Construction authorization balances as a percentage of annual apportionment Accrued-unbilled balances Inactive Obligations as a percentage of annual apportionment Number of inactive projects
Bridge/NBIS	<ul style="list-style-type: none"> Percent of routine inspections on schedule The number of bridges behind on Underwater Inspections. The number of bridges behind on Fracture Critical Inspections The number of inspection reports not turned in, or not turned in in a timely manner
Planning	<ul style="list-style-type: none"> Percentage of STIP advanced Cost growth during planning stage Percentage of areas in air quality conformity Percentage of local projects bid versus planned
Environment	<ul style="list-style-type: none"> Average time to complete EISs, EAs and CEs Percentage of projects meeting anticipated completion date Wetland replacement ratios
Design	<ul style="list-style-type: none"> Cost growth during design Construction change orders attributed to design Schedule growth Significant PS&E comments requiring resolution Value engineering savings FHWA response time for PS&E approval
ROW	<ul style="list-style-type: none"> Percentage of projects with conditional ROW certifications Number of ROW appeals filed each year Percentage of parcels acquired through condemnation
Safety	<ul style="list-style-type: none"> Percent of Highway Safety Improvement Program funds obligated Number of completed Roadway Safety Audits Improvement in assessment scores associated with implementation of proven safety countermeasures
Operations	<ul style="list-style-type: none"> Average incident clearance time Number of incidents lasting over 90 minutes Duration of peak period (AM and PM for key routes) Improvement in Work Zone Self-Assessment scores
Contract Administration	<ul style="list-style-type: none"> Number of bids per project (by region, type of work, contract size, level of competition, etc.) Bids and award dispersion by contractor
Construction	<ul style="list-style-type: none"> Cost growth during construction Schedule growth during construction Value engineering savings – construction Expenditures determined to be ineligible for Federal participation Percentage of projects completed on time

V. Legal Sufficiency Review

All new or revised S&O Agreements will require a legal sufficiency review by the Office of Chief Counsel (HCC) before execution by the Division Administrator. Before requesting a legal review, the Division Administrator should ensure that Division staff has thoroughly reviewed the S&O Agreement and that it has been developed in accordance with this guidance. Divisions are encouraged to use the S&O Agreement Template and the Project Action Responsibility Matrix, and consult with HIPA-10 and with HCC on questions that arise while developing their S&O Agreements

The purpose of the legal sufficiency review is to ensure that the responsibilities being assumed by State DOTs do not exceed statutory authority. The template in Appendix A to this S & O Agreement Guidance includes a list identifying the FHWA approval actions and related responsibilities that States may assume as of March 28, 2014. The Chief Counsel has concurred with that list, and must concur with any revisions to the list before those revisions are applied in a State. While HCC counsel will be available to assist Divisions as needed in the development of the Stewardship and Oversight Agreements, HCC legal sufficiency reviews will be limited to two areas:

1. Whether approvals and related responsibilities assumed by the State are consistent with the list in Appendix A (as it is in effect on the date of the legal sufficiency review); and
2. Whether the S&O Agreement contains the necessary provisions, described in Section IV(3) of this S & O Agreement Guidance, on State responsibility when an LPA carries out State-assumed approvals or related responsibilities.

The legal sufficiency review will not address other aspects of the S&O Agreements.

When submitting a draft S&O Agreement for legal review, Divisions must submit their S&O Agreements to the HIPA Official Mailbox (FHWA), HIPAOfficialMailbox.fhwa@dot.gov. HIPA-10 staff will then coordinate with HCC on the legal sufficiency review. Division Administrators should also notify their respective Directors of Field Services of such action. To facilitate the legal sufficiency review, when the Division submits the draft S&O Agreement to HIPA, the Division should highlight any deviations from the S&O Agreement Template's Project Action Responsibility Matrix (Attachment A to the Template in Appendix A). The Division should include a written explanation for the deviation and a citation to the legal authority allowing the proposed assumption of responsibility.

HIPA-10 will either return to the Division the S&O Agreement with comments or send it to HCC to initiate the legal sufficiency review. The legal sufficiency review typically will be completed within 30 calendar days unless the S&O Agreement includes deviations from the S&O Agreement Template's Project Action Responsibility Matrix or fails to include the necessary language on LPA projects. When HCC determines an S&O Agreement is legally sufficient, it will notify the Division Administrator via email, with a copy to HIPA-10. Once notified that HCC has completed the legal sufficiency review, the State DOT chief executive officer and the Division Administrator may sign the S&O Agreement.

VI. Execution of the Agreement:

Divisions are responsible for developing S&O Agreements with their respective State DOTs. Until an S&O Agreement has been developed and executed by both the State DOT and Division, the Division remains responsible for all Federal-aid highway project review and approvals pertaining to design, PS&E, contract awards, and project inspections, in accordance with the State/Division current S&O Agreement.

To ensure that S&O Agreements can be signed expeditiously, the Division should encourage the State DOT to complete any necessary legal review by State DOT counsel before the agreement is submitted for FHWA legal sufficiency review.

Superseded

Appendices

Appendix A: Stewardship and Oversight Agreement Template with the following attachments:

Attachment A: Master Project Action Responsibility Matrix

Attachment B: Program Action Responsibility Matrix

Attachment C. FHWA/STATE DOT Manuals and Operating Agreements

Appendix B: Glossary

Appendix C: Project Oversight Designation Requirement in the Fiscal Management Information System (FMIS)

Superseded

Appendix A: Stewardship and Oversight Agreement Template

STEWARDSHIP AND OVERSIGHT AGREEMENT
ON PROJECT ASSUMPTION AND PROGRAM OVERSIGHT
BY AND BETWEEN
FEDERAL HIGHWAY ADMINISTRATION, _____ DIVISION
AND THE
STATE OF _____ DEPARTMENT OF TRANSPORTATION
(Drafting Note: Amend as needed to reflect legal name of the State agency.)

SECTION I. BACKGROUND AND INTRODUCTION

The Federal-aid Highway Program (FAHP) is a federally-assisted program of State-selected projects. The Federal Highway Administration (FHWA) and the State Departments of Transportation have long worked as partners to deliver the FAHP in accordance with Federal requirements. In enacting 23 U.S.C. 106(c), as amended, Congress recognized the need to give the States more authority to carry out project responsibilities traditionally handled by FHWA. Congress also recognized the importance of a risk-based approach to FHWA oversight of the FAHP, establishing requirements in 23 U.S.C. 106(g). This Stewardship and Oversight (S&O) Agreement sets forth the agreement between the FHWA and the State of _____ Department of Transportation (State DOT) on the roles and responsibilities of the FHWA and the State DOT with respect to Title 23 project approvals and related responsibilities, and FAHP oversight activities.

The scope of FHWA responsibilities, and the legal authority for State DOT assumption of FHWA responsibilities, developed over time. The U.S. Secretary of Transportation delegated responsibility to the Administrator of the FHWA for the FAHP under Title 23 of the United States Code, and associated laws. (49 CFR 1.84 and 1.85) The following legislation further outlines FHWA's responsibilities:

- Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991;
- Transportation Equity Act for the 21st Century (TEA-21) of 1998;
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and
- Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (P.L. 112-141).

The FHWA may not assign or delegate its decision-making authority to a State Department of Transportation unless authorized by law. Section 106 of Title 23, United States Code (Section 106), authorizes the State to assume specific project approvals. For projects that receive funding under Title 23, U.S.C., and are on the National Highway System (NHS) including projects on the Interstate System, the State may assume the responsibilities of the Secretary of the U.S. Department of Transportation under Title 23 for design, plans, specifications, estimates, contract

awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate. (23 U.S.C. 106(c)(1)) For projects under Title 23, U.S.C. that are not on the NHS, the State shall assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspections unless the State determines that such assumption is not appropriate. (23 U.S.C. 106(c)(2))

For all other project activities which do not fall within the specific project approvals listed in Section 106 or are not otherwise authorized by law, the FHWA may authorize a State DOT to perform work needed to reach the FHWA decision point, or to implement FHWA's decision. However such decisions themselves are reserved to FHWA.

The authority given to the State DOT under Section 106(c)(1) and (2) is limited to specific project approvals listed herein. Nothing listed herein is intended to include assumption of FHWA's decision-making authority regarding Title 23, U.S.C. eligibility or Federal-aid participation determinations. The FHWA always must make the final eligibility and participation decisions for the Federal-aid Highway Program.

Section 106(c)(3) requires FHWA and the State DOT to enter into an agreement relating to the extent to which the State DOT assumes project responsibilities. This Stewardship and Oversight Agreement (S&O Agreement), includes information on specific project approvals and related responsibilities, and provides the requirements for FHWA oversight of the FAHP (Oversight Program), as required by 23 U.S.C. 106(g).

SECTION II. INTENT AND PURPOSE OF S&O AGREEMENT

The intent and purpose of this S&O Agreement is to document the roles and responsibilities of the FHWA's [INSERT STATE] Division Office (FHWA or Division) and [INSERT NAME OF THE STATE DOT] (State DOT) with respect to project approvals and related responsibilities, and to document the methods of oversight which will be used to efficiently and effectively deliver the FAHP.

SECTION III. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS ON THE NATIONAL HIGHWAY SYSTEM

(Information Note: Assumption of Responsibilities on the NHS are discussed in Section II of the S&O Agreement Guidance.)

- A. The State DOT *may assume* the FHWA's Title 23 responsibilities for design; plans, specifications, and estimates (PS&E); contract awards; and inspections, with respect to *Federal-aid projects on the National Highway System (NHS)* if both the *State DOT* and *FHWA* determine that assumption of responsibilities is appropriate.
- B. Approvals and related activities for which the State DOT has assumed responsibilities as shown in Attachment A will apply program wide unless project specific actions for which the Division will carry out the approval or related responsibilities are documented in accordance with the FHWA Project of Division Interest/Project of Corporate Interest Guide (FHWA PoDI/PoCI Guide) located at <http://www.fhwa.dot.gov/federalaid/stewardship/>.

- C. The State DOT may not assume responsibilities for Interstate projects that are in high risk categories. (23 U.S.C. 106(c)(1))
(Information Note: High Risk Categories are discussed in Section III of the S&O Agreement Guidance.)
- D. The State DOT is to exercise any and all assumptions of the Secretary responsibilities for Federal-aid projects on the NHS in accordance with Federal laws, regulations and policies.

SECTION IV. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS OFF THE NATIONAL HIGHWAY SYSTEM

(Information Note: Assumption of responsibilities off the NHS is discussed in Section II of the S&O Agreement Guidance.)

- A. The State DOT *shall assume* the FHWA’s Title 23 responsibilities for design, PS&Es, contract awards, and inspections, with respect to *Federal-aid projects off the NHS (non-NHS)* unless the *State DOT* determines that assumption of responsibilities is not appropriate. (23 U.S.C. 106(c)(2))
- B. Except as provided in 23 U.S.C.109(o), the State DOT is to exercise the Secretary’s approvals and related responsibilities on these projects in accordance with Federal laws.
- C. The State DOT, in its discretion, may request FHWA carry out one or more non-NHS approvals or related responsibilities listed as “State” in Attachment A on a program-wide basis. For a project specific request, the State may request FHWA carry out any approval or related responsibility listed in Attachment A off the NHS. Such project-specific requests shall be documented in accordance with the FHWA PoDI/PoCI Guide.
- D. Pursuant to 23 U.S.C. 109(o), non-NHS projects shall be designed and constructed in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR LOCALLY ADMINISTERED PROJECTS

(Information Note: LPAs are discussed in Section II of the S&O Agreement Guidance.)

The State DOT may permit local public agencies (LPAs) to carry out the State DOT’s assumed responsibilities on locally administered projects. The State DOT is responsible for LPA compliance with all applicable Federal laws and requirements.

SECTION VI. AREAS OF ASSUMPTION UNDER 23 U.S.C. 106(c)

State DOT assumption of responsibilities under 23 U.S.C. 106(c) covers six areas: design; plans, specifications, and estimates (PS&E); contract awards; and inspections, which are defined as follows:

- A. Design includes preliminary engineering, engineering, and design-related services directly relating to the construction of a FAHP-funded project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services.
- B. PS&E represent the actions and approvals required before authorization of construction. The PS&E package includes geometric standards, drawings, specifications project estimates, and certifications relating to completion of right-of-way acquisition and relocation, utility work, and railroad work.
- C. Contract awards include procurement of professional and other consultant services and construction-related services to include advertising, evaluating, and awarding contracts.
- D. Inspections include general contract administration, material testing and quality assurance, review, and inspections of Federal-aid contracts as well as final inspection/acceptance.
- E. Approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(i) and any successor regulation in 23 CFR Part 710.

SECTION VII. FEDERAL APPROVALS AND RELATED RESPONSIBILITIES THAT MAY NOT BE ASSUMED BY THE STATE DOT

(Information Note: Responsibilities that may not be assumed are discussed in Section II of the S&O Agreement Guidance.)

- A. Any approval or related responsibility not listed in Attachment A cannot be assumed by the State without prior concurrence by FHWA Headquarters. The following is a list of the most frequently-occurring approvals and related responsibilities that may not be assumed by the State DOT:
 - Civil Rights Program approvals;
 - Environmental approvals, except those specifically assumed under other agreements. (23 U.S.C. 326 and 327; programmatic categorical exclusion agreements);
 - Federal air quality conformity determinations required by the Clean Air Act;
 - Progress payments and final vouchers;
 - Approval of federally-funded hardship acquisition, protective buying, and 23 U.S.C. 108(d) early acquisition;

- Project agreements and modifications to project agreements and obligation of funds (including advance construction);
 - Planning and programming pursuant to 23 U.S.C. 134 and 135;
 - Special Experimental Projects (SEP-14 and SEP-15);
 - Use of Interstate airspace for non-highway-related purposes;
 - Any Federal agency approval or determination under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, and implementing regulations in 49 CFR Part 24;
 - Waivers to Buy America requirements;
 - Approval of Federal participation under 23 CFR 1.9(b);
 - Provide pre-approval for preventive maintenance project (until FHWA concurs with State DOT procedures);
 - Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations, or other contributions applied to a project;
 - Functional replacement of property;
 - Approval of a time extension for preliminary engineering projects beyond the 10-year limit, in the event that actual construction or acquisition of right-of-way for a highway project has not commenced;
 - Approval of a time extension beyond the 20-year limit for right of way projects, in the event that actual construction of a road on the right-of-way is not undertaken;
 - Determine need for Coast Guard Permit;
 - Equal Employment Opportunity (EEO) Contract Compliance Review Approval;
 - Training Special Provision – Approval of New Project Training Programs; and
 - Any other approval or activity not specifically identified in Attachment A unless otherwise approved by the FHWA, including the Office of Chief Counsel.
- B. For all projects and programs, the State DOT will comply with Title 23 and all applicable non-Title 23, U.S.C. Federal-aid program requirements, such as metropolitan and statewide planning; environment; procurement of engineering and design related service contracts (except as provided in 23 U.S.C. 109(o)); Civil Rights including Title VI of the *Civil Rights Act*, and participation by Disadvantaged Business Enterprises; prevailing wage rates; and acquisition of right-of-way, etc.
- C. This Agreement does not modify the FHWA’s non-Title 23 program approval and related responsibilities, such as approvals required under the Clean Air Act; National Environmental Policy Act, Executive Order on Environmental Justice (E.O. 12898), and other related environmental laws and statutes; the Uniform Act; and the Civil Rights Act of 1964 and related statutes.

SECTION VIII. PROJECT ACTION RESPONSIBILITY MATRIX

Attachment A, Project Action Responsibility Matrix, to this S&O Agreement identifies FAHP project approvals and related responsibilities. The Matrix specifies which approvals and related responsibilities are assumed by the State under 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as approvals and related responsibilities reserved to FHWA.

SECTION IX. HIGH RISK CATEGORIES

(Information Note: High risk categories are discussed in Section III of the S&O Agreement Guidance.)

- A. In 23 U.S.C. 106(c), Congress directs that the Secretary shall not assign any approvals or related responsibilities for projects on the Interstate System if the Secretary determines the project to be in a high risk category. Under 23 U.S.C. 106(c)(4)(8), the Secretary may define high risk categories on a national basis, State-by-State basis, or national and State-by-State basis.
- B. The Division has determined there are no high risk categories.

Alternative Provision:

FHWA has established the following high risk categories:

(Information Note: Determination of High Risk Categories must be coordinated with the Office of Program Administration)

[LIST HIGH RISK CATEGORY OR CATEGORIES]

SECTION X. FHWA OVERSIGHT PROGRAM UNDER 23 U.S.C. 106(g)

(Information Note: The FHWA Oversight Program is discussed in Section IV of the S&O Agreement Guidance.)

- A. In 23 U.S.C. 106(g), Congress directs that the Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP. This program includes FHWA oversight of the State's processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the State under 23 U.S.C. 106(c). Congress defines that, at a minimum, the oversight program shall be responsive to all areas relating to financial integrity and project delivery.
- B. The FHWA shall perform annual reviews that address elements of the State DOT's financial management system in accordance with 23 U.S.C. 106(g)(2)(A). FHWA will periodically review the State DOT's monitoring of subrecipients pursuant to 23 U.S.C. 106(g)(4)(B).
- C. The FHWA shall perform annual reviews that address elements of the project delivery systems of the State DOT, which elements include one or more activities that are involved in the life cycle of project from conception to completion of the project. The FHWA will also evaluate the practices of the State DOT for estimating project costs, awarding contracts, and reducing costs. 23 U.S.C. 106(g)(2) and (3).

- D. To carry out the requirements of 23 U.S.C. 106(g), the FHWA will employ a risk management framework to evaluate financial integrity and project delivery, and balance risk with staffing resources, available funding, and the State's transportation needs. The FHWA may work collaboratively with the State DOT to assess the risks inherent with the FAHP and funds management, and how that assessment will be used to align resources to develop appropriate risk response strategies

Techniques the Division and State DOT may use to identify and analyze risks and develop response strategies include the following:

- Program Assessments;
- FIRE Reviews;
- Program Reviews;
- Certification Reviews;
- Recurring or periodic reviews such as the Compliance Assessment Program (CAP); and
- Inspections of project elements or phases.

These techniques will be carried out in a manner consistent with applicable Division Standard Operating Procedures or other control documents relating to program assessments, FIRE, program reviews, CAP, etc.

The following techniques and processes will be used to carry out the requirements of 23 U.S.C. 106(g):

[DOCUMENT THE OVERSIGHT TECHNIQUES AND PROCESSES HERE, INCLUDING THE ROLES AND RESPONSIBILITIES OF THE STATE DOT AND DIVISION, OR REFERENCE OTHER CONTROL DOCUMENTS, STANDARD OPERATING PROCEDURES, ETC.]

- E. Program Responsibility Matrix

Attachment B to this S&O Agreement is the Program Responsibility Matrix that identifies all relevant FHWA program actions, and Division and State DOT program contact offices.

(Drafting Note: Refer to <http://www.fhwa.dot.gov/federalaid/stewardship/> for the latest updated version which can be incorporated into the agreement as Attachment B. The Matrix should only be modified to reflect the Division and State DOT contacts.)

- F. Manuals and Operating Agreements

State DOT manuals, agreements and other control documents that have been approved for use on Federal-aid projects are listed in Attachment C to this S&O Agreement.

- G. Stewardship and Oversight Indicators

The Division and State DOT may jointly establish Stewardship and Oversight Indicators (Indicators). The Indicators should set targets, track trends, and implement countermeasures and actions when the data is moving away from the desired target direction. Indicators can provide documented evidence that the State DOT assumption of responsibilities is functioning appropriately. Stewardship and Oversight Indicators should be reviewed on an annual basis. If utilized, the Indicators shall be incorporated by reference to this S&O Agreement.

(Drafting Note: The State DOT and the Division should consider incorporating stewardship/oversight indicators as an integral part of joint Federal/State stewardship/oversight activities in the S&O Agreement.)

SECTION XI. STATE DOT OVERSIGHT AND REPORTING REQUIREMENTS

(Information Note: The FHWA Oversight Program is discussed in Section IV of the S&O Agreement Guidance.)

A. State DOT Oversight and Reporting Requirements

(Drafting Note: The S&O Agreement should address how assumed authorities will be carried out by the State DOT. It should include the reports, reviews, data, staffing information, performance assurances, etc., that will provide documented assurance that the State DOT is properly carrying out its responsibilities in accordance with this S&O Agreement, and how this information will be shared with the Division. The S&O Agreement also can include business service standards that would provide an expectation for how long it would take to provide reports, reviews, and findings along with the expectation to implement corrective actions when necessary.)

The State DOT is responsible for demonstrating to the FHWA how it is carrying out its responsibilities in accordance with this S&O Agreement. In order to fulfill this responsibility, the State DOT will [LIST ACTIVITIES, CONTROL DOCUMENTS, ETC.]

B. State DOT Oversight of Locally Administered Projects

(Drafting Note: The S&O Agreement will document the role of the State DOT in communicating, educating, and validating the Federal requirements with LPAs.)

- B.1. State DOT's are required to provide adequate oversight of subrecipients including oversight of any assumed responsibilities the State DOT delegates to a LPA.
- B.2. Pursuant to 23 U.S.C. 106(g)(4), the State DOT shall be responsible for determining that subrecipients of Federal funds have adequate project

delivery systems for locally administered projects and sufficient accounting controls to properly manage such Federal-aid funds.

- B.3. The State DOT acknowledges that it is responsible for sub-grantee awareness of Federal grant requirements (49 CFR Part 18.37), management of grants and sub-grants (49 CFR 18.40), and pass through entity responsibilities (OMB Circular A-133§ .400 (d)). The State DOT shall carry out these responsibilities using the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation State officials maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.4. The State DOT shall assess whether a sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage projects, using the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.5. The State DOT shall assess whether a sub-recipient is staffed and equipped to perform work satisfactorily and cost effectively, and that adequate staffing and supervision exists to manage the Federal project(s), by using the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.6. The State DOT shall assess whether sub-recipient projects receive adequate inspection to ensure they are completed in conformance with approved plans and specifications, by using the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.7. The State DOT shall ensure that when LPAs elect to use consultants for engineering services, the LPA, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project. The State DOT's process to ensure compliance with this requirement is documented by the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.8. The State DOT procedures for reporting requirements for certain sub-recipients in accordance with the Federal Funding Accountability and Transparency Act of 2006, PL 109-282 (as amended by PL 110-252) are documented by the following actions, programs, and processes:

(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.9. The State DOT shall ensure that project actions will be administered in accordance with all applicable Federal laws and regulations. The State DOT will use the following process on required approvals on sub-recipient projects [DESCRIBE PROCESS OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL], and approved on sub-recipient administered projects.

Drafting Note: The activities for ensuring compliance, at a minimum, oversight should cover these areas:

- a. Consultant selection and management;
- b. Environment;

- c. Design;
- d. Civil Rights;
- e. Financial management including audits and indirect cost allocation plans;
- f. Right-of-way;
- g. Construction monitoring, including Quality Control/Quality Assurance (QC/QA); and
- h. Contract administration including the State DOT's responsibility to approve a sub-recipient to pursue a contract procurement method other than competitive bidding.

B.10. The State DOT shall document its oversight activities for LPA-administered projects and findings, and how it will share this information with the FHWA. **[DESCRIBE THE STATE DOT ACTIONS, PROGRAMS, AND PROCESSES OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL].**

SECTION XII. IMPLEMENTATION AND AMENDMENTS

- A. This S&O Agreement will take effect as of the effective date of the signature of the FHWA **[INSERT STATE]** Division Administrator, who shall sign this S&O Agreement last.
- B. The Division and State DOT agree that updates to this Agreement will be considered periodically on a case-by-case basis or when:
 - Significant new legislation, Executive orders, or other initiatives affecting the relationship or responsibilities of one or both parties to the S&O Agreement occurs;
 - Leadership, or leadership direction, changes at the State DOT or FHWA; or
 - Priorities shift as a result of audits, public perception, or changes in staffing at either the State DOT or Division Office.
- C. The Division and State DOT agree that changes may occur to the contents of the Attachments to this S&O Agreement and documents incorporated by reference into the S&O Agreement. Except as provided in paragraph XII.D., changes to the contents of these documents will not require the Division and State DOT to amend this S&O Agreement. The effective date of any revisions to one of these documents shall be clearly visible in the header of the document. This Agreement and any revised document shall be posted on the Division's S&O Agreement internet site within five (5) business days of the effective date.
- D. Any changes to the high risk categories must be documented by an amendment to this S&O Agreement.

EXECUTION BY THE FHWA [INSERT STATE] DIVISION OFFICE

Executed this _____ day of _____, 201__.

Signature

[INSERT NAME]
Division Administrator

Superseded

EXECUTION BY THE [INSERT NAME OF STATE DOT]

Executed this _____ day of _____, 201__.

Signature

[INSERT NAME]

Title

Superseded

**ATTACHMENT A
PROJECT ACTION RESPONSIBILITY MATRIX
(As of March 28, 2014)**

(Drafting Note: The Division should refer to <http://www.fhwa.dot.gov/federalaid/stewardship/> for the latest updated version of this table.)

The following matrix identifies Federal-aid highway program (FAHP) project approvals and related responsibilities. The matrix specifies which ones are subject to State assumption under the provisions of 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as those which are reserved to FHWA.

In the column entitled “Projects on the NHS” if an item is marked “FHWA or State,” it means the State may assume the specified approval and related responsibilities if the Division determines the assumption is appropriate. For projects on the NHS, the FHWA may retain any approval or related action in any box marked “FHWA or State” as deemed appropriate by the Division. If the FHWA retains any approval or related action in any box marked “FHWA or State”, the project is a PoDI, and will require a PoDI plan.

For the column marked “Projects off the NHS”, the State must assume all items marked “State” unless the State determines the assumption of a particular item by the State is not appropriate.

Except as expressly stated in notes to the matrix below, the State cannot assume any item marked only as “FHWA” in either column. Any item marked only “FHWA” is reserved to FHWA because it is outside the scope of 23 U.S.C. 106(c), or otherwise is reserved to FHWA by law. The State DOT is responsible for ensuring all individual elements of the project are eligible for FAHP funding, but all final eligibility and participation determinations are retained by FHWA. While FHWA may not delegate decision-making authority to a State unless authorized by law, FHWA may authorize a State DOT to perform work needed to reach the decision point, or to implement the decision.

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
PROGRAMMING (All phases)		

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
Ensure project in Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)	STATE	STATE
Identify proposed funding category	STATE(1)	STATE(1)
FINANCIAL MANAGMENT (All phases)		
Obligate funds/approve Federal-aid project agreement (project authorizations) (Note: this action cannot be assumed by State)	FHWA	FHWA
Authorize current bill (Note: this action cannot be assumed by State)	FHWA	FHWA
Review and Accept Financial Plan and Annual Updates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Review Cost Estimates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Develop Financial Plan for Federal Projects between \$100 million and \$500 million. [23 U.S.C. 106(i)]	STATE	STATE
ENVIRONMENT (All phases)		
All EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations. (Note: this action	FHWA(2)	FHWA(2)

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
cannot be assumed by STATE except under 23 U.S.C. 327)		
Categorical Exclusion approval actions (Note this action cannot be assumed by the State except through an assignment under 23 U.S.C. 326 or 327, or through a programmatic agreement pursuant to Section 1318(d) of MAP-21)	FHWA(2)	FHWA(2)
PRELIMINARY DESIGN (Design Phase)		
Consultant Contract Selection	FHWA or STATE (3)	STATE (3)
Sole source Consultant Contract Selection	FHWA or STATE (3)	STATE (3)
Approve hiring of consultant to serve in a “management” role (Note: this action cannot be assumed by State) [23 CFR 172.9]	FHWA	FHWA
Approve consultant agreements and agreement revisions (Federal non-Major Projects) [23 CFR 172.9]	FHWA or STATE	STATE
Approve consultant agreements and agreement revisions on Federal Major Projects [23 CFR 172.9] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve exceptions to design standards [23 CFR 625.3(f)]	FHWA or STATE	STATE
Interstate System Access Change [23 USC 111] (Note: this action cannot be assumed by State)	FHWA	N/A
Interstate System Access Justification Report [23 USC 111] (Note: action may be assumed by	FHWA or STATE	N/A

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
State pursuant to 23 USC 111(e))		
Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	FHWA or STATE	STATE
Approve Project Management Plan for Federal Major Projects over \$500 million [23 USC 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve innovative and Public-Private Partnership projects in accordance with SEP-14 and SEP-15 (Note: this action cannot be assumed by State)	FHWA	FHWA
Provide pre-approval for preventive maintenance project (until FHWA concurs with STATE procedures) (Note: this action cannot be assumed by State)	FHWA	FHWA
DETAILED / FINAL DESIGN (Design Phase)		
Provide approval for complex and other unusual bridges and other structures on the Interstate. [23 USC 109(a) and FHWA Policy]	FHWA	N/A
Provide approval of preliminary plans for major bridges or other structures (non-Interstate). [23 USC 109(a) and FHWA Policy]	FHWA	STATE
Approve retaining right-of-way encroachments [23 CFR 1.23 (b) & (c)]	FHWA or STATE(4)	STATE

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
Approve use of local force account agreements [23 CFR 635.104 & 204]	FHWA or STATE	STATE
Approve use of publicly owned equipment [23 CFR 635.106]	FHWA or STATE	STATE
Approve the use of proprietary products, processes [23 CFR 635.411]	FHWA or STATE	STATE
Concur in use of publicly furnished materials [23 CFR 635.407]	FHWA or STATE	STATE
RIGHT-OF-WAY (Design and Operational Phases)		
Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)] (Note: 23 CFR 710.201 authorizes FHWA and STATE to agree to scope of property-related oversight and approvals for all actions except those on the Interstate System)	FHWA for Interstate FHWA or STATE for Non-Interstate	STATE
Make public interest finding on whether State may proceed with bid advertisement even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)]	FHWA for Interstate FHWA or STATE for Non-Interstate	STATE
Ensure ROW certificate is in place [23 CFR 635.309(c)]	FHWA or STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
Approve Hardship and Protective Buying [23 CFR 710.503] (If a Federal-aid project) (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve Interstate Real Property Interest Use Agreements [23 CFR 710.405] (Note: this action cannot be assumed by State)	FHWA	N/A
Approve non-highway use and occupancy [23 CFR 1.23(c)]	FHWA for Interstate FHWA or STATE for Non-Interstate (3)	STATE (3)
Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve disposal at fair market value of federally funded right-of-way, including disposals of access control [23 CFR 710.409] (Note: 23 CFR 710.201 authorizes FHWA and STATE to agree to scope of property-related oversight and approvals for all actions except those on the Interstate System)	FHWA for Interstate FHWA or STATE for Non-Interstate (3)	STATE (3)
Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project (note: this action cannot be assumed by State)	FHWA	FHWA
Federal land transfers [23 CFR	FHWA	FHWA

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
710, Subpart F] (Note: this action cannot be assumed by State)		
Functional replacement of property [23 CFR 710.509] (Note: this action cannot be assumed by State)	FHWA	FHWA
SAFETY (Design Phase)		
Eligibility determinations for safety hardware (Note: this action cannot be assumed by State)	FHWA	FHWA
SYSTEM OPERATIONS AND PRESERVATION (Design Phase)		
Accept Transportation Management Plans (23 CFR 630.1012(b))	FHWA or STATE	STATE
Approval of System Engineering Analysis (for ITS) [23 CFR 940.11]	FHWA or STATE	STATE
PS&E AND ADVERTISING (Design Phase)		
Approve PS&E [23 CFR 630.201]	FHWA or STATE	STATE
Authorize advance construction and conversions [23 CFR 630.703 & 709] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve utility or railroad force account work [23 CFR 645.113 & 646.216]	FHWA or STATE	STATE
Approve utility and railroad agreements [23 CFR 645.113 & 646.216]	FHWA or STATE	STATE
Approve use of consultants by utility companies [23 CFR 645.109(b)]	FHWA or STATE	STATE
Approve exceptions to maximum railroad protective insurance limits [23 CFR 646.111]	FHWA or STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
Authorize advertising for bids (FHWA authorization done via construction authorization) [23 CFR 635.112, 309]	FHWA or STATE	STATE
CONTRACT ADVERTISEMENT AND AWARD (Design Phase) All contracts to be done by competitive bidding unless otherwise authorized by law		
Approve cost-effectiveness determinations for construction work performed by force account or by contract awarded by other than competitive bidding [23 CFR 635.104 &.204]	FHWA(5) or STATE(5)	STATE(5)
Approve emergency determinations for contracts awarded by other than competitive bidding [23 CFR 635.104 &.204]	FHWA or STATE	STATE
Approve construction engineering by local agency [23 CFR 635.105]	FHWA or STATE	STATE
Approve advertising period less than 3 weeks [23 CFR 635.112]	FHWA or STATE	STATE
Approve addenda during advertising period [23 CFR 635.112]	FHWA or STATE, whichever approved PS&E	STATE
Concur in award of contract [23 CFR 635.114]	FHWA or STATE	STATE
Concur in rejection of all bids [23 CFR 635.114]	FHWA or STATE	STATE
Approval of Design-Build Requests-for-Proposals and Addenda [23 CFR 635.112]	FHWA or STATE	STATE
CONSTRUCTION (Construction Phase)		
Approve changes and extra work [23 CFR 635.120]	FHWA or STATE	STATE
Approve contract time extensions [23 CFR 635.120]	FHWA or STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
Concur in use of mandatory borrow/disposal sites [23 CFR 635.407]	FHWA or STATE	STATE
Accept materials certification [23 CFR 637.207]	FHWA or STATE	STATE
Concur in settlement of contract claims [23 CFR 635.124]	FHWA or STATE	STATE
Concur in termination of construction contracts [23 CFR 635.125]	FHWA or STATE	STATE
Waive Buy America provisions [23 CFR 635.410] (Note: this action cannot be assumed by State)	FHWA	FHWA
Final inspection/acceptance of completed work [23 USC 114(a)]	FHWA or STATE	STATE
CIVIL RIGHTS (All phases)		
Approval of Disadvantaged Business Enterprise (DBE) Project Contract Goal set by the State DOT under 49 CFR 26.51(d). [49 CFR 26.51(e)(3)]	FHWA or STATE	STATE
Acceptance of Bidder's Good Faith Efforts to Meet Contract Goal [49 CFR 26.53] or of Prime Contractor's Good Faith Efforts to Find Another DBE Subcontractor When a DBE Subcontractor is Terminated or Fails to Complete Its Work [49 CFR 26.53(g)] (Note: this action cannot be performed by the FHWA)	STATE	STATE
Equal Employment Opportunity (EEO) Contract Compliance Review Approval [23 CFR Part	FHWA or STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX (as of March 28, 2014)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
230, Subpart D)).		
Training Special Provision – Approval of Project Goal for training slots or hours [23 CFR Part 230, Subpart A]	FHWA or STATE	STATE
Training Special Provision – Approval of New Project Training Programs (Note: this action cannot be assumed by State) [23 CFR 230.111(d), (e)]	FHWA	FHWA

FOOTNOTES:

1. State is responsible for ensuring that all individual elements of the project are eligible. FHWA will check that the scope of the project as described in submitted project agreement is eligible for the category of funding sought. All final eligibility and participation determinations are retained by FHWA.
2. If there is a 23 U.S.C. 326 or 325 assignment or PCE agreement, decisions are handled in accordance with those assignments or agreements.
3. State’s process and modifications to, or variation in process, require FHWA approval.
4. FHWA approval is required for revocable occupancy permits of non-conforming outdoor advertising signs.
5. A programmatic approval for projects with total costs below \$25,000 has been approved by FHWA.

**ATTACHMENT B
PROGRAM RESPONSIBILITY MATRIX**

PROGRAM ACTION RESPONSIBILITY

The following matrix is a list of program actions. The Division should refer to <http://www.fhwa.dot.gov/federalaid/stewardship/> for the latest updated version which can be incorporated into the agreement or referenced as a control document. Modify the matrix to reflect the Division and State “Responsible Program Office.” The primary office of contact should be listed, rather than an individual or the approving official.

Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	State DOT Responsible Program Office	Remarks
Appropriations, Allotments, Obligations	31 USC 1341(a)(1)(A)& (B); 31 USC 1517(a); 23 USC 118(b), 23 USC 121	As needed	Not Applicable	Office of Chief Financial Officer			State will monitor appropriations, allotments and obligations to ensure that all funding is used efficiently within each quarter and use all Obligation Authority (OA) by the end of the year.
Approval of Indirect Cost Allocation Plans (ICAPs)	49 CFR Part 18; 2 CFR 200 Subpart E (previously 2 CFR 225); ASMBC-10	As needed	Not Applicable	Office of Chief Financial Officer			The State will certify that the ICAP was prepared in accordance with 2 CFR 200 Subpart E.

FIRE Program Activities	FHWA Order 4560.1B (or as superseded)	Ongoing		Office of Chief Financial Officer		State will continue to provide oversight and conduct reviews to ensure Federal-aid compliance. FHWA will review and monitor. State responsibilities include multiple tasks in support of risk assessments, conducting reviews and implementation of recommendations.
Audit Coordination/FHWA Financial Statement Audit/State External Audit Reviews/State Internal Audit Reviews	FMFIA, 49 CFR 18.26; OMB Circular A-123, 133; GAAP, CFO Act of 1990; DOT Order 8000.1C	As needed	Not Applicable	Office of Chief Financial Officer		State assures corrective action is taken to resolve audit findings and FHWA will monitor activities to ensure implementation.
Improper Payments Review	Improper Payments Information Act of 2002, PL 107-300, Improper Payments Elimination and Recovery Act of 2010, PL 111-204, Improper Payments Elimination and Recovery Improvement Act of 2012, PL 112-248	Annually		Office of Chief Financial Officer		State will provide all information necessary to document sampled payments and FHWA offices will review and complete appropriate data submittal forms.
Transfer of Funds between programs or to other FHWA offices or agencies as requested by State	23 USC 126	As needed	Not Applicable	Office of Chief Financial Officer		State will submit requests for transfer and FHWA approves and processes the funding transfers between programs, to other States, to other agencies, and to FHWA HQ, Federal Lands, or Research offices.

Reviews of State Transportation Departments Financial Management Systems - Financial Integrity	23 USC 106(g)(2)(A)	Annually	Not Applicable	Office of Chief Financial Officer			23 USC 106(g)(2)(A) states that the Secretary shall perform annual reviews that address elements of the State transportation departments' financial management systems that affect projects approved under subsection (a).
Review Adequacy of Sub-recipient Project Delivery Systems and Sufficient Accounting Controls to Manage Federal Funds	23 USC 106(g)(4)(A)(i)	As needed	Not Applicable	Office of Chief Financial Officer			
Periodic Reviews of States Monitoring of sub-recipients	23 USC 106(g)(4)(B)	As needed	Not Applicable	Office of Infrastructure			
Approval of Increased Federal Share Agreement (Sliding Scale)	23 USC 120(b)(2)	As determined by the Federal Share Agreement	Not Applicable	Office of Chief Financial Officer			A State must enter into an agreement with FHWA for use of the increased Federal share allowable under this section, which must be reviewed and updated periodically as agreed to in the agreement. States must demonstrate that they are in compliance with the statute and the agreement.
Prepare / Review Title VI Plan Accomplishments and Next Year's Goals	23 CFR 200.9(b)(10)	Annually	1-Oct	Office of Civil Rights			Division office reviews and comments.
Prepare / EEO Contractor Compliance Plan accomplishments and next year's goals	23 CFR 230, Subpart C, Appendix A, Part I, III	Annually	1-Oct	Office of Civil Rights			Division office reviews and comments.
Prepare / Review State Internal EEO Affirmative Action Plan (Title VII) Accomplishments and Goals	23 CFR 230.311	Annually	1-Oct	Office of Civil Rights			Courtesy copy to HQ.
Review DBE Program Revisions	49 CFR 26.21(b)(2)	As needed	Not Applicable	Office of Civil Rights			Division sends to HCR for review and approval as

Prepare / DBE Uniform Awards and Commitment Report	49 CFR 26, Appendix B	Semi-Annual	June 1st December 1st	Office of Civil Rights		Division Office reviews and sends to HCR
Prepare / Annual Analysis and Corrective Action Plan (if necessary)	49 CFR 26.47(c)	Annual (as necessary)	December 31st	Office of Civil Rights		Division Office approves sends copy to HCR
Prepare / State DBE Program Goals	49 CFR 26.45(f)(1)	Triennial	August 1st	Office of Civil Rights		Division reviews and approves; HCC provides legal sufficiency review and approval sends copy to HCR
Prepare / Review On-the-Job-Training (OJT) goals & accomplishments	23 CFR 230.111(b)	Annually	TBA	Office of Civil Rights		Division office reviews and comments.
Approval of OJT and DBE Supportive Services fund requests	23 CFR 230.113 & 23 CFR 230.204	Annual	TBA	Office of Civil Rights		Division recommends approval submits to HCR for final approval
Return of any unused discretionary grant program funding	23 CFR 230.117(2)	Annual	TBA	Office of Civil Rights		Division works with HCR and CFO
Prepare / Review of Report on Supportive Services (OJT & DBE)	23 CFR 230.113(g), 230.121(e), 230.204(g)(6)	Quarterly		Office of Civil Rights		Division office reviews and comments.
Prepare / Review Annual Contractor Employment Report (Construction Summary of Employment Data (Form PR-1392)	23 CFR 230.121(a); Appendix D to Subpart A, Part 230, General Information and Instructions	Annually	1-Dec	Office of Civil Rights		Recommendation sent to HQ for approval.
Prepare / Review State DOT Employment Statistical Data (EEO-4)	23 CFR, Subpart C, Appendix A	Biannual	1-Dec	Office of Civil Rights		Report sent to HQ quarterly for informational purposes and recommendation sent to HQ annually for approval.
Prepare / Review Annual Federal Projected Awards Reports - Historically Black Colleges & Universities/Tribal Colleges & Universities/Hispanic Serving Institutes, American Indian Alaskan Native, Asian Pacific & American Islander.	Presidential Executive Orders: 13230, 13256, 13270, 13361, 13515	Annual	TBA	Office of Civil Rights		Divisions submit data to HCR who prepares report for DOCR

Prepare / Review ADA Complaint Reports of Investigation	28 CFR 35.190	As needed	Not Applicable	Office of Civil Rights		Division office reviews, FHWA HQ approves and issues finding.
Review Americans with Disabilities Act (ADA) /Sec. 504 Program Plan accomplishments and next year's goals	49 CFR 27.11(c), EO 12250	Annually	1-Oct	Office of Civil Rights		Division office reviews and comments.
Return of unexpended funds used for Summer Transportation Institutes	23 CFR 230.117(2)	Annual	August 30; however, State procurement rules may govern	Office of Civil Rights		Divisions work with HCR and CFO
Prepare / Review Request for National Summer Transportation Institute (NSTI) Proposals (SOWs)	23 USC 140(b)	Annual	TBA	Office of Civil Rights		Divisions recommend approval. HCR gives final approval
Prepare / Review NSTI Report (questionnaire)	23 USC 140(b)	Annual	October 15th	Office of Civil Rights		Divisions provide to HCR
Receipt of State Consultation Process with Tribal Governments	23 CFR 450.210(c)	As needed	Not Applicable	Office of Federal Lands Highway		Informational Purposes.
Approval of Contracting Procedures for Consultant Selection	23 CFR 172.5 & 172.9	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Determination of High Risk Categories - Limitation on Interstate Projects	23 USC 106(c)(4)(B)	As needed	Not Applicable	Office of Infrastructure		Office of Program Administration determines national categories and must concur on any State designations.
Approval of State 3R Program	23 CFR 625.4(a)(3), 23 USC 109(n)	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Verify adoption of Design Standards (National Highway System, including Interstate)	23 CFR 625, 23 USC 109(b), 23 USC 109(c)(2), 23 USC 109(o)	As needed	Not Applicable	Office of Infrastructure		FHWA HQ regulatory action to adopt NHS standards.
Approval of preliminary plans of Major and Unusual Bridges on the Interstate Highway System	(M1100.A)	As needed	Not Applicable	Office of Infrastructure		Director of HIBT has approval of preliminary plans of Major and Unusual Bridges on the Interstate Highway System (M1100.A)
Approval of State Standard Specifications	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.

Verify State Design Exception Policy complies with FHWA Policy	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Approval of State Standard Detail Plans	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Approval of Pavement Design Policy	23 CFR 626.3	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Review of Value Engineering Policy and Procedures	23 CFR 627.1(b)&(c), 23 CFR 627.7 FHWA Order 1311.1B	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Review.
Review of Value Engineering Annual Report	23 CFR 627.7, FHWA Order 1311.1B	Annual	Not Applicable	Office of Infrastructure		FHWA Division Office collects, reviews, and submits to HQ for review and reporting.
Review and Approval of Interstate Access Requests	23 USC 111, 23 CFR 710, 74 FR 43743-43746 (Aug. 27, 2009)	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office approval with concurrence from HQ on more complex access requests.
Approval of Liquidated Damages Rate	23 CFR 635.127	Every 2 years	Not Applicable	Office of Infrastructure		FHWA Division Office Approval.
Approval of Quality Assurance Program	23 CFR 637.205	As needed	Not Applicable	Office of Infrastructure		State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Assure Central Laboratory accredited by AASHTO Accreditation Program or FHWA approved comparable program	23 CFR 637.209	As needed	Not Applicable	Office of Infrastructure		State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.

Assure Non-STD designated lab performing Independent Assurance sampling and testing accredited by AASHTO Accreditation Program or FHWA approved comparable program	23 CFR 637.209	As needed	Not Applicable	Office of Infrastructure		State administrators, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Assure Non-STD designated lab used in dispute resolution accredited by AASHTO Accreditation Program or FHWA approved comparable program	23 CFR 637.209	As needed	Not Applicable	Office of Infrastructure		State administrators, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Review Independent Assurance Annual Report	23 CFR 637.207	Annually	1-Mar	Office of Infrastructure		State administrators, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Assure Labor Compliance - Prevailing Wage Rate	23 USC 113	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Review and Approval
Determination of Eligible Preventive Maintenance Activity - Cost-Effective Means of Extending Useful Life Determination	23 USC 116(e)	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval
Approval of Utility Agreement / Alternate Procedure	23 CFR 645.119	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval
Approval of Utility Accommodation Policy	23 CFR 645.215, 23 USC 109(l), 23 USC 123	As needed	Not Applicable	Office of Infrastructure		FHWA Division Office Approval
Review Bridge Construction, Geotechnical, and Hydraulics	23 CFR 650	As needed	Not Applicable	Office of Infrastructure		
Review Plans of Corrective Action established to address NBIS compliance issues	23 CFR 650, 23 USC 144	Annually		Office of Infrastructure		Division office performs annual compliance review and reports results to HQ.

Review NBI Data Submittal	23 CFR 650 Subpart C, Annual Memo from HQ, 23 USC 144	Annually	1-Apr	Office of Infrastructure			Division resolve errors with States; States submit to HQ.
Review structurally deficient bridge construction Unit Cost submittal	23 USC 144	Annually	1-Apr	Office of Infrastructure			Submit to HQ.
Review Section 9 of the Rivers and Harbors Act Submittals (Bridge Permits)	23 CFR 650 Subpart H; 33 CFR 114 & 115	As needed	Not Applicable	Office of Infrastructure			
Approval for reduction of expenditures for off-system bridges	23 USC 133(g)(2)(B)	As needed	Not Applicable	Office of Infrastructure			The FHWA Administrator may reduce the requirement for expenditures for off-system bridges if the FHWA Administrator determines that the State has inadequate needs to justify the expenditure.
Determination on Adequacy of State's Asset Management Plan	23 USC 119(5)	Annually beginning second fiscal year after establishment of the process		Office of Infrastructure			
Certification and Recertification of States Process for Development of State Asset Management Plan	23 USC 119(6)	Recertification every four years after establishment of the process		Office of Infrastructure			
Review Reporting on Performance Targets	23 USC 150(e)	Beginning four years after enactment of MAP-21 and biennially thereafter		Office of Infrastructure			
Review National Highway System Performance Achievement Plan for Actions to achieve the targets (when State does not achieve or make significant progress toward achieving)	23 USC 119(7)	Required if State does not achieve targets (or significant progress) for 2 consecutive reports		Office of Infrastructure			

States and sub-recipient failure to maintain projects - Notice and withholding Federal-aid Funds	23 USC 116(d)	As needed	Not Applicable	Office of Infrastructure		
Emergency Relief (ER) Damage Assessments and Reports	23 CFR 668 23 USC 120 and 125	As needed	Not Applicable	Office of Infrastructure		Perform with State.
Toll Credit and Maintenance of Effort (MOE) Calculation and Agreement	23 USC 120(i)	Annually		Office of Infrastructure		State will calculate the amount of eligible toll credit and submit for approval. FHWA will review and approve the request.
Local Public Agency (LPA) Oversight	49 CFR Part 18 – 18.37 and 18.40; OMB Circular A-133; 23 USC 106(g)(4)	As needed	Not Applicable	Office of Infrastructure		States are responsible to ensure that LPAs are aware of all the applicable Federal-aid Program requirements; States are responsible to ensure monitoring and oversight to assure compliance with Federal requirements. 23 USC further reinforces stressing accountability on "project delivery systems" and "accounting controls."
Approval to Sell, Lease or Otherwise Dispose of a Ferry Purchased with Federal-aid Funds	23 USC 129 (c)(6)	As needed	Not Applicable	Office of Infrastructure		Division Office reviews and submits for Office of Program Administration for Administrator Approval
Territorial Highway Program - Approval of Territory Agreement	23 USC 165(c)(5)	Reviewed and Revised as needed every two years		Office of Infrastructure		Division Office works with Office of Program Administration and HCC
TIFIA Credit Program	23 USC 601-609	As needed	Not Applicable	Office of Innovative Program Delivery		Project sponsors submit requests for credit assistance to the TIFIA JPO for review; approval by the Secretary
GARVEEs	23 USC 122; GARVEE Guidance 3/14	As needed	Not Applicable	Office of Innovative Program Delivery		MOUs strongly suggested for each GARVEE issue. FM contacts OIPD for review/concurrence before final approval

State Infrastructure Banks	NHS Act Section 308; 23 USC 610; SIB Guidance 3/14	Annual Report	Not Applicable	Office of Innovative Program Delivery			Division sends copy of report to OIPD. SIB submits annual report to Division Office.
Section 129 Tolling Authority Requests	23 USC 129(a)	As needed	Not Applicable	Office of Innovative Program Delivery			At the option of the project sponsor, may execute a Tolling Eligibility MOU with the Division Office; HIN coordinates FHWA HQ review
Section 166 HOV/HOT Lanes Tolling Authority Requests	23 USC 166(d)	As needed	Not Applicable	Office of Innovative Program Delivery			At the option of the project sponsor, may execute a Tolling Eligibility MOU with the Division Office; HIN coordinates FHWA HQ review
Value Pricing Pilot Program Tolling Authority Requests	ISTEA Section 1012(b)	As needed	Not Applicable	Office of Innovative Program Delivery			Requests submitted to HIN to coordinate review; approval by the Administrator
Interstate System Reconstruction and Rehabilitation Pilot Program Tolling Authority Requests	TEA-21 Section 1216(b)	As needed	Not Applicable	Office of Innovative Program Delivery			Applications submitted to HIN to coordinate review; approval by the Administrator
Annual Audit of Toll Facility Records and Certification of Adequate Maintenance - Report Submittal	23 USC 129(a)(3)(B); TEA-21 Section 1216(b)(5)(B); SAFETEA-LU Section 1604(b)(3)(A); ISTEA Section 1012(b)(3)	Annually		Office of Innovative Program Delivery			Division Office to receive the reports.
Project Management Plan (Major Projects)	23 U.S.C. 106(h)(2)	Prior to first federal authorization of construction funds for a Major Project	Not Applicable	Office of Innovative Program Delivery	Division Office will conduct concurrent review with HQ Office of Innovative Program Delivery.	State DOT or Project Sponsor will prepare and submit Project Management Plan.	Division Office will provide approval after receiving concurrence from HQ Office of Innovative Program Delivery.
Financial Plan (Major Projects)	23 U.S.C. 106(h)(3)	Prior to first federal authorization of construction funds for a Major Project and then annually.	Annually as noted in the approved Initial Financial Plan	Office of Innovative Program Delivery	Division Office will conduct concurrent review with HQ Office of Innovative Program Delivery.	State DOT or Project Sponsor will prepare and submit annual Financial Plans.	Division Office will provide approval after receiving concurrence from HQ Office of Innovative Program Delivery.

Financial Plan (Other Projects)	23 U.S.C. 106(i)	Prior to first federal authorization of construction funds for an Other Project and then annually.	Annually as noted in the approved Initial Financial Plan	Office of Innovative Program Delivery	Division Office will review and approve Financial Plans for Other Projects in accordance with its stewardship and oversight agreement with the State DOT or Project Sponsor.	State DOT or Project Sponsor will prepare and submit annual Financial Plans to the Division Office, only upon request.	Other Projects are defined as projects with an estimated total cost of \$100 million or more that have not been designated as Major Projects.
Review Designation and Re-designation of Primary Freight Network	23 USC 167(d)	One year after enactment of MAP-21 and every ten years thereafter		Office of Operations			Under development, initial PFN designation scheduled for Spring 2014 completion.
Review Development and Update of National Freight Strategic Plan	23 USC 167(f)	Three years after enactment of MAP-21 and every five years thereafter		Office of Operations			OST lead
Review Freight Transportation Conditions and Performance Report	23 USC 167(g)	Two years after enactment of MAP-21 and every two years thereafter		Office of Operations			OST lead
Review HOV Operations Report for Tolled Use and Low-Emission and Energy-Efficient Vehicle Use	23 USC 166(d)	Annually		Office of Operations			
Congestion Partnerships Assessment	Annual Memo from HQ	Annually	1-Jul	Office of Operations			Complete with partners and forward to HQ.
Operations Support Program	Annual Memo from HQ	Annually	1-Jul	Office of Operations			Eligibility determination made by HQ. July 1 date for approval to issue funding for current FY.
Traffic Incident Management Self-Assessment	Annual Memo from HQ	Annually	1-Jul	Office of Operations			Complete with partners and forward to HQ.

Work Zone Self-Assessment	Annual Memo from HQ	Annually	7/1/2013, This project is currently on hiatus and has not been determined whether it will be reestablished or not.	Office of Operations			Complete with partners and forward to HQ.
Approval of State-Prepared Manual on Uniform Traffic Control Devices - State Traffic Control Manuals	23 CFR 655.603, 23 USC 109(d)	As needed	Not Applicable	Office of Operations			
Review Vehicle Size & Weight Enforcement Plan	23 CFR 657.11, 23 USC 127	Annually	1-Oct	Office of Operations			
Review Vehicle Size & Weight Enforcement Certification	23 CFR 657.13, 23 USC 141	Annually	1-Jan	Office of Operations			
Approval of National Network Modifications	23 CFR 658.11	As needed	Not Applicable	Office of Operations			
Intelligent Transportation System Architecture & Standards	23 CFR Part 940	As needed	Not Applicable	Office of Operations			
Approval of Work Zone Significant Project Determination	23 CFR 630.1010	As needed		Office of Operations			
Approval of Exceptions to Work Zone Procedures for Interstate Projects	23 CFR 630.1010	As needed		Office of Operations			
Approval of Work Zone Policy and Procedures Conformance Review	23 CFR 630.1014	At appropriate intervals		Office of Operations			
Process Review of Work Zone Safety and Mobility Procedures	23 CFR 630.1008, 23 USC 109(e)(2), 23 USC 112(g)	Every 2 years		Office of Operations			
Approval of State Planning Work Program and Revisions (Part 1)	23 CFR 420.111, 23 CFR 420.115, and 23 CFR 420.209	Annually	Prior to Program Period	Office of Planning, Environment & Realty			FHWA Division Office Approval.
Approval of State Research and Development Work Program (Part 2)	23 CFR 420.111, 23 CFR 420.115, and 23 CFR 420.209	Annually	Prior to Program Period	Office of Planning, Environment & Realty			FHWA Division Office Approval.

Approval of State's Distribution of Planning Funds Formula - Allocation Formulas for PL Funds	23 CFR 420.109, 23 USC 104(d)(2)(A)(i)	When Revised	Not Applicable	Office of Planning, Environment & Realty			FHWA Division Office Approval.
Review of State Public Involvement Procedures	23 CFR 450.210(a)	As needed	Not Applicable	Office of Planning, Environment & Realty			FHWA Division Office Review to Assure Compliance.
Receipt of State Consultation Process for Non- metropolitan Local Officials	23 CFR 450.210(b)	As needed	Not Applicable	Office of Planning, Environment & Realty			Informational Purposes.
Review of Long-range Statewide Transportation Plan	23 CFR 450.214	As needed	Not Applicable	Office of Planning, Environment & Realty			FHWA Division Office Review to Assure Compliance.
Approval of Statewide Transportation Improvement Program (STIP)	23 CFR 450.216, 23 CFR 450.218(a) & (c), 23 USC 135(g)(7)	At least every 4 years	Not Applicable	Office of Planning, Environment & Realty			Joint FHWA and FTA approval.
Approval of STIP Amendments	23 CFR 450.218(a) & (c)	As needed	Not Applicable	Office of Planning, Environment & Realty			Joint FHWA and FTA approval.
Finding of Consistency of Planning Process with Section 134 and 135	23 USC 135(g)(8), 23 CFR 450.218(b)	Concurrent with STIP approval	Not Applicable	Office of Planning, Environment & Realty			FHWA and FTA issue a joint finding concurrent with STIP approval.
Review of State Self-certification that Planning Process is in Accordance with Applicable Requirements	23 CFR 450.218(a)	Submitted with proposed STIP or STIP amendments	Not Applicable	Office of Planning, Environment & Realty			Received with STIP.
Approval of Transportation Management Area (TMA) MPO Unified Planning Work Programs (UPWP)	23 CFR 450.308(b) and 23 CFR 420 (Subpart A)	Prior to Program End	Not Applicable	Office of Planning, Environment & Realty			
Approval of Non-TMA UPWA	23 CFR 450.308(b) and 23 CFR 420 (Subpart A)	Prior to Program End	Not Applicable	Office of Planning, Environment & Realty			May use simplified work statement.
Approval of UPWP Revisions and Amendments (All MPO's)	23 CFR 420.115	As needed	Not Applicable	Office of Planning, Environment & Realty			
Review of UPWP Performance and Expenditure Reports (All MPO's)	23 CFR 420.117(b)	Not more frequently than quarterly	Not Applicable	Office of Planning, Environment & Realty			
Approval of Report Before Publication (All MPO's)	23 CFR 420.117(e)	As needed	Not Applicable	Office of Planning, Environment & Realty			Waiver may be granted.

Approval to use Planning Funds outside Urbanized Areas for States Receiving Minimum Apportionment	23 USC 104(d)(1)(A)(ii)	As needed	Not Applicable	Office of Planning, Environment & Realty			
Review of Metropolitan Planning Area Boundary (Establishment and Changes)	23 CFR 450.312	As needed	Not Applicable	Office of Planning, Environment & Realty			Approval by MPO and the Governor, shape files forwarded to HQ. (Comment: No action is required by FHWA/FTA).
Review of Metropolitan Transportation Planning Organizations (MPO) Designation and Re-designation	23 CFR 450.310	As needed	Not Applicable	Office of Planning, Environment & Realty			Require agreement between Governor and local governments.
Review of Metropolitan Planning Agreements (MPA) for Attainment or Entire Nonattainment Area	23 CFR 450.314(a)	When Completed	Not Applicable	Office of Planning, Environment & Realty			Between MPO/State DOT/Transit Operator. Included in UPWP or Prospectus (23 CFR 450.314(d)).
Review of MPA - for MPA that do not include the entire nonattainment or maintenance area	23 CFR 450.314(b), 23 USC 109(j)	When Completed	Not Applicable	Office of Planning, Environment & Realty			Between MPO/State DOT/State AQ Agency.
Review of MPO Public Participation Procedures	23 CFR 450.316(a)	As needed	Not Applicable	Office of Planning, Environment & Realty			Must be developed and published.
Review of Metropolitan Transportation Plan (MTP) in Attainment Areas (and Updates)	23 CFR 450.322	Every 4 years	Not Applicable	Office of Planning, Environment & Realty			
Review of MTP in Non-Attainment and Maintenance Areas (and Updates)	23 CFR 450.322	Every 5 years	Not Applicable	Office of Planning, Environment & Realty			
Review of MTP Amendments	23 CFR 450.322(c)	As Needed	Not Applicable	Office of Planning, Environment & Realty			
Air Quality Conformity Determination on LRTP in Non-attainment and Maintenance Areas	23 CFR 450.322(d)	Concurrent with LRTP updates at least every 4 years and as needed on amendments	Not Applicable	Office of Planning, Environment & Realty			After receipt of MPO determination; Joint FHWA and FTA determination; In consultation with the Environmental Protection Agency (EPA).

Review of Transportation Improvement Program (TIP)	23 CFR 450.300(a); 23 CFR 450.324(b); 23 CFR 450.328(a), 23 USC 134(j)(1)(D)	Prior to Program Period	Not Applicable	Office of Planning, Environment & Realty		No succinct Federal approval action is required for the TIP. FHWA/FTA approval of the TIP is through the STIP approval process.
Review of TIP Amendments	23 CFR 450.324(a); 23 CFR 450.328(b)	As needed	Not Applicable	Office of Planning, Environment & Realty		No succinct Federal approval action is required for the TIP. FHWA/FTA approval of the TIP is through the STIP approval process.
Approval of Air Quality Conformity Determination on TIP	23 CFR 450.326; 23 CFR 450.328	At least every 4 years, or when the TIP has been modified (unless exempt projects)	Not Applicable	Office of Planning, Environment & Realty		Applies to non-attainment and maintenance areas only. After receipt of MPO determination, joint determination with FTA (in cooperation with EPA).
Federal Finding of Consistency of Planning Process with Section 134 and 135	23 CFR 450.218(b); 23 CFR 450.334(a)	Concurrent with (S)TIP submittal	Not Applicable	Office of Planning, Environment & Realty		At least every four years, joint finding with FTA when TIP is submitted.
In Metropolitan Planning Areas, Review of State and MPO Self-certification that Planning Process is in Accordance with Applicable Requirements	23 CFR 450.334 (a), 23 CFR 218(a)	Annually or concurrent with the STIP/TIP cycle	Not Applicable	Office of Planning, Environment & Realty		Required for all MPO's. May be included in the STIP, TIP, or UPWP, at least every 4 years.
In TMA's, Certification that Planning Process is in Accordance with Applicable Requirements	23 CFR 450.334(b), 23 USC 134(k)(5)	Every 4 years		Office of Planning, Environment & Realty		Joint FHWA and FTA Certification.
Approval of Federal-Aid Urban Area Boundaries	23 CFR 470.105 (a), 23 USC 101(a)(33)	As needed	Not Applicable	Office of Planning, Environment & Realty		
Approval of Revision of Functional Classification	23 CFR 470.105 (b)	As needed	Not Applicable	Office of Planning, Environment & Realty		
Approval by Administrator of Interstate Additions & Revisions	23 USC 103(c)(1)(D), 23 CFR 470.111, 23CFR 470.115 (a)	As needed	Not Applicable	Office of Planning, Environment & Realty		Approval by HQ – Administrator.

Approval by Office Director of National Highway System (NHS) Additions and Revisions	23 USC 103(b)(3), 23 CFR 470.113 and 470.115(a)	As needed	Not Applicable	Office of Planning, Environment & Realty		Approved by HQ - Office Director.
Review of CMAQ Annual Report	CMAQ Guidance Memo October 31, 2006	Annually	1-Mar	Office of Planning, Environment & Realty		Division provides information on CMAQ projects including: amount of obligation, project description and location, and air quality benefits. The report must be submitted via the web-based CMAQ Tracking System.
Transportation Planning Excellence Awards		Annually	1-Feb	Office of Planning, Environment & Realty		Call for entries for the FHWA FTA Transportation Planning and Excellence Awards.
Approval of Local Technical Assistance Program (LTAP) Centers Work Plan and Budget	FHWA LTAP Field Manual	Annually	31-Mar	Office of Planning, Environment & Realty		FHWA HQ approval.
Approval of Public Involvement Program Procedures	23 CFR 771.111(h), 23 USC 128	As needed	Not Applicable	Office of Planning, Environment & Realty		
Approval of NEPA Procedures, including Section 4(f)	23 CFR 771; 23 CFR 774; SAFETEA-LU 6007 & 6009, 23 USC 109(h)	As needed	Not Applicable	Office of Planning, Environment & Realty		
Approval of Noise Policies	23 CFR 772.7, 772.9, and 772.13, 23 USC 109(i)	As needed	Not Applicable	Office of Planning, Environment & Realty		FHWA approves State' noise abatement policy.
EIS Status Updates	FHWA Strategic Goal - EIS Timeliness	Quarterly	(Fiscal Year - Oct, Jan, Apr, Jul)	Office of Planning, Environment & Realty		Monitor time required to complete EIS's. Determine projects which have exceeded recommended timeline (3 years). Identify projects which should be listed as dormant. Submit to HEPE.
Endangered Species Act Cost Report		Annually	1-Mar	Office of Planning, Environment & Realty		
Exemplary Ecosystem Initiatives Applications		Annually	1-Apr	Office of Planning, Environment & Realty		

Approval of Acquisitions, Appraisals, and Relocations Program and Procedures	49 CFR Part 24, The UA	As needed	Not Applicable	Office of Planning, Environment & Realty			
Early Acquisitions	23 CFR 710.501	As needed	Not Applicable	Office of Planning, Environment & Realty			
Local Public Agency Oversight	49 CFR 24.4(b); 23 CFR 710.201	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Highway Facility Relinquishment	23 CFR 620.203	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of ROW Disposal Authorization Request	23 CFR 710.409	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of ROW Operations Manual (Organization, Policies and Procedures), Updates, and Certification	23 CFR 710.201	January 1, 2001 and every 3 years thereafter or as required by changes in State law or Federal regulation or law	Not Applicable	Office of Planning, Environment & Realty			
Approval of Exception to Charging Fair Market Value	23 CFR 710.403 and 23 CFR 710.409	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Interstate Real Property Use Agreements	23 CFR 710.405	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Request for Federal Land Transfer	23 CFR 710.601	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Request for Direct Federal Acquisition	23 CFR 710.603	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Outdoor Advertising Policies and Procedures, and Regulation and Procedure Approval	23 CFR 750.304, 23 CFR 750.705, 23 USC 131	As needed	Not Applicable	Office of Planning, Environment & Realty			
Approval of Requests to Exempt Certain Nonconforming Signs, Displays, and Devices	23 CFR 750.503	As needed	Not Applicable	Office of Planning, Environment & Realty			

Approval of Railroad Agreement Alternate Procedure	23 CFR 646.220	As needed	Not Applicable	Office of Planning, Environment & Realty		
Approval of Uniform Act Waivers and Waivers from Availability of Comparable Replacement Dwelling before Displacement	49 CFR 24.7, 49 CFR 24.204(b)	As needed	Not Applicable	Office of Planning, Environment & Realty		Requests reviewed and approved by HEPR Office Director.
Review of Uniform Relocation Assistance & Real Property Acquisition Report -(OMB Form 2125-0030)	49 CFR 24.9c & Appendix B 49 CFR 24.603	Annually	15-Nov	Office of Planning, Environment & Realty		Submitted to FHWA Headquarters (HQ).
Review of Real Property Acquisition Statistical Report	FHWA Order 6540.1	Annually	15-Nov	Office of Planning, Environment & Realty		
Approval of Management Process and Project Selection Procedures and Certification for Research, Development & Technology Transfer Program and Revisions to Process	23 CFR 420.115 and 23 CFR 420.209	As needed	Not Applicable	Office of Planning, Environment & Realty		FHWA Division Office Approval.
Periodic Review of States Management Process of the Research, Development & Technology Transfer Program	23 CFR 420.209	Periodic	Not Applicable	Office of Planning, Environment & Realty		FHWA Division Office Periodic Review.
Approval of Performance and Expenditure Reports for SPR Research Work Programs	23 CFR 420.117	No less frequently than annual and no more frequently than quarterly	90 Days After End Of Period	Office of Planning, Environment & Realty		FHWA Division Office Approval.
Approval of SPR research reports	23 CFR 420.117	Prior to publication unless prior approval is waved	Not Applicable	Office of Planning, Environment & Realty		FHWA Division Office Approval unless waived.
Annual Traffic Reports	Traffic Monitoring Analysis System and Traffic Monitoring Guide reporting	When Published	As needed	Office of Highway Policy information		When Published

Approval of Annual Field Review Report	HPMS Field Review Guidelines (June 2001) Continuous Process Improvement Model for HPMS(February 2003)	Annually	1-Nov	Office of Highway Policy information		Review memo to HQ.
Approval of Certified Public Road Mileage	23 CFR 460.3(b)	Annually	1-Jun	Office of Highway Policy information		Each year, the Governor of each State and territory or a designee must certify Public Road Mileage. FHWA division reviews the Mileage and sends to HQ with division review/concurrence. This is reported to NHTSA for Apportionment of Safety Funds.
Approval of Data Submittal	23 CFR 420.105(b), HPMS Field Manual	Annually	15-Jun	Office of Highway Policy information		State DOT sends directly to Division Office and HQ.
Highway Statistics Reports	Guide to Reporting Highway Statistics			Office of Highway Policy information		State DOT of Division Office sends directly to HQ.
Motor Fuels Report	A Guide to Reporting Highway Statistics, Chapter 2	Due 60 days after end of each reporting month		Office of Highway Policy information		
Vehicles and Drivers (561, 562, 566, and 571)	A Guide to Reporting Highway Statistics, Chapters 3, 4, 5, and 6	1-Apr	1-Apr	Office of Highway Policy information		
Finance (531, 532, 541, 542, and 543 (optional))	A Guide to Reporting Highway Statistics, Chapters 8 and 9	1-Apr	1-Apr	Office of Highway Policy information		
Transportation Bond Referendums	A Guide to Reporting Highway Statistics, Chapter 9	When Published	When Published	Office of Highway Policy information		
State DOT / Toll Authority Audits and Published Annual Reports and Form 539 (optional)	A Guide to Reporting Highway Statistics, Chapter 10	When Published	When Published	Office of Highway Policy information		Annually, Due as soon as available.
Finance (536)	A Guide to Reporting Highway Statistics, Chapter 11	30-Sep	30-Sep	Office of Highway Policy information		Biennially for odd-numbered years. Due nine months after end of reporting year

Finance (534)	A Guide to Reporting Highway Statistics, Chapter 12	15-Jun	15-Jun	Office of Highway Policy information		Annually for State, Biennially for local
Highway Finance and Tax Legislation	A Guide to Reporting Highway Statistics, Chapter 13	When Published	When Published	Office of Highway Policy information		
State DOT Budgets and Published Annual Reports	A Guide to Reporting Highway Statistics, Chapter 13	When Published	When Published	Office of Highway Policy information		
Motor Fuel Oversight Review	July 24, 2001 HQ Memo	Initial baseline reports no later than December 31, 2003		Office of Highway Policy information		Annual progress reports and statement of verification by June 30. Submitted via UPACS.
Review of Biennial - Toll Facilities in the United States	23 CFR 450.105(b) HPMS Field Manual	Biennially - Odd Years	June 15 (Odd Years)	Office of Highway Policy information		Division Office sends to HQ.
State Highway Maps (Tourist)		When Published	When Published	Office of Highway Policy information		Two copies to each Division Office and 100 copies to HQ.
Traffic Flow Maps		When Published		Office of Highway Policy information		When Published.
Vehicle Classification Data	MAP-21, HPMS Field Manual, Traffic Monitoring Guide	15-Jun	15-Jun	Office of Highway Policy information		Part of Annual HPMS submittal.
Highway Use Tax Evasion Grant Awards	23 USC 143	Annual	Not Applicable	Office of Highway Policy information		FHWA along with the Internal Revenue Service will review applications and select awardees for projects designed to reduce or eliminate fuel tax evasion. FHWA will also review annual progress reports on projects.
Heavy Vehicle Use Tax (HVUT) – Certification of verifying proof-of-payment of HVUT	23 CFR 669.7	1-Jul	1-Jul	Office of Highway Policy information		Each year, the Governor of each State, or a designee must certify that the State is verifying that the HVUT has been paid before they issue or renew registrations on vehicles over 55,000 lbs. The HVUT program is administered by the Internal Revenue Service.

Heavy Vehicle Use Tax (HVUT) – Certification of verifying proof-of-payment of HVUT	23 CFR 669	Annual	1-Jan	Office of Highway Policy information		Each year, the Governor of each State, or a designee must certify that the State is verifying that the HVUT has been paid before they issue or renew registrations on vehicles over 55,000 lbs. The HVUT program is administered by the Internal Revenue Service.
Heavy Vehicle Use Tax (HVUT) – Triennial review of State program	23 CFR 669.21	Triennial	Not Applicable	Office of Highway Policy information		Every 3 years, the local Division Office will perform a review of the State process for verifying that the HVUT has been paid before a registration can be issued or renewed for vehicles over 55,000 lbs. The HVUT program is administered by the Internal Revenue Service.
Permanent ATR Data	Heavy Vehicle Travel Information System Field Manual	Monthly	Monthly	Office of Highway Policy information		Submit monthly, within 20 days after the close of the month for which the data were collected.
Continuous Automatic Vehicle Classifier Data	Heavy Vehicle Travel Information System Field Manual	Monthly	Monthly	Office of Highway Policy information		Send up to one week of data per quarter

Weight and Vehicle Classification Data Collected at Weigh-in-motion sites	Heavy Vehicle Travel Information System Field Manual	15-Jun	As needed	Office of Highway Policy information			WIM data collected at non-continuous sites during a year should be submitted by June 15 of the following year. If continuous WIM data are available, then up to one week of data per quarter.
Approval of MAP-21 compliant SHSP update within the legislatively required timeframe.	23 U.S.C. 148 (d)(2)(B)	Non Recurring	By Aug. 1 of the fiscal year after the HSIP final rule is established	Office of Safety			FHWA Division Offices provide copy of SHSP process approval letter to HQ.
Highway Safety Improvement Program (HSIP) and Railway-Highway Crossing Program (RHCP) Reports	23 USC 148(h), 23 CFR 924.15	Annually	31-Aug	Office of Safety			As per MAP-21 guidance, reports are due to FHWA Division Office by August 31st and to the Office of Safety by September 30.
Transportation Performance Management (TPM) for Safety	23 USC 150, 23 USC 134, 23 USC 135, 23 USC 148(i)	Annually	31-Aug	Office of Safety			Per MAP-21, States and MPOs must set targets for established measures. Targets must be assessed for achievement
Review Drug Offender Driver's License Suspension Law & Enforcement Certification (Section 159)	23 USC 159 23, CFR 192.5	Annually	1-Jan	Office of Safety			Certifications due to the Division Office by January 1.
Section 154/164 Compliance Status - Funds Reservation	23 USC 154 and 23 USC 164	Annually	30-Oct	Office of Safety			States must submit a Shift letter to the Division Office by Oct. 30 indicating how to apply the penalty. New penalty states have additional time. The Office of Safety processes the compilation of information in a memo to the CFO.
Review Safety Belt Compliance Status	23 USC 153, 23 CFR 1215.6	Annually	Annually	Office of Safety			NHTSA

High Risk Rural Roads (HRRR) Special Rule	23 USC 148(g)(1)	Annually	Annually	Office of Safety		After the final FARS and HPMS data are available, FHWA HQ will inform the States if the HRRR Special Rule applies for the following FY.
Older Drivers and Pedestrians Special Rule	23 USC 148 (g)(2)	Annually	31-Aug	Office of Safety		States should include in their annual HSIP reports (due August 31st) the calculations performed, verifying whether the Older Driver Special Rule applies in the State. If the Special Rule applies to a State in a given year, the State must include in its subsequent SHSP strategies to address the increases in the fatality and serious injury rates for drivers and pedestrians over the age of 65.
FHWA Emergency Preparedness Program	Executive Order 12656 and FHWA Order 1910.2C	As needed	Not Applicable	Office of Operations		National Programs.

**ATTACHMENT C
MANUALS AND OPERATING AGREEMENTS**

STATE DOT Manuals (approved by FHWA for use on Federal-aid projects -- this list is provided as an example and is not all inclusive)

Access Policy Affirmative Action Plan
Bid Evaluation Procedures
Bridge Manual
Consultant Selection Process
Contract Administration Manual
Contract Compliance Plan
Disadvantaged Business Enterprise (DBE) Plan
Environmental Process Manual
Financial Services Manual
Highway Safety Improvement Plan
Indirect Cost Allocation Plan (Cost Pool Composition/Eligibility)
Local Public Agency (LPA) Guidelines and Manuals
Materials Manual
Right of Way Manual
Standard Drawings
State DOT Design Manual
Statewide Transportation Improvement Plan
Supplemental and Standard Specifications
Title VI Plan
Traffic Operations Manual (e.g. MUTCD supplement)
Transportation Improvement Plan
Utility Manual
Work Programs

- Local/Tribal Technical Assistance Program (LTAP/TTAP)
- Statewide Planning and Research
- Transportation Management Area/Metropolitan Planning Organization (TMA/MPO)

Operating (Programmatic) Agreements

NEPA/404
Endangered Species Act Section 7
Endangered Species Act Informal Consultation
Stewardship and Oversight Indicators
Risk-Based Project Level Oversight

Appendix B: Glossary

Assumption of Responsibilities – The act of State DOT to accept responsibility for carrying out and approving certain actions in the place of the FHWA. Such actions are to be taken by the State DOT in conformance with Federal laws, regulations, and policies.

Assumed Projects – Federal projects that the State DOT reviews in the place of the FHWA and has the authority to approve certain specified actions pertaining to design; plans, specifications, and estimates; contract awards; and inspections.

Certification Reviews – A review that formalizes the continuing oversight and day-to-day evaluation of the planning process.

Control Document – Applicable laws, regulations, standards, policies, and standard specifications approved by FHWA for use on Federal-aid highway projects.

Core Functions – Activities that make up the primary elements of the division office’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.

Locally Administered Projects – For the purpose of the S&O Agreement, a Federal-aid project in which an entity other than a traditional State DOT is a sub-recipient and this entity is administering the particular phase being authorized, i.e., Preliminary Engineering, ROW, or Construction. These would include projects where the non-traditional entity will either perform the work itself or enter into a contract for services or construction. State DOT remains responsible for the local public agency’s compliance on locally administered projects.

Local Public Agency (LPA) – Any organization, other than a traditional State DOT, with administrative or functional responsibilities that are directly or indirectly affiliated with a governmental body of any Tribal Nation, State, or local jurisdiction. LPAs would most often include cities or counties. However, an LPA, as defined here, could also include a State entity as well, perhaps even a part of a State DOT. An example could include a Port Authority or Toll Authority that had not traditionally worked with the Federal-aid highway program (FAHP).

Oversight – The act of ensuring that the FAHP is delivered consistent with laws, regulations, and policies.

Program Assessments – This evaluation technique may take many forms, including joint risk assessments and self-assessments. 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 – A thorough analysis of key program components and the processes employed by the State DOT in managing the program. The reviews are conducted to: 1) ensure compliance with Federal requirements; 2) identify areas in need of improvement; 3) identify

opportunities for greater efficiencies and cost improvement to the program; and/or 4) identify exemplary practices.

Projects of Division Interest (PoDIs) – PoDIs are those projects that have an elevated risk, contain elements of higher risk, or present a meaningful opportunity for FHWA involvement to enhance meeting project objectives.

For PoDIs, FHWA has made a risk-based decision to retain project approval actions or conduct stewardship and oversight activities for the project as provided for in 23 USC 106.

Recurring Reviews – Reviews that the division office conducts annually or on a regular periodic basis. Examples include NBIS, HPMS, HVUT, etc.

Risk Assessment – The process of identifying a risk event, determining the likelihood of the event happening, determining the impact (positive or negative) of the event on the delivery of the FAHP, and identifying an appropriate risk response strategy.

Risk-Based Approach – Incorporating risk assessment and risk management into investment and strategic decision making (the means by which limited resources are focused).

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

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

Unit Performance Plan – The annual performance plan prepared by an individual FHWA unit that address unit responsibilities and priorities taking into account the National Performance Objectives and National Initiatives identified in the FHWA's Strategic Implementation Plan (SIP) as well as specific initiatives identified at the unit level based on risk.

Appendix C: Project Oversight Designation Requirement in the Fiscal Management Information System (FMIS)

PoDI/State Administered – Projects of Division Interest that are administered by the State DOT. If specific 106(c) responsibilities are assumed by the State DOT, the responsibilities assumed should be noted in the project description and/or remarks fields. (Projects where all six 106(c) responsibilities are retained by FHWA would need no such notation.) These are projects where FHWA will review and approve actions pertaining to one or more of the following (design; plans, specifications, and estimates; contract awards; and project inspections) and may also include additional areas of focus by the division.

PoDI/Locally Administered – Projects of Division Interest that are locally administered. If specific 106(c) responsibilities are assumed by the State DOT, the responsibilities assumed should be noted in the project description and/or remarks fields. (Projects where all six 106(c) responsibilities are retained by FHWA would need no such notation.) These are projects where FHWA will review and approve actions pertaining to one or more of the following (design; plans, specifications, and estimates; contract awards; and project inspections) and may also include additional areas of focus by the division.

Assumed/State Administered – Projects where *responsibility for all six Section 106(c) items* is assumed by the State DOT and the project is administered by the State DOT. These are projects where the State DOT has assumed responsibility for review and approval actions pertaining to all of the following: design; plans, specifications, and estimates; contract awards; and project inspections.

Assumed/Locally Administered - Projects where *responsibility for all Section 106(c) items* is assumed by the State DOT and the project is administered by a local agency. These are projects where the State DOT has assumed responsibility for review and approval actions pertaining to all of the following: design; plans, specifications, and estimates; contract awards; and project inspections.

Other – There may be situations that do not fit the previous categories. In cases where the project is identified as “Other,” additional details should be provided in the project description and/or remarks fields. Examples could include non-State DOT direct recipients.