




U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: ACTION: SEP-15 Application Process

Date: October 14, 2004

From: Frederick G. Wright, Jr. 
Executive Director

Reply to
Attn. of: HIPA - 30

To: Associate Administrators
Chief Counsel
Directors of Field Services
Resource Center Managers
Division Administrators
Federal Lands Highway Division Engineers

This memo sets forth the process for approving applications submitted pursuant to Federal Register Notice "New Special Experimental Project (SEP-15) to Explore Alternative and Innovative Approaches to the Overall Project Development Process."

SEP-15 is a new experimental process for FHWA to identify for trial evaluation new public-private partnership approaches to project delivery. It is anticipated that these new approaches will allow the efficient delivery of transportation projects without impairing FHWA's ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers. SEP-15 addresses, but is not limited to, four major components of project delivery – contracting, compliance with environmental requirements, right-of-way acquisition, and project finance. Elements of the transportation planning process may be involved as well.

Application Process:

SEP-15 applications should be submitted by a State Department of Transportation (State DOT) to the appropriate FHWA Division Office. Applicants may include localities and private transportation ventures as project sponsors but must include the State DOT. SEP-15 applications should provide a brief description of the project and specific Federal-aid program areas of experimentation, explain the innovative techniques proposed and the expected value of those techniques, and identify proposed performance measures to evaluate the success of the SEP-15 project.

It is anticipated that SEP-15 applications will include suggested changes to the FHWA's traditional project approval procedures and may require some modifications in the implementation of FHWA policy. Deviations from current title 23, U.S.C., requirements



and generally applicable FHWA regulations also may be involved. For these reasons, the Division Office will forward the application to the Deputy Administrator who will appoint the Division Administrator and a senior member of FHWA Leadership to be co-facilitators for the project. The co-facilitators will form a team consisting of FHWA staff familiar with the areas of policy addressed in the application and, if appropriate, staff from other agencies potentially affected by the application. This team will assist the co-facilitators in preliminarily deciding whether the application is an appropriate candidate for SEP-15.

If the co-facilitators determine the project is not appropriate for SEP-15, the Division Administrator will notify the State DOT. Otherwise, the project sponsors (both public and private) will be asked to make a formal presentation of SEP-15 application. The presentation should include proposed milestones for advancing the project and address any questions of the co-facilitators. This meeting will be scheduled by the co-facilitators within thirty (30) days after their preliminary determination that the project is appropriate for SEP-15 consideration.

After the meeting, the co-facilitators will determine if they have sufficient information upon which to form a recommendation. The co-facilitators will notify the applicant if additional information is needed. If not, the co-facilitators will forward a recommendation to the Deputy Administrator who will make the final determination on whether the application should be approved allowing it to proceed under SEP-15. If the application is not approved, the Division Administrator will notify the State DOT.

If the Deputy Administrator approves the application, the co-facilitators will work with the public and private project sponsors to draft an Early Development Agreement (EDA) within sixty (60) days of receipt of the Deputy Administrator's approval of the application. The EDA should contain parameters to guide such key elements as project planning and design, environmental review, ROW acquisition, procurement method, regulatory compliance, timelines, financing, construction and operation. The EDA should also identify the performance measures that will be used to evaluate the success of the SEP-15 process. The EDA can be modified over time as the project matures. The original EDA and any amendments thereto must be approved by the Deputy Administrator.

The co-facilitators will be responsible for ensuring that the project is coordinated within the Department of Transportation and other stakeholders in the Federal government. If the project is one also being considered by the President's Environmental Streamlining Task Force created under Executive Order 13274, the co-facilitators will work with the members of the Task Force to help identify any concerns Federal agencies may have with the project and assist the project sponsors in addressing those concerns. The co-facilitators will be responsible for monitoring the status of the project through the start of construction and ensure that FHWA approval is provided at key stages of the project's development.

Upon the completion of major milestones, the public-private sponsors will be responsible for submitting an independently prepared report that summarizes lessons learned from the SEP-15 process. These reports shall include the experiment undertaken, the lessons learned, evaluate the success of the process and its impact on the project, and recommend statutory and regulatory changes with an explanation of how the changes will improve the delivery of the Federal-aid highway program. The reports should be submitted to the co-facilitators.

In their SEP-15 application, project sponsors, may suggest revisions to the procedures outlined above if other procedures would better meet the goals of SEP-15.

FOR FURTHER INFORMATION CONTACT: Mr. Dwight Horne, Office of Program Administration, (HIPA-1), ext. 6-0494 or Mr. L. Harold Aikens, Jr., Assistant Chief Counsel for Program Legal Services, Office of the Chief Counsel (HCC-30), (202) 366-0791