

**Federal-aid Highway Program  
Stewardship and Oversight Agreement on  
Project Assumption and Program Oversight  
by and between**

**North Dakota Department of Transportation  
And  
Federal Highway Administration  
North Dakota Division**

The Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT) enter into this agreement to conduct project oversight activities in accordance with the following stipulated elements. This agreement outlines responsibilities and accountability for FHWA and NDDOT. The purpose of this agreement is to clarify actions, prevent misinterpretations, and avoid time delays.

At a minimum, this agreement will be reviewed every three years by FHWA and NDDOT in January. FHWA or NDDOT may initiate amendments to this Agreement should essential modifications become apparent to either party.

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## **1. Purpose**

### ***1.1. Purpose of Agreement***

The purpose of this Stewardship and Oversight Agreement is to document the roles and responsibilities of the Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT) in administering the Federal-Aid Highway Program. This Stewardship and Oversight Agreement outlines a consistent risk based approach for FHWA and NDDOT to effectively and efficiently manage the Federal-aid Highway Program and ensure that it is delivered in accordance with laws, regulations, policies, and good business practices. FHWA and NDDOT administer the Federal-aid Highway Program through program and project management, and use a number of management tools to monitor the health of the Federal-aid Highway Program including performance indicators/measures, program assessments such as the Risk Management Framework, program reviews including the Financial Integrity Review and Evaluation (FIRE) Program, and other tools. NDDOT accepts responsibility for assumed (also referred to as State Administered in this Agreement) program and project oversight in accordance with Section 106 of Title 23, United States Code (U.S.C.).

FHWA retains overall responsibility for the Federal-aid Highway Program and retains the right and authority to review all aspects of the NDDOT's delivery of the Federal-aid Highway Program. Nothing in this Agreement will limit FHWA from accessing or reviewing any Federal-aid program and/or project or NDDOT's or sub-recipient's documents that are pertinent to the delivery of the Federal-aid Highway Program.

### ***1.2. Assumption Of Responsibilities (23 U.S.C. 106(c))***

The principal statutory and regulatory basis for development, administration, and oversight of Federal-aid projects are Title 23, United States Code (U.S.C.) – Highways, and Code of Federal Regulations (CFR), in particular 23 CFR. The specific statutory basis for this agreement is Title 23 U.S.C., Section 106(c)(3), Project Approval and Oversight. This requires FHWA and NDDOT to enter into an agreement that documents the assumption of responsibilities.

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.

### **1.3. Assumption Of Responsibilities For Locally Administered Projects**

NDDOT may, pursuant to 23 CFR 1.11 and 635.105, delegate certain Federal-aid project authorities to local public agency (LPA) to carry out the NDDOT's assumed responsibilities on locally administered projects. If NDDOT chooses to delegate certain Federal-aid project authorities to an LPA, NDDOT is still responsible and accountable for ensuring that the projects are administered in accordance with all applicable Federal laws and requirements.

NDDOT is responsible for ensuring that LPA administered projects are carried out in accordance with FHWA approved "[NDDOT Local Government Manual](#)." This manual will be reviewed in consultation with FHWA on an annual basis for the purpose of continuous improvement. Modifications to the manual will require FHWA approval.

If an LPA administered project is selected as a PoDI by either NDDOT or FHWA, an individual project oversight plan will be prepared specifying those approval actions retained by FHWA.

Section 9.2 of this Agreement details NDDOT's oversight and reporting requirements when administering its LPA program.

### **1.4. Assumption Of Responsibilities For Federal-Aid Projects Off the National Highway System**

The NDDOT *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 NDDOT determines that assumption of responsibilities is not appropriate. (23 U.S.C. 106(c)(2))

Except as provided in 23 U.S.C.109(o), the NDDOT is to exercise the Secretary's approvals and related responsibilities on these projects in accordance with Federal laws.

The NDDOT, in its discretion, may request FHWA carry out one or more non-NHS approvals or related responsibilities listed as "NDDOT" in Attachment A on a program-wide basis. For a project specific request, the NDDOT 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.

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.

### ***1.5. Stewardship Expectations***

This Agreement outlines the framework by which FHWA and NDDOT will administer the Federal-aid Highway Program efficiently and effectively to maintain a national highway network, improve operation, improve safety, and provide for national security while protecting and improving the environment. This Agreement addresses the comprehensive approach in administering the Federal-aid Highway Program through stewardship and assumed roles and responsibilities to NDDOT.

## **2. NDDOT and FHWA Roles and Responsibilities**

### ***2.1. Role/Expectations of NDDOT***

NDDOT is empowered through assumption of responsibilities as provided under Federal law to monitor, review, and/or approve activities related to the use of Federal-aid funds. NDDOT, in conformance with Title 23, U.S.C., accepts responsibilities for assumed duties in this Agreement. NDDOT is responsible for administering the assumed aspects of the Federal-aid Highway Program in a manner that ensures efficient and effective use of the Federal-aid funds and compliance with federal laws and regulations. NDDOT, along with FHWA, is responsible for ensuring financial integrity and compliance with applicable laws and regulations.

NDDOT shall comply with applicable laws and regulations regardless of funding source in order to maintain Federal-aid eligibility.

#### ***2.1.1. Permissible Areas Of Assumption Under 23 U.S.C. 106(c)***

NDDOT assumption of responsibilities under 23 U.S.C. 106(c) may cover only activities in the following areas:

- A. Design, which 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, which 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, which include procurement of professional and other consultant services and construction-related services to include advertising, evaluating, and awarding contracts.
  - D. Inspections, which 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.

## ***2.2. Role/Expectations of FHWA***

FHWA will monitor the Federal-aid Highway Program and maintain review and/or approval authority of non-assumed activities. FHWA, along with NDDOT, is responsible for ensuring financial integrity and compliance with applicable laws and regulations. FHWA is accountable for the Federal-aid Highway Program and ensuring that it is delivered in an efficient and effective manner. FHWA will review, at their discretion, any program or project having an FHWA action including those that have unique features, high-risk elements, unusual circumstances, or projects included in program and/or process reviews. FHWA may become involved with any Federal-aid project which NDDOT has assumed oversight responsibility.

### ***2.2.1. Federal Approvals and Related Responsibilities That May Not be Assumed by NDDOT***

Notwithstanding this Agreement, FHWA retains overall responsibility for all aspects of the Federal-aid Highway Program. This Agreement does not preclude FHWA access to and review of a Federal-aid project at any time and does not replace the provisions of Title 23, U.S.C. Program and project responsibilities are discussed in the sections below.

FHWA's oversight will be satisfied by a risk management framework of process/program reviews, CAP reviews and PODI inspections.

NDDOT assumes project approvals for FHWA for all Federal-aid projects where FHWA has not retained PODI oversight.

However, as mentioned above, certain actions and responsibilities on assumed projects cannot be and are not assumed by NDDOT as identified below:



- A. Any approval or related responsibility not listed in Appendix 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 NDDOT:
- 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;
  - Approval of current bill 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 NDDOT 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;
  - 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 NDDOT 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.

In order to maintain federal eligibility, the above must be complied with.

Appendix 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. Assumption of project approvals specified in this matrix will apply program wide. Deviations will be documented on a project by project basis through the development of individual PoDI plans identifying individual PoDI oversight phase(s).

### **3. Identifying Projects of Division Interest**

FHWA is required to develop and document criteria for identifying, assessing, and selecting projects of division interest (PODI) to receive oversight. These will be projects that have an elevated potential to either pose a risk to the Agency or an opportunity to advance key Agency initiatives. Project selection will occur, at a minimum, during the review of the draft Statewide Transportation Improvement Program (STIP) usually in September or October. These projects and phase of project are mutually agreed upon with NDDOT based on a risk management approach and may be included in the Compliance Assessment Program (CAP) reviews. PODI reviews are assigned to a FHWA Transportation Engineer according to their assigned NDDOT Districts.

The degree of project review/inspection activity for phase of project is established by FHWA and outlined in section 5.5 and FHWA PoDI Project Level Actions shown in Appendix B. FHWA and NDDOT agree that additional PoDI may be added during the year as new projects or risk elements are identified.

An updated PoDI list will be maintained in a manner that is easily accessible and readily available to both FHWA and NDDOT project staff.

#### 4. High Risk Categories

- 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.

#### 5. FHWA Methods of Oversight

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 NDDOT 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 NDDOT may use to identify and analyze risks and develop response strategies include the following:

- Program Assessments and Risk Assessments;
- FIRE Reviews;
- Program Reviews;
- Certification Reviews;
- Projects of Division Interest Reviews
- Recurring or periodic reviews such as the Compliance Assessment Program (CAP); and
- Sub-recipient Monitoring

Appendix C, Program Responsibility Matrix 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.

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

##### ***5.1. Program Assessment and Risk Assessment***

Program assessments and risk assessments will be used in a cooperative effort between NDDOT and FHWA in evaluating program areas. This effort will focus on balancing risk with consideration for staffing resources, funding within Federal-aid Highway Programs, and highway needs within the state. NDDOT will work

collaboratively with FHWA to identify risks and make practical resources available to address FHWA's risk assessment findings.

The primary purpose of a program assessment is to evaluate the current state of a program and to identify strengths and opportunities for improvement of the various program areas. In collaboration with NDDOT, FHWA staff is responsible for completing the program assessments and addressing the findings.

The risk assessment process will be led by FHWA and will be performed annually by NDDOT and FHWA staff for various program areas. These assessments identify the level of risk (high, medium, and low) for each area. Program assessments may be used as a step in the risk assessment process. The risk assessment process provides key input in identifying FHWA's major initiatives and activities in FHWA's Performance Plan and it assists FHWA and NDDOT with resource planning (e.g. personnel, budget, priorities, and so on) to address these initiatives.

## ***5.2. Summary of Key Oversight Initiatives***

FHWA and NDDOT are held to a high standard of accountability and transparency, and are frequently assessed by various Federal review teams. To improve consistency in program oversight among the FHWA Division Offices, a single, comprehensive oversight document that reflects all of the proposed FHWA oversight initiatives for the coming performance year will be created by FHWA. In the past, numerous oversight initiatives were documented in many places, including: FHWA's Unit Plan, Risk Assessment, and the Stewardship and Oversight Agreement. By developing a Summary of Key Oversight Initiatives, FHWA can readily capture all initiatives associated with FHWA oversight responsibilities. This puts FHWA in a better position to respond to the various Federal reviews and audits, and allows FHWA to explain what is being done in its risk based program oversight.

FHWA will prepare, by June 1<sup>st</sup> of each year, a Summary of Key Oversight Initiatives that summarizes FHWA's planned oversight activities for the FHWA Performance Year (June 1<sup>st</sup> through May 31<sup>st</sup>). The oversight activities will be discussed with NDDOT during May leadership meetings between NDDOT and FHWA to discuss any changes or new initiatives in planned oversight and reporting activities.

## ***5.3. Financial Integrity Review and Evaluation Program***

FHWA has implemented the Financial Integrity Review and Evaluation (FIRE) program (FHWA Order 4560.1C) to ensure that Federal-aid funds are properly managed and effectively used in accordance with Federal policies and that safeguards are in place to minimize fraud, waste, and abuse. In addition, the FIRE program ensures that proper internal controls are established and maintained in conducting day-to-day operations, both within FHWA and NDDOT. FHWA is responsible for completing the components of the FIRE program on an annual basis, and coordinating with NDDOT personnel, as necessary.

## 5.4. Program Reviews

NDDOT and FHWA will monitor activities and exercise controls as necessary within their respective areas of responsibility to ensure all Federal-aid projects are carried out in compliance with applicable laws, regulations, and standards. The monitoring of these activities is intended to evaluate procedures and policies used in delivering the Federal-aid Highway Program, and to identify strengths and opportunities for improvement. Furthermore, the monitoring activity will be both on a program-wide and project level basis using key processes such as (but not necessarily limited to) project reviews/project management teams, process reviews/program evaluation (PR/PE), project inspections, sub-recipient activities, and partnering activities. Other methods of monitoring projects and programs include reviewing NDDOT reports, attending monthly/periodic meetings, and maintaining regular communications. Further discussion of the key processes is provided below.

### 5.4.1. Process Reviews/Program Evaluations (PR/PE)

FHWA uses PR/PEs to evaluate project development and construction activities. The primary purpose of the PR/PE program is to provide FHWA with a monitoring and control technique that documents procedures and processes and further assures FHWA that Federal-aid funds are being spent in accordance with Federal laws, regulations, and policies. In addition, PR/PEs evaluate the effectiveness of processes, procedures, and products developed by NDDOT in all phases of a project, as well as the internal operations of FHWA. Based in part on these reviews, assurances can be made that a program is being implemented as intended and is producing a product of expected quality. PR/PEs can be used to evaluate either or both Title 23 and non-Title 23 activities on Federal-aid projects, regardless of route designation [i.e., National Highway System (NHS) or non-NHS] or Federal-aid funding category.

PR/PEs are generally selected as a result of the risk assessment process conducted annually. This is a systematic process of consistent discovery and detection of potential risk events in all areas of the Federal-aid Highway Program where Corporate Threats and Opportunities are discovered and discussed as well. PR/PEs may also be initiated and conducted as necessary throughout the year if an emerging topic/issue is determined by the FHWA leadership team to be of significant risk to FHWA at the national, regional, or statewide level. FHWA staff will involve and discuss potential projects with their NDDOT counterparts prior to topic selection. With the limited number of resources (staff, budget, etc.) available to FHWA and NDDOT, PR/PEs will be conducted on an “as needed” basis. That is, there will not be a specified total number of PR/PEs to be conducted per year by FHWA, and accordingly, there will not be a specified number of PR/PEs to be conducted in a particular emphasis area (i.e., environment, design, construction, etc.) in a year. Program reviews will be conducted annually for certain Compliance Assessment Program (CAP) projects.

The PR/PE topics should be strategically identified to achieve program goals, while balancing the associated risks, priorities, and available resources of FHWA and NDDOT. The associated risks may include statutory requirements, evidence of non-compliance, lack of established procedures, quality, and competencies of personnel, and FHWA's relationship with NDDOT. Benefits should also be considered in the selection of PR/PE topics. This may include evaluation of quality, resolving complex technical issues, advancing innovative technologies, and cost-effective solutions.

PR/PEs will normally be conducted using a joint FHWA/NDDOT team approach, typically with 2-5 members to a team. When appropriate, the PR/PE should include a financial review and involve members of the FHWA and NDDOT finance sections to review and determine if appropriate internal controls exist to detect and prevent possible fraud, waste, or abuse of Federal-aid funds. It is the goal of FHWA to have NDDOT personnel as active members on each PR/PE team, recognizing that there may be times when, due to differing priorities or lack of available resources, this may not be possible. NDDOT team member(s) should periodically brief NDDOT management of the status and findings of the PR/PE. The draft final report with findings and recommendations will be discussed by FHWA and NDDOT management. The purpose of this discussion is to document feedback on the findings and develop a joint implementation plan for the agreed upon recommendations.

#### 5.4.2. Partnering Activities

Partnering is an effective management technique used to improve communications and enhance the resolution of conflicts during project development and construction. Active participation in partnering activities has resulted in high benefits relative to improved communications and working relationships among FHWA, NDDOT, Resource Agencies, and industry. Examples of this activity include; Federal/State interagency Executive Quarterly meetings, ACEC-ND/NDDOT/FHWA, tribal consultation meetings, advisory committees for urban interstate reconstruction projects, task forces, quality management committees.

#### 5.5. PoDI Reviews

Project reviews focus on developing a project for letting and assuring that stewardship/oversight requirements are met. Project reviews may focus on any aspect of a Federal-aid highway project. These reviews will monitor the goal that the project be completed on time, within budget, and with the highest degree of quality and safety.

These projects require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, contract changes, inspections and final acceptance of Federal-aid projects

on a project by project basis to assure compliance with applicable Federal requirements.

FHWA Transportation Engineers will review and approve preliminary project designs; approve Plans, Specifications, and Estimates; concur in award; approve<sup>1</sup> changes in contract (change orders, supplemental agreements, time extensions, claims, etc.); conduct project inspections; final inspections; and project acceptance. Project related agreements with local public agencies, railroads, or utilities concerning items such as funding, relocation, flagging, access, or insurance do not normally require FHWA approval unless the agreement affects federal funding eligibility on the project as referenced in Appendix C.

Each FHWA Transportation Engineer will conduct periodic project inspections; final inspections; and project acceptance. FHWA project inspections are conducted with NDDOT personnel or unannounced. These inspections are designed to focus on evaluating and improving current activities and following-up on unresolved issues from previous FHWA reviews. If possible, issues should be resolved at the time of the review. Each FHWA Transportation Engineer and FHWA Program Specialist will devise a method of ensuring proper follow-up with NDDOT.

- <sup>1</sup> All contract modifications must be approved by FHWA, but non-substantial construction change orders as defined in NDDOT's Construction Records Manual are usually approved at final inspection rather than prior to the work being undertaken.

### ***5.6. Compliance Assessment Program (CAP) Reviews***

CAP Reviews are FHWA project reviews to determine quickly whether a program or process is being conducted efficiently, effectively, and in compliance with federal requirements; based on a random statistically-valid sample size. They may be used to follow up on PR/PE recommendations or as part of the risk assessment process to select PR/PE topics. They are generally very limited in scope, typically looking at a sample of projects per a program area. Project selection will be determined by FHWA. A list of required project CAP reviews will be provided to NDDOT annually.

### ***5.7. Sub-recipient Monitoring***

NDDOT will also monitor sub-recipient activities to assure compliance with applicable Federal requirements. Sub-recipient monitoring will cover each program, function, or activity, and as part of the overall monitoring will include an assessment of the sub-recipient's ability to manage Federal-aid projects.

## **6. Control Documents**

### ***6.1. NDDOT Manuals, Policies, Specifications, Guides, and Procedures***



A listing of applicable documents reviewed for compliance with Federal-aid requirements and/or approved by FHWA is contained in Appendix D. Revisions to any of these manuals, policies, specifications, etc., that are related to Federal-aid will be sent to FHWA for approval/concurrence before the revision is implemented. The FHWA approval procedures are documented in section 8.2. The Appendices A and C list project and program actions, federal fund eligibility references, responsible party identification for NDDOT and FHWA, action requirements, and approval authority identification.

## **6.2. Programmatic Agreements**

A listing of programmatic agreements is contained in Appendix E.

## **7. Stewardship/Oversight Indicators**

These indicators help assess performance in administering Federal-aid highway program requirements and assist in determining whether funds are being effectively utilized to improve the transportation system. A listing of applicable stewardship/oversight indicators is contained in Appendix F.

These indicators should be used to set targets, track trends, and to implement actions. For example, countermeasures may include increased attention/review of the issue or developing new processes/procedures. NDDOT and FHWA will review these indicators in May of each year. The indicators/measures also serve as a tool in conducting annual risk assessments.

## **8. FHWA Division Responsibilities**

FHWA shall ensure that projects or programs comply with certain non-Title 23, U.S.C. Federal-aid program requirements, such as those for metropolitan and statewide planning, environment (NEPA, Clean Air Act, and other related environmental laws and statutes), procurement of engineering and design related service contracts, Brooks Act, Title VI of the Civil Rights Act and related statutes, participation by disadvantaged business enterprises (DBE), prevailing wage rates (Davis-Bacon), construction procurement procedures (competitive bidding), and acquisition of Right-of-Way (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and related statutes).

For all assumed projects or programs, FHWA shall also ensure that all necessary approvals and activities are in accordance with Federal policies, practices and standards, and Title 23 and certain non-Title 23, U.S.C.

Oversight on Other Projects – Additionally, NDDOT may request FHWA oversight in project or program activities. The extent of FHWA oversight will be defined by NDDOT's request and will be met to the extent FHWA has available staffing and funding.



Technical Assistance – FHWA is prepared to provide technical assistance to NDDOT or local transportation agencies on any aspect of an eligible Title 23 project. Technical assistance activities will be decided on a case-by-case basis in NDDOT consultation with NDDOT, other partners and FHWA.

### **8.1. FHWA's Stewardship and Oversight Communication Activities**

As part of its stewardship and oversight communication activities, FHWA will:

- Conduct annual Program and Risk Assessment discussions jointly with NDDOT. And share the annual program and risk assessment information that relates to the NDDOT or sub-recipients.
- Share annual CAP project and program reviews that relate to the NDDOT or sub-recipients.
- Share information on program or performance measurement/management that relates to the NDDOT or sub-recipients.
- Share project, process, or program reviews that relate to the NDDOT or sub-recipients.
- Share FHWA performance planning information that relates to the NDDOT or sub-recipients.
- Share new and revised FHWA policies, rules, and guidance.
- Inform NDDOT if a project related Freedom of Information Act request is received.
- Discuss, on at least an annual basis, stewardship and oversight efforts that are governed by this Agreement.

### **8.2. FHWA Oversight Documentation**

#### FHWA Reviewed/Approved NDDOT Manuals, Policies, Specifications, Guides, and Procedures

NDDOT manuals, policies, specifications, guides, and procedures discussed in section 6.1 and listed in Appendix D will be formally approved by FHWA unless noted. Formal approval by FHWA must be documented as described below.

Manuals, Policies, and Procedures – Changes to manuals, policies, and procedures listed in Appendix D will be submitted by NDDOT to FHWA requesting formal

approval for the change. FHWA will respond by letter through e-mail documenting the formal approval and the approved submittal will be filed by FHWA.

Specifications – FHWA will attend NDDOT's Specification Meeting. FHWA objections to proposed or revised specifications will be raised at this meeting. If concerns are discovered, they will immediately be brought to the attention of NDDOT's Specification Engineer for resolution. All FHWA meeting decisions will be documented, reviewed by FHWA Project Delivery Team Leader, stamped approved, and filed by FHWA.

### FHWA Planning Oversight

Statewide Transportation Improvement Program (STIP) – Review of the STIP submitted by NDDOT will take place jointly with FHWA North Dakota Division and the Federal Transit Administration (FTA) Region VIII in Lakewood, CO. A joint approval letter will be signed by the FHWA Division Administrator and the FTA Regional Administrator, and sent to NDDOT.

State Planning and Research (SPR) Program – Review and approval of the annual SPR workplan and revisions, submitted by the Planning/Asset Management and the Materials and Research Divisions to FHWA, will be done by the Transportation Planning and Program Development Team Leader. The review will include evaluation of the projected funding, the minimum expenditures for planning and research, and an eligibility review of planned activities. Accomplishment reporting of all planning and research projects will be reviewed to ensure useful products are being produced. Additionally, reports and other deliverables may be reviewed to verify utility. Some revisions to Part II of the program (such as State Research Program - IHRB) are handled via e-mail approval between the NDDOT Materials and Research Division and FHWA's Program Development Team. The NDDOT should allow at least 14 days for the review and approval of the documents. Once the work plans have been approved, FMIS authorization may occur.

### FHWA Project Development Oversight

FHWA will participate<sup>2</sup> in Project Management Teams (PMTs) and review draft and final documents and preliminary plans as requested by NDDOT. For PMT meetings FHWA will actively participate in the meeting and provide input on FHWA requirements for the project. PMT minutes will document those discussions and agreements and will be reviewed by FHWA and provided by NDDOT. Comments will be provided to NDDOT if errors or omissions are noted by FHWA.

<sup>2</sup> For PODI, FHWA will participate in all PMT meetings. For assumed projects requiring either an EA/FONSI or an EIS/ROD, FHWA will participate only in PMT meetings until the NEPA process is completed. Additional approvals are not required when proprietary products are being evaluated in FHWA-sponsored programs such as the Innovative Bridge Research and Deployment Program, and the Innovative Pavement Research and Deployment Program.

For draft NEPA and design documents, comments will be returned by FHWA within 14 days to the submitter, unless coordination is required with FHWA HQ. FHWA will expect the submitter to resolve with FHWA any outstanding issues noted in the comments.

Copies of submittals and comments will be kept in FHWA's preliminary files until the project completes construction.

Commitments within NEPA and design documents/approvals will be reviewed for compliance by FHWA at the time construction is authorized/obligated.

### Dispute Resolution

In the event that agreement cannot be reached between FHWA Transportation Engineers or program managers and the NDDOT representative, resolution of the dispute will be accomplished in accordance with Appendix G of this Agreement. See Appendix G for further detail on elevating and resolving a dispute.

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.

## **9. NDDOT Responsibilities**

By signing this Agreement, NDDOT accepts responsibility for FHWA review and approval actions to the extent such review and approval is required by Federal law and regulation. FHWA's expectation is that the NDDOT will act on the behalf of the Secretary of the USDOT for assumed projects and will exercise similar judgment as FHWA.

### ***9.1. NDDOT Oversight and Reporting Requirements***

The NDDOT 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, FHWA and NDDOT jointly developed Business Service Standards (BSS) for specific program areas.

BSS provide an expectation for how long it will take to provide reports and findings along with the expectation of a response concerning actions from NDDOT.

Approval Timelines – It is the expectation that all FHWA project and program actions/reviews/approvals will be completed as defined in BSS. Additional time may be required if coordination with FHWA HQ is necessary or NDDOT communicates short timeline necessary under special circumstances. All timelines will be in calendar days unless designated by law.

For assumed projects or programs that are developed and administered by local agencies/governments, NDDOT shall provide the necessary review and approval to assure compliance with Federal requirements as discussed in this Agreement. NDDOT will be responsible for determining that sub-recipients of Federal funds have adequate staffing, project delivery systems, and sufficient accounting control as well as monitoring sub-recipients. Sub-recipient monitoring will cover each program, function, or activity, and as part of the overall monitoring will include an assessment of the sub-recipient's ability to manage Federal-aid projects NDDOT will monitor sub-recipient activities. Furthermore, NDDOT is ultimately accountable to FHWA for ensuring compliance with Federal-aid requirements on such projects.

For state funded only projects, i.e. "no Federal funds used", FHWA may still have a required Federal action in which case NDDOT shall comply with certain required laws and regulations.

NDDOT will inform FHWA if a project related Freedom of Information Act request is received.

## ***9.2. NDDOT Oversight of Locally Administered Projects***

NDDOT is required to provide adequate oversight of sub-recipients including oversight of any assumed responsibilities the NDDOT has delegated to a Local Public Agencies. Therefore, NDDOT is to exercise similar judgments as FHWA based on Federal Laws, regulations, and policies. In carrying out its responsibilities for a sub-recipient oversight program (23 U.S.C. 106(g)(4)), sub-grantee awareness of Federal grant requirements), management of grants and sub-grants (49 CFR 18.40), and pass through entity responsibilities(2 CFR 200.331 Requirements for Pass-thru Entities) , NDDOT will:

- Maintain a sufficiently staffed LPA administration unit
- Maintain an up-to-date contract administration tools website; and  
Administer the LPA program in conformance with the FHWA approved "[NDDOT Local Government Manual](#)".

As stipulated in section 1.3 of this Agreement, NDDOT and FHWA will assess the "NDDOT Local Government Manual" on an annual basis to determine if there are any opportunities to improve the processes outlined. NDDOT agrees to maintain and administer these procedures, such that they, at a minimum, allow NDDOT to:

- Determine whether a sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage Federal-aid projects;
- Determine 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-aid project(s);
- Assess whether sub-recipient projects receive adequate inspection to ensure they are completed in conformance with approved plans and specifications;
- 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;
- Carry out sub-recipient reporting requirements in accordance with the Federal Funding Accountability and Transparency Act of 2006, PL 109-282 (as amended by PL 110-252).
- Ensure that project actions will be administered in accordance with all applicable Federal laws and regulations.

NDDOT's activities for ensuring compliance, at a minimum, oversight 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 NDDOT's responsibility to approve a sub-recipient to pursue a contract procurement method other than competitive bidding.

The NDDOT shall document its oversight activities for LPA-administered projects and findings, and provide access to FHWA upon request.

## **10. Implementation And Amendments**

- A. This S&O Agreement will take effect as of the effective date of the signature of the FHWA North Dakota Division Administrator, who shall sign this S&O Agreement last.
- B. The Division and NDDOT 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 NDDOT or FHWA; or
  - Priorities shift as a result of audits, public perception, or changes in staffing at either the NDDOT or Division Office.
- C. The Division and NDDOT 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 and E, changes to the Attachments and documents incorporated by reference will not require the Division and NDDOT 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.
- E. Any changes to the Project Action Responsibility Matrix must be approved by the FHWA Office of Infrastructure in writing and documented by an amendment to this S&O Agreement.

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**EXECUTION BY THE FHWA NORTH DAKOTA DIVISION OFFICE**

Executed this 27<sup>th</sup> day of May, 2015.



\_\_\_\_\_  
Signature

Wendall L. Meyer  
Division Administrator

**EXECUTION BY THE NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Executed this 27<sup>th</sup> day of May, 2015.

Grant Levi  
Signature

Grant Levi, P.E.  
Director, North Dakota Department of Transportation



# **APPENDIX A**

## **PROJECT ACTION RESPONSIBILITY MATRIX**

**APPENDIX A**  
**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(As of November 14, 2014)**

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. **This matrix applies program wide; any revision to project approval assumptions by the State, as shown in the matrix, will be handled on a project by project basis.** When a change in project approval assumptions is determined appropriate for a specific project, the project will be classified as a PoDI<sup>1</sup> and the project approval assumptions will be documented in a project oversight plan.

Projects actions that cannot be assumed by NDDOT at any time are noted in the action description. These actions are reserved to FHWA because they are outside the scope of 23 USC 106(c) or otherwise are reserved to FHWA by law.

For the column marked “Projects on the NHS,” FHWA may retain any approval or related action in any box marked “State” as deemed appropriate by FHWA. In those situations, the project will be classified as a PoDI, and an individual project oversight plan will be prepared.

For the column marked “Projects off the NHS”, NDDOT will assume all items marked “State” unless NDDOT determines the assumption of a particular item is not appropriate on a project by project basis. Again, in these situations, the particular project will be identified as a PoDI and an individual project oversight plan will be prepared detailing those project approval actions that will be retained by FHWA.

NDDOT 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 NDDOT unless authorized by law, FHWA may authorize NDDOT to perform work needed to reach the decision point, or to implement the decision.

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<sup>1</sup> *The following are considered PoDI projects: Major Projects (>\$500M); Appalachian Development Highway Projects; TIGER Discretionary Grant Projects; NHS Projects with Retained FHWA Project Approval; Non-NHS Projects with Retained FHWA Project Approval; and Projects Selected by FHWA for Risk-based Stewardship & Oversight. Regardless of retained project approval actions, any Federal-aid Highway Project either on or off the NHS that the Division identifies as having an elevated level of risk can be selected for risk-based stewardship and oversight and would then be identified as a PoDI. Please see “Projects of Division Interest (PoDI)/Projects of Corporate Interest (PoCI) Guidance (available at <http://www.fhwa.dot.gov/federalaid/stewardship/>)*

**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(Excluding PoDIs, which are subject to separate PoDI Plans)**

<b>ACTION</b>	<b>AGENCY RESPONSIBLE</b>	
	<b>PROJECTS ON THE NHS</b>	<b>PROJECTS OFF THE NHS</b>
Ensure project in Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)	STATE	STATE
Identify proposed funding category	STATE(1)	STATE(1)
Obligate funds/approve Federal-aid project agreement, modifications, and project closures (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
All EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations. (Note: this action cannot be assumed by STATE except under 23 U.S.C. 327)	FHWA(2)	FHWA(2)
Categorical Exclusion approval actions (Note this action cannot be assumed by the State except through an assignment under 23 U.S.C.	FHWA(2)	FHWA(2)

**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(Excluding PoDIs, which are subject to separate PoDI Plans)**

ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
326 or 327, or through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g))		
Consultant Contract Selection	STATE (3)	STATE (3)
Sole source Consultant Contract Selection	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]	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)]	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 State pursuant to 23 USC 111(e))	STATE	N/A
Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	STATE	STATE
Approve Project Management Plan for Federal Major Projects over \$500 million [23 USC	FHWA	FHWA

**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(Excluding PoDIs, which are subject to separate PoDI Plans)**

ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
106(h)] (Note: this action cannot be assumed by State)		
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
Provide approval of preliminary plans for unusual/complex structures on the Interstate. [23 USC 109(a) and FHWA Policy]	FHWA (4)	N/A
Provide approval of preliminary plans for unusual/complex structures (non-Interstate). [23 USC 109(a) and FHWA Policy]	STATE (4)	STATE
Approve retaining right-of-way encroachments [23 CFR 1.23 (b) & (c)]	STATE	STATE
Approve use of local force account agreements [23 CFR 635.104 & 204]	STATE	STATE
Approve use of publicly owned equipment [23 CFR 635.106]	STATE	STATE
Approve the use of proprietary products, processes [23 CFR 635.411]	STATE	STATE
Concur in use of publicly furnished materials [23 CFR 635.407]	STATE	STATE
Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	STATE	STATE

<b>PROJECT ACTION RESPONSIBILITY MATRIX</b> (Excluding PoDIs, which are subject to separate PoDI Plans)		
<b>ACTION</b>	<b>AGENCY RESPONSIBLE</b>	
	<b>PROJECTS ON THE NHS</b>	<b>PROJECTS OFF THE NHS</b>
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)(3)]	FHWA for Interstate STATE for Non-Interstate	STATE
Ensure compliant ROW certificate is in place [23 CFR 635.309(c)]	STATE	STATE
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 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 STATE for Non-Interstate (3)	STATE (3)

**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(Excluding PoDIs, which are subject to separate PoDI Plans)**

ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
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 710, Subpart F] (Note: this action cannot be assumed by State)	FHWA	FHWA
Functional replacement of property [23 CFR 710.509] (Note: this action cannot be assumed by State)	FHWA	FHWA
Accept Transportation Management Plans (23 CFR 630.1012(b))	STATE	STATE
Approval of System Engineering Analysis (for ITS) [23 CFR 940.11]	STATE	STATE
Approve PS&E [23 CFR 630.201]	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]	STATE	STATE
Approve utility and railroad agreements [23 CFR 645.113 & 646.216]	STATE	STATE
Approve use of consultants by utility companies [23 CFR 645.109(b)]	STATE	STATE
Approve exceptions to maximum railroad protective insurance limits [23 CFR 646.111]	STATE	STATE
Authorize (approve) advertising for bids () [23 CFR 635.112, 309]	STATE	STATE

**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(Excluding PoDIs, which are subject to separate PoDI Plans)**

ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
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]	STATE	STATE
Approve emergency determinations for contracts awarded by other than competitive bidding [23 CFR 635.104 &.204]	STATE	STATE
Approve construction engineering by local agency [23 CFR 635.105]	STATE	STATE
Approve advertising period less than 3 weeks [23 CFR 635.112]	STATE	STATE
Approve addenda during advertising period [23 CFR 635.112]	STATE, if approved PS&E	STATE
Concur in award of contract [23 CFR 635.114]	STATE	STATE
Concur in rejection of all bids [23 CFR 635.114]	STATE	STATE
Approval of Design-Build Requests-for-Proposals and Addenda [23 CFR 635.112]	STATE	STATE
Approve changes and extra work [23 CFR 635.120]	STATE	STATE
Approve contract time extensions [23 CFR 635.120]	STATE	STATE
Concur in use of mandatory borrow/disposal sites [23 CFR 635.407]	STATE	STATE
Accept materials certification [23 CFR 637.207]	STATE	STATE
Concur in settlement of contract claims [23 CFR 635.124]	STATE	STATE
Concur in termination of construction contracts [23 CFR 635.125]	STATE	STATE



<b>PROJECT ACTION RESPONSIBILITY MATRIX</b> (Excluding PoDIs, which are subject to separate PoDI Plans)		
<b>ACTION</b>	<b>AGENCY RESPONSIBLE</b>	
	<b>PROJECTS ON THE NHS</b>	<b>PROJECTS OFF THE NHS</b>
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)]	STATE	STATE
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)]	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 230, Subpart D]).	STATE	STATE
Training Special Provision – Approval of Project Goal for training slots or hours [23 CFR Part 230, Subpart A]	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) Unusual/Complex bridges and structures are those that the Division determines to have unique foundation problems, new or complex designs, exceptionally long spans, exceptionally large foundations, complex hydrologic (including climate change and extreme weather events) aspects, complex hydraulic elements or scour related elements, or that are designed with procedures that depart from currently recognized acceptable practices (i.e., cable-stay, suspension, arch, segmental concrete, moveable, truss, tunnels, or complex geotechnical walls or ground improvement systems)

**APPENDIX B**

**FHWA PoDI**  
**PROJECT-LEVEL**  
**ACTIONS**

**Appendix B:**  
**FHWA PoDI Project-Level Actions**

NHS-projects are defined by system, irrespective of Federal funding source.

Projects selected by mutual agreement are to be selected by FHWA & NDDOT management on an annual basis. These projects are known as Projects of Division Interest (PODI). Examples of PODI likely to be selected are:

- Complex Emergency Relief Projects
- Complex Urban Reconstruction Projects
- Major Structure Projects
- Environmental Impact Statement Projects
- Geographical, Varying Type of Work, and Local Public Agency Representation

Oversight by FHWA on selected PoDI by mutual agreement may be limited to key phases (environment, design, and/or construction). The phases of FHWA oversight will be determined by mutual agreement at the time of selection. These projects will be identified in a NDDOT/FHWA transmittal letter.

In addition to the annual selection of PODI, NDDOT may request projects to be PODI at any time as new projects or risk elements are identified.

FHWA Transportation Engineers will oversee PODI according to their assigned NDDOT Districts. The degree of PoDI oversight (required PoDI project-level action(s)) for phase of project is established on the chart on the following page.

**FEDERAL AID PROJECT OVERSIGHT  
Required FHWA PoDI Project-Level Actions**

	<i>Begin Project</i>
	<b>STIP</b>
	<b><u>ENVIRONMENT PHASE</u></b>
	<b>NEPA</b>
	<b>Categorical Exclusion, or</b>
	<b>Draft Environmental Assessment- Final Environmental Assessment –</b>
	<b>FONSI, or</b>
	<b>Draft Environmental Impact Statement – Final Environmental</b>
<b>All</b>	<b>Assessment – ROD</b>
<b>Projects</b>	<b><u>DESIGN PHASE</u></b>
<b>Are</b>	<b>Authorization</b>
<b>Subject to</b>	<b>Preliminary Engineering</b>
	<b>Right-of-Way</b>
	<b>Utility Adjustment</b>
<b>Special</b>	<b>Project Agreement</b>
<b>Reviews</b>	Design Exception (Interstate only)
<b>&amp;/or</b>	Proprietary Product
<b>Technical</b>	State Owned/Furnished Material
<b>Assistance</b>	Plans, Specifications, and Estimate (usually combined with Construction Authorization)
<b>At Any</b>	
<b>Time</b>	<b><u>CONSTRUCTION PHASE</u></b>
	<b>Authorization</b>
	<b>Receipt of Bids/Construction</b>
	<b>Construction Engineering</b>
	Concurrence in Award
	Change Order
	Time Extension
	Claim Adjustment
	Final Inspection
	Final Acceptance
	<b>Final Voucher</b>
	<i>End Project</i>

Key: All steps shown require FHWA interaction on PODI Oversight Federal aid Projects. The steps in **Bold** may not be assumed by NDDOT on Federal-aid Projects.

# **APPENDIX C**

## **PROGRAM ACTION RESPONSIBILITY MATRIX**

## Key to Program Action Responsibility Matrix Abbreviation

ADA – FHWA Assistant Division Administrator

EPMPS – FHWA Environment Program Manager and Planning Specialist

ESTL – FHWA Engineering Services Team Leader

FATL – FHWA Financial and Administrative Team Leader

FT – FHWA Finance and Administration Team

HCC – Headquarters Chief Counsel

PMPM – FHWA Pavement and Materials Program Manager

PPDTL – FHWA Planning and Program Development Team Leader

STOPE – FHWA Safety and Traffic Operations Program Engineer

The NDDOT and FHWA contact person will be the lead responsible for internal coordination if necessary for those activities that may involve other divisions.

## Appendix C: Program Action Responsibility Matrix

### PROGRAM ACTION RESPONSIBILITY MATRIX

The following matrix is a composite list of program actions from several actual Stewardship/Oversight Agreements that is provided for illustrative purposes. Assignment of responsibilities may be different from those shown as determined by the FHWA Division Office and NDDOT in their analysis and discussion.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Air Quality	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	PPDTL	Local Government	After receipt of MPO determination; Joint FHWA and FTA determination; In consultation with the Environmental Protection Agency (EPA).
Air Quality	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	PPDTL	Local Government	Applies to non-attainment and maintenance areas only. After receipt of MPO determination, joint determination with FTA (in cooperation with EPA).
Air Quality	Review of CMAQ Annual Report	CMAQ Guidance Memo October 31, 2006	Annually	1-Mar	Office of Planning, Environment & Realty	PPDTL	Programming	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.
Metropolitan Planning	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	PPDTL	Local Government	FHWA Division Office Approval.



Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	N/A
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	May use simplified work statement.
Metropolitan Planning	Approval of UPWP Revisions and Amendments (All MPO's)	23 CFR 420.115	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	
Metropolitan Planning	Approval of Report Before Publication (All MPO's)	23 CFR 420.117(e)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	Waiver may be granted.
Metropolitan Planning	Review of Metropolitan Planning Area Boundary (Establishment and Changes)	23 CFR 450.312	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	Approval by MPO and the Governor, shape files forwarded to HQ. (Comment: No action is required by FHWA/FTA).
Metropolitan Planning	Review of Metropolitan Transportation Planning Organizations (MPO) Designation and Re-designation	23 CFR 450.310	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	Require agreement between Governor and local governments.
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	Between MPO/State DOT/Transit Operator. Included in UPWP or Prospectus (23 CFR 450.314(d)).
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	Between MPO/State DOT/State AQ Agency.
Metropolitan Planning	Review of MPO Public Participation Procedures	23 CFR 450.316(a)	As needed	Not Applicable	Office of Planning,	PPDTL/EPMPS	Local Government	Must be developed and published.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
					Environment & Realty			
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	
Metropolitan Planning	Review of MTP Amendments	23 CFR 450.322(c)	As Needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	No succinct Federal approval action is required for the TIP. FHWA/FTA approval of the TIP is through the STIP approval process.
Metropolitan Planning	Review of TIP Amendments	23 CFR 450.324(a); 23 CFR 450.328(b)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/EPMPS	Local Government	No succinct Federal approval action is required for the TIP. FHWA/FTA approval of the TIP is through the STIP approval process.
Metropolitan Planning	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	EPMPS	Local Government	Required for all MPO's. May be included in the STIP, TIP, or UPWP, at least every 4 years.
Metropolitan Planning	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	PPDTL/EPMPS	Local Government	Joint FHWA and FTA Certification.
N/A	Territorial Highway Program - Approval of Territory Agreement	23 USC 165(c)(5)	Reviewed and Revised as needed every two years		Office of Infrastructure	Not Applicable in ND	Not Applicable in ND	Division Office works with Office of Program Administration and HCC

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Statewide Planning	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	PPDTL	Planning and Asset Management	FHWA Division Office Approval.
Statewide Planning	Review of State Public Involvement Procedures	23 CFR 450.210(a)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Planning and Asset Management	FHWA Division Office Review to Assure Compliance.
Statewide Planning	Receipt of State Consultation Process for Non-metropolitan Local Officials	23 CFR 450.210(b)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Planning and Asset Management	Informational Purposes.
Statewide Planning	Review of Long-range Statewide Transportation Plan	23 CFR 450.214	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Planning and Asset Management	FHWA Division Office Review to Assure Compliance.
Statewide Planning	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	PPDTL	Programming	Joint FHWA and FTA approval.
Statewide Planning	Approval of STIP Amendments	23 CFR 450.218(a) & (c)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Programming	Joint FHWA and FTA approval.
Statewide Planning	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	PPDTL	Programming	FHWA and FTA issue a joint finding concurrent with STIP approval.
Statewide Planning	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	PPDTL	Programming	Received with STIP.
Statewide Planning	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	PPDTL	Office of Transportation Programs/Local Government	
Statewide Planning	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	PPDTL	Programming	At least every four years, joint finding with FTA when TIP is submitted.
Statewide Planning	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	PPDTL	Local Government	

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Statewide Planning	Approval of Revision of Functional Classification	23 CFR 470.105 (b)	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Local Government	
Statewide Planning	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	PPDTL	Planning and Asset Management	Approved by HQ - Office Director.
Statewide Planning	Transportation Planning Excellence Awards		Annually	1-Feb	Office of Planning, Environment & Realty	PPDTL/EPMPS	Planning and Asset Management/Local Government	Call for entries for the FHWA FTA Transportation Planning and Excellence Awards.
Statewide Planning	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	PPDTL	Planning and Asset Management/Materials and Research	FHWA Division Office Approval.
Bridge, Structures, Hydraulics, Geotech	Approval of preliminary plans of Major and Unusual Bridges on the Interstate Highway System	(M1100.A)	As needed	Not Applicable	Office of Infrastructure	ESTL	Bridge	Director of HIBT has approval of preliminary plans of Major and Unusual Bridges on the Interstate Highway System (M1100.A)
Bridge, Structures, Hydraulics, Geotech	Review Bridge Construction, Geotechnical, and Hydraulics	23 CFR 650	As needed	Not Applicable	Office of Infrastructure	ESTL	Bridge	
Bridge, Structures, Hydraulics, Geotech	Review Plans of Corrective Action established to address NBIS compliance issues	23 CFR 650, 23 USC 144	Annually		Office of Infrastructure	ESTL	Bridge	Division office performs annual compliance review and reports results to HQ.
Bridge, Structures, Hydraulics, Geotech	Review NBI Data Submittal	23 CFR 650 Subpart C, Annual Memo from HQ, 23 USC 144	Annually	1-Apr	Office of Infrastructure	ESTL	Bridge	Division resolve errors with States; States submit to HQ.
Bridge, Structures, Hydraulics, Geotech	Review structurally deficient bridge construction Unit Cost submittal	23 USC 144	Annually	1-Apr	Office of Infrastructure	ESTL	Bridge	Submit to HQ.
Bridge, Structures, Hydraulics, Geotech	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	ESTL/EPMPS	Bridge/ETS	

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Civil Rights	Prepare / Review Title VI Plan Accomplishments and Next Year's Goals	23 CFR 200.9(b)(10)	Annually	1-Oct	Office of Civil Rights	FATL	Civil Rights	Division office reviews and comments.
Civil Rights	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	FATL	Civil Rights	Division office reviews and comments.
Civil Rights	Prepare / Review State Internal EEO Affirmative Action Plan (Title VII) Accomplishments and Goals	23 CFR 230.311	Annually	1-Oct	Office of Civil Rights	FATL	Civil Rights	Courtesy copy to HQ.
Civil Rights	Review DBE Program Revisions	49 CFR 26.21(b)(2)	As needed	As needed	Office of Civil Rights	FATL	Civil Rights	Division sends to HCR for review and approval
Civil Rights	Prepare / DBE Uniform Awards and Commitment Report	49 CFR 26, Appendix B	Semi-Annual	June 1st December 1st	Office of Civil Rights	FATL	Civil Rights	Division Office reviews and sends to HCR
Civil Rights	Prepare / Annual Analysis and Corrective Action Plan (if necessary)	49 CFR 26.47(c)	Annual (as necessary)	December 31st	Office of Civil Rights	FATL	Civil Rights	Division Office approves sends copy to HCR
Civil Rights	Prepare / State DBE Program Goals	49 CFR 26.45(f)(1)	Triennial	August 1st	Office of Civil Rights	FATL	Civil Rights	Division reviews and approves; HCC provides legal sufficiency review and approval sends copy to HCR
Civil Rights	Prepare / Review On-the-Job-Training (OJT) goals & accomplishments	23 CFR 230.111(b)	Annually	October 1st	Office of Civil Rights	FATL	Civil Rights	Division office reviews and comments.
Civil Rights	Approval of OJT and DBE Supportive Services fund requests	23 CFR 230.113 & 23 CFR 230.204	Annual	TBA	Office of Civil Rights	FATL	Civil Rights	Division recommends approval submits to HCR for final approval
Civil Rights	Return of any unobligated discretionary grant program funding	23 CFR 230.117(2)	Annual	TBA	Office of Civil Rights	FATL	Programming/ Civil Rights	Division works with HCR and CFO
Civil Rights	Prepare / Review of Report on Supportive Services (OJT & DBE)	23 CFR 230.113(g), 230.121(e), 230.204(g)(6)	Quarterly	If funded	Office of Civil Rights	FATL	Civil Rights	Division office reviews and comments.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Civil Rights	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	FATL	Civil Rights	Recommendation sent to HQ for approval.
Civil Rights	Prepare / Review State DOT Employment Statistical Data (EEO-4)	23 CFR, Subpart C, Appendix A	Biannual	1-Dec	Office of Civil Rights	FATL	Human Resources	Report sent to HQ quarterly for informational purposes and recommendation sent to HQ annually for approval.
Civil Rights	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	October 1	Office of Civil Rights	FATL	Programming	Divisions submit data to HCR who prepares report for DOCR
Civil Rights	Prepare / Review ADA Complaint Reports of Investigation	28 CFR 35.190	As needed	Not Applicable	Office of Civil Rights	STOPE	Civil Rights	Division office reviews, FHWA HQ approves and issues finding.
Civil Rights	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	STOPE	Civil Rights	Division office reviews and comments.
Civil Rights	Return of unexpended funds used for Summer Transportation Institutes	23 CFR 230.117(2)	Annual	Not Applicable in ND	Office of Civil Rights	FATL	Civil Rights	Divisions work with HCR and CFO
Civil Rights	Prepare / Review Request for National Summer Transportation Institute (NSTI) Proposals (SOWs)	23 USC 140(b)	Annual	Not Applicable in ND	Office of Civil Rights	FATL	Civil Rights	Divisions recommend approval. HCR gives final approval
Civil Rights	Prepare / Review NSTI Report (questionnaire)	23 USC 140(b)	Annual	Not Applicable in ND	Office of Civil Rights	FATL	Civil Rights	Divisions provide to HCR

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Design Constr., Maint.	Approval of Contracting Procedures for Consultant Selection	23 CFR 172.5 & 172.9	As needed	Not Applicable	Office of Infrastructure	DPM	ETS	FHWA Division Office Approval.
Design, Const, Maint	Approval of State 3R Program	23 CFR 625.4(a)(3), 23 USC 109(n)	As needed	Not Applicable	Office of Infrastructure	DPM	Design	FHWA Division Office Approval.
Design, Const, Maint	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	DPM	Design	FHWA HQ regulatory action to adopt NHS standards.
Design, Const, Maint	Approval of State Standard Specifications	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure	DPM	ETS	FHWA Division Office Approval.
Design, Const, Maint	Verify State Design Exception Policy complies with FHWA Policy	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure	DPM	Design	FHWA Division Office Approval.
Design, Const, Maint	Approval of State Standard Detail Plans	23 CFR 625.3	As needed	Not Applicable	Office of Infrastructure	DPM	Design	FHWA Division Office Approval.
Design, Const, Maint	Approval of Pavement Design Policy	23 CFR 626.3	As needed	Not Applicable	Office of Infrastructure	PMPM	Design	FHWA Division Office Approval.
Design, Const, Maint	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	DPM	ETS/ Design	FHWA Division Office Review.
Design, Const, Maint	Review of Value Engineering Annual Report	23 CFR 627.7, FHWA Order 1311.1B	Annual	Not Applicable	Office of Infrastructure	DPM	ETS/Design	FHWA Division Office collects, reviews, and submits to HQ for review and reporting.
Design, Const, Maint	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	DPM	Design	FHWA Division Office approval with concurrence from HQ on more complex access requests.
Design, Const, Maint	Approval of Liquidated Damages Rate	23 CFR 635.127	Every 2 years	Not Applicable	Office of Infrastructure	ESTL	Construction	FHWA Division Office Approval.
Design, Const, Maint	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	DPM/PMPM	Design/Material and Research	FHWA Division Office Approval
Design, Const, Maint	Approval of Utility Agreement / Alternate Procedure	23 CFR 645.119	As needed	Not Applicable	Office of Infrastructure	DPM	Design	FHWA Division Office Approval

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Design, Const, Maint	Approval of Utility Accommodation Policy	23 CFR 645.215, 23 USC 109(l), 23 USC 123	As needed	Not Applicable	Office of Infrastructure	DPM	Design	FHWA Division Office Approval
Design, Const, Maint	Emergency Relief (ER) Damage Assessments and Reports	23 CFR 668 23 USC 120 and 125	As needed	Not Applicable	Office of Infrastructure	ERPM	Local Government/ Maintenance	Perform with State.
Design, Const, Maint.	Assure Labor Compliance - Prevailing Wage Rate	23 USC 113	As needed	Not Applicable	Office of Infrastructure	CPM	Construction/Civil Rights	FHWA Division Office Review and Approval
Environment	Approval of Public Involvement Program Procedures	23 CFR 771.111(h), 23 USC 128	As needed	Not Applicable	Office of Planning, Environment & Realty	EPMPS	ETS	
Environment	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	EPMPS	ETS	
Environment	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	EPMPS	ETS	FHWA approves State' noise abatement policy.
Environment	EIS Status Updates	FHWA Strategic Goal - EIS Timeliness	Quarterly	(Fiscal Year - Oct, Jan, Apr, Jul)	Office of Planning, Environment & Realty	EPMPS	ETS	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.
Environment	Endangered Species Act Cost Report		Annually	1-Mar	Office of Planning, Environment & Realty	EPMPS	ETS	
Environment	Exemplary Ecosystem Initiatives Applications		Annually	1-Apr	Office of Planning, Environment & Realty	EPMPS	ETS	



Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Finance	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	FT	Programming	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.
Finance	Approval of Indirect Cost Allocation Plans (ICAPs)	; 2 CFR 200 Subpart E ASMB-C-10	As needed	Not Applicable	Office of Chief Financial Officer	FT	Finance	The State will certify that the ICAP was prepared in accordance with 2 CFR 200 Subpart E.
Finance	FIRE Program Activities	FHWA Order 4560.1C (or as superseded)	Ongoing	As needed	Office of Chief Financial Officer	FT	Programming/ Finance	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.
Finance	Audit Coordination/FHWA Financial Statement Audit/State External Audit Reviews/State Internal Audit Reviews	FMFIA, 2 CFR Part 200, Subpart F; GAAP, CFO Act of 1990; DOT Order 8000.1C	As needed	As needed	Office of Chief Financial Officer	FT	Finance/ Audit Services	State assures corrective action is taken to resolve audit findings and FHWA will monitor activities to ensure implementation.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Finance	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	If selected	Office of Chief Financial Officer	FT	Finance	State will provide all information necessary to document sampled payments and FHWA offices will review and complete appropriate data submittal forms.
Finance	Transfer of Funds between programs or to other FHWA offices or agencies as requested by State	23 USC 132 and FHWA Order 4551.1	As needed	As needed	Office of Chief Financial Officer	FT	Programming	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.
Finance	Reviews of State Transportation Departments Financial Management Systems - Financial Integrity	23 USC 106(g)(2)(A)	Annually	As requested	Office of Chief Financial Officer	FT	Finance	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).
Finance	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	As needed	Office of Chief Financial Officer	FT	Local Government	

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Finance	Approval of Increased Federal Share Agreement (Sliding Scale)	23 USC 120(b)(2)	As determined by the Federal Share Agreement	As needed	Office of Chief Financial Officer	FT	Finance	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.
Finance	TIFIA Credit Program	23 USC 601-609	As needed	Not Applicable in ND	Office of Innovative Program Delivery	FATL	Finance/ Programming	Project sponsors submit requests for credit assistance to the TIFIA JPO for review; approval by the Secretary
Finance	GARVEEs	23 USC 122; GARVEE Guidance 3/14	As needed	As needed	Office of Innovative Program Delivery	FATL	Finance/ Programming	MOUs strongly suggested for each GARVEE issue. FM contacts OIPD for review/concurrence before final approval
Finance	State Infrastructure Banks	NHS Act Section 308; 23 USC 610; SIB Guidance 3/14	Annual Report	TBD	Office of Innovative Program Delivery	FATL	Finance/ Programming	Division sends copy of report to OIPD. SIB submits annual report to Division Office.
Finance	Section 129 Tolling Authority Requests	23 USC 129(a)	As needed	Not Applicable in ND	Office of Innovative Program Delivery	FATL	Finance/ Programming	At the option of the project sponsor, may execute a Tolling Eligibility MOU with the Division Office; HIN coordinates FHWA HQ review
Finance	Section 166 HOV/HOT Lanes Tolling Authority Requests	23 USC 166(d)	As needed	Not Applicable in ND	Office of Innovative Program Delivery	FATL	Finance/ Programming	At the option of the project sponsor, may execute a Tolling Eligibility MOU with the Division Office; HIN coordinates FHWA HQ review
Finance	Value Pricing Pilot Program Tolling Authority Requests	ISTEA Section 1012(b)	As needed	Not Applicable in ND	Office of Innovative Program Delivery	FATL	Finance/ Programming	Requests submitted to HIN to coordinate review; approval by the Administrator

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Finance	Interstate System Reconstruction and Rehabilitation Pilot Program Tolling Authority Requests	TEA-21 Section 1216(b)	As needed	Not Applicable in ND	Office of Innovative Program Delivery	FATL	Finance/ Programming	Applications submitted to HIN to coordinate review; approval by the Administrator
Finance	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.
Finance	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.
Finance	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 NDDOT 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.
Freight	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	PPDTL	Planning and Asset Management	Under development, initial PFN designation scheduled for Spring 2014 completion.
Freight	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	PPDTL	Planning and Asset Management	OST lead

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Freight	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	PPDTL	Planning and Asset Management	OST lead
Highway Information	Annual Traffic Reports	Traffic Monitoring Analysis System and Traffic Monitoring Guide reporting	When Published	As needed	Office of Highway Policy information	PPDTL	Planning and Asset Management	When Published
Highway Information	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	PPDTL	Planning and Asset Management	Review memo to HQ.
Highway Information	Approval of Certified Public Road Mileage	23 CFR 460.3(b)	Annually	1-Jun	Office of Highway Policy information	PPDTL	Planning and Asset Management	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.
Highway Information	Approval of Data Submittal	23 CFR 420.105(b), HPMS Field Manual	Annually	15-Jun	Office of Highway Policy information	PPDTL	Planning and Asset Management	State DOT sends directly to Division Office and HQ.
Highway Information	Highway Statistics Reports	Guide to Reporting Highway Statistics			Office of Highway Policy information	PPDTL	Planning and Asset Management	State DOT of Division Office sends directly to HQ.
Highway Information	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	PPDTL	Budget and Finance	
Highway 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	PPDTL	Budget and Finance	
Highway 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	PPDTL	Budget and Finance	
Highway Information	Transportation Bond Referendums	A Guide to Reporting Highway Statistics, Chapter 9	When Published	When Published	Office of Highway Policy information	PPDTL	Budget and Finance	

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Highway 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	PPDTL	Budget and Finance	Annually, Due as soon as available.
Highway Information	Finance (536)	A Guide to Reporting Highway Statistics, Chapter 11	30-Sep	30-Sep	Office of Highway Policy information	PPDTL	Budget and Finance	Biennially for odd-numbered years. Due nine months after end of reporting year
Highway Information	Finance (534)	A Guide to Reporting Highway Statistics, Chapter 12	15-Jun	15-Jun	Office of Highway Policy information	PPDTL	Budget and Finance	Annually for State, Biennially for local
Highway Information	Highway Finance and Tax Legislation	A Guide to Reporting Highway Statistics, Chapter 13	When Published	When Published	Office of Highway Policy information	PPDTL	Budget and Finance	
Highway 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	PPDTL	Budget and Finance	
Highway Information	Motor Fuel Oversight Review	July 24, 2001 HQ Memo	Initial baseline reports no later than December 31, 2003		Office of Highway Policy information	PPDTL	ND Tax Dept./ NDDOT Budget and Finance	Annual progress reports and statement of verification by June 30. Submitted via UPACS.
Highway Information	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	PPDTL	Budget and Finance/Planning and Asset Management	Division Office sends to HQ.
Highway Information	State Highway Maps (Tourist)		When Published	When Published	Office of Highway Policy information	PPDTL	Planning/Asset Management	Two copies to each Division Office and 100 copies to HQ.
Highway Information	Traffic Flow Maps		When Published		Office of Highway Policy information	PPDTL	Planning and Asset Management	When Published.
Highway Information	Vehicle Classification Data	MAP-21, HPMS Field Manual, Traffic Monitoring Guide	15-Jun	15-Jun	Office of Highway Policy information	PPDTL		Part of Annual HPMS submittal.
Highway Information	Highway Use Tax Evasion Grant Awards	23 USC 143	Annual	Not Applicable	Office of Highway Policy information	PPDTL	Planning and Asset Management	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.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Highway Information	Heavy Vehicle Use Tax (HVUT) – Certification of verifying proof-of-payment of HVUT	23 CFR 669	Annual	1-Jan	Office of Highway Policy information	PPDTL	Motor Vehicle	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.
Highway Information	Heavy Vehicle Use Tax (HVUT) – Triennial review of State program	23 CFR 669.21	Triennial	Not Applicable	Office of Highway Policy information	PPDTL	Motor Vehicle	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.
Highway Information	Permanent ATR Data	Heavy Vehicle Travel Information System Field Manual	Monthly	Monthly	Office of Highway Policy information	PPDTL	Planning and Asset Management	Submit monthly, within 20 days after the close of the month for which the data were collected.
Highway Information	Continuous Automatic Vehicle Classifier Data	Heavy Vehicle Travel Information System Field Manual	Monthly	Monthly	Office of Highway Policy information	PPDTL	Planning and Asset Management	Send up to one week of data per quarter
Highway Information	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	PPDTL	Planning and Asset Management	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.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
LPA	Local Public Agency (LPA) Oversight	2 CFR 200.331; 23 USC 106(g)(4)	As needed	Not Applicable	Office of Infrastructure	EST	Local Government	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."
Management	Determination of High Risk Categories - Limitation on Interstate Projects	23 USC 106(c)(4)(B)	As needed	Not Applicable	Office of Infrastructure	Asst. DA	Deputy Director	Office of Program Administration determines national categories and must concur on any State designations.
Management	Toll Credit and Maintenance of Effort (MOE) Calculation and Agreement	23 USC 120(i)	Annually		Office of Infrastructure	Asst. DA	Deputy Director	State will calculate the amount of eligible toll credit and submit for approval. FHWA will review and approve the request.
Management	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	Asst. DA	Deputy Director	Division Office reviews and submits for Office of Program Administration for Administrator Approval
Management	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); ISTE A Section 1012(b)(3)	Annually	Not Applicable in ND	Office of Innovative Program Delivery	Asst. DA	Deputy Director	Division Office to receive the reports.
Management	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	Asst. DA	Deputy Director	Approval by HQ – Administrator.



Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Materials	Approval of Quality Assurance Program	23 CFR 637.205	As needed	Not Applicable	Office of Infrastructure	PMPM	Materials and Research	State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Materials	Assure Central Laboratory accredited by AASHTO Accreditation Program or FHWA approved comparable program	23 CFR 637.209	As needed	Not Applicable	Office of Infrastructure	PMPM	Materials and Research	State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Materials	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	PMPM	Materials and Research	State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Materials	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	PMPM	Materials and Research	State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Materials	Review Independent Assurance Annual Report	23 CFR 637.207	Annually	1-Mar	Office of Infrastructure	PMPM	Materials and Research	State administers, with programmatic agreement by the Division Office, as part of their materials testing and construction quality assurance/acceptance program.
Operations	Review HOV Operations Report for Tolloed Use and Low-Emission and Energy-Efficient Vehicle Use	23 USC 166(d)	Annually	As determined by HQ	Office of Operations	STOPE	Not Applicable in ND	
Operations	Congestion Partnerships Assessment	Annual Memo from HQ	Annually	1-Jul	Office of Operations	STOPE	Not Applicable in ND	Complete with partners and forward to HQ.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Operations	Traffic Incident Management Self-Assessment	Annual Memo from HQ	Annually	1-Jul	Office of Operations	STOPE	Maintenance	Complete with partners and forward to HQ.
Operations	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	STOPE	Design	Complete with partners and forward to HQ.
Operations	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	STOPE	Design	
Operations	Review Vehicle Size & Weight Enforcement Plan	23 CFR 657.11, 23 USC 127	Annually	1-Oct	Office of Operations	STOPE	Highway Patrol	
Operations	Review Vehicle Size & Weight Enforcement Certification	23 CFR 657.13, 23 USC 141	Annually	1-Jan	Office of Operations	STOPE	Highway Patrol	
Operations	Approval of National Network Modifications	23 CFR 658.11	As needed	Not Applicable	Office of Operations	STOPE	Highway Patrol/Maintenance	
Operations	Intelligent Transportation System Architecture & Standards	23 CFR Part 940	As needed	Not Applicable	Office of Operations	STOPE	Maintenance	
Operations	Approval of Work Zone Significant Project Determination	23 CFR 630.1010	As needed		Office of Operations	STOPE	Design	
Operations	Approval of Exceptions to Work Zone Procedures for Interstate Projects	23 CFR 630.1010	As needed		Office of Operations	STOPE	Design	
Operations	Approval of Work Zone Policy and Procedures Conformance Review	23 CFR 630.1014	At appropriate intervals		Office of Operations	STOPE	Design	
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	STOPE	Design	

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Performance Management	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	DPM	Asset Management	
Performance Management	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	Asst. DA	Asset Management	
Performance Management	Review Reporting on Performance Targets	23 USC 150(e)	Beginning four years after enactment of MAP-21 and biennially thereafter		Office of Infrastructure	Asst. DA	Asset Management	
Performance Management	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	Asst. DA	Asset Management	
Planning	Receipt of State Consultation Process with Tribal Governments	23 CFR 450.210(c)	As needed	Not Applicable	Office of Federal Lands Highway	PPDTL	Programming	Informational Purposes.
Policy	Approval for reduction of expenditures for off-system bridges	23 USC 133(g)(2)(B)	As needed	Not Applicable	Office of Infrastructure	Asst. DA	Deputy Director	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.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Policy	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	Asst. DA	Deputy Director	
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	PPDTL	ETS	
Realty	Early Acquisitions	23 CFR 710.501	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	ETS	
Realty	Local Public Agency Oversight	49 CFR 24.4(b); 23 CFR 710.201	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	ETS	
Realty	Approval of Highway Facility Relinquishment	23 CFR 620.203	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	ETS	
Realty	Approval of ROW Disposal Authorization Request	23 CFR 710.409	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	ETS	
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	PPDTL	ETS	
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	Asst. DA	ETS	
Realty	Approval of Interstate Real Property Use Agreements	23 CFR 710.405	As needed	Not Applicable	Office of Planning, Environment & Realty	Asst. DA	ETS	
Realty	Approval of Request for Federal Land Transfer	23 CFR 710.601	As needed	Not Applicable	Office of Planning, Environment &	PPDTL	ETS	Approval by DA

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
					Realty			
Realty	Approval of Request for Direct Federal Acquisition	23 CFR 710.603	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL	ETS	
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	PPDTL	Maintenance	
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	PPDTL	Maintenance	
Realty	Approval of Railroad Agreement Alternate Procedure	23 CFR 646.220	As needed	Not Applicable	Office of Planning, Environment & Realty	PPDTL/ESTL	Planning/Asset Management	
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	PPDTL	ETS	Requests reviewed and approved by HEPR Office Director.
Realty	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	PPDTL	ETS	Submitted to FHWA Headquarters (HQ).
Realty	Review of Real Property Acquisition Statistical Report	FHWA Order 6540.1	Annually	15-Nov	Office of Planning, Environment & Realty	PPDTL	ETS	
Research	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	PPDTL	Materials and Research	FHWA Division Office Approval.
Research	Approval of Local Technical Assistance Program (LTAP) Centers Work Plan and Budget	FHWA LTAP Field Manual	Annually	31-Mar	Office of Planning, Environment & Realty	PPDTL/STOPE	Materials and Research/LTAP Center	FHWA HQ approval.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Research	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	PPDTL	Materials and Research	FHWA Division Office Approval.
Research	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	PPDTL/EPMPS	Materials and Research	FHWA Division Office Periodic Review.
Research	Approval of SPR research reports	23 CFR 420.117	Prior to publication unless prior approval is waved	Not Applicable	Office of Planning, Environment & Realty	PPDTL	Materials and Research	FHWA Division Office Approval unless waived.
Safety	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	STOPE	Safety	FHWA Division Offices provide copy of SHSP process approval letter to HQ.
Safety	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	STOPE	Programming	As per MAP-21 guidance, reports are due to FHWA Division Office by August 31st and to the Office of Safety by September 30.
Safety	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	STOPE	Safety	Per MAP-21, States and MPOs must set targets for established measures. Targets must be assessed for achievement
Safety	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	STOPE	Safety/Programming	Certifications due to the Division Office by January 1.

Program	Activity	Authority	Frequency	Due Date	FHWA HQ Program Office	FHWA Division Responsible Program Office	NDDOT Responsible Program Office	Remarks
Safety	Section 154/164 Compliance Status - Funds Reservation	23 USC 154 and 23 USC 164	Annually	30-Oct	Office of Safety	STOPE	Safety/Programming	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.
Safety	Review Safety Belt Compliance Status	23 USC 153, 23 CFR 1215.6	Annually	Annually	Office of Safety	STOPE	Safety	NHTSA
Safety	High Risk Rural Roads (HRRR) Special Rule	23 USC 148(g)(1)	Annually	Annually	Office of Safety	STOPE	Programming	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.
Safety	Older Drivers and Pedestrians Special Rule	23 USC 148 (g)(2)	Annually	31-Aug	Office of Safety	STOPE	Programming	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.
Safety	FHWA Emergency Preparedness Program	Executive Order 12656 and FHWA Order 1910.2C	As needed	Not Applicable	Office of Operations	PPDTL/STOPE	Maintenance	National Programs.

## NDDOT Manuals Approved by FHWA for use on Federal-Aid Projects

ACTIVITY	Authority	Frequency / Due	NDDOT Contact	FHWA Contact	Remarks
Asset Management – NDDOT Transportation Asset Management Plan	N/A	As needed		Design Program Manager	Currently being developed
Consultant Administrative Services Procedures Manual	N/A	As needed	Environmental & Transportation Services	Design Program Manager	Approved 12/2007
Civil Rights - ADA Transition Plan	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 12/2011
Civil Rights - Annual Overall DBE Goal	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 2012
Civil Rights - DBE Program Administration Manual	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 12/22/2011
Civil Rights - Internal EEO Affirmative Action Plan	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 4/15/2013
Civil Rights – OJT Program Plan	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 2013
Civil Rights - Title VI and Nondiscrimination Program	N/A	As needed	Business Economic Opportunities Program	FATL	Approved 10/2012
Design – CADD Standard Drawings	N/A	As needed	Design	Design Program Manager	
Design – Design Guidelines	N/A	As needed	Design	Design Program Manager	Approved 3/19/2007
Design – Design Manual	N/A	As needed	Design	Design Program Manager	
Design – NDDOT Standard Specifications for Road and Bridge Construction	N/A	As needed	Design	Design Program Manager	Approved 2008
Design – Coordination and Notification for Utility Relocations, Adjustments, and Reimbursement Policy and Procedures	N/A	As needed	Design	Design Program Manager	Approved 6/2010
Design – Value Engineering Policy	N/A	As needed	Design	Design Program Manager	



ACTIVITY	Authority	Frequency / Due	NDDOT Contact	FHWA Contact	Remarks
Design – A Policy for Accommodation of Utilities on State Highway Right-of-Way	N/A	As needed	Design	Design Program Manager	Approved 12/2006
Emergency Relief Manual	N/A	As needed	Local Government	ER Program Manager	Currently being developed
Environment – NDDOT Noise Policy and Guidance	N/A	As needed	Environment	ERPE	Approved 7/7/2011
Environment – NDDOT Storm Water Pollution Prevention Plan	N/A	As needed	Environment	ERPE	Approved 3/31/2004
Environment - NDDOT Public Involvement Process	N/A	As needed	Environment	ERPE	
Local Government Manual	N/A	As needed	Local Government	Construction Program Manager	Approved 5/2008
Local Public Agency Right-of-Way Acquisition Manual	N/A	As needed	ROW	ERPE	Approved 12/2010
Pavement & Materials - NDDOT Field Sampling and Testing Manual	23 CFR 637B	As needed	Materials & Research	PMPM	Approved 4/2008
Pavement & Materials - NDDOT Transportation Certification Program Manager	23 CFR 637B	As needed	Materials & Research	PMPM	
ROW Manual	N/A	As needed	ROW	ERPE	
Safety – NDDOT Highway Safety Improvement Program (HSIP) Implementation Plan	N/A	As needed	Safety	STOPE	Approved 1/2010
Safety - SHSP	N/A	As needed	Safety	STOPE	Approved 1/2010
State Manual of Uniform Traffic Control Devices (MUTCD) and any NDDOT Supplements	23 CFR 655.603(b)	Within 2 years of updates to MUTCD	Operations	STOPE	

**APPENDIX D**

**NDDOT MANUALS &**  
**DOCUMENTS**

## **Appendix D: NDDOT Manuals & Documents**

### **NDDOT Manuals (Approved or to be Approved by FHWA)**

#### Asset Management

NDDOT Transportation Asset Management plan

#### Bridge

Bridge Manual

#### Construction

Bid Evaluation Procedures

Contract Administration Manual

Contract Compliance Plan

[NDDOT Construction Records Manual\\*\\*](#)

#### Consultant Administrative Services

[Consultant Administrative Services Procedures Manual](#)

#### Civil Rights

Website: [Title VI and Nondiscrimination Program/ADA Website](#)

[Title VI and Nondiscrimination Program](#)

[NDDOT ADA Transition Plan](#)

Website: [DBE Program Website](#)

[DBE Program Administration Manual](#)

Website: [OJT Program Website](#)

[OJT Program Plan](#)

Website: [Internal EEO Affirmative Action Website](#)

[Internal EEO Affirmative Action Plan](#)

#### Design

[NDDOT Design Manual](#)

[NDDOT CADD Standard Drawings](#)

[NDDOT Design Guidelines](#)

[NDDOT Standard Specifications for Road and Bridge Construction](#)

[NDDOT Supplemental Specifications](#)

[Coordination and Notification for Utility Relocation, Adjustments, and Reimbursement Policy and Procedures](#)

Value Engineering Policy and guidance documents

[A Policy for Accommodation of Utilities on State Highway Right-Of-Way](#)

Emergency Relief

[NDDOT Emergency Relief Manual](#)

Environment

[NDDOT Storm Water Pollution Prevention Plan](#)

[NDDOT Noise Policy and Guidance](#)

[NDDOT Public Involvement Process](#)

Finance

Financial Services Manual

Indirect Cost Allocation Plan (Cost Pool Composition/Eligibility)

Local and Tribal Governments

[NDDOT Local Government Manual](#)

[Local Public Agency Right of Way Acquisition Manual](#)

Pavement and Materials

[NDDOT Field Sampling and Testing Manual](#)

Materials Manual

Planning

[Statewide Transportation Improvement Program \(STIP\)](#)

Right-Of Way

[NDDOT ROW Manual](#)

Safety

[NDDOT Highway Safety Improvement Program \(HSIP\) Implementation Plan](#)

[Strategic Highway Safety Plan \(SHSP\)](#)

Traffic Operations

State Manual of Uniform Traffic Control Devices (MUTCD) and any NDDOT state supplements

Traffic Operation Manual

Work Programs

Local/Tribal Technical Assistance Program (LTAP/TTAP)

State Planning and Research

Transportation Management Area/Metropolitan Planning Organization (TMA/MPO)

**NDDOT Manuals (Not Approved by FHWA)**

Bridge and Structures

NDDOT Bridge Inspection Procedures Manual

Construction and Contract Administration

[NDDOT Construction Records Manual\\*\\*](#)

Civil Rights

[External Civil Rights Manual](#)

[NDDOT Davis Bacon Wage and Payroll Requirements Handbook](#)

Environment

[NDDOT Erosion and Sediment Control Manual](#)

Maintenance Manual

NDDOT Maintenance Manual

Planning

NDDOT Transportation Certification Program Manual

NDDOT Public Involvement Procedures

\*\* NDDOT retains approval authority of the overall Construction Records manual FHWA concurrence required for future revisions proposed to the 1) Change Order Approval chart and 2) sections related to Weighed Materials, procedures, and Haul Summaries

**APPENDIX E**

**PROGRAMMATIC**  
**AGREEMENTS**

## **Programmatic Agreement**

[Emergency Relief Programmatic Agreement](#)

[North Dakota Tribal Consultation Programmatic Agreement](#)

[Programmatic Categorical Exclusion](#)

Regional Planning FTA Agreement

USACE Cooperative MOU

USFWS Reimbursable Agreement

[Wetland Mitigation Banking Interagency Guidance](#)

[Wetland Mitigation Banking Programmatic Agreement](#)

Unified Certification Program MOU

# **APPENDIX F**

# **STEWARDSHIP AND OVERSIGHT INDICATORS**



## **Appendix F: Stewardship/Oversight Indicators**

This section will be updated to reflect MAP 21 pending implementation of performance goals, performance measures and performance targets as outline at the following website: <http://www.fhwa.dot.gov/map21/pm.cfm>.

The NDDOT stewardship and oversight indicators are listed below.

### Construction and Contract Administration

- a. Percent of contracts completed within the contract time plus approved time extensions.
- b. Percent of project completed within 10% of the bid amount.

### Design

- Percent of projects bid within 20% of the environmental documents estimate. [or STIP estimate?]
- Percent of projects bid that meet approved standards (i.e., without a design exception).

### Environment

- EIS-ROD within agreed time.
- EA-FONSI within agreed time.
- Project bid openings postponed due to delay in environmental clearance or receipt of a permit.

### Planning

- Percent of STIP/TIP projects advanced to construction.
- Percent of STIP/TIP projects advanced to construction within 25% of estimate. (Presently, NDDOT is not prepared to implement this performance measure. Additional data elements need to be collected and mechanisms implemented in order to tract this information. The implementation of this performance measure is considered long term.)

### Safety

Program measures are addressed in detail in the SHSP, annual reporting of progress and effectiveness under the HSIP, and in supporting documentation for the Section 402 HSP. NDDOT will update measures based on MAP 21 implementation. MAP-21 has defined the key safety performance measures as:

- (i) the number and rate of fatalities on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the

State;

(ii) the number and rate of serious injuries on all public roads with, to the maximum extent practicable, a breakdown by functional classification and ownership in the State; and

(iii) the occurrences of fatalities and serious injuries at railway-highway crossings.

The FHWA stewardship and oversight indicators are listed below.

- FMIS Transaction Times – Report statistics on time from NDDOT submittal to FHWA approval of FMIS transactions. This is calculated using NDDOT submittal dates and FHWA approval dates from FMIS report and tracked.
- Time to close PODI oversight projects – Report statistics on time from initial authorization/obligation to project is closed in FMIS. This is calculated using FHWA FMIS authorization date and closed date and tracked.
- Number of construction inspections performed on PODI Oversight and State Administered projects (state and local) by FHWA.
- Inactive federal-aid project metrics to be provided quarterly.
- Number and area of structurally deficient bridges

**APPENDIX G**  
**DISPUTE RESOLUTION**

## **Appendix G: DISPUTE RESOLUTION**

While most requests by the NDDOT for Federal approval result in a positive response, there are occasions when agreement cannot be rapidly reached within the anticipated turn-around time. It is the intent of this section of the Stewardship Agreement to provide a template for escalating issues that have reached impasse at the normal operational level.

It is expected that nearly all issues should be resolved between FHWA's Transportation Engineers or program managers and the NDDOT representative who has submitted the request within the business operation time frames denoted in this Stewardship Agreement.

When the above operational level cannot reach agreement, it is expected that negotiations will continue but with the involvement of NDDOT's Division head and/or District Engineer.

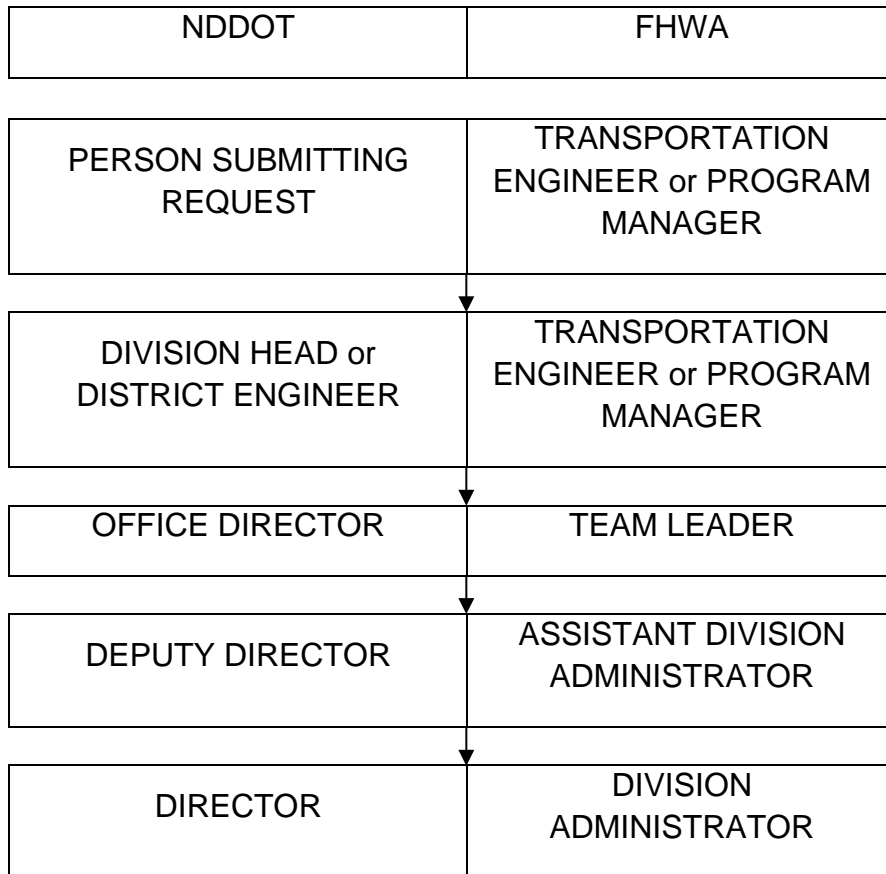
When the Transportation Engineer/program manager-Division/District level cannot reach agreement, it is expected that the FHWA Team Leader will become involved on behalf of FHWA, while the NDDOT will involve the appropriate Office Director.

If the above-mentioned levels are unable to resolve the issue at hand, FHWA's Assistant Division Administrator and NDDOT's appropriate Deputy Director will seek resolution.

Should none of the above negotiations result in a satisfactory resolution, the FHWA Division Administrator and the Director of the North Dakota Department of Transportation will determine the final outcome.

Since time is nearly always an important factor, escalation to the next level should be accomplished by the respective sides as soon as it has been determined that the issue cannot be resolved at the level where the question is stalled.

## NDDOT-FHWA DISPUTE RESOLUTION



# **APPENDIX H**

# **GLOSSARY**

## **Appendix H: Glossary**

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

**Assumed Projects** – Federal projects that the NDDOT 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.

**Bridge**: A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet (6.1 meters) between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening.

**Categorical Exclusion (CE)** – An action that does not individually or cumulatively have a significant environmental effect. Specific list of actions normally considered as CEs are contained in 23 CFR 771.117(c), and 771.117(d).

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

**CFR** – Code of Federal Regulations

**Control Document** – Applicable laws, regulations, standards, policies, and standard specifications approved for use by FHWA 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.

**Assumed Projects** – (also known as State Administered or Non-Federal Oversight Projects) – Projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, contract changes, inspections and final acceptance of Federal-aid projects on a project by project basis. NDDOTs act on behalf of the Secretary and FHWA on these projects, and should exercise similar judgment. See State Administered Program or Projects and Locally Administered Projects.

**Federal-aid construction projects** – All construction projects funded under Title 23 U.S.C. This includes any construction project funded under 23 U.S.C. such as a highway, rail, transit, vertical building, offices, parking lots, bicycle paths, pedestrian

trails, etc. (examples: Buy America, DBE program requirements, etc.)

Federal-aid contract – Any contract containing any Federal-aid funding.

Federal-aid highways – Highways on the Federal-aid highway systems and all other public roads not classified as local roads or rural minor collectors.

Federal-aid highway construction project – Any Federal-aid funded construction work physically located inside of or linked to the highway Right-of-Way. Includes all Federal-aid highway construction projects regardless of location, but does not include rail or trail projects located outside of highway Right-of-Way.

Federal-aid highway construction projects on the National Highway System – All Federal-aid highway construction projects located on the National Highway System. These requirements are not applicable to: a) Federal-aid highway construction projects on non-NHS routes or b) Federal-aid non-highway construction such as trail projects not located within the highway Right-of-Way examples: FHWA policies for claims, warranties, incentive /disincentives).

Federal-aid highway systems – The National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the "Interstate System").

Federal-aid project – Any work funded with Federal-aid funds.

FHWA – Federal Highway Administration, North Dakota Division, Bismarck, North Dakota

FHWA Headquarters (HQ) – Federal Highway Administration, 1200 New Jersey Ave., SE Washington, DC 20590

FMIS – FHWA's Fiscal Management Information System that is used for project authorization and obligation and is FHWA's major financial information system.

FMIS Final Voucher – Joint project closure document that closes the FMIS record, also referred to as the project closure document for FHWA.

FMIS Project Closure – Joint, final FMIS action taken on a project that closes the FMIS record, also referred to as the final voucher for FHWA.

Grant – An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. In addition, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.



Grantee – The government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Inherently Low Risk Projects on the Interstate System – New or reconstruction Interstate projects over \$1M that are routine and generally non-controversial in which the NDDOT has a high-level of experience and documented procedures and practices in place for ensuring compliance with Federal requirements.

Interstate Reconstruction – Additional mainline capacity, modification and/or creation of new access points, removal and replacement of the pavement structure or the overlay of an existing pavement structure more than 4" thick, modification or creation of rest areas/weigh stations, or removal and replacement of any significant part of the substructure or superstructure of an existing bridge.

Locally Administered Projects – For the purpose of the Agreement, a Federal-aid project in which an entity other than a traditional NDDOT is a sub-recipient and this entity is administering the particular phase being authorized, i.e., PE, 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.

Local Public Agency (LPA) – Any organization, other than a traditional NDDOT, with administrative or functional responsibilities which 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, a LPA, as defined here, could also include a State entity as well, perhaps even a part of a NDDOT. An example could include a Port Authority or Toll Authority that had not traditionally worked with the FAHP.

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

Non-Concurrent Construction – When the time period between the completion of one operationally independent project and the start of the next project exceeds 5 years.

Non-Title 23 Requirements – Requirements of the grantee and subgrantee of the Federal-aid program that are not contained with Title 23 of United States Code. Examples of these requirements include but are not limited to Environmental, Civil Rights, Davis-Bacon wage rates, procurement of engineering and design related services, and Disadvantaged Business Enterprises that apply to all projects and are subject to review regardless of oversight process.

Operational Independence – A phase of work as a portion of the project described in the environmental document that can be built and function as a viable transportation facility even if the rest of the work described in the environmental document is never built.

Oversight – The act of ensuring that the FAHP is delivered consistent with laws, regulations, and policies. FHWA may review NDDOT’s Program or Projects approval actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, contract changes, inspections and final acceptance of Federal-aid projects on a project by project basis or any program areas to ensure compliance with laws and regulations as described in Appendices A, C, F and G. through a risk based approach.

Partial Oversight Projects – Projects for which the State has assumed some of the oversight responsibilities of FHWA, with FHWA retaining or having specific approval authority for a particular responsibility or phase of the projects. These projects are also known as PODI Oversight Projects.

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

Process Reviews/Program Evaluations (PR/PE) – A review conducted whose primary purpose is to provide a monitoring and control technique that documents procedures and processes and further assures that Federal-aid funds are being spent in accordance with Federal laws, regulations, and policies. In addition, PR/PEs evaluates the effectiveness of the processes, procedures, and products developed by NDDOT in all phases of a project, as well as the internal operations of the FHWA North Dakota Division.

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 NDDOT 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.

Programmatic Categorical Exclusions (PCE) – PCEs are a subset of categorical exclusions (CEs). These are actions listed as CEs under 23 CFR 771.117(c), and under Section III(b) of the *Programmatic Agreement for Certain Categorical Exclusion Actions*, between NDDOT and FHWA. The agreement describes how the NDDOT will certify that certain actions are CEs and FHWA will approve the certification of the action through any subsequent federal approval action.

Project Inspections – Inspections in which projects are reviewed to ascertain compliance with applicable laws, regulations, agreements, etc., and contain documented findings. They can also be used to document new or innovative practices or technologies.

Projects of Division Interest (PODI) – These projects require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, contract changes, inspections and final acceptance of Federal-aid projects on a project by project basis to ensure compliance with laws and regulations as described in Appendices A, C, F and G. These projects and its oversight areas are selected through a risk-based approach and mutually agreed upon with NDDOT.

RASPS – Rapid Approval & State Payment System is a feeder system used by FHWA to electronically process grant payments against balances obligated in FMIS and DELPHI (USDOT’s internal accounting program). This payment process is often referred to as the “Current Bill.”

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

Responsible Charge – Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects; makes or participated in decisions on change orders, contract modifications, etc.: maintains a current awareness of the project conditions: and is held accountable for completion of all aspects of the federal-aid project. The persons or persons in responsible charge must be a full time employee of the contracting agency. For NDDOT-administered projects, this person must also be an engineer.

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 Federal-aid Highway Program, 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 funded projects and programs.

State Administered Program or Projects – (also known as Assumed) Programs or Projects where FHWA has assumed and NDDOT has assumed responsibility for all necessary approvals and activities are in accordance with State policies, practices and standards, and Title 23, U.S.C. These are projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, Right-of-Way certification statements, contract awards, contract changes, inspections, and final acceptance of Federal-aid projects on a project by project basis. NDDOT acts on behalf of the Secretary and FHWA on these projects, and should exercise similar judgment.

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

Stewardship/Oversight Indicators – These indicators track trends that are associated with the health of the FAHP, and compliance with Federal requirements. They generally relate to the actual execution of the program, not the performance of the transportation system itself. The indicators provide insights into stewardship/oversight needs (e.g. design errors review), fiscal processes (e.g. unobligated balance), project quality (e.g. NDDOT inspection effort), etc. They can also be mutual service requirements for the Division Office such as “document review time” and “technical support levels.” Although these measures support improved system quality they are not the strategic outcome oriented type measures envisioned by a performance-based FAHP.

Subgrant – An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement.

Subgrantee – The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Tapered Match on Federal-aid Projects – allows flexibility in meeting the non-Federal share requirements, provided the overall Federal share is not exceeded at the close of the project. When a tapered match is authorized, the established Federal share is applied to the total project costs, instead of applying to each progress payment. The individual billing percentage applied to progress payments may be higher or lower than the designated Federal share or the lump sum established for the project.

Title 23 Requirements – Requirement of the grantee and subgrantee of the Federal-aid program that are contained within Title 23 of United States Code such as bidding requirements, planning, design standards, emergency relief, and so on.

U.S.C. – United States Code

Value Engineering (VE) - A systematic process of review and analysis of a project, during the concept and design phases, by a multidiscipline team of persons not involved in the project, which is conducted to provide recommendations for:

- Providing the needed functions safety, reliably, efficiently, and at the lowest overall cost;
- Improving the value and quality of the project; and
- Reducing the time to complete the project.

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 I**

**PROJECT OVERSIGHT**  
**DESIGNATION**  
**REQUIREMENT in the**  
**FISCAL MANAGEMENT**  
**INFORMATION SYSTEM**  
**(FMIS)**

## **Appendix I: Project Oversight Designation Requirement in the Fiscal Management Information System (FMIS)**

**PoDI/State Administered** – Projects of Division Interest that are administered by the NDDOT. These are projects where responsibility for one or more of the six Section 106(c) items has been retained by FHWA, or other projects where FHWA has not retained responsibilities for any such items but are otherwise designated as PoDIs by the Division. If specific 106(c) responsibilities are assumed by the NDDOT, 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. These are projects where responsibility for one or more of the six Section 106(c) items has been retained by FHWA, or other projects where FHWA has not retained responsibilities for any such items but are otherwise designated as PoDIs by the Division. If specific 106(c) responsibilities are assumed by the NDDOT, 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 NDDOT and the project is administered by the NDDOT. These are projects where the NDDOT 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 NDDOT and the project is administered by a local agency. These are projects where the NDDOT 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-NDDOT direct recipients.