

Oklahoma Department of Transportation

Change Orders - FHWA Prior Approval
Construction Control Directive No. **19961121**

March 13, 2012

Scope: To establish the procedure for FHWA change order approval on Federally funded projects.

There are instances where prior approval of change orders will be required by the Federal Highway Administration (FHWA) to ensure that the work is eligible for Federal funds including:

- Any changes to the limits of the project as defined in the contract require prior FHWA approval regardless of whether it is Federal oversight or not.
- When a major change order is required on a Federal oversight project, the FHWA Area Engineer must be informed prior to the beginning of work. This action is necessary to comply with Federal regulations that prohibit retroactive approval of funds.

CHANGES TO PROJECT LIMITS

On all Federally funded projects regardless of Federal oversight, all changes to the project limits, which includes shortening or lengthening the project as defined in the contract, must have prior FHWA approval. The following list of actions must be performed by ODOT to obtain FHWA approval:

- Submit a Public Interest Finding (PIF) to the FHWA Area Engineer signed by the ODOT Field Division Engineer which includes the following:
 1. An explanation of the extension or reduction being requested (how many feet or miles) and the estimated cost increase or decrease.
 2. The reason for the adjustment to the project limits and an explanation of why it is in the public interest to do so.
 3. A statement that this modification will not eliminate any safety feature such as length of guardrail, width of shoulders, etc.
 4. A reevaluation of the existing Categorical Exclusion or National Environmental Policy Act (NEPA) document for the project to determine if the original NEPA findings and recommendations remain valid in light of the revised project limits; and a commitment to update the document if the reevaluation identifies

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additional social, economic, and environmental impacts not documented in the original NEPA review.

5. A statement on the Right-of-Way impacts of this adjustment in the project limits.
6. A statement that the modification will retain the same design (pavement cross section, etc.) for the extended project limits as for the ongoing construction contract.
7. For reductions in project limits provide explanation as in No. 6.

Once FHWA approval of the PIF has been granted, ODOT must proceed with the following actions for each of the projects:

- Update the NEPA document when determined necessary and submit to FHWA for approval.
- Submit to FHWA a new Right-of-Way certificate reflecting the new project limits.
- Submit to FHWA a Financial Management Information System (FMIS) modification request reflecting the new project limits.
- Submit to FHWA a project construction change order for the adjustments to the project limits. The change order must:
 1. Explain the causes of the underrun/overrun; and specifically list each affected contract item, the contract item's quantities, unit costs, and total cost.
 2. Identify any additional contract time required to complete the change order work.
 3. Not revise the current project's contract pay items description or unit costs; nor add new contract pay items to the project to complete the additional work within the extended project limits.
 4. Retain same design (pavement cross section, etc.) for the extended project limits as for the ongoing construction contract and meet current safety criteria.

As previously noted, adjustments to the project limits is an action that requires prior FHWA approval. Therefore, no work may be performed beyond the initial project limits of any Federal-aid project until this information has been submitted and approved.

MAJOR CHANGE

Major changes on Federal oversight projects must have prior FHWA approval. In accordance with 23 CFR 635.120, the Department and the Federal Highway

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Administration must establish specific parameters as to what constitutes a major change. The following parameters have been agreed to and will be utilized as the general definition of what constitutes a major change. The list of parameters is not intended to be all inclusive and any issues that may result in questions or comments surrounding sensitive issues should be directed to ODOT Construction Division or your FHWA Area Engineer. A major change is defined as one that results in any of the following:

- A change in the project scope, regardless of the cost. Project scope is defined by those activities required to complete the construction contract and work for the project according to the required commitments. Changes in project scope may be temporary or permanent in nature. Examples include the following:
 1. Change to the hydraulic or load carrying capacity and/or durability of structures. Approval by the ODOT Bridge Division Engineer must be obtained prior to seeking FHWA approval.
 2. Change to the traffic capacity or operation of the highway, including any unplanned ramp closures or detours. Approval by the ODOT Traffic/Roadway Division Engineer must be obtained prior to seeking FHWA approval for permanent traffic capacity or operational changes.
 3. Change affecting the environmental commitments.
 4. Change to the project limits (see previous section).
 5. Allowing access within a highway facility with limits of no access (i.e. allowing the contractor a temporary break in the R/W fence on the Interstate).
 6. Allowing the contractor to install and operate a portable plant or staging area within the limits of right-of-way which impacts the flow of traffic or results in a safety concern for the highway facility.
 7. Change to the pavement typical section. Approval of the ODOT Pavement Design Engineer must be obtained prior to seeking FHWA approval.
 8. Change that presents cost or time saving advantages to the contractor that were not available prior to the award of the contract such as value engineering, or cost reduction proposals.

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- A change that results in an increase in the project cost of more than \$100,000 due to a decision to change the project scope, as defined above, or due to a changed site condition.
 1. A major change in cost is:
 - A change that results in an increase to the project cost when only the relevant pay items are tabulated. Items not related to the change cannot be used to offset the cost of the change being considered.
 - A change that results from a contractor claim involving a legal issue, or a settlement based on a legal opinion or resolved through the Dispute Resolution Process.
 - A change that results from any adjustment to the contract made by the Engineer because of a significant change when acceptable prices cannot be obtained through negotiations.
 2. A major change in cost is not:
 - Change to a major item in the contract within the variations in quantities clause (increase or decrease in a contract item under 25%).
 - Change to fund a contract incentive.
 - Change to fund a price escalation clause.
 - Change to fund the overrun of contract items of more than \$100,000 due to the plan quantity being underestimated.
 - Any change that results in an increase in the project cost of less than \$100,000.

The examples above do not cover every possible scenario and every effort should be made to keep your FHWA Area Engineer informed of any change order on oversight projects being considered that could be interpreted to fall into any of these categories.

All other changes are considered minor. It is preferable to keep FHWA aware of minor change orders even though they do not require FHWA's formal prior approval to avoid non-participation situations.

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THE PROCEDURE

When changes to the project limits or major changes occur, the ODOT Resident Engineer will contact the Federal Highway Administration Area Engineer with a description of the change and an approximate cost. The Area Engineer will document the date contacted, their understanding of the major change, and their conceptual approval on a Form-1365. Copies of the form will be sent to the Resident Engineer, the Division Engineer and the State Construction Engineer.

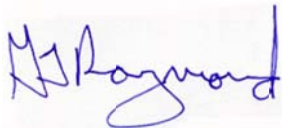
A copy of the completed Form-1365, cost analysis, and any other supporting documents regarding the change order must be attached to the change order in SiteManager.

If a change order falls below the requirements for notification after FHWA notification has occurred, such as the actual cost falling below \$100,000, the Form-1365 should still be attached.

In the interest of saving time, the Construction Division will send change orders to the Federal Highway Administration prior to Transportation Commission approval, to allow for a simultaneous review/approval process.

Formal minor change orders on oversight projects will continue to be sent to the FHWA however, a Form-1365 will not be required.

Failure by ODOT to follow the procedures outlined in this Construction Control Directive could result in the Federal Highway Administration denying participation in the cost of the change order.



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