



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2026-0628]

Modification of the Application Process for Special Experimental Project 16 (SEP-16), Special Experimental Project 15 (SEP-15), and Test and Evaluation Project 045 (TE-045)

AGENCY: Federal Highway Administration (FHWA), U.S Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: FHWA is seeking comments on a new process for submission and evaluation of applications under SEP-16, SEP-15, and TE-045 (collectively the “three experimental projects”). The purpose of the modification is to achieve a streamlined, uniform process to reduce burden and improve the efficiency of the application and evaluation process for all three experimental projects.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following means:

- *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590;

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue S.E., Washington, D.C. 20590, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329;
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All submissions received, including any personal information provided, will be posted without change or alteration to www.regulations.gov. For more information, you may review the U.S. Department of Transportation's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Ms. Samantha Pratt, Office of Infrastructure, (737) 389-1048, Samantha.Pratt@dot.gov, Federal Highway Administration, 100 Centennial Mall North Room 220, Lincoln, NE 68508; or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-1523, Michael.Harkins@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at www.regulations.gov. The Website is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's Website at: www.FederalRegister.gov and the U.S. Government Publishing Office's Website at: www.GovInfo.gov.

Background

FHWA undertakes experimental projects pursuant to the authority granted to the Secretary in Title 23 United States Code (U.S.C.) 502(b), providing the experimental authority to test, develop or assist in testing and developing any material, invention, patented article, or process. For information on the background and legal authority for each of the three projects, please refer to the Federal Register notices announcing each experimental project, as follows.

SEP-16 was originally announced in a Federal Register notice published on September 20, 2018, to test and evaluate the delegation of program-level responsibilities of the Federal-aid highway program to States (83 FR 47674). SEP-16 was expanded to include project-level responsibilities in a Federal Register notice published June 24, 2020 (85 FR 38011). SEP-16 may be used to test deviations from Title 23 statutory, regulatory, or policy provisions, provided the experimental features are consistent with the overall purpose and intent of the underlying statute, regulation, or policy being tested. Actions explicitly prohibited by statute cannot be the subject of a SEP-16 experiment. The experiment must be consistent with other Federal laws that apply to Title 23 funded activities.

SEP-15 was announced in a Federal Register notice published on October 6, 2004, to encourage testing and experimentation throughout the entire development process for transportation projects aimed at increased project management flexibility, more innovation, improved efficiency, timely project implementation and new revenue streams including private investment. (69 FR 59983). SEP-15 addresses four major components of project delivery; contracting, compliance with FHWA's National Environmental Policy Act (NEPA) process and other environmental requirements, right-of-way acquisition, and project finance. Given the scope of some of the proposals that have surfaced, elements of the transportation planning process may be involved as well.

SEP-15 projects cannot be used to modify environmental and other requirements external to Title 23.

FHWA announced the establishment of the TE-045 Project in a Federal Register notice published on April 8, 1994 (59 FR 16889). The purpose of TE-045 is to develop innovative financing concepts which have the potential to increase investment or reduce public agency costs. TE-045 projects must comply with non-Title 23 statutory and regulatory requirements such as NEPA, relocation assistance, etc.

Currently the application processes for the three experimental projects are not consistent. For example, the application and evaluation process for a SEP-16 proposal is a four-step process including submission of a Letter of Interest, Concept Paper, and Detailed Proposal. If the experiment proposed is accepted, then a Memorandum of Understanding is executed. The application and evaluation process for a SEP-15 proposal is a three-step process that involves submission of an application, issuance of an Acceptance Letter by FHWA, and execution of an Early Development Agreement. When there are uncertainties whether an experimental feature is appropriate for SEP-15, the State DOT may submit a Concept Paper to FHWA which may provide a basis to offer a preliminary assessment of the proposed experiment. The application process for TE-045 is a one-step process which only requires submission of a proposal. FHWA is proposing to restructure and standardize the application and evaluation process of proposed experiments under the three experimental projects. This notice seeks comments on the proposed process as outlined herein.

Proposed Application Process for SEP-16, SEP-15, and TE-045

The proposed application and evaluation process for the three experimental projects consists of two steps.

Step 1: Letter of Interest (LOI). A State DOT¹ submits a LOI to its respective FHWA Division Office. The LOI should provide a brief synopsis of the proposed experiment, typically no more than two pages, and should:

- a. Identify the experimental project proposed under TE-045, SEP-15, or SEP-16.
- b. Describe the proposed experiment including but not limited to identification of the section of Title 23, U.S.C., 23 CFR, FHWA policy or guidance that would be tested and evaluated.
- c. Demonstrate the State has, or will apply, the necessary controls and resources² to oversee the test and experiment, including identification of any project partners and their respective roles and responsibilities.
- d. Provide a proposed duration for conducting the test and experimentation, including, as applicable, a timeline for any transition activities both before and after the experimental period.
- e. Summarize the anticipated benefits including:
 - Reasons why the State is seeking to undertake the experiment.
 - Anticipated improvements to program or project delivery.
 - Related cost or time savings.

Step 2: Work Plan. After reviewing the LOI and coordinating with FHWA Headquarters, the FHWA Division Office, in writing, either invites the State DOT to proceed with the development of a Work Plan or notifies the State DOT its proposal has not been accepted. If the proposal is accepted, the FHWA Division Office and the State DOT

¹ Under TE-045, SEP-15 and SEP-16 only State DOTs (23 U.S.C. 101) are eligible to submit proposed experiments. A State DOT may partner with localities and other transportation entities but in all cases a LOI and application must be submitted by a State DOT.

² For proposed experiments under SEP-16, the LOI should demonstrate that the State DOT has the necessary laws, regulations, controls, and resources in place to assume the Federal role for the responsibilities requested. If applicable, the State DOT may use experience with assumption of authorities under 23 U.S.C. 106(c) and other authorities to demonstrate readiness to assume the requested responsibilities.

develop a Work Plan, in coordination with FHWA Headquarters, to carry out the accepted experiment under the respective TE-045, SEP-15 or SEP-16. The Work Plan will be a living document and may be modified as necessary during the duration of the experiment.

Although a Work Plan will be tailored to the respective TE-045, SEP-15 or SEP-16 at a minimum, all will include the following:

- a. Description of each accepted experiment and conditions under which the experiment will be conducted.
- b. Performance measures and evaluation criteria to evaluate the success of the experiment.
- c. Duration of the experiment and, as applicable, a transition plan to return to pre-experimental process and procedures.
- d. Reporting milestones to document the status and eventual outcome of the experiment. For each accepted experiment, reports shall include:
 - Description of the experiment.
 - Lessons learned.
 - Evaluation of the success of the experiment.
 - Any recommend statutory, regulatory, and/or policy changes with an explanation of how the changes will improve the delivery of the Federal-aid highway program.

Conclusion

FHWA is committed to supporting opportunities to experiment with alternative and innovative approaches to implementing Federal-aid highway programs and projects. To this end, this notice seeks comments on a proposed uniform application and evaluation process for SEP-16, SEP-15, and TE-045 that is streamlined and more consistent across the three experimental projects.

Authority: 23 U.S.C. 315 and 502.

Sean McMaster,

Administrator,

Federal Highway Administration.

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