Right-of-Way Section

Right-of-Way Manual 2025

Excellence in Transportation.

Delaware Department of Transportation
2025 Right-of-Way Manual

Table of Contents

Preface **7**

A. Introduction 7

B. Mission Statement 8

C. Manual Navigation/Organization 8

I. Administration **10**

A. Functions Within DelDOT 11

B. ROW Organization 13

C. Records Management System 15

D. Advanced Training 15

E. Primary Legal Authorities 16

F. Procurement Services 18

G. Management of Fee Services 19

H. Project Cost Estimating 19

I. Federal Participation 20

J. Funds Distribution and Revenue Collections 22

II. Appraisal **23**

A. Staff Organization 24

B. Staff Appraiser Responsibilities 25

C. Appraisal Report Requirements 27

D. Methods 28

E. Appraisal Report Standards 29

F. Waiver Estimate of Valuation Criteria 29

G. Sample and Forms Letters 30

III. Appraisal Review **44**

A. Review Appraiser Staff Organization, Certifications,and Credentials 45

B. Review Appraiser Responsibilities 45

C. Additional Fee Review Appraiser Responsibilities 46

D. Appraisal Review Assignments 46

E. Appraisal Review Report Requirements 47

F. Necessary Appraisal Review Updates and Corrections 48

G. Review Appraiser Report Determinations Subsequent to Complete Review 49

H. Waiver Estimate of Valuation Criteria 49

I. Sample and Forms Letter 50

IV. Real Property Acquisition **63**

A. Staff Organization 64

B. General Responsibilities 65

C. Coordination with Appraisal Staff 66

D. Coordination with Relocation Assistance Staff 66

E. Coordination with Land Services Staff 67

F. Property Owner Contact Procedures 67

G. Waiver Valuation Responsibilities 71

H. Administrative Settlements 72

I. Condemnation Action 73

J. Real Property Exchanges 74

K. Agreement Documentation 75

L. Uneconomic Remnant Issues 75

M. Advanced or Early Acquisition Actions 76

N. Voluntary Acquisitions 81

O. Real Property Donations 82

P. Exchange of Real Property Interests 82

Q. Acquisition from a State or Local Public Agency 82

R. Federal Land Transfers . . . 83
S. Functional Replacements . . . 83
T. Temporary Occupancy After Acquisition . . . 83
U. Extinguishing Utility Easements . . . 84
V. DelDOT Acquisition Documents . . . 85
V. Relocation Assistance . . . 190
A. Staff Organization . . . 191
B. General Responsibilities . . . 191
C. Relocation Assistance Planning . . . 193
D. Residential Occupant Advisory Services . . . 194
E. Non-Residential (Business) Advisory Services . . . 198
F. Relocation Assistance Notices . . . 200
G. Record Keeping . . . 202
H. Relocation Assistance Forms and Sample Letters . . . 203
VI. Land Titles and Settlements . . . 263
A. Staff Organization . . . 264
B. General Responsibilities and Procedures . . . 264
C. Request for Title Report . . . 265
D. General Property Settlement Guidelines . . . 265
E. Fee Simple and Permanent Easement SettlementGuidelines and Procedures . . . 266
F. Temporary Easement Guidelines . . . 267
G. Title Insurance . . . 267
H. Request for Payment (RFP) . . . 267
I. Liens . . . 268
J. Tax Implications and Reporting . . . 268
K. Forms and Documents . . . 269
VII. Condemnation Actions . . . 292
A. Staff Organization . . . 293

B. General Responsibilities and Procedures 293
C. Negotiations at an Impasse 294
D. Legal Coordination 295
E. Condemnation Complaint Action 295
F. Order of Possession Process 295
G. Settlement Process During the Condemnation Process 296
H. Alternative Dispute Resolution 296
I. Court Trial Process 297
J. Payment of Award and Interest 298

VIII. Land Services 306

A. Staff Organization 307
B. General Responsibilities 307
C. Coordination with Appraisal Staff 308
D. Coordination with Relocation Assistance Staff 309
E. Coordination with Acquisition Staff 309
F. Property Maintenance 310
G. Demolition Process 313
H. Right-of-Way and Road Abandonment/Vacation Activities 314
I. Sale and Transfer of Real Property Interests 314
J. Handling of Funds Received 314
K. Land Services Forms and Sample Letters 314

IX. Internal Controls 363

A. Project Delivery; Plans, Specifications, and Estimates(PS&E) 364
B. ROW Certifications 364
C. ROW Manual Maintenance 369
D. ROW Plan Review Process 370
E. Internal Process Reviews 370
F. Sub-Grantee Oversight (Local Public Agency – (LPA)) 371

G. Fee Acquisition Services . . . 371
H. Project Tracking . . . 373
I. Design/Build Process . . . 373
J. Closing Forms . . . 374
Appendix Definitions and Acronyms . . . 380
APPENDIX – DEFINITIONS AND ACRONYMS . . . 381
Attachments . . . 386
Attachment A - Appraisal Methods and Report Standards . . . 387
Attachment B - Relocation Assistance, Payments and Standards . . . 402
Attachment C - Disposal of Excess/Surplus Real Property Rights . . . 426
Attachment D - Additional Information . . . 431
Attachment E - DelDOT/FHWA Stewardship Agreement . . . 519
Attachment F - Legal Authorities . . . 535
Federal Code and Regulations . . . 536
Delaware Law and Code References . . . 1111
Attachment G - DelDOT Right-of-Way Org Chart . . . 1226

Preface

A. Introduction

The purpose of creating a Right of Way Manual (Manual) is to establish the policies and intent of the Delaware Department of Transportation (DelDOT) and how it will support the implementation of the Federal Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (URA), as well as all applicable State of Delaware laws and regulations. The object of this manual is to ensure fair and equitable treatment for all owners of real property to be acquired or impacted by DelDOT, to set out procedures to minimize litigation through acquisition by agreement, and to ensure the persons displaced by project activities are treated consistently and fairly in order to avoid disproportionate injuries due to projects benefiting the public in general.

In carrying out its responsibilities, the DelDOT Right of Way (ROW) is guided by a variety of both Federal and state regulations. These regulations typically provide several absolute requirements which must be followed in a prescribed manner in order that property owners are guaranteed their rights under the applicable laws. In addition to these absolute and prescribed rules, there are many guidelines and best practices that are generally followed, but which may be altered or adjusted to fit various unique situations. The federal regulations often allow for DelDOT to handle acquisitions in alternative ways, as long as those alternatives are handled in a consistent and fair manner. This Manual does provide consistent guidelines on how to apply methodologies on a program wide basis, in accordance with the allowable flexibilities built into regulations and guidance.

1. Legal Authorities

a. Delaware Codes and Regulations:

- Title 10, Chapter 61
- Title 17, Chapter 1
- Title 24, Chapter 40
- Title 29, Chapter 93

b. Federal Code of Regulations and Statutes

- Title VI Civil Rights Act of 1964
- 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition For Federal and Federally- assisted Programs Act of 1970, as amended
- 23 CFR Part 710 Highways Right of Way and Real Estate
- 23 CFR Part 635.309 Authorization

The manual is also constructed so that changes in regulations and procedures can be implemented and documented without having to make wholesale alternatives to the manual. Revised and updated regulations and guidance are routine in the Right of Way program, and for this manual to remain relevant over a period of years, these revisions needed to be incorporated as economically as possible.

B. Mission Statement

DelDOT Right-of-Way (ROW) employs a diverse staff responsible for ensuring compliance with policies and procedures required for the acquisition of right-of-way, preparation of land surveys, relocation of utilities, and the quality control and assurance of ROW plans on highway and bridge projects. ROW staff is also responsible for the oversight of the Department's property management activities. The entire ROW staff is committed to performing their duty in a timely, effective, and customer-oriented manner for the benefit of all the citizens of Delaware. All Federal and federally-assisted projects will follow Federal regulations and shall be used as a reference guide for such activities.

C. Manual Navigation/Organization

The Manual is set up to enable sections to be used independently of each other in order to share with the public, DelDOT employees or others. The first 9 Sections are formal and are references to be used in order to ensure compliance with State and Federal laws. They give a detailed list of what must be done to follow these regulations and laws. There are links to various other sections including the forms and other references.

Attachments A-C are specific to some of our major processes under the Uniform Act. Namely Appraising, Relocation, and the Disposal of Excess Land. These sections are set aside in order to be readily accessible to the specific user. Attachment D provides a variety of guidance materials that are considered to be of general use to all ROW professionals.

The FHWA and DelDOT stewardship agreement is included as Attachment E. This is the formal agreement between the federal government and DelDOT and outlines the various interactions of review and approval between DelDOT and the FHWA.

The applicable Federal and State of Delaware Code and Regulations are included in Attachment F.

There is a copy of the organization chart included in Attachment G.

It is important to know that ALL SECTIONS of the manual included herein are considered to be part of the overall all ROW Manual. The document is interconnected throughout, much like our project teams are connected. The user should view the manual as a complete document which fulfills the requirements of a complete ROW manual.

This manual is organized in sections along the flow of work through the ROW division. The various Manual sections include:

I. Administration

II. Appraisal

III. Appraisal Review

IV. Real Property Acquisition

V. Relocation Assistance

VI. Land Titles and Settlements

VII. Condemnation Actions

VIII. Land Services

IX. Internal Controls

This manual contains several links to applicable Federal or State code and/or Regulations and information specific to the manual contents. The majority of the links are directed to material contained within the manual. When not feasible or practical to include these refences within the manual, links are provided to applicable websites to provide additional references.

Chapter I



ADMINISTRATION

I. ADMINISTRATION

Purpose- This manual contains instructions needed to complete the administrative portion of the Department's Right of Way Services operational business. It is designed to give instructions to appropriate Department staff for administering matters mandated by Delaware statute, administrative rules, etc. This manual ensures consistency in carrying out the Department's policies.

A. Function Within DelDOT

1. Relationship within Transportation Solutions

a. The Chief of Right of Way (ROW) reports to the Director, Transportation Solutions

b. The basic responsibility of the ROW Unit is to obtain full physical and legal possession of all real property rights necessary to provide a clear right-of-way to enable DelDOT construction and maintenance activities to proceed in an orderly manner. The goal is for the real property rights possession to occur prior to, or in conjunction with, the development of the project Plans, Specifications, and Estimates (PS&E). Most of the acquisition projects will emanate from one of three sections within Transportation Solutions organization: Bridge, Project Development North, or Project Development South.

c. The ROW Unit must comply with all applicable State and Federal laws and regulations in administering its duties. Since the acquisition of real property rights will typically be conducted under the power of eminent domain, a unique set of rules must be followed that differs from real estate transactions that typically occur in the open marketplace. In particular, property owners being impacted by DelDOT projects are entitled to a wide variety of prescribed information and assurances.

d. The ROW Unit will provide relocation assistance plans and ROW cost estimates at the request of the Chief of ROW in conjunction with the preparation of National Environmental Policy Act Review Process (NEPA) documents. During the NEPA phase of project development, projected real property rights acquisition project costs factor into the decision-making process. Often times, multiple alignment options are under consideration, and ROW costs will be a factor of concern.

e. The ROW Unit will coordinate with the ROW Engineering Section to update the proposed dates for NEPA approval documents, as many aspects of the ROW acquisition process are dependent on the date of NEPA approval. As a general rule, ROW activities up to and including the establishment of an offer of just compensation may occur prior to NEPA approval. The actual offer to acquire real property rights is not made until after NEPA project approval.

f. Although the ROW Unit will typically acquire real property rights under the power of eminent domain, there may be situations where the property acquisitions are executed as a voluntary transaction. These voluntary transaction situations may be related to acquisition of environmental mitigation sites, or to other property acquisitions deemed to be in the general interest of DelDOT or other State agencies.

g. With the concurrence of the Director, Transportation Solutions; the Chief of ROW, may be asked to acquire real property rights for other agencies and jurisdictions within the State of Delaware. Some form of documentation between Agencies should be executed to set out responsibilities.

2. Relationship with Planning

a. The ROW Unit may undertake activities initiated by the Director of the Planning Section. These real property rights acquisitions may be for a specific Planning project purpose or may be for general statewide property development goals.

b. All activities initiated by the Planning Section must be coordinated with and approved by the Director, Transportation Solutions.

c. The Planning Section is responsible for managing the "Transportation Alternatives Program", which may involve the acquisition of real property rights for specific projects. Real property rights may need be acquired by either DelDOT or by sponsoring local public agencies. If the property acquisitions are to be by DelDOT staff, then activities will be coordinated between Transportation Solutions and Planning. If local public agencies are responsible for the property acquisitions, then the ROW Unit will provide oversight assurance.

d. Typical Planning initiatives may involve advanced acquisitions that are associated with protective purchases and real property interests. These initiatives may originate at various levels within State government and be delegated down to the DelDOT Planning Section to undertake. One Statewide initiative is the "Corridor Capacity Preservation Program", and the ROW Unit may be asked to undertake activities by the Planning Section, as needed.

e. Coordination with Planning will be necessary regarding property rights and entrance permit authority. If ROW issues are connected with the issuance of entrance permits, the ROW Unit may coordinate with local jurisdictions to determine what, if any, rights need to be acquired.

f. The ROW Unit will coordinate with Planning regarding whether proposed activities are set out in an appropriate manner in the Statewide Transportation Improvement Plan (STIP).

g. The ROW Unit will refer to federal-aid functional classification maps as supplied and updated by Planning. These maps are necessary to determine what federal approvals may be necessary in conjunction with the State/Federal Stewardship Agreement, depending upon roadway classification.

3. Relationship with Finance

a. The ROW Unit will coordinate with Finance regarding the accounting for, and deposit of, funds received in association with real property rental receipts. Processes will be in place to assure that all funds received by the ROW Unit will be promptly and efficiently transferred to Finance.

b. The ROW Unit will coordinate with Finance regarding the availability of both State and federal funds for project activities. Processes will be in place to assure that adequate and available funding is in place prior to the ROW Unit making any financial commitments.

c. The ROW Unit will coordinate with Finance regarding ROW cost estimates for project activities, and the potential for funding available to conduct early acquisition activities. The funding levels as set out in the STIP must be accurate, and if the actual ROW costs differ substantially from the funding levels as set out in the STIP, then those funding levels must be adjusted.

4. Relationship with Attorney General

a. The Attorney General Office (AG) will supply the ROW Unit with representation to oversee settlements and closings. The nature of this relationship will vary depending upon a variety of factors, including collateral responsibilities of the legal representative, DelDOT workload and activity, and the availability of private legal services.

b. All issues of legal concern will be coordinated with the Attorney General Office. The AG Office will be responsible to provide guidance on specific legal matters involving eminent domain issues. These issues could include items such as; compensable damages, interest payments, underlying roadway easements, differentiation between real and personal property, taking vs. police power, etc.

B. ROW Organization

1. Organization Chart (see Attachment G)

2. Unit Responsibilities

a. Perform all tasks as assigned by the Director, Transportation Solutions. This includes providing support services to all other functions within DelDOT, and attending meetings and workshops at the request of project coordinators. ROW staff may also be called upon to provide public outreach, and respond to any public or official inquiries regarding the acquisition and disposition of real property rights.

b. Maintain an adequate records system to document all activities. ROW staff will enter all appropriate data into DelDOT database records in whatever format is currently in use.

Records will also be kept to enable the presentation of ROW data to support requests from either Federal or State oversight officials.

c. Provide training to enable staff to perform all assigned duties. Specific ROW function training is available from organizations such as; International Right of Way Association, Federal Highway Administration and its associated National Highway Institute, Delaware Association of Appraisers, Appraisal Institute, as well as others. General training in business management is also available from a wide variety of organizations.

d. Represent DelDOT in a professional manner at all times. All employees will dress, act, and speak in a manner that represents, supports, and retains the trust that the public places in its public employees.

e. Provide a mentoring program to allow all staff to advance in proficiency of duties. All employees will be mentored by a staff member who can provide guidance on how to advance in their professional development. Annual performance evaluations will be prepared in accordance with prescribe DelDOT procedures.

f. Comply with all requirements as set out by the Human Resources Unit.

g. Maintain time and attendance records.

h. Maintain a training record for all staff. This record will document what training has been received to aid in the personal advancement of all employees. Although a central training record will be maintained, it is the responsibility of each employee to report their training and check to make sure that the central record in accurate and complete.

i. Perform routine performance assessments for all staff. Although a formal annual performance evaluation is required, supervisors will provide continual and ongoing guidance to their staff in order that there is a constant flow of feedback on performance to staff members.

j. Maintain an internal process review by Unit function. On a rotating basis, there will be an internal review of various ROW functions. This internal review may be conducted by other ROW staff only, or the reviews may include staff from other functions within DelDOT.

k. Maintain a formal process to incorporate acquired right of way interests into public transportation ownership.

l. Coordinate with representatives of the Attorney General Office regarding legal authority and legal opinions.

m. Maintain an accurate and up to date ROW Manual approved by FHWA.

C. Records Management System

1. Unifier is the basic overall document management system utilized by DelDOT to track department wide project activity. This system provides a wide view of project activity, and ROW activity is entered on a macro-scale basis.

a. The only ROW Unit personnel that have access to enter data into Primavera are the assigned ROW staff.

b. Data is entered on a project-by-project basis providing information relative to the status of all parcels on a project and in what phase of ROW activity.

2. The Real Estate Management tracking system (REM) is an internally developed spread sheet that is utilized as a general tracking mechanism for overall ROW Unit activity.

3. Shared drive (N Drive) spreadsheets are utilized to tract project activity in both the appraisal management and the acquisition functions.

a. ROW staff maintains a spreadsheet that includes information such as; project and parcel number, real property ownership, acquisition area (partial or total), improvements in acquisition area, and assignment dates.

b. ROW staff will enter general project and parcel data that can be accessed and utilized by individual acquisition agents to maintain a parcel file and status report for each individual parcel. The information contained in this status report includes various dates of assigned activities, assignment personnel, and assignment completion dates.

4. Individually maintained spreadsheets are utilized by a variety of ROW personnel to maintain performance data in numerous functional areas.

5. The Friday prior to project status meetings, any updates should be provided to the ROW Administrator to update in Primavera.

D. Advancement and Training

1. The working staff within the ROW Unit is generally composed of individuals designated as "ROW Agents". These agents may have experience and pay grade levels set out as Agent I, Agent II, and Agent III. Typically, a new hire will start out as an Agent I, and then advance upward based upon a combination of increasing level of working knowledge, responsibility, years of experience in the right of way profession, and accomplished training. It is generally expected that all ROW staff will eventually reach the journeyman level of ROW Agent III in their career in the ROW Unit.

Above the level of journeyman ROW Agents are supervising employees given the title of "Agent IV, ROW Managers". While the duties of these managers may vary somewhat

depending upon agency needs, the Managers generally supervise the areas designated as; (1) Appraisal and Appraisal Review, (2) Acquisition and Relocation, (3) Land Services (Property Management), and (4) Operations Services (Coordination between Managers, Document Maintenance, Internal Reviews, Special Projects, and Condemnation). These Manager positions are competitive in nature and subject to DelDOT rules as set out by the DelDOT Office of Human Resources.

Depending upon background and experience, and in accordance with DelDOT personal and hiring rules, new employees in the ROW Unit may be hired at any appropriate pay grade level.

2. Formal training to aid in professional development will be provided to all employees in a variety of methods. Group training will often be provided at a DelDOT facility from a variety of educational organizations. Staff may also obtain formal training in a small group or on an individual basis at training sites either within or outside the State of Delaware. Additionally, many organizations provide for internet-based training which employees may access during work hours upon approval of their supervisor.

3. The most widespread organization providing training for the ROW professional is the International Right of Way Association (IRWA). This organization has many local Chapters, including one in the State of Delaware. The IRWA offers numerous training courses throughout the U.S., and also provides for a series of professional designations for those involved in the field of ROW. DelDOT recognizes the professional designations earned by employees, as one criteria of accomplishment enabling promotion and advancement.

In addition to the IRWA, the Federal Highway Administration also provides ROW training, both through its professional staff, and via its training arm, the National Highway Institute (NHI). Although the NHI courses do not typically lead to any professional designation within NHI, all NHI ROW courses are accepted by the IRWA as equivalent formal training towards obtaining designations.

DelDOT ROW staff within the appraisal and valuation discipline will typically obtain formal training provided by a variety of real property appraisal organizations. Appraisal staff is required to be licensed by the Delaware Division of Professional Regulation and are required to maintain their license with a series of prescribed continuing education.

Although specific ROW targeted training is essential for staff, opportunities will also be sought out to provide for general staff training in a wide variety of professional development areas.

4. Travel both within and outside the State of Delaware will be guided by the policies as set out in the Office of Human Resources.

E. Primary Legal Authorities

2. Delaware Code;

a. 6 Delaware Code, Ch. 77 - Alternative Dispute Resolution

b. 10 Delaware Code, Ch. 61 - Condemnation

c. 17 Delaware Code, Section 132 - DelDOT General Authority

d. 17 Delaware Code, Section 137 - Authority to Acquire and Dispose of Real Property

e. 17 Delaware Code, Section 138 - Uneconomic Remnants

f. 17 Delaware Code, Section 145 - Corridor Capacity Preservation Program

g. 24 Delaware Code, Section 4007 - Certificate or License Required

h. 24 Delaware Code, Section 4009 - Appraiser Trainee; Requirements of Supervision

i. 29 Delaware Code, Section 2504 - DOJ Authority for DelDOT

j. 29 Delaware Code, Ch. 69 - Procurement Guidelines

k. 29 Delaware Code, Section - 8401 - Establishment of DelDOT

l. 29 Delaware Code, Section - 9301 Relocation Assistance

m. 29 Delaware Code, Section - 9305 Relocation Assistance

n. 29 Delaware Code, Section - 9308 Relocation Assistance

o. 29 Delaware Code, Ch. 95 - Real Property Acquisition

p. 29 Delaware Code, Section 9503 - Litigation Expenses

q. 29 Delaware Code, Section 9504 - Inverse Condemnation

r. 29 Delaware Code, Section 9505 - Real Property Acquisition Policies

s. 29 Delaware Code, Section 9506 - Buildings Structures and Improvements

2. Delaware Regulations;

a. Delaware Administrative Code, Title 2, Sec 2406 - Advance Acquisition Committee

3. **Delaware Procedures and Guidance;**

   a. DelDOT/FHWA Stewardship Agreement – Defines FHWA oversight responsibilities related to DelDOT actions.

   b. DelDOT ROW Manual - DelDOT ROW procedures formally approved by FHWA on a continuing basis.

4. **Federal Law;**

   a. U.S. Code 42, Chapter 61 (Public Law 91-646) – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act).

5. **Delaware Case Law**

   a. A summary of relevant cases is contained in the "Guidance Materials" section of the Manual.

6. **Federal Regulations**

   a. 23 CFR, Part 635 – Right of Way Certification for FHWA funded projects.

   b. 23 CFR, Part 710 – Regulations regarding FHWA funded projects, including funding and reimbursement, project planning, design/build projects, property management, early acquisition, functional replacement, and federal land transfers.

   c. 49 CFR, Part 24 – General regulations for all federal assisted real property acquisitions.

7. **FHWA procedures and guidance (available on FHWA website);**

   a. Uniform Act Frequently Asked Questions

   b. Real Estate Acquisition Guide for Local Public Agencies

   c. Real Estate Services Project Development Guide

   d. 23 CFR Frequently Asked Questions

F. Procurement of Services

1. General State Requirements will be followed, in accordance with guidance from the DelDOT contract administration staff.

2. Appraisal and Acquisition fee consultant services may be utilized at the discretion of the Chief of ROW. Typically, such services are utilized in conjunction with the appraisal process but may also be utilized to fulfill any ROW need, depending upon project activity and availability of staff. In conjunction with DelDOT's Procurement Services Section, there will be routine and ongoing requests for services that may be necessary to supplement the staff of the ROW Unit.

a. ROW Turn-key services that are responsible for all or most phases of the acquisition of ROW will draw from approved acquisition firms. The advertisement for services will occur no less than every five years.

b. Fee Appraiser services will be drawn from an approved list of qualified real property appraisers. The advertisement for services will occur no less than every three years.

c. Fee Review Appraiser services from an approved list of qualified real property review appraisers. The advertisement for services will occur no less than every three years.

d. Acquisition services will be drawn from an approved list of qualified firms. The advertisement for services will occur on an as needed basis.

3. Property Management Services

a. A list of real property demolition contractors, rodent control contractors, asbestos abatement consultants, and general contractors will be maintained for as needed services.

b. A list of environmental testing and mitigation firms will be maintained in coordination with the Environmental Stewardship Section of Transportation Solutions.

c. In conjunction with the maintenance of a real property inventory, the services of consultant and contracting firms may be employed.

G. Management of Fee Services

1. The Appraisal Manager will be responsible for management of all fee appraisal activities.

2. The Land Services Manager will be responsible for all property management activities.

3. The Acquisition/Relocation Manger will be responsible for all elements of fee acquisition and relocation services.

4. The Operation Services Manager will be responsible for all elements of eminent domain activity, project development, and other activities as assigned by the Chief of ROW.

H. Project Cost Estimating

1. At various times during the project development process, the ROW staff will be asked by either the project manager or a representative of the Office of Finance to provide an estimate of the proposed ROW acquisition costs on a project-by-project basis. Depending upon the nature of the project the Chief of ROW may ask any appropriate staff member to prepare the estimate. While there are obvious specific timeframes when cost estimates need to be developed, a new cost estimate could be required at any point in the project development process.

2. The first project cost estimate will likely be associated with the development of the Statewide Transportation Improvement Program (STIP), which is a planning document,

and which may contain only general ROW concept needs. The project estimate at this level will be based on perceived ROW needs and will likely be a general overview estimate.

3. An updated cost estimate would likely be required in conjunction with the development of a project NEPA environmental document. At this point in time, project acquisition limits are being determined, and any potential residential or business displacements are being established. Project cost estimates at this point should be prepared by individuals with property valuation experience, along with relocation assistance experience, if appropriate. Estimates will be based on the most current project acquisition plans available at the time and should be prepared in conjunction with a field review.

4. During the ROW appraisal and acquisition process, any unanticipated and significant increases or decreases in prior estimated ROW acquisition costs will be documented by the Appraisal Manager and reported to the Project Manager. A significant increase or decrease would be one of greater than 15% difference from the most recent project cost estimate.

5. All ROW cost estimates will be written and prepared on a parcel-by-parcel basis, when such parcel information is available. Acquisition and relocation assistance costs shall be separately stated. The Appraisal Manager will keep a record of all prepared cost estimates.

I. Federal Participation

1. The Office of Finance will determine whether there are federal funds in any phase of a project, and whether federal funds will participate in ROW costs and expenses. Regardless of whether or not there is federal participation, all basic ROW acquisition and relocation assistance procedures will follow the same process. When federal funding is participating in any phase of a project, federal representatives will have the opportunity to review project files with reasonable notice.

a. Federal review personnel may not independently access any DelDOT files, and a DelDOT representative will retrieve whatever relevant files are requested. Any copies of documents will be made by DelDOT representatives. Depending upon the nature of the document, DelDOT representatives (with legal concurrence) may restrict the removal of original or copies of documents from DelDOT premises.

b. Although federal review is typically conducted subsequent to acquisition activity, any number of issues may be cause for a concurrent review along with project activity. Actions which could result in a concurrent review by federal representatives could be the result of a property owner initiative, or a DelDOT request for advance federal concurrence.

c. There may be occasional situations where a waiver of federal regulations is warranted due to an unusual situation which prevents fair property owner treatment. Anytime federal input is involved in a project action, such input must be documented in writing and included in the project file.

2. In order for federal participation to be eligible for any acquisition or relocation assistance activity, there must be documentation from the Acquisition/Relocation Manager and/or Operation Services Manager that the three following actions have occurred;

   a. The proposed activity can be found described in the approved Statewide Transportation Improvement Plan (STIP), in the proper category and timeframe.

   b. The proposed activity must have an approved NEPA Environmental Document, which may be on a project basis or on an independent action basis.

   c. The proposed activity must have been approved and contained in the federal agency financial funding system. For the FHWA, this system is known as the Fiscal Management Information System (FMIS).

3. Federal funds may participate in the purchase of uneconomic remnants but will not typically participate in the purchase of excess ROW not needed for project purposes. Whenever excess and non-project related ROW is being purchased, in conjunction with normal acquisition activities, the excess ROW should be coded as non-federal participating, in conjunction with guidelines from the Office of Finance.

4. The State/Federal Stewardship Agreement, as contained in Attachment "E" to this Manual, provides guidance on when various federal approval and oversight actions are required.

5. In order for federal funds to participate in any phase of a DelDOT project, any real property acquisition rights must have been purchased in compliance with all applicable federal and State regulations. It is often prudent to acquire certain real property acquisition rights in advance of the normal project development process. When this advance acquisition activity occurs, the following procedures must be followed;

   a. If DelDOT desires federal participation in the proposed acquisition at either the time of the acquisition or when normal project activities commence, then the acquisition must be approved in writing by the FHWA as either a "early acquisition", a "protective purchase" or a "hardship acquisition" as defined by federal regulations at 23 CFR 710.501 and 23 CFR 710.503.

   b. If DelDOT does not desire federal participation in the acquisition but would desire to be eligible for project credit match later, then federal approval is not necessary, however, all applicable regulations and procedures must be followed. Under this procedure, a federal project match credit will only be allowed for those real property rights incorporated into the eventual project operating ROW. It is important to note that a project match credit is only available for the value of the real property rights and does not include relocation assistance payments or miscellaneous DelDOT administrative expenses.

6. Project match credits can be based upon either the value of the real property rights at the time the credit is applied, or it can be based upon the historic and actual acquisition cost. For purposes of consistency, DelDOT will typically base any project related credit on the current appraised value of the real property rights. In unusual circumstances, and with federal approval, the credit may be based upon the historic acquisition cost.

a. The current market value of the real property rights at the time of credit match may be determined by any valuation technique that is approved by the FHWA. This includes valuations prepared by DelDOT appraisal staff.

J. Funds Distribution and Revenue Collections

1. Procurement requirements will be followed in conjunction with the procedures as established by the DelDOT Contract Administration Section. The most common services that will be procured by Contract Administration will be for mowing contracts and for asbestos abatement. The DelDOT Land Services Manager will generally be responsible for obtaining services related to demolition contracts.

2. Income collection may be received in various forms, but generally will be by delivery of bank checks. Income may be delivered in person or by mail for rental use of DelDOT owned property. All income received by the Land Services Section will be properly coded as to project and delivered to the Finance Section within 24 hours or next business day that such income is received.

3. All payments for service provided to the ROW Unit will be managed by through the Contract Administration Section.

Chapter II



APPRAISAL FUNCTION

II. APPRAISAL FUNCTION

Authority in Delaware Law: at Title 24, Chapter 40, Sections 4007 and 4009
Federal Regulation: 49 CFR 24.102 Basic Acquisition Policies
49 CFR 24.103 Criteria for Appraisals

Purpose – To provide appraisal services relating to the nature, quality, value, or utility of specified real property interests. To estimate of market value of the real property interests being acquired or otherwise considered in conjunction with transportation improvement projects.

A. Staff Organization

1. The Appraisal Services Manager supervises staff and provides assignments for both appraisal activities and appraisal review activities.

a. The Appraisal Manager must be a Delaware Certified General Real Property Appraiser.

2. The Appraisal Services Manager determines the need for either an appraisal or a waiver valuation in coordination with the Acquisition Manager.

a. The decision of whether to prepare an appraisal or a waiver valuation depends on the anticipated estimate of value and complexity of the appraisal problem.

b. The waiver threshold for uncomplicated estimations of value for federally funded projects is $25,000. The federal agency funding the project may approve exceeding the $15,000 threshold, up to an amount of $35,000 per 49 CFR 24.102(c)(2)(ii)(C). This requires an approval (in writing) from the federal agency funding the project.

c. The waiver threshold for uncomplicated estimations of value for state funded projects is $50,000.

3. Staff Appraiser Certifications and Credentials

a. All staff appraiser and fee appraisers must be certified as an appraiser by the State of Delaware Division of Professional Regulation.

b. All staff appraisers must either hold the Certified General Real Property Appraiser or Certified Residential Real Property Appraiser license.

c. Appraisal staff is encouraged to obtain membership in professional appraisal organizations.

d. All staff appraisers must be knowledgeable of the principles of eminent domain appraising. This includes knowledge of what is either a compensable or non-compensable item under Delaware State law.

4. Fee Appraiser Certifications and Credentials

a. All fee appraisers must be certified as an appraiser by the State of Delaware Division of Professional Regulation.

b. All fee appraisers may only perform appraisal duties as approved by the State of Delaware Division of Professional Regulation.

c. All fee appraisers must be approved by the DelDOT Appraisal Staff and Contract Administration staff as having the knowledge, skills, and abilities to prepare an appraisal that meets eminent domain requirements in the State of Delaware.

d. All fee appraisers must be accepted as having been pre-qualified to perform appraisal functions for DelDOT. Such pre-qualification will occur on a continuing basis thru a request from Contract Administration being sent to all Delaware licensed appraisers. Fee appraisers will be given increasingly more complicated appraisal problems to value, as their proficiency improves.

5. Non-Real Property Specialty Appraisals and Valuations

a. All specialty appraisers and valuators must either be licensed in their particular field of expertise by the State of Delaware Division of Professional Regulation or have demonstrated expert knowledge in a specific type of valuation.

B. Staff Appraiser Responsibilities

1. General

a. Evaluate the appraisal problem and complexity for each property ~~to~~ determine the appraisal assignment and scope of work commensurable with the valuation problem. The Appraisal Services Manager shall determine which appraisers are competent to complete the assignment.

b. Determine the number of appraisal reports required for each parcel based on the anticipated estimate of vale and/or complexity. Although typically only one appraisal report is prepared for each project parcel, there may be circumstances where the complexity of the appraisal problem or the relatively high value estimate of the acquisition indicates the preference for more than one appraisal report. This decision will be made by the Appraisal Services Manager.

c. Assigning appraisal activity requires several variables to be considered in the decision-making process. In addition to the experience and competency of the potential appraiser, the bid proposal (if fee appraiser) and the ability to submit the product in a timely manner. Other factors that may need to be considered include expert witness experience and maintaining a diverse group of available appraisers.

d. A member of the appraisal staff shall document and maintain complete records of all appraisal activity. This includes appraisal activity, timeliness, evaluations, and completeness of product.

e. The Appraisal Services Manager monitors staff and fee appraisers to assure timely and appropriate appraisal products will be completed in accordance with stated timeframes.

f. Each appraisal assignment must contain an assignment plan (scope of work) to assure the appraisal reflects the property rights being valued.

g. In conjunction with the Appraisal Services Manager, provide guidance regarding issues related to non-compensable damages.

h. In conjunction with the Appraisal Services Manager, provide guidance on issues related to special benefits vs. general benefits.

i. In conjunction with the Appraisal Services Manager, provide guidance in determining the real property versus personal property.

j. In conjunction with the Appraisal Services Manager, provide guidance related to tenant owned real property. Generate Right-of-Way (ROW) cost estimates to Project Development staff, Planning staff, and Environmental Studies staff as requested.

k. Review ROW plans to assure adequacy and accuracy for ROW appraisal use. Be available to discuss results of such review with engineering design staff.

l. Attend assigned public meetings and be available to discuss appraisal issues with the public.

m. Participate in any appropriate discussions with Department of Justice staff.

n. Assist in maintenance of market sales, cost estimating data bases, and other appraisal reference materials.

3. Appraiser Duties (staff and fee)

a. Confirm adequacy of the assignment plan and scope of work in coordination with the Appraisal Manager.

b. Provide property owner or owner's representative with an opportunity to accompany the appraiser during inspection of the property. Depending upon circumstances, this property inspection should also be coordinated with the assigned review appraiser and, if appropriate, relocation assistance advisor.

c. Prepare appraisal reports in conformance with the appraisal assignment plan, and within designated timeframes.

d. Prepare a residential "carve out", if required.

e. Assure that items of real property and personal property are properly identified.

f. Respond in a timely manner to any requests received from the Review Appraiser.

g. Be prepared to discuss appraisal report, as requested, in conjunction with acquisition process.

h. Prepare property valuations for "soft match" (non-cash) purposes.

i. Prepare property valuations for excess land disposal or for real property project related land swap purposes.

4. Additional Fee Appraiser Duties

a. Provide fee quotes and time constraints when requested to submit appraisal product proposals.

b. Submit appraisal reports in a manner and format in compliance with the assignment plan, scope of work, and contract.

c. Provide any relevant back-up data as requested by DelDOT staff.

d. Be available to discuss appraisal report product with any appropriately identified State or Federal review agency.

C. Appraisal Report Requirements

1. Federal Regulations for transportation eminent domain acquisitions

a. The federal regulations regarding the preparation of real property appraisals for highway related transportation projects under the authority of eminent domain is regulated by the Uniform Relocation and Real property Acquisition Act of 1970 as amended (The Uniform Act) and can be found at Subpart B, Sections 24.103 and 24.104.

b. Additional federal regulations regarding real property acquisition appraisal preparation for highway related appraisals can be found at 23 CFR Part 710.

c. When federal-aid oversight of a real property appraisal is for a federal agency other than the FHWA, the "Uniform Appraisal Standards for Federal Land Acquisitions" will be the standards guidance unless that federal agency approves utilization of the standards in the DelDOT ROW Manual.

2. Federal guidance regarding federal land acquisitions and the real property appraisal preparation is published by the Appraisal Foundation in cooperation with the U.S. Department of Justice, in the document "Uniform Appraisal Standards for Federal Land Acquisitions" (also known as the "Yellow Book"). Such guidance will be utilized when DelDOT acquires real property when federal funding is from a source other than the Federal Highway Administration.

3. Uniform Standards of Professional Appraisal Practice (USPAP)

a. These Standards apply to all licensed appraisers who prepare real property appraisals in the State of Delaware regardless of the nature or purpose of the appraisal report.

b. When Federal and State real property eminent domain appraisal requirements conflict with USPAP standards a "jurisdictional exception" or assignment condition is invoked.

c. In those situations where either the federal regulations, State of Delaware Regulations, or the DelDOT appraisal guidelines are stricter than USPAP, the stricter rule will apply.

4. State of Delaware Professional Regulations

a. Provide for the establishment of the Council on Real Estate Appraisers, which regulate the real property appraisal profession in Delaware. This includes the issuing of various levels of real property appraiser licensure and certification.

b. Establishes the availability of reciprocity for appraisers licensed in States other than Delaware.

c. Establishes fees for the issuance and renewal of licenses and certification.

d. Establishes the necessary continuing education requirements for maintenance of licenses and certifications.

e. Establishes how complaints are to be handled and grounds for discipline and manner of discipline.

D. Methods

1. Partial Acquisition Appraisal Report – a Strip Acquisition Valuation

a. An appraisal method used for partial acquisitions of property without any damages to the remainder caused by the acquisition may be valued by strip appraisal methodology.

b. This appraisal method includes the reimbursement of uncomplicated amenities but is not applicable if there are substantial improvements or damages to the remainder property. Damages cannot be measured using the strip appraisal methodology.

c. This appraisal method must include a statement relative to whether or not there are any consequential damages to the remainder property, as a result of the proposed acquisition.

1. Before and After Valuation Report

a. This is the most comprehensive type of report analysis and is particularly applicable for complicated acquisitions and any acquisition that may be thought to result in damages to the remainder.

b. The Before and After valuation method is used to determine (if any) damages to the larger parcel due to project impacts. Damages caused by the acquisition versus the cost-to-cure approach is analyzed and DelDOT pays the lesser of the two. See attachment "A' for further information.

c. A Before and After appraisal is required in federal rule states (Delaware in particular) for condemnation proceedings. This type of analysis is required in Court sanctioned eminent domain proceedings.

2. Total Property Appraisal Report

a. A narrative or form report can be utilized for any total acquisition that is of an uncomplicated nature. A narrative report is most appropriate for complicated total acquisitions valuations.

b. Unless otherwise determined by the Chief of ROW, all outdoor advertising signs, cell towers, and similar structures will be treated as personal property. All underground storage tanks and similar improvements will be treated as real property.

c. Unless otherwise determined by the Chief of ROW, appraisers will be given instructions to appraise all real property "as if clean from contamination" with either an extraordinary assumption or hypothetical condition. Sites believed to be encumbered by contamination will be treated on a case-by-case basis.

E. Appraisal Report Standards – SEE ATTACHMENT A

F. Waiver Estimate of Valuation Criteria

1. A waiver estimate of valuation as defined by federal and State regulations, is not an appraisal report.

2. DelDOT licensed appraisal staff do not prepare waiver valuations.

3. DelDOT appraisal staff may advise right-of-way staff on valuation issues in the following manner.

a. Provide appropriate market sales data.

b. Prepare cost studies.

c. Explain basic valuation methodology.

d. Answer market data and market trends questions from right-of-way staff, which does not assume any of the responsibilities of a licensed real property appraiser.

G. Sample and Forms Letters

1. APSL 1 Appraisal Fee Quote Request

2. APSL 2 Procurement Procedures Quotation Summary

3. APSL 3 Appraisal Assignment Plan and Contract

4. APSL 4 Owner Contact Letter

5. APSL 5 Certificate of Review Appraiser and Conclusion of Fair Market Value

6. APSL 7 Appraisal Review Summary for Disposition

7. APSL 9 Appraisal Parcel File Summary

8. APSL 11 Review Assignment Plan-Contract

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

Appraisal Fee Quote Request

To: Appraiser

From: «DelDOT_Appraisal_Contact», Right of Way Agent
«DelDOT_Email»; «DelDOT_Phone_»

Date: «DelDOT_Email»; due by noon, «DelDOT_Email»

RE: Project: «Project_Number», «Project_Name»

State Parcel No.	Tax Parcel No.	Zoning	Acreage	Owner	Location	Notes

Please submit your appraisal fee quote(s) and timing for the above referenced parcels.

Plans will be provided.

APPRAISAL PROBLEM: Determine market value of the project impacts and determine the impact of the project to the remainder if any.

ITEMS TO BE ADDRESSED IN THE APPRAISAL:
Please adhere to the Federal Registry **§ 24.103 Criteria for appraisals.**

Procurement Procedures Quotation Summary

Dept/Div/Section: Transportation Solution/ROW/Appraisal	**Approved by:**	**Fee Requested – Due – Awarded**
Appraisals for **Project #; Project Name**	**Amount: $**	

Parcel #	**Notes**
Vendor Selected:	
Explanation for selection if other than low bid:	

Vendor solicited:

Vendor Name	Contact Person	Fee – Format – Days to Complete	Total

Assignment Plan and Contract
Appraiser
Date

Project Name:
Project Number: **FAP Number:**
Parcel Number:

This appraisal assignment(s) for the above referenced property(s) is to be completed in accordance with the terms and conditions of your "Master Agreement for Fee Appraisers" and the additional information stated herein.

Client: Delaware Department of Transportation
Address: 250 Bear Christiana Road, Bear, DE 19701
Contact:

Intended User(s): DelDOT
Intended Use: This appraisal is to estimate the fair market value of the property, as of a specified date of valuation, for the proposed acquisition of the property rights for a Federally assisted project. The project's proposed acquisition needs are noted on the provided plans.

Type of Value: Market Value
Effective Date: Date of Inspection

Definition of Market Value:
Wilmington Housing Auth. v. Harris 47 Del. 469 (1952)
Market value is the price which would be agreed upon by a willing seller and a willing buyer under usual and ordinary circumstances, without any compulsion whatsoever upon the seller to sell or upon the buyer to buy.

Characteristics:
Property Location:
Owner:
Mailing Address:
Contact Phone: **Email:**
Type:
Tax Parcel No.:
Interest:

Extraordinary Assumptions: None
Hypothetical Conditions: None

Scope of Work/Appraisal Problem:

Determine market value of the project impacts and determine the impact of the project to the remainder if any. There will be a denial of access along the frontage of Coastal Highway. The property owner also owns the adjoining lands, and we are envisioning a larger parcel with these 3 parcels. Please let us know if you concur. If damages to the remainder are seen by the appraiser, contact the Department to determine if a before and after appraisal is required.

Temporary Construction Easement duration if applicable:

Pursuant to the Uniform Act 49CFR Part 24, the appraiser shall not consider project influence.
The appraiser shall not consider exposure and marketing-time as it is not part of the market value definition in ***Wilmington Housing Auth. v. Harris 47 Del. 469 (1952).***

Delaware Real Estate Services Manual stipulates that the appraiser is to contact the owner by phone and in cases where the property owner, or their authorized representative, has not responded in a timely manner, then a registered letter with a return receipt is required and the receipt is to be included in the Addenda.

Please afford the property owner, or their authorized representative, the opportunity to accompany the appraiser during the physical inspection of the property and/or the opportunity to discuss the project as it relates to the subject property.

The following items are to be considered non-compensable:

a. **Circuity of travel**
b. **Loss of business**
c. **Temporary diversion or rerouting of traffic**
d. **Business loss during construction**
e. **Traffic volume increase or decrease**
f. **Enforcement of police power in regulating traffic**
g. **Access impairment or temporary denial during construction**
h. **Diversion of traffic**
i. **Personal property as opposed to fixtures**

Identify Property: Provide an adequate description of the physical characteristics of the subject property, areas impacted by DelDOT's project and any known or observed encumbrances, as well as location, zoning, and present use.

Physical Factors: As they exist on the day of inspection
Economic Factors: Consider subject's local market dynamics

Analysis
Highest and Best Use: Summarize the support and rationale for the opinion of highest and best use including research and market analysis.

Valuation: Consider all relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. If less than the three approaches to value are used an explanation of why each approach is not relevant is required.

Extent: A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source, method of financing, and verification by a party involved in the transaction. Pictures of the comparable sales with identification of photographer and date taken are required.

Support documents for the appraisal were provided with the fee quote request.

This appraisal could be subject to a Freedom of Information Act ("FOIA") request and as such, the Department of Transportation ("DelDOT") wants to inform you in advance of that possibility. In that case, DelDOT would be required to turn over your appraisal to the requesting party. If a FOIA request is submitted, you will be provided the opportunity to redact from the appraisal any information that you believe to be of a proprietary nature concerning personal and/or financial matters.

The appraiser shall submit an electronic draft of the appraisal initially. After the review process is complete the appraiser shall submit an electronic file of the signed appraisal and three signed hardcopies to the DEPARTMENT.

Type of Appraisal Report:
☐ **Total Property** ☐ **Before & After** ☐ **Partial Acquisition** ☐ **Form**

Any services provided by the appraiser for judicial proceedings will require a separate contract and fee.

Date of Completion: **Fee:**

I accept this Assignment Plan-Contract and will return a signed original within ten (10) days.

Appraiser Date
DE Certified; License

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

July 10, 2025

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Property_County» County
Project Name: «Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property Address: «Property_Location»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation (DelDOT) has plans to make improvements along «Project_Name». The Department needs to acquire a portion of, or rights in, the property referenced above for these improvements. The compensation for the acquisition will be based upon an approved real estate appraisal. «Appraiser», a certified general real estate appraiser, will complete this appraisal.

As part of the appraisal process, the appraiser must personally inspect the property and provide you and/or you're representative a reasonable opportunity to accompany them on their inspection. The contact information I have for you is «Contact_Phone_» or «Contact_Email». If you are not the contact person, or if this information is incorrect, please provide me with the corrected contact information, as soon as possible. This personal contact with the appraiser will afford you and/or your representative the opportunity to discuss pertinent aspects of this project and the affect it has on your property. The appraiser will contact you, or your representative, in the near future to schedule an appointment.

If you have any questions concerning this letter, please call me at «DelDOT_Phone_» or via e-mail at «DelDOT_Email».

Sincerely,

«DelDOT_Appraisal_Contact»
Right of Way Agent

:
cc: «Appraiser»

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

CERTIFICATE OF REVIEW APPRAISER AND CONCLUSION OF FAIR MARKET VALUE

PROJECT NO.	F.A.P.	PARCEL NO.
PROJECT NAME:		
OWNER:		
COUNTY:	DATE INSPECTED SUBJECT:	

I, the undersigned, certify that I have made a visual inspection of the subject, and that the determination of market value is to be used in connection with a Transportation project. I further certify that I have personally inspected the comparable sales used by the appraiser in their determination of fair market value; that I have no direct or indirect present or contemplated future personal interest in the subject property or in any benefit from its acquisition; and that my determination of fair market value has been reached independently, based on appraisals and other factual data of record without collaboration or direction. Items compensable under State law, but not eligible for Federal reimbursement, if any, are set out in this review.

I further certify that the appraisal is fully documented and supported as required by the Department of Transportation and the requirements of the current policies and procedures, and it is estimated that the Fair Market Value of the part acquired plus any loss in value to the remainder (if any), as of date is $_____.

	APPRAISER		REVIEWER
BEFORE and AFTER METHODOLOGY			
BEFORE VALUE			
AFTER VALUE			
DIFFERENCE			
LAND AND/OR IMPROVEMENTS			
LOSS IN VALUE TO REMAINDER			
TEMPORARY CONSTRUCTION EASEMENT			
PARTIAL ACQUISITION and TOTAL ACQUISITION:			
FEE ACQUISITION – existing RW-PE			
FEE ACQUISITION			
PERMANENT EASEMENT			
TEMPORARY CONSTRUCTION EASEMENT			
SITE IMPROVEMENTS TOTAL			
MECHANICAL & EQUIPMENT TOTAL			
ESTIMATED REAL ESTATE COMPENSATION (DUE TO PROPERTY OWNER)			

CORRELATION:
The subject of this review is an appraisal prepared by _____, for the State of Delaware, Department of Transportation. The intended user of this review is DelDOT. The intended use of this review is to qualify the appraisal report for soundness, reasonableness, compliance to applicable State and Federal regulations, and compliance with the State of Delaware Real Estate Manual guidelines. The purpose of this review is to correlate the appraiser's value conclusion to just compensation for the property owner due to project acquisition needs.

The report is dated _____ and the effective date of the appraisal is _____. I inspected the property of _____, which is the effective date of this review.

The Scope of Work performed in the appraisal review process were first to perform a desk review to check the appraisal for accuracy and completeness of factual data, compliance with applicable guidelines and the State of Delaware Real Estate Manual guidelines and proper application of appraisal techniques and methodology. The second step after the appraisal report was found to be sound and reasonable was to perform an inspection of the project site and comparable sales sites from a public street to gain an understanding of the project and the appraiser's rational. The final step was to correlate the conclusions of the report with meaningfulness and usefulness to DelDOT for use in negotiations and acquisition purposes.

Based upon the scope of this assignment, the appraiser has/has not employed recognized appraisal techniques and methods. The appraisal does/does not comply with my understanding of the State of Delaware Real Estate Manual guidelines. The appraisal report does/does not include a sufficient level of information to lead a reader to a reasonable conclusion. The review appraiser does/does not accept and approves the appraisal and value conclusion and recommends, accepts, or not accepts the methods and analyses employed in the appraisal report.

Commentary must comply with Standards Rule 4-2:
Intended User of review:
Intended Use of review: Subject to the requirements of DelDOT.
Purpose of review:
Tax Parcel Number(s):
Owner(s):
Property Address:
Appraiser:
Date of Appraisal Report:
Date of Appraised Value:
State extraordinary assumptions/hypothetical conditions noted in the appraisal and if their use did, or did not, affect the assignment results:
State Appraisal Review *Scope of Work*:
State the reviewer's opinions and conclusions about the appraisal, including reasons for disagreement:

Comments:

Summary of Acquisition(s)

FEE
PE
TCE
Site Improvements Total
M&E Total
Total

Supplemental Certifications

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analysis, opinions, and conclusions in this report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My analyses, opinions, and conclusions were developed, and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*
- I did personally inspect the subject property of the work under review.
- No one provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within three-year period immediately preceding acceptance of this assignment.

DATE	Name REVIEW APPRAISER	DE Certified General or Residential Real Property Appraiser License #

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

CERTIFICATE OF REVIEW APPRAISER AND CONCLUSION OF FAIR MARKET VALUE FOR DISPOSITION

PROJECT NO.	F.A.P.	PARCEL NO.
PROJECT NAME:		
OWNER:		
COUNTY:	DATE INSPECTED SUBJECT:	

I, the undersigned, certify that I have made a visual inspection of the subject, and that the determination of fair market value is to be used in the disposition of excess land as authorized by Title 17 of the Delaware Code. I further certify that I have personally inspected the comparable sales used by the appraisers in their determination of fair market value; that I have no direct or indirect present or contemplated future personal interest in the subject property or in any benefit from its sale; and that my determination of fair market value has been reached independently, based on appraisals and other factual data of record without collaboration or direction.

I further certify that the appraisal is fully documented and supported as required by the Department of Transportation and the requirements of the current policies and procedures, and it is estimated that the Fair Market Value for disposition of the above parcel as of (date), is $0.00.

	APPRAISER	REVIEWER
LAND AND/OR IMPROVEMENTS		
EASEMENT		
ESTIMATED MARKET VALUE		

CORRELATION:

The subject of this review is an appraisal prepared by_____, for the State of Delaware, Department of Transportation. The appraisal report is dated _____ and sets for an opinion of the market value of the fee simple interest of the subject property. The intended user of this review is DelDOT. The intended use of this review is to qualify the appraisal report for soundness, reasonableness, compliance with the State of Delaware Real Estate Manual guidelines. The purpose of this review is to establish a value for disposition of the declared excess land from the acquisition of property for the (Name of Project) project.

The scope of work performed in the appraisal review process consisted of first performing a desk review to check the appraisal for accuracy, completeness, factual data, and the State of Delaware Real Estate Manual guidelines, and proper application of appraisal techniques and methodology. After the desk review was completed and the appraisal was found to be sound and reasonable, inspections of the project and site were completed and the comparable data were viewed from a public street to better help the reviewer with the understanding of the project and appraisers rational. Finally, the conclusions in the report were correlated to the meaningfulness and usefulness to DelDOT for disposition purposes.

Based upon the scope of this assignment, the appraiser has/has not employed recognized appraisal techniques and methods. The appraisal does/does not comply with my understanding of the State of Delaware Real Estate Manual guidelines. The appraisal report does/does not include a sufficient level of information to lead a reader to a reasonable conclusion. The review appraiser does/does not accept and approves the appraisal and value conclusion and recommends, accepts, or not accepts the methods and analyses employed in the appraisal report.
Commentary must comply with Standards Rule 4-2:
Intended User of review:
Intended Use of review: Subject to the requirements of DelDOT.

Purpose of review:
Tax Parcel Number(s):
Owner(s):
Property Address:
Appraiser:
Date of Appraisal Report:
Date of Appraised Value:
State extraordinary assumptions/hypothetical conditions noted in the appraisal and if their use did, or did not, affect the assignment results:
State Appraisal Review *Scope of Work*:
State the reviewer's opinions and conclusions about the appraisal, including reasons for disagreement:

Comments:

Attachment

Supplemental Certifications

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analysis, opinions, and conclusions in this report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My analyses, opinions, and conclusions were developed, and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*
- I did personally inspect the subject property of the work under review.
- No one provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within three-year period immediately preceding acceptance of this assignment.

DATE Name DE Certified General or Residential Real Property Appraiser
REVIEW APPRAISER License #

Parcel File Summary

State Project No.		Federal-Aid Project No.	
Project Title			
		Parcel No.	
Owner's Name			
Relocation			

Initial and date when required documentation is filed. If a document is not required, mark N/A (non-applicable). A copy of all letters, correspondence, memoranda, emails, forms, etc., as well as a copy of the appraisal(s) are to be retained in the file for permanent record keeping and eventual archiving and microfilming.

APPRAISAL SERVICES **DATE**

Property History/Deed

Appraisal Fee Quote Request

Appraisal Fee Quote Summary

Assignment of Appraisal(s) ☒ fee ☐ staff due

Letter to owner/notification to accompany appraiser

Appraisal(s) Received/Completed

Assignment to Review Appraiser

Certificate of Review Appraiser

Approved Appraisal to Acquisition

Authorization to pay	Date	Voucher #'s	Paid Date and number	Amount
Fee Appraiser-				
M&E Appraiser				
Landscaper				
Other / Fence Contractor				
Appraisal Review Fee-				

All required documentation is in the file.

Statewide Appraisal Coordinator - Date

Approved: Statewide Manager Appraisal Services – Date

DelDOT

FEE APPRAISAL REVIEWER ASSIGNMENT PLAN-CONTRACT
<Appraiser's Name>
<Date>

Project Name:
Project Number: **FAP Number:**
Parcel Number:

This is to request your acceptance of the appraisal review assignment for the above referenced property that is to be completed in accordance with the terms and conditions of your "Master Agreement for Fee Appraisal Reviewers" and the additional information stated therein.

1. The review report will assist in acquisition of the necessary rights of way and easements (permanent and temporary) for the project. The intended user is the client, The Delaware Department of Transportation. The intended use is to affirm the appraisal conforms to the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation, with 49 CFR, part 24.103 (Criteria for appraisals) and the Delaware Real Estate Manual (Right of Way and Appraisal).

2. This appraisal review assignment entails resolving all appraisal questions and issues with the fee appraiser. This assignment also requires that the reviewer communicate with DelDOT's appraisal department throughout the review process.

3. The completed Appraisal Review Certification must be submitted electronically to the DEPARTMENT.

4. The fee established to complete the appraisal review assignment is $.

5. In the event the services of the APPRAISAL REVIEWER are required for pretrial conferences in preparation for condemnation proceedings regarding the property appraised, the DEPARTMENT will enter into a separate contract for Fee Appraisal Reviewer Services.

6. The APPRAISAL REVIEWER shall execute and supply with each appraisal report a "Certificate of Review Appraiser and Conclusion of Fair Market Value".

7. The APPRAISAL REVIEWER must return a signed copy of this contract to the DEPARTMENT'S District Real Estate Office within **10 days** of the Assignment Date.

Date of Completion

I accept this Review Assignment and will return a signed original within ten (10) days.

Appraiser's Name Date
DE Certified General Real Property Appraiser X1-000

Chapter III



APPRAISAL REVIEW FUNCTION

III. APPRAISAL REVIEW FUNCTION

Authority in Delaware law at Title 24, Chapter 40, Sections 4007 and 4009

Federal Authority 49 CFR 24.104

Purpose To assure the regulatory compliance requirements of State and Federal laws and regulations have been satisfied to estimate the Just Compensation and/or market value for all real property interests being appraised.

A. Review Appraiser Staff Organization, Certifications, and Credentials

1. The Appraisal Services Manager supervises staff and provides assignments.

2. All review appraisers must either hold the Certified General Real Property Appraiser or Certified Residential Appraiser license by the State of Delaware Division of Professional Regulation.

3. Review appraisal staff is encouraged to obtain membership in professional appraisal organizations.

4. All review appraisers must be knowledgeable in the principals of eminent domain appraising in the State of Delaware. This includes knowledge of what is either a compensable or non-compensable characteristic under Delaware State law.

B. Review Appraiser Responsibilities

1. Coordinate with staff from all other DelDOT Sections, as requested.

2. Maintain accurate records to document all relevant activity.

3. Upon receiving assignment from the appraisal manager, the review appraiser will communicate with the fee appraiser on all appraisal matters pertinent to the review process.

4. Review appraisal reports for adequacy and compliance of all applicable standards and all aspects of the scope of work.

5. Recommend, accept, or not accept the appraised market value conclusion.

6. Prepare a written report which evaluates the appraisal under review.

7. Be available to testify in Court as requested by DelDOT legal representatives.

8. Review appraisal reports and any other relevant documentation that may be provided by impacted property owners.

9. Review property appraisals for "soft match" purposes.

10. Review property appraisals for excess land disposal or for project-related swap purposes.

11. Staff appraisers make recommendations regarding "uneconomic remnant" situations, as appropriate.

12. Participate in annual evaluation of fee appraiser performance.

C. Additional Fee Review Appraiser Responsibilities

1. All fee review appraisers must be licensed as an appraiser by the State of Delaware Division of Professional Regulation.

2. All fee review appraisers may only perform appraisal review duties as approved by the State of Delaware Division of Professional Regulation.

3. All fee appraisers will be determined by the DelDOT Appraisal Services Manager as having the knowledge, skills, and abilities necessary to prepare an appraisal review report for eminent domain purposes in the State of Delaware.

4. All fee review appraisers must apply for employment consideration in accordance with the rules of the DelDOT Office of Contract Administration.

D. Appraisal Review Assignments

1. Desk Review

a. A desk review of an appraisal is the first step for all appraisals to determine if the appraisal satisfies the scope of work and minimum report requirements. This can be accomplished based on the review appraiser's knowledge of the property and the project.

2. Field Review

a. A field review is required for all appraisals being reviewed for right-of-way acquisitions and eminent domain acquisitions.

b. A field review requires an exterior inspection of the subject property as well as all of the comparable sales and listings, both vacant and improved sales.

c. An interior inspection of any subject improvements should be made if the appraisal is for an acquisition that includes the improvements.

3. Technical Office Review

a. The final office review is for verification of how well the appraisal problem has been defined, presented and solved within the report. All factual information, analysis, reasoning, logic, adjustments, and conclusions are examined to formulate the reviewer's opinion as to the accuracy of the content within the report, and whether there is credibility in the final value estimate. The appraiser may be contacted to make necessary corrections to the appraisal report on compliance and quality issues leading to acceptance of the total appraisal product.

b. For partial acquisitions, the basis for benefits and damages to the remainder should be justified, and where possible, supported by actual market studies. Reference to severance damage studies shall be examined and reviewed. Where damages accrue to the remainder and where cost-to-cure has been used, a careful check of the soundness of the application of this method and verification of all costs incidental to its use are examined.

4. Administrative Review

a. An administrative review may be performed by an appraiser or a non-appraiser and is sometimes referred to as a compliance review.

b. An administrative review may include confirmation that the appraisal report conforms to assignment requirements and to applicable law for real property acquisition appraisals.

c. The administrative reviewer shall not form an opinion regarding the analysis, judgement, or opinion of value contained within the appraisal report under review.

E. Appraisal Review Report Requirements

1. Federal Requirements

a. The federal regulations regarding the preparation of appraisal review reports under the authority of eminent domain can be found at 49 CFR, 24.104.

b. When federal-aid oversight on a real property appraisal review is from a federal agency other than the FHWA, the Uniform Standards for Federal Land Acquisitions (UASFLA-Yellow Book) will be the standards appraisal guidance, unless that federal agency approves utilization of the standards in the DelDOT ROW Manual.

2. Uniform Standards of Professional Appraisal Practice (USPAP)

a. These Standards apply to all licensed appraisers who prepare appraisal reviews in the State of Delaware, regardless of the nature or purpose of the appraisal report.

b. In those situations where either the federal regulations or the DelDOT appraisal review guidelines are stricter than the most current USPAP, the stricter rule will apply.

3. State of Delaware Law

a. All appraisals will be made in accordance with Delaware law governing compensability, benefit, and value elements. The following are damage items which are non-compensable under Delaware law:

- Circuity of travel.
- Loss of business.
- Temporary diversion or rerouting of traffic.
- Business loss during construction.
- Traffic volume increase or decrease.
- Enforcement of police power in regulating traffic.
- Access impairment or temporary denial during construction.
- Diversion of traffic.
- Personal property as opposed to fixtures

F. Necessary Appraisal Review Updates and Corrections

1. Appraisal Report

a. If the appraisal report under review contains typographical errors or other similar minor errors, the review appraiser will note the necessary corrections and notify the appraiser of the need to make such corrections to the report.

b. If the appraisal report under review contains minor factual errors, the review appraiser will return the appraisal to the appraiser for correction. If the appraisal report under review contains anything beyond minor factual errors, it must be sent back to the appraiser for correction prior to being accepted as approved by DelDOT. If any factual changes become

apparent after the completion of the appraisal report that affect value, a new assignment to update the appraisal is ordered.

2. **New Assignment Appraisal Report**

   a. If in the opinion of the review appraiser, new facts have been uncovered or the market has changes, the review appraiser may request a new opinion of value from the appraiser, which will be considered to be a new assignment. A new effective date of value along with a new effective date of review completion should be established.

   b. In cases where a condemnation action is filed with the Court, the original appraisal report is considered void. A before and after appraisal is required for federal rule states for condemnation proceedings. The effective date of the appraisal is the court determined date of possession. Delaware is a federal rule state.

G. Review Appraiser Report Determinations Subsequent to Complete Review

1. "Approved and Recommended" is the basis for the establishment of the amount believed to be "just compensation".

2. "Accepted" as meeting all established requirements, but not recommended as the basis for the establishment of the amount believed to be "just compensation". This appraisal status will typically be designated when more than one appraisal is obtained on a parcel, and one or more of the appraisals is not designated as "recommended".

3. "Not Accepted" for DelDOT use and not meeting minimum appraisal report standards. Depending upon the nature of the deficiencies, DelDOT may choose whether it is appropriate to compensate the appraiser for the work performed. The payment determination will be made in joint concurrence by the Appraisal Services Manager and the Chief of ROW.

4. The review appraiser report and certification may be presented and accessible in any format that meets the needs and the circumstances of the appraisal report and scope of work.

5. Regardless of any determination of market value of less than $500.00, a DelDOT minimum just compensation payment of $500.00 per acquisition parcel will be established and offered to the real property owner. Any individual owner of "tenant owner improvements" will also be eligible for a $500.00 minimum compensation offer.

H. Waiver Estimate of Valuation Criteria

1. A waiver estimate valuation as defined by federal and State regulations, is not an appraisal report.

2. DelDOT review appraisers will generally not prepare, or review waiver estimate valuations for determinations of compensation.

3. DelDOT review appraisers may advise right-of-way staff on compensation issues in the following manner.

   a. Provide source information for appropriate market sales data.

   b. Explain basic valuation methodology.

   c. Answer market data and market trends questions from right-of-way staff, which does not assume any responsibilities as a licensed real property appraiser.

I. Sample and Forms Letter

1. APSL 1 Appraisal Fee Quote Request

2. APSL 3 Appraisal Assignment Plan and Contract

3. APSL 4 Owner Contact Letter

4. APSL 5 Certificate of Review Appraiser and Conclusion of Fair Market

5. APSL 7 Certificate of Review Appraiser and Conclusion of Fair Market Value for Disposition

6. APSL 9 Appraisal Parcel File Summary

7. APSL 11 Review Assignment Plan-Contract

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

Appraisal Fee Quote Request

To: Appraiser

From: «DelDOT_Appraisal_Contact», Right of Way Agent
«DelDOT_Email»; «DelDOT_Phone_»

Date: «DelDOT_Email»; due by noon, «DelDOT_Email»

RE: Project: «Project_Number», «Project_Name»

State Parcel No.	Tax Parcel No.	Zoning	Acreage	Owner	Location	Notes

Please submit your appraisal fee quote(s) and timing for the above referenced parcels.

Plans will be provided.

APPRAISAL PROBLEM: Determine market value of the project impacts and determine the impact of the project to the remainder if any.

ITEMS TO BE ADDRESSED IN THE APPRAISAL:
Please adhere to the Federal Registry **§ 24.103 Criteria for appraisals.**

Assignment Plan and Contract
Appraiser
Date

Project Name:
Project Number: **FAP Number:**
Parcel Number:

This appraisal assignment(s) for the above referenced property(s) is to be completed in accordance with the terms and conditions of your "Master Agreement for Fee Appraisers" and the additional information stated herein.

Client: Delaware Department of Transportation
Address: 250 Bear Christiana Road, Bear, DE 19701
Contact:

Intended User(s): DelDOT
Intended Use: This appraisal is to estimate the fair market value of the property, as of a specified date of valuation, for the proposed acquisition of the property rights for a Federally assisted project. The project's proposed acquisition needs are noted on the provided plans.

Type of Value: Market Value
Effective Date: Date of Inspection

Definition of Market Value:
Wilmington Housing Auth. v. Harris 47 Del. 469 (1952)
Market value is the price which would be agreed upon by a willing seller and a willing buyer under usual and ordinary circumstances, without any compulsion whatsoever upon the seller to sell or upon the buyer to buy.

Characteristics:
Property Location:
Owner:
Mailing Address:
Contact Phone: **Email:**
Type:
Tax Parcel No.:
Interest:

Extraordinary Assumptions: None
Hypothetical Conditions: None

Scope of Work/Appraisal Problem:

Determine market value of the project impacts and determine the impact of the project to the remainder if any. There will be a denial of access along the frontage of Coastal Highway. The property owner also owns the adjoining lands, and we are envisioning a larger parcel with these 3 parcels. Please let us know if you concur. If damages to the remainder are seen by the appraiser, contact the Department to determine if a before and after appraisal is required.

Temporary Construction Easement duration if applicable:

Pursuant to the Uniform Act 49CFR Part 24, the appraiser shall not consider project influence.
The appraiser shall not consider exposure and marketing-time as it is not part of the market value definition in ***Wilmington Housing Auth. v. Harris 47 Del. 469 (1952).***

Delaware Real Estate Services Manual stipulates that the appraiser is to contact the owner by phone and in cases where the property owner, or their authorized representative, has not responded in a timely manner, then a registered letter with a return receipt is required and the receipt is to be included in the Addenda.

Please afford the property owner, or their authorized representative, the opportunity to accompany the appraiser during the physical inspection of the property and/or the opportunity to discuss the project as it relates to the subject property.

The following items are to be considered non-compensable:

a. **Circuity of travel**
b. **Loss of business**
c. **Temporary diversion or rerouting of traffic**
d. **Business loss during construction**
e. **Traffic volume increase or decrease**
f. **Enforcement of police power in regulating traffic**
g. **Access impairment or temporary denial during construction**
h. **Diversion of traffic**
i. **Personal property as opposed to fixtures**

Identify Property: Provide an adequate description of the physical characteristics of the subject property, areas impacted by DelDOT's project and any known or observed encumbrances, as well as location, zoning, and present use.

Physical Factors: As they exist on the day of inspection
Economic Factors: Consider subject's local market dynamics

Analysis
Highest and Best Use: Summarize the support and rationale for the opinion of highest and best use including research and market analysis.

Valuation: Consider all relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. If less than the three approaches to value are used an explanation of why each approach is not relevant is required.

Extent: A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source, method of financing, and verification by a party involved in the transaction. Pictures of the comparable sales with identification of photographer and date taken are required.

Support documents for the appraisal were provided with the fee quote request.

This appraisal could be subject to a Freedom of Information Act ("FOIA") request and as such, the Department of Transportation ("DelDOT") wants to inform you in advance of that possibility. In that case, DelDOT would be required to turn over your appraisal to the requesting party. If a FOIA request is submitted, you will be provided the opportunity to redact from the appraisal any information that you believe to be of a proprietary nature concerning personal and/or financial matters.

The appraiser shall submit an electronic draft of the appraisal initially. After the review process is complete the appraiser shall submit an electronic file of the signed appraisal and three signed hardcopies to the DEPARTMENT.

Type of Appraisal Report:
☐ **Total Property** ☐ **Before & After** ☐ **Partial Acquisition** ☐ **Form**

Any services provided by the appraiser for judicial proceedings will require a separate contract and fee.

Date of Completion: **Fee:**

I accept this Assignment Plan-Contract and will return a signed original within ten (10) days.

Appraiser Date
DE Certified; License

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

July 10, 2025

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Property_County» County
Project Name: «Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property Address: «Property_Location»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation (DelDOT) has plans to make improvements along «Project_Name». The Department needs to acquire a portion of, or rights in, the property referenced above for these improvements. The compensation for the acquisition will be based upon an approved real estate appraisal. «Appraiser», a certified general real estate appraiser, will complete this appraisal.

As part of the appraisal process, the appraiser must personally inspect the property and provide you and/or you're representative a reasonable opportunity to accompany them on their inspection. The contact information I have for you is «Contact_Phone_» or «Contact_Email». If you are not the contact person, or if this information is incorrect, please provide me with the corrected contact information, as soon as possible. This personal contact with the appraiser will afford you and/or your representative the opportunity to discuss pertinent aspects of this project and the affect it has on your property. The appraiser will contact you, or your representative, in the near future to schedule an appointment.

If you have any questions concerning this letter, please call me at «DelDOT_Phone_» or via e-mail at «DelDOT_Email».

Sincerely,

«DelDOT_Appraisal_Contact»
Right of Way Agent

:
cc: «Appraiser»

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

CERTIFICATE OF REVIEW APPRAISER AND CONCLUSION OF FAIR MARKET VALUE

PROJECT NO.	F.A.P.	PARCEL NO.
PROJECT NAME:		
OWNER:		
COUNTY:	DATE INSPECTED SUBJECT:	

I, the undersigned, certify that I have made a visual inspection of the subject, and that the determination of market value is to be used in connection with a Transportation project. I further certify that I have personally inspected the comparable sales used by the appraiser in their determination of fair market value; that I have no direct or indirect present or contemplated future personal interest in the subject property or in any benefit from its acquisition; and that my determination of fair market value has been reached independently, based on appraisals and other factual data of record without collaboration or direction. Items compensable under State law, but not eligible for Federal reimbursement, if any, are set out in this review.

I further certify that the appraisal is fully documented and supported as required by the Department of Transportation and the requirements of the current policies and procedures, and it is estimated that the Fair Market Value of the part acquired plus any loss in value to the remainder (if any), as of date is $_____.

	APPRAISER		REVIEWER
BEFORE and AFTER METHODOLOGY			
BEFORE VALUE			
AFTER VALUE			
DIFFERENCE			
LAND AND/OR IMPROVEMENTS			
LOSS IN VALUE TO REMAINDER			
TEMPORARY CONSTRUCTION EASEMENT			
PARTIAL ACQUISITION and TOTAL ACQUISITION:			
FEE ACQUISITION – existing RW-PE			
FEE ACQUISITION			
PERMANENT EASEMENT			
TEMPORARY CONSTRUCTION EASEMENT			
SITE IMPROVEMENTS TOTAL			
MECHANICAL & EQUIPMENT TOTAL			
ESTIMATED REAL ESTATE COMPENSATION (DUE TO PROPERTY OWNER)			

CORRELATION:
The subject of this review is an appraisal prepared by _____, for the State of Delaware, Department of Transportation. The intended user of this review is DelDOT. The intended use of this review is to qualify the appraisal report for soundness, reasonableness, compliance to applicable State and Federal regulations, and compliance with the State of Delaware Real Estate Manual guidelines. The purpose of this review is to correlate the appraiser's value conclusion to just compensation for the property owner due to project acquisition needs.

The report is dated _____and the effective date of the appraisal is _____. I inspected the property of _____, which is the effective date of this review.

The Scope of Work performed in the appraisal review process were first to perform a desk review to check the appraisal for accuracy and completeness of factual data, compliance with applicable guidelines and the State of Delaware Real Estate Manual guidelines and proper application of appraisal techniques and methodology. The second step after the appraisal report was found to be sound and reasonable was to perform an inspection of the project site and comparable sales sites from a public street to gain an understanding of the project and the appraiser's rational. The final step was to correlate the conclusions of the report with meaningfulness and usefulness to DelDOT for use in negotiations and acquisition purposes.

Based upon the scope of this assignment, the appraiser has/has not employed recognized appraisal techniques and methods. The appraisal does/does not comply with my understanding of the State of Delaware Real Estate Manual guidelines. The appraisal report does/does not include a sufficient level of information to lead a reader to a reasonable conclusion. The review appraiser does/does not accept and approves the appraisal and value conclusion and recommends, accepts, or not accepts the methods and analyses employed in the appraisal report.

Commentary must comply with Standards Rule 4-2:
Intended User of review:
Intended Use of review: Subject to the requirements of DelDOT.
Purpose of review:
Tax Parcel Number(s):
Owner(s):
Property Address:
Appraiser:
Date of Appraisal Report:
Date of Appraised Value:
State extraordinary assumptions/hypothetical conditions noted in the appraisal and if their use did, or did not, affect the assignment results:
State Appraisal Review *Scope of Work*:
State the reviewer's opinions and conclusions about the appraisal, including reasons for disagreement:

Comments:

Summary of Acquisition(s)

FEE
PE
TCE
Site Improvements Total
M&E Total
Total

Supplemental Certifications

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analysis, opinions, and conclusions in this report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My analyses, opinions, and conclusions were developed, and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*
- I did personally inspect the subject property of the work under review.
- No one provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within three-year period immediately preceding acceptance of this assignment.

DATE	Name REVIEW APPRAISER	DE Certified General or Residential Real Property Appraiser License #

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

CERTIFICATE OF REVIEW APPRAISER AND CONCLUSION OF FAIR MARKET VALUE FOR DISPOSITION

PROJECT NO.	F.A.P.	PARCEL NO.
PROJECT NAME:		
OWNER:		
COUNTY:	DATE INSPECTED SUBJECT:	

I, the undersigned, certify that I have made a visual inspection of the subject, and that the determination of fair market value is to be used in the disposition of excess land as authorized by Title 17 of the Delaware Code. I further certify that I have personally inspected the comparable sales used by the appraisers in their determination of fair market value; that I have no direct or indirect present or contemplated future personal interest in the subject property or in any benefit from its sale; and that my determination of fair market value has been reached independently, based on appraisals and other factual data of record without collaboration or direction.

I further certify that the appraisal is fully documented and supported as required by the Department of Transportation and the requirements of the current policies and procedures, and it is estimated that the Fair Market Value for disposition of the above parcel as of (date), is $0.00.

	APPRAISER	REVIEWER
LAND AND/OR IMPROVEMENTS		
EASEMENT		
ESTIMATED MARKET VALUE		

CORRELATION:

The subject of this review is an appraisal prepared by_____, for the State of Delaware, Department of Transportation. The appraisal report is dated _____ and sets for an opinion of the market value of the fee simple interest of the subject property. The intended user of this review is DelDOT. The intended use of this review is to qualify the appraisal report for soundness, reasonableness, compliance with the State of Delaware Real Estate Manual guidelines. The purpose of this review is to establish a value for disposition of the declared excess land from the acquisition of property for the (Name of Project) project.

The scope of work performed in the appraisal review process consisted of first performing a desk review to check the appraisal for accuracy, completeness, factual data, and the State of Delaware Real Estate Manual guidelines, and proper application of appraisal techniques and methodology. After the desk review was completed and the appraisal was found to be sound and reasonable, inspections of the project and site were completed and the comparable data were viewed from a public street to better help the reviewer with the understanding of the project and appraisers rational. Finally, the conclusions in the report were correlated to the meaningfulness and usefulness to DelDOT for disposition purposes.

Based upon the scope of this assignment, the appraiser has/has not employed recognized appraisal techniques and methods. The appraisal does/does not comply with my understanding of the State of Delaware Real Estate Manual guidelines. The appraisal report does/does not include a sufficient level of information to lead a reader to a reasonable conclusion. The review appraiser does/does not accept and approves the appraisal and value conclusion and recommends, accepts, or not accepts the methods and analyses employed in the appraisal report.

Commentary must comply with Standards Rule 4-2:

Intended User of review:

Intended Use of review: Subject to the requirements of DelDOT.

Purpose of review:
Tax Parcel Number(s):
Owner(s):
Property Address:
Appraiser:
Date of Appraisal Report:
Date of Appraised Value:
State extraordinary assumptions/hypothetical conditions noted in the appraisal and if their use did, or did not, affect the assignment results:
State Appraisal Review *Scope of Work*:
State the reviewer's opinions and conclusions about the appraisal, including reasons for disagreement:

Comments:

Attachment

Supplemental Certifications

I certify that, to the best of my knowledge and belief:

- The facts and data reported by the reviewer and used in the review process are true and correct.
- The analysis, opinions, and conclusions in this report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My analyses, opinions, and conclusions were developed, and this review report was prepared in conformity with the *Uniform Standards of Professional Appraisal Practice.*
- I did personally inspect the subject property of the work under review.
- No one provided significant real or personal property appraisal or appraisal review assistance to the person signing this certification.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within three-year period immediately preceding acceptance of this assignment.

DATE	Name REVIEW APPRAISER	DE Certified General or Residential Real Property Appraiser License #

Parcel File Summary

State Project No.		Federal-Aid Project No.	
Project Title			
		Parcel No.	
Owner's Name			
Relocation			

Initial and date when required documentation is filed. If a document is not required, mark N/A (non-applicable). A copy of all letters, correspondence, memoranda, emails, forms, etc., as well as a copy of the appraisal(s) are to be retained in the file for permanent record keeping and eventual archiving and microfilming.

APPRAISAL SERVICES **DATE**

Property History/Deed

Appraisal Fee Quote Request

Appraisal Fee Quote Summary

Assignment of Appraisal(s) ☒ fee ☐ staff due

Letter to owner/notification to accompany appraiser

Appraisal(s) Received/Completed

Assignment to Review Appraiser

Certificate of Review Appraiser

Approved Appraisal to Acquisition

Authorization to pay	Date	Voucher #'s	Paid Date and number	Amount
Fee Appraiser-				
M&E Appraiser				
Landscaper				
Other / Fence Contractor				
Appraisal Review Fee-				

All required documentation is in the file.

Statewide Appraisal Coordinator - Date

Approved: Statewide Manager Appraisal Services – Date

DelDOT

FEE APPRAISAL REVIEWER ASSIGNMENT PLAN-CONTRACT
<Appraiser's Name>
<Date>

Project Name:
Project Number: **FAP Number:**
Parcel Number:

This is to request your acceptance of the appraisal review assignment for the above referenced property that is to be completed in accordance with the terms and conditions of your "Master Agreement for Fee Appraisal Reviewers" and the additional information stated therein.

1. The review report will assist in acquisition of the necessary rights of way and easements (permanent and temporary) for the project. The intended user is the client, The Delaware Department of Transportation. The intended use is to affirm the appraisal conforms to the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation, with 49 CFR, part 24.103 (Criteria for appraisals) and the Delaware Real Estate Manual (Right of Way and Appraisal).

2. This appraisal review assignment entails resolving all appraisal questions and issues with the fee appraiser. This assignment also requires that the reviewer communicate with DelDOT's appraisal department throughout the review process.

3. The completed Appraisal Review Certification must be submitted electronically to the DEPARTMENT.

4. The fee established to complete the appraisal review assignment is $_____.

5. In the event the services of the APPRAISAL REVIEWER are required for pretrial conferences in preparation for condemnation proceedings regarding the property appraised, the DEPARTMENT will enter into a separate contract for Fee Appraisal Reviewer Services.

6. The APPRAISAL REVIEWER shall execute and supply with each appraisal report a "Certificate of Review Appraiser and Conclusion of Fair Market Value".

7. The APPRAISAL REVIEWER must return a signed copy of this contract to the DEPARTMENT'S District Real Estate Office within **10 days** of the Assignment Date.

Date of Completion

I accept this Review Assignment and will return a signed original within ten (10) days.

_____

Appraiser's Name	Date
DE Certified General Real Property Appraiser	X1-000

Chapter IV

REAL PROPERTY ACQUISITION FUNCTION

IV. REAL PROPERTY ACQUISITION FUNCTION

Purpose- To acquire all necessary real property interests necessary to maintain and improve the transportation system within Delaware. All acquisition activity must comply with all applicable State and federal regulations and must consider the various needs of all property owners impacted by the transportation program.

DE Authority: Title 6, Chapter 77

Title 17, Chapter 1, Sections 132, 137, 138, and 145

Title 29, Chapter 95, Sections 9503 thru 9506

Federal Authority: 23 CFR Part 710.305 Acquisition

49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

A. Staff Organization

1. The **Acquisition Manager** supervises staff and provides assignments based upon the experience of the agents relative to the assignment complexity, the location of the projects, and the desire to balance staff workload.

2. **Acquisition Agent Certifications and Credentials**

   a. All acquisition staff must be familiar with the real property acquisition program or be under the supervision of an experienced acquisition staff professional. The rules of eminent domain provide for strict requirements of disclosure to those being impacted by DelDOT projects, and a set protocol is mandatory.

   b. All acquisition staff must be currently taking, or already have taken, accredited Right of Way courses, providing a basic knowledge of the Right of Way acquisition program. Both basic and advanced courses in eminent domain acquisition requirements are typically provided by organizations such as the International Right of Way Association (IRWA) and the Federal Highway Administration (FHWA).

   c. Acquisition staff is encouraged to attend educational courses which will provide them with improved skills in performing their duties. Courses within the IRWA organization, Appraisal Institute or the FHWA's National Highway Institute (NHI) are among those offered for the staff.

   d. All acquisition staff must become familiar with reading and interpreting ROW and construction plans. The acquisition agent is the primary property owner contact to explain the impacts to the property as a result of the construction project. The agent must be able to utilize the project plans to provide the property owner a realistic interpretation of what the property will look like once the project is completed. In those circumstances where a more detailed explanation is required than the acquisition agent can provide, the agent should obtain the services of a project design engineer to further describe the project impacts.

B. General Responsibilities

1. Acquisition Agent Responsibilities

a. In order that ROW management may be able to get an approximate real-time view and print out of the status of project acquisition activity, the agents must enter all relevant data into the identified electronic document system, as soon as possible after any recordable interface action.

b. Agents must be capable of preparing all documents necessary to construct a parcel acquisition file. This includes a thorough review of all appraisal documents and all valuation waiver documents. There are a wide variety of documents required on any given parcel, depending upon the nature of the acquisition and the types of real property rights to be acquired, such as; fee title, permanent easements, and temporary easements.

c. One key aspect of all acquisition activity is the maintenance of a complete and thorough parcel file summary and contact log regarding all parcel related communications. Any property owner contacts should be entered into the official log as soon as possible in order that no relevant item may be forgotten and possibly omitted.

d. There are specific prescribed methods for delivering acquisition documents to impacted property owners, and the agent should never deviate from these prescribed methods without prior written approval from the Acquisition Manager.

e. The concepts of just compensation and market value are integral to the acquisition process, and the agent must be able to verbalize these concepts in an understandable manner to those being impacted.

f. An example of a partial property acquisition may be where the remainder parcel of property may meet the definition of an “uneconomic remnant”. If such remnant does meet this definition, it will have been set out in the appraisal report and will require a unique two- option acquisition offer. The agent must be able to explain how this Agency determined “uneconomic remnant” status impacts the acquisition and the acquisition offer.

g. Most property owners being impacted by an acquisition project will need time to consider and evaluate the DelDOT offer of just compensation. The agent must maintain constant and effective communications with property owners throughout the acquisition process and be available to answer any questions that may arise. The goal of the acquisition agent is to maintain a balance between an open and professional relationship with the impacted property owner and the need to maintain a project schedule. The agent must be able to present justification for the DelDOT acquisition action, and to also provide justification for the offer of just compensation.

h. Impacted property owners may ask questions regarding what tax implications may ensue as a result of the proposed acquisition. Whenever the subject of tax implications is raised, the agent must never offer an opinion and refer the property owner to direct all inquiries to their own tax advisor.

i. Often the impacted property owner may present their own conflicting or rebutting value information data. The agent must take all such communications seriously, document and

discuss this data with the appraisal staff, and/or the Acquisition Manager. All internal discussions shall be documented within the tract file.

j. If settlement cannot be reached with the impacted property owner, the agent must be able to articulate the reasons that settlement cannot be reached and recommend either to attempt an administrative settlement or to proceed to a condemnation action.

k. When settlement is reached, the agent will need to obtain appropriate signatures and prepare final acquisition documents.

2. Authorization to make offer at initiation of negotiations.

a. The Acquisition Manager will assign parcel activities to individual acquisition agents, who shall assemble the acquisition package based upon the assigned dates to initiate negotiations.

b. The acquisition agent may initiate negotiation on a parcel-by-parcel basis, upon written approval from the Acquisition Manager.

c. An individual who has established a parcel acquisition value of $15,000 or less, may also act as the acquisition agent on that parcel. Such a circumstance will not be considered a conflict of interest.

C. Coordination with Appraisal Staff

1. Upon receipt of all appraisal documents, the agent will review the document to assure that the various aspects of the appraisal can be understood and explained. If there are any elements or special items in the appraisal that the agent is unsure about, the agent will discuss the appraisal with the review appraiser.

2. Appraisal reports that involve "uneconomic remnants" will always be discussed with the appraisal staff, as this is a unique compensation matter that must be clearly understood.

3. Upon making an initial offer, the agent will advise all property owners that they may have their own property value appraisal prepared, or they may have the DelDOT appraisal reviewed by their own appraisal representative. They will be advised that DelDOT does not participate in property owner appraisal or appraisal review expenses. The agent will make available a list of DelDOT approved fee appraisers to the property owner, advising that the property owner is not limited to utilizing such list, but that eminent domain appraisals are specialized in form and that not all real property appraisers are competent to prepare eminent domain appraisals.

4. Any appraisal or other valuation information provided by the property owner will be presented to the appraisal staff for review and consideration.

D. Coordination with Relocation Assistance Staff

1. When the acquisition agent is not also acting as relocation agent, then there will be a need for the relocation agent to become a part of the acquisition team.

2. If the acquisition involves residential or non-residential displacement of displaced persons, or displacement of personal property only, relocation assistance staff will accompany the acquisition agent in the presentation of the initial offer, if possible.

3. When, acquisition issues and relocation issues are linked in purpose, and a combined DelDOT presence is preferred in all acquisition activities. It must be explained to those impacted, that while, the acquisition offer and the relocation assistance benefits are separate in nature, they are linked in application in many situations. It will be the decision of the Acquisition Manager to determine how staff will be assigned when relocation assistance is an aspect of the acquisition.

E. Coordination with Land Services Staff

1. The Acquisition Manager will notify Land Services anytime the acquisition will result in possible future real property disposition issues that will not be included in the construction contract. Such notification will be via written communications from the Acquisition Manager to Land Services as soon as the issue becomes apparent.

   a. A representative of the Land Services team will be made aware of the specific date of all closing actions where land services will have accountability subsequent to the closing action.

2. Land Services will also need to be made aware of any potential issues regarding the need to dispose of personal property that will not be removed from the acquisition area through the relocation assistance program. Such notification will be via written communications from the Acquisition Manager to Land Services Manager as soon as the issue becomes apparent.

   a. Land Services may be required to establish salvage values for certain types of actions. This may occur when the real property owner is considering the re-purchase of acquired real property, or when real property is being sold via public means. Consultation with the appraisal unit may be necessary.

F. Property Owner Contact Procedures

1. **Pre-Acquisition Activities**

   a. The Acquisition Manager shall assign appropriate agents to attend all assigned project public workshops and meetings, and actively engage with any potentially impacted property owners to explain the acquisition process. The assignment will be at the discretion of the Acquisition Manager, but every effort will be made to include any agent who may be assigned to the project in the future. The acquisition agents attending these meetings should prepare written comments regarding their meeting contacts that would be of relevance to the Acquisition Manager.

   b. The agent shall attend any pre-acquisition individual property owner meetings as requested by the Acquisition Manager and make available appropriate acquisition literature and reference material. The agent will advise the Acquisition Manager of any items of interest from these meetings.

   c. The agent will accompany the appraisal or relocation assistance staff to property owner or tenant meetings, upon request. All activities will be coordinated through the Acquisition Manager.

   d. Upon the receipt of final ROW plans, the Acquisition Manager will request a title search for each parcel identified as being impacted by the proposed project. This request will be made in writing to the settlement staff.

e. A "Notice of Intent to Acquire" will be presented to all identified real property owners prior to initiating the real property valuation process. This "Notice" will be initiated by the Acquisition Manager or Operation Services Manager at the time of delivery of project plans which allow for acquisition activities to commence. Upon receipt of notification from the Acquisition Manager or Operation Services Manager that acquisition activities may commence, the acquisition staff will prepare the "Notice of Intent to Acquire", which will be mailed to all effected property owners on the project.

2. Offer Presentation and Follow-up

a. All acquisition offers will be made in-person, unless either DelDOT or the property owner should determine that an in-person offer is not required. A personal delivery of the acquisition offer will allow for the real property owner to establish a relationship with the acquisition agent and will also allow for the most effective means of one-on-one communication.

b. If an in-person acquisition offer is not made, such offer could be by certified U.S. mail with return receipt requested. This offer by certified mail will require written approval by the Acquisition Manager and would typically be utilized in low value and uncomplicated acquisitions. This methodology could also be utilized when the real property owner is not residing within the State of Delaware or may be on an extended vacation.

1. Whenever any offer is delivered by certified mail the acquisition agent will take all reasonable action to contact the property owner to let them know of the impending delivery of the offer package. All offers by mail will contain contact information for the DelDOT acquisition agent.
2. Within eight (8) working days subsequent to the estimated delivery date of the offer package, the acquisition agent will attempt to make a follow-up contact with the real property owner, if such property owner has not already initiated contact.

c. If the real property owner is currently residing or stationed in a location outside of the United States, and certified U.S. mail delivery is not reasonable, the offer package may be delivered by an international messenger service.

d. The use of delivery of documents and the use of electronic signatures shall be approved by FHWA. The ROW staff will coordinate with the DelDOT IT department to develop an electronic delivery and signature process that follows 49 CFR 24.5(e).

e. The receipt of the written offer will establish the "initiation of negotiations" for the real property rights being acquired.

f. Following the initial offer, the agent will maintain routine contact with the property owner until either settlement is reached, or a recommendation for condemnation action is made.

1. Once the initial offer has been presented, the acquisition agent should then communicate with the property owner in whatever format is preferred by the property owner.
2. All contacts initiated by the property owner should receive a prompt response, including any information that may have been requested.

3. If the acquisition agent does not receive contact from the property owner, the agent should initiate contact at reasonable intervals, but not less than every two weeks. The agent should not be overbearing, but express concern over the need for some type of progress in resolving the proposed acquisition. The Acquisition Manager will have set timeframes for needs to resolve acquisition issues, prior to initiating condemnation action.

g. There will occasionally be situations where conflicts arise over ownership of real property. If DelDOT representatives cannot resolve the conflicts, it will be necessary to initiate condemnation action.

3. Acquisition Package

a. Prior to receiving an acquisition package at the "initiation of negotiations", the real property owner will typically have had the opportunity to attend public workshops regarding the proposed project. Additionally, they would have previously received an official notice from DelDOT indicating an "Intent to Acquire" real property. If an appraisal is being prepared in conjunction with the acquisition, the real property owner would also have been contacted by the appraiser and offered an opportunity to accompany the appraiser on the appraiser's inspection of the real property. If the acquisition offer is being prepared as a "waiver valuation" rather than by appraisal, the real property owner may or may not have been contacted by the preparer of the "waiver valuation".

b. The documents presented to the real property owner at the "initiation of negotiations" may vary somewhat depending upon the nature of the property rights being acquired, such as; fee title, permanent easements, and temporary easements.

c. The acquisition package will always include:

1. A dated offer letter that serves as the "initiation of negotiations", and which sets out the basic acquisition process and the dollar amount being offered as DelDOT's estimate of just compensation. The letter will describe the areas of land being acquired, and a summary of all improvements being acquired as real property. If the acquisition is a partial taking and there are damages (or special benefits) to the remainder, the damages (or special benefits) will be separately stated in the offer letter. There are various letter formats depending upon whether the valuation is based upon an appraisal or based upon a "waiver valuation" (one "waiver valuation" letter for up to $15,000 and another for $15,000 to $35,000). Additional letter formats are required for any acquisition offer of over $1,000,000, or if any proposed acquisitions involve an "uneconomic remnant";
2. A purchase contract relevant to the type of real property rights being acquired, such as; fee title, permanent easement, or temporary easement;
3. Real property tax forms as required by the State of Delaware (Form Substitute W-9).
4. A mortgage information sheet to be completed if the real property is encumbered by an existing mortgage;

5. A color-coded copy of the ROW acquisition plans, showing what property is being acquired. (If there is a question regarding exactly what improvements are within the area of the acquisition, the acquisition agent may request that a survey team stake the acquisition area for the benefit of the real property owner);
6. A DelDOT brochure titled "Your Property and the Right of Way", which provides basic eminent domain acquisition information;
7. If the project has been determined by the Chief of ROW to qualify for Alternative Dispute Resolution (ADR), such provision will accompany all offers to acquire associated with that particular project (see ADR guidelines).

d. Depending upon how the property deed reads, such deed may contain reference to property lines which extend into the existing roadway. In such situation that property within the existing roadway ROW is actually encumbered by use for DelDOT under the application of "Kings Law". Whenever the ROW project plans make reference to this "Kings Law" land area, the acquisition package will also include a letter describing the application of "Kings Law". If the property owner does not object, DelDOT acquisition agents will proceed to amend the existing deed to adjust property ownership boundaries to conform to current standards.

e. There may be situations where the real property rights owner believes that it is in their best overall interest to donate some or all the real property rights to DelDOT for project purposes. When this interest is expressed by the owner, DelDOT will provide a donation letter to be signed, which sets out that the property owner is waiving their rights to compensation or an appraisal.

f. Under the circumstance that real property improvements are included in the acquisition, the property owner has first refusal rights to re-purchase any improvements which DelDOT declares to be surplus. As such, and in conjunction with the acquisition, the property owner will be provided a letter identified as "Notice of Option to Repurchase Surplus Property".

g. In certain instances, it may be appropriate for individuals to either disclaim or release any possible real property rights associated with the real property proposed to be acquired by DelDOT. When this situation occurs, such individuals will be asked to sign appropriate forms and documentation.

4. Tenant Owned Improvements

a. If any tenant-owned improvements are described in the appraisal report, the owner of the improvements will be treated appropriately as a real property owner and presented with all relevant documents and forms.

b. If during the acquisition process there is a question regarding tenant owned improvements that was not addressed in the appraisal report, then that issue shall be discussed with the appraisal staff and/or the Acquisition Manager.

5. Fee and Permanent Easement Acquisitions

a. All fee and permanent easement acquisitions will proceed as a real property ownership transfer and recorded in the appropriate County Courthouse. In order to receive compensation, real property owners must enter information into the State of Delaware

database via electronic internet connection, in accordance with the data as required on State of Delaware Substitute Form W-9. If property owners indicate that they are unable to enter such data via electronic means, then they must fill out the appropriate form, and grant the DelDOT acquisition agent the right to enter such data as their representative.

b. The agent will prepare all appropriate paperwork to facilitate such property transfer and review all documents to assure that there is no missing data on any relevant forms.

6. Temporary Easements

a. The documents pertaining to temporary easements will be maintained in the DelDOT acquisition file and will not typically be filed in the County courthouse unless the value of the temporary easement exceeds $25,000, or the Acquisition Manager determines there to be an extraordinary situation which would require the filing of the documents.

b. The Appraisal Services Manager and the Acquisition Manager will coordinate with the Construction Project Manager to maintain an understanding of the project timeframe throughout the project, from design until completion.

c. In most situations the temporary easement will commence on the date of acquisition settlement, and this timeframe will be set out in the appraisal report or waiver valuation document. For unusual situations such as early acquisition, the Acquisition Manager will establish the commencement date, for negotiation purposes.

d. Any extensions to temporary easement timelines will be dictated by actual project activity and re-negotiated if necessary.

G. Waiver Valuation Responsibilities

1. A "waiver valuation" is a permitted acquisition valuation vehicle that is permitted in federal regulations at 49 CFR 24.102, in lieu of the preparation of an appraisal report. The individual preparing a waiver valuation must have sufficient knowledge and understanding of the local real estate market. DelDOT has determined that any employee who has achieved the level of Agent II or above, meets the definition to be eligible to prepare a waiver valuation.

2. Value Limitations

a. A waiver valuation may be prepared for all non-complicated acquisitions that are not expected to exceed $35,000 ($50,000 for non-federal projects). Per 49 CFR 24.102 (c)(2)(ii)(c) waiver valuations using Federal funds exceeding the $15,000 threshold require that the Federal Funding agency approve exceeding the $15,000 threshold, up to an amount of $35,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property.

b. The utilization of the appraisal waiver valuation process will be a joint determination of the Appraisal Manager and the Acquisition Manager. If agreement cannot be reached regarding the preparation of an appraisal waiver, the Chief of ROW will make the final determination.

c. All waiver valuations will include a statement that consequential damages to the remainder property were considered as not applicable to the proposed acquisition.

d. All waiver valuation actions in excess of $15,000 must have the written approval of the property owner. Per 49 CFR 24.102 (c) (2)(ii)(c) waiver valuations using Federal funds exceeding the $15,000 threshold require that the Federal Funding agency approve exceeding the $15,000 threshold, up to an amount of $35,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property. At the time of the initiation of negotiations, the real property owner will be asked if they are willing to accept and sign a waiver allowing for negotiations to proceed based on the waiver valuation value estimate. If the real property owner refuses to sign a waiver, the Appraisal Manager will be asked to initiate preparation of an appraisal.

e. Although property owner approval is not required to prepare and deliver a waiver valuation with compensation of $15,000 or less, the preparation of an appraisal will be evaluated should the property owner so request. A final determination on this matter will be made by the Acquisition Manager.

f. Regardless of any waiver valuation determination of less than $500.00, the offer of just compensation will be adjusted upward to reflect a DelDOT minimum offer of $500.00.

3. Coordination with the Appraisal Unit

a. The licensed appraisal staff will typically not prepare waivers valuations.

b. The licensed appraisal staff may provide market sales and general valuation guidance to the waiver valuation preparers. The appraisal staff maintains listings of recent real property sales, and acquisition agents may be guided to where they may find the most recent sales.

c. The licensed appraisal staff may provide valuation review services at the discretion of the Appraisal Services Manager.

4. Approval Process

a. The Acquisition Manager will determine the waiver valuation approval process on a case- by-case basis. Whenever possible, the land value per unit as set out in the waiver valuation will be based on a minimum of three market sales.

b. Whenever minor improvements are within the area of the acquisition, the value of the improvements will be based upon either an improvement cost manual or the services of an improvement specialist for that particular item.

c. Whenever more than one acquisition agent is preparing waiver valuations on the same project, those agents may compare land values to prevent inconsistencies that would appear to provide unequal treatment to similar landowners.

H. Administrative Settlements

Administrative settlement. - The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an "authorized agency official approves such administrative settlement" as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. per 49 CFR 24.102(i).

1. **Documentation**

   a. When agreement with the property owner cannot be reached based upon the approved offer of just compensation, an administrative settlement may be considered. The determination of whether to consider an administrative settlement will include a wide variety of considerations, including:

   (1) The opinions of the appraisal staff as to the strength of the appraisal report.

   (2) Any valid conflicting data as presented by the property owner.

   (3) Any legal complications that may be applicable to any remainder property.

   (4) Any perceived adverse complications that may arise in the condemnation or trial process.

   b. The acquisition agent will make an administrative settlement recommendation to the Acquisition Manager, accompanied by a thorough summary of the acquisition issues.

   c. If the property owner has engaged the services of legal representation, such legal representation must be noted.

2. **Approval Authority – All Administrative Settlements shall be approved by the following DelDOT authorized agency official:**
   The purchase price for the property may exceed the amount offered as just compensation. This can occur when reasonable efforts to negotiate an agreement at that amount have failed and an "authorized agency official approves such administrative settlement" as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. per 49 CFR 24.102(i)

   a. The Acquisition Manager shall approve an offer of administrative settlement where the total acquisition value is $500,000 or less.

   b. The Chief of ROW shall approve an offer of administrative settlement where the total acquisition value is $750,000 or less.

   c. The Chief Engineer shall approve an offer of administrative settlement where the total acquisition value is $1,000,000 or less.

   d. The Secretary of Transportation shall approve all offers of administrative settlement of over $1,000,000.

3. All administrative settlement actions must be supported by an explanation of the acquisition circumstances and recommendation for settlement.

4. If the market value offer has been adjusted by the appraisal staff to reflect a new or more accurate valuation data, that new market value establishes the basis for a revised written offer and future administrative settlements.

I. Condemnation Action

1. If all reasonable attempts to reach an amicable settlement have been exhausted, the acquisition agent will advise the property owner by letter that condemnation action may begin by sending out an acquisition impasse letter. This letter may be sent utilizing any

method providing a secure transmission and signature can be assured. The ROW staff will coordinate with the DelDOT IT staff to utilize an appropriate electronic transfer methodology. Prior to initiating an impasse letter, the acquisition agent must have received written authorization from the Acquisition Manager or Operation Services Manager.

2. Unless circumstances dictate otherwise, an impacted property owner should be given at least thirty days to consider the DelDOT offer prior to sending out the impasse letter.

3. After the expiration of the stated timeframe to reach settlement, and if agreement cannot be reached, the acquisition agent will assemble a condemnation package and send the package to the Acquisition Manager. The condemnation package will include at a minimum, a summary

   of the negotiation activities to date, any written documentation submitted by the property owner, any notice of property owner legal representation, and the project proposed PS&E date.

4. The Acquisition Manager will then forward the condemnation package to Operation Services Manager for a compliance check. At this point in time the Operation Services Manager will prepare an "Affidavit of Necessity" for the Secretary of Transportation to sign.

5. The Operation Services Manager should be advised in writing of the pending issuance of any impasse letter prior to the receipt of the condemnation package. This may be done in any written manner by the acquisition agent, with a copy of the impasse letter.

6. The Operation Services Manager will forward the approved condemnation package to the Chief of ROW for approval.

7. When the Secretary of Transportation signs the "Affidavit of Necessity" to condemn, the acquisition process will be transferred from the Acquisition Manager to the Operation Services Manager. At this point in time, NO MEMBER OF THE RIGHT OF WAY STAFF MAY CONDUCT ACQUISITION NEGOTIATIONS WITH THE PROPERTY OWNER. Any property owner contacts must be referred to the Deputy, Attorney General via the Operation Services Manager.

   SPECIAL NOTE: If at the time that an acquisition parcel is transferred to the Operation Services Manager for condemnation action, the parcel has remaining unresolved relocation assistance issues, then the operation services staff will continue to coordinate with the relocation assistance advisor.

8. In the event that settlement on value cannot be reached within a reasonable timeframe, the impacted property owner may still be willing to allow DelDOT to take physical possession of the property for purposes of proceeding to construction. In such situations the property owner may be willing to sign a "Right-of-Entry Agreement".

J. Real Property Exchanges

1. A real property exchange is possible and will typically involve DelDOT transferring ownership of excess/surplus land to an impacted real property owner, in lieu of cash compensation.

2. The consideration of all exchanges must be initiated by the real property owner, and if approved by DelDOT would be considered to be a type of administrative settlement.

3. The market value of all real property involved in the exchange must be reduced to cash equivalency, for purposes of evaluating the proposed transaction. Any exchanges will be coordinated with Land Services staff.

4. At the request of the impacted property owner, other value-added accommodation may be obtained from DelDOT in lieu of cash compensation for the acquisition of the real property rights. Whenever this situation may arise, the market value of the DelDOT accommodation must be established by cash equivalency**.**

K. Agreement Documentation

1. Construction of Agreement

a. The negotiated agreement will include all information required to document the property ownership transfer.

b. If there are special actions to mitigate damages, crop removal, or cash disbursement issues, these items will be clearly noted.

c. The property owner may request that a DelDOT contractor enter onto their property to take additional actions such as removing shrubs or trees. In such instance the property owner will be asked to sign a temporary trespass agreement to allow for such action to occur.

d. All special arrangements will have the written approval of the Acquisition Manager. The Acquisition Manager must inform the DelDOT Project Manager of any special arrangements prior to the acceptance of the Agreement by DelDOT.

L. Uneconomic Remnant Issues

1. Presentation of the Offer

a. When an uneconomic remnant has been identified by the Agency Review Appraiser, there will be two acquisition offers. One offer will be for the required acquisition area, along with any identified damages to the remainder. The second offer will include acquisition value of the uneconomic remnant.

b. The acquisition agent will explain the practical impact of each of the two offers.

2. Uneconomic Remnant Alternatives

a. The decision of which offer to accept will be solely at the discretion of the property owner.

b. Any request by the property owner for DelDOT to acquire a property remnant which was not determined to be an uneconomic remnant, will be discussed with the appraisal staff and the Acquisition Manager.

c. The property management staff will be notified of the acquisition of any uneconomic remnants, so that future disposal can be arranged.

3. Excess Land Acquisitions

a. There may be situations where the remainder property after a partial acquisition is not considered to be an uneconomic remnant, however, the property owner still desires that DelDOT purchase the remainder property.

b. If the Acquisition Agent obtains appropriate approvals, an offer for a total acquisition can be made, and the acquisition will be treated similarly to an uneconomic remnant acquisition, except that the purchase of any excess real property will not be eligible for federal participation reimbursement.

M. Advanced or Early Acquisition Actions

The Department may initiate acquisition of real property interests for a proposed transportation project at any time it has legal authority to do so. Based on project needs and/or landowner requests, DelDOT may elect to pursue an Advanced Acquisition or an Early Acquisition. Advanced Acquisitions may be undertaken prior to final environmental approval and Early Acquisitions may be undertaken before the completion of the environmental review process for the proposed transportation corridor preservation, access management, or other purposes, with approval from the Right-of- Way Chief and FHWA.

1. Advanced Acquisitions – Protective buying and hardship acquisition 23 CFR 710.503

There are two types of advanced acquisitions: hardship acquisitions and protective buying. Real property acquisition required for a planned public project or program may be authorized when it can be demonstrated that the impending project or program creates a particular hardship for a property owner or when DelDOT determines that an advanced acquisition protects the public interest as determined by the Advanced Acquisition Commission, department director and/or state right of way manager. FHWA approval is also required when utilizing advanced acquisition on a federal aid or state funded project. Advanced acquisition of real property and/or access rights may be considered for corridor preservation, access management or other purposes.

a. ***General conditions.*** Prior to final environmental approval of a transportation project, the grantee may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

   1. The transportation project is included in the currently approved STIP;
   2. The grantee has complied with applicable public involvement requirements in 23 CFR Part 450 and 23 CFR Part 771;
   3. A determination has been completed for any property interest subject to the provisions of 23 U.S.C. §138; and
   4. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C 470(f) (historic properties).

b. ***Protective buying***. The grantee must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

c. ***Hardship acquisitions***. The grantee must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that

1. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and

2. Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

ci. ***Environmental decisions***. Acquisition of property under this section is subject to environmental review under 23 CFR Part 771. Acquisitions under this section shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative

1. **Early Acquisitions (23 CFR Part 710.501)**

a. ***General*** DelDOT may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. DelDOT may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes.
Subject to the requirements in this section, DelDOT may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph 23 CFR 710.501(e). The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

b. ***State-funded early acquisition without Federal credit or reimbursement.*** A State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of 23 CFR 710.501(c)(1) through (5).

c. ***State-funded early acquisition eligible for future credit.*** Subject to 23 CFR 710.203(b) (direct eligible costs), 23 CFR 710.505(b), and 23 CFR 710.507 (State and local contributions), Early Acquisition Project costs incurred by a State agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

1. The property was lawfully obtained by the State agency;

2. The property was not land described in 23 U.S.C. §138;
3. The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR Part 24;
4. The State agency complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d - 2000d - 4)
5. The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
    a. The decision on need to construct the proposed transportation project;
    b. The consideration of any alternatives for the proposed transportation project required by applicable law; and
    c. The selection of the design or location for the proposed transportation project; and
6. The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

d. ***State-funded early acquisition eligible for future reimbursement***. Early Acquisition Project costs incurred by a DelDOT prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of 23 CFR 710.501(c)(1)-(5), and the requirements of 23 CFR 710.203(b) (direct eligible costs) have been met. The State agency must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. §108(c)(3):
    1. any land acquired, and relocation assistance provided, complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
    2. the requirements of Title VI of the Civil Rights Act of 1964 have been complied with;
    3. the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;
    4. the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. §135;
    5. the alternative for which the real property interest is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;
    6. before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, (23 U.S.C §108), and in compliance with 49 U.S.C §303, Section 7 of the Endangered Species Act, and

all other applicable environmental laws that shall be identified by the Secretary in regulations; and

7. before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

e. ***Federally funded early acquisition***. The FHWA may authorize the use of funds apportioned to a State under title 23 for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

1. The State has authority to acquire the real property interest under State law; and
2. The acquisition of the real property interest —
    a. is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3;
    b. will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;
    c. will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;
    d. will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
    e. is consistent with the State transportation planning process under 23 U.S.C. §135;
    f. complies with other applicable Federal laws (including regulations);
    g. will be acquired through negotiation, without the threat of, or use of, condemnation; and
    h. will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and Title VI of the Civil Rights Act of 1964(42 U.S.C. §2000d et seq.).
3. The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. §134, 23 U.S.C. §135, 49 U.S.C. §5303 and 49 U.S.C. §5304.
4. The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. §108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed

transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph 23 CFR 501(e)(2)(iii). The Early Acquisition Project must comply with all applicable environmental laws

f. ***Prohibited Activities***. Except as provided in this paragraph, real property interests acquired under 23 CFR 501(e) and pursuant to 23 U.S.C. §108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, "development in anticipation of a transportation project" means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a DelDOT may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

g. ***Reimbursement.*** If Federal -aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. §108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State

h. ***Relocation Assistance Eligibility***. In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

3. Timing definitions to be considered an "early acquisition".

a. DelDOT – Acquisition occurs prior to certification of semi-final ROW plans.

b. FHWA – Acquisition occurs prior to completion the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes

4. Real Property Rights Involved

a. Fee title acquisition would involve permanent acquisition of underlying title.

b. Permanent easements would involve permanent use for stated purpose.

c. Options to purchase would pay compensation for the right to purchase property at a stated value at a future date, at the discretion of DelDOT.

d. Property Reservations would pay a rental fee for a stated period of time.

e. All manner of early acquisition payments will be based upon a valuation appraisal or a "waiver valuation", at the discretion of the Acquisition Manager after consultation with the Appraisal Manager.

5. Approval Actions

a. Coordination within DelDOT on whether to pursue any early acquisition action would be the joint responsibility of the project design manager and the ROW Acquisition Manager. If both the project manager and the Acquisition Manager believe that an early acquisition is a responsible action, written approval must be obtained from the Chief Engineer.

b. Depending upon early acquisition circumstances, DelDOT may need to obtain approval for the action from the Advanced Acquisition Committee.

c. Prior to proceeding with an early acquisition, some form of written approval or sign-off must also be obtained from the DelDOT Finance Section, indicating that funding for the acquisition is available.

d. Condemnation authority will typically not be utilized in conjunction with an early acquisition, unless approved in writing by the Chief Engineer, after consultation with DelDOT legal representation.

e. Federal participation in early acquisition activities will be as stated in Chapter 1, paragraph I of this Manual.

6. Advanced Acquisition Committee (AAC)

a. The AAC is an independent committee made composed of legislators and State government representatives who are responsible to review proposed acquisition of real property interests, when such acquisitions are proposed to occur prior to the approval of semi-final construction plans.

b. Proposed acquisitions prior to semi-final plan approval meet the State definition of "early acquisition" and are typically encountered on an individual parcel basis for a variety of reasons.

c. Whenever such defined "early acquisitions" are proposed, the Chief of ROW will contact the Office of the Secretary to make arrangements for an appropriate AAC meeting.

N. Voluntary Acquisitions

1. This type of activity is at the discretion of DelDOT and can be employed whenever DelDOT is not utilizing its eminent domain authority and will not utilize its eminent domain authority at any point in the foreseeable future.

a. Any real property that may be needed to be acquired in conjunction with any proposed DelDOT project, cannot be considered for voluntary acquisition if DelDOT wishes to maintain its eligibility for future federal participation in any phase of the future project.

b. Mitigation sites and construction staging sites may qualify for voluntary acquisition if alternative sites are available and eminent domain action will not be utilized.

c. Real property rights may be purchased as requested by property owners, if DelDOT determines it to be in the public interest, and the purchase is not associated with any envisioned project that may utilize any type of federal participation.

2. Written Documentation

a. It will be necessary to provide a letter to the property owner stating that eminent domain action will not be pursued if agreement on price cannot be reached.

b. Valuation will be based upon reviewed and approved DelDOT appraisal, or waiver valuation.

c. Administrative settlements are permitted with proper justification.

3. Relocation Assistance

a. In conjunction with a voluntary acquisition, relocation assistance benefits are generally not applicable to owner occupants.

b. Whenever a voluntary acquisition involves improvements that are occupied by tenants, all appropriate relocation assistance benefits will be available to those tenant/occupants. The tenants will formally become "displaced persons" on the date that a "binding agreement to purchase" with the property owner becomes effective.

O. Real Property Donations

1. At the discretion of the impacted property owner, the real property rights necessary for DelDOT to acquire may be obtained in the form of a donation at no expense to DelDOT.

a. Whenever a real property owner is considering a donation of any real property rights, they must provide signed documentation that they are aware of their right to receive compensation but are donating the real property rights.

b. Even if the property is being donated, an appraisal is required unless there is a written release by property owner.

c. Any real property donations may be for either a partial or full donation of real property interest.

P. Exchange of Real Property Interests

1. Excess DelDOT owned real property interests may be utilized as payment for acquired real property, at the request of the property owner.

2. DelDOT construction actions or features may be used as payment for acquired real property, at the request of the property owner.

3. All exchanges or construction activity must be based on approved appraisals and reduced to cash equivalency dollar amounts.

Q. Acquisition from a State or Local Public Agency

1. Valuation will be based upon a reviewed appraisal unless released from such obligation by an appropriate representative of the Agency.

2. Payment for real property rights to a State Agency or local jurisdiction may be in the form of cash or any other approved exchange.

R. Federal Land Transfers

1. The process involves contacting the appropriate federal agency and ascertaining the procedures that are required regarding the property rights acquisition. Each of the various federal agencies has their own policies for relinquishing real property rights.
2. The FHWA is available to act as an intermediary with other federal agencies as set out in federal regulations at 23 CFR 710.601.
3. In certain situations, as set out in federal regulations at 23 CFR 710.603, the FHWA may make a direct federal acquisition from another federal agency.

S. Functional Replacements

1. When acquiring real property interests from a public agency, DelDOT may, at its discretion, offer to functionally replace those real property rights, as an alternative to providing compensation based upon market value. Any such approach to compensation must be approved by the Chief of ROW with the concurrence of the Chief Engineer.
2. Eligibility for this approach to compensation requires that the public agency commit to maintaining the replacement real property in public ownership for the foreseeable future.
3. Under the functional replacement philosophy, the impacted public agency has the opportunity to accept functional replacement or the approved market value of the real property rights.
4. Written federal approval is required if federal reimbursement is anticipated in the project costs.
5. Provides for equal replacement of utility of property, taking into account current code requirements and documented contemporary standards.
6. The costs for increases in capacity or betterments, other than required to meet legal requirements or prevailing standards, are not eligible for compensation.
7. Prior to DelDOT approving a functional replacement acquisition, a complete and thorough replacement facility analysis must be reviewed and approved by the Chief of ROW.

T. Temporary Occupancy After Acquisition

1. Upon DelDOT taking legal possession of an occupied residence or business, those still occupying the property will be given a thirty (30) notice to vacate. Depending upon individual circumstances, those occupants may or may not be able to vacate the property within the stated timeframe. Whenever the situation dictates that those occupants are unable to vacate the property within the stated timeframe, the acquisition agent, in consultation with the Acquisition Manager, will make a determination of whether to recommend extended occupancy.
2. Occupants are entitled to thirty days of rent-free occupancy once DelDOT has taken legal possession of the real property.
    a. Arrangements must be documented in writing by the acquisition agent if the occupancy is to be extended beyond the thirty days.

b. Occupants will always be responsible for utility payments and proper maintenance during the thirty-day free rent period.

c. The thirty-day rent-free period may be extended with approval of the Acquisition Manager, in consultation with the Chief of ROW.

3. The Acquisition Manager must assure that the land services staff will be present at the closing and settlement meeting. The land services staff must prepare a lease agreement to suit the circumstances of the situation. The lease may be signed by the tenant at any time, but should be executed no later than the settlement date.

a. The Land Services staff will assume responsibility for all real property leasing activity, from the date of closing until the property is vacated.

U. Extinguishing Utility Easements

1. If the existing utility real property easement right is to be relocated to within the new right of way, then the process for extinguishing the existing easement right will be handled by the Utility Staff in accordance with the procedures as set out in the DelDOT Utility Manual.

2. If the existing utility real property easement right is to be extinguished via acquisition, then the value will be established via the valuation process, and an acquisition offer made in accordance with the procedures as set out in this Chapter.

V. DelDOT Acquisition Documents

1. ACQ 2a- Agent Assignment Waiver under $25K
2. ACQ 2b- Agent Assignment Waiver over $25K
3. ACQ 2c- Agent Assignment Waiver under $25K (managing consultants)
4. ACQ 2d- Agent Assignment Appraisal (non-merge) (managing consultant)
5. ACQ 2e- Agent Assignment Appraisal
6. ACQ 2f- Agent Assignment Appraisal
7. ACQ 2g- Agent Assignment Appraisal (managing consultant)
8. ACQ 2h- Agent Assignment Waiver over $25K (managing consultants)
9. ACQ 3 - Negotiation Record
10. ACQ 4 - Property History
11. ACQ 5 - Subject Data Form
12. ACQ 6 - Acquisition Package Approval Form
13. ACQ 7a - Intro Letter
14. ACQ 7b- Door Knock Letter
15. ACQ 8a- Appraisal Offer Letter
16. ACQ 8b- Appraisal Offer Letter Over $1,000,000
17. ACQ 9a- App. Waiver Offer Letter Under $25k
18. ACQ 9b- App. Waiver Offer Letter Over $25K

19. ACQ 10- Offer Letter for Donation
20. ACQ 11- Revision Offer Letter
21. ACQ 12- Rescind Offer Letter
22. ACQ 13- Right of Entry Agreement
23. ACQ 14a- Purchase Contract Partial
24. ACQ 14b- Purchase Contract Total
25. ACQ 15 - RW by PE - Partial Purchase
26. ACQ 16a- Permanent Easement (New Castle)
27. ACQ 16b- Permanent Easement (Kent - Sussex)
28. ACQ 17a- Aerial Easement Agreement (New Castle)
29. ACQ 17b- Aerial Easement Agreement (Kent-Sussex)
30. ACQ 18 - Agreement to Grant
31. ACQ 19a- Temporary Easement Agreement (New Castle)
32. ACQ 19b- Temporary Easement Agreement (Kent-Sussex)
33. ACQ 20- Mortgage Information Sheet
34. ACQ 21- Agreement to Waive Appraisal
35. ACQ 22- Proceeds Distribution
36. ACQ 23a- 10 Day Letter Appraisal
37. ACQ 23b- 10 Day Letter Waiver
38. ACQ 24- Notary Identity Verification
39. ACQ 25- Option to Repurchase
40. ACQ 26- Right-of-Way Rep Certification
41. ACQ 27- Check Received. Letter, Delivered by Hand
42. ACQ 28a- Temporary Trespass Agreement (Acquisition)
43. ACQ 28b- Temporary Trespass Agreement (Donation)
44. ACQ 29- Uneconomic Remnant Purchase Form
45. ACQ 30a- Owner Disclaimer

46. ACQ 30b - Tenant Release

47. ACQ 31- After Settlement Trespass Agreement

48. ACQ 32 - Kings Law Letter

49. ACQ 33- Blank RFP 2025

50. ACQ 34- Kent County Property-Owner-Information-Form

51. ACQ 35- Paid out of Closing Memo

52. ACQ 38- Title Search Req. Memo

53. ACQ 39- Transfer of Agent Form

54. ACQ 40- W-9 (Federal)

55. ACQ 41- Transfer Tax NCC 2020

56. ACQ 43- Transfer Tax Sussex

57. ACQ 44- DE Real Estate Income Form 5403

58. ACQ 45- Transfer Tax DE RTT-TAX

59. Legal Description - Kings Law

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to acquire **(#of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Right-of-Way Manager

Remarks: Prepare introduction letter to owner/owner representative in advance of offer based on Waiver Valuation process. Complete Subject Data form. Meet with owner to discuss project and needs. If owner/owner representative provides information that will impact Subject Data form/information, modify information in Subject Data form. If Subject Data form/information is accurate, make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed: Date:_____

_____
Agent

_____
Manager

Remarks:«Remarks»

DelDOT Right-of-Way

Document No. ACQ 2a
March 12, 2025

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Right-of-Way Manager

Remarks: Prepare introduction letter to owner/owner representative in advance of offer based on Waiver Valuation process. Since the potential acquisition cost are anticipated to exceed $25,000 the Subject Data form cannot be prepared by you. Coordinate with another right of way agent for preparation of the Subject Data form to avoid the Conflict of Interest as noted in 49CFR. Meet with owner to discuss project and needs. If owner/owner representative provides information that will impact Subject Data form/information, modify information in Subject Data form. If Subject Data form/information is accurate, prepare make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code including informing the owner of the right to an appraisal. If owner does not agree with the offer advise me so an appraisal can be ordered. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Date:_____

Assignment has been completed:

_____
Agent

_____
Manager

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to manage the consultant **(Consultant name)** with **(Agency Name),** as they acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Right-of-Way Manager

Remarks: Prepare introduction letter to owner/owner representative in advance of offer based on Waiver Valuation process. Complete Subject Data form. Meet with owner to discuss project and needs. If owner/owner representative provides information that will impact Subject Data form/information, modify information in Subject Data form. If Subject Data form/information is accurate, make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed: Date:_____

_____
Agent

_____
Manager

ASSIGNMENT

Project No. _____ F.A.P. No. _____ Parcel No. _____

Project Title _____

Owner: _____

Date of Assignment _____ Date to Complete _____

AGENT NAME (agent) is hereby assigned to manage the consultant **(Consultant name)** with **(Agency Name),** as they acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Acquisitions Manager

Remarks: Read appraisal report and review five year property history. If there are any questions or concerns about the title or liens, please advise me so we can request a title report. Prepare all necessary paperwork to make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed:

Date:_____

_____
Agent

_____
Manager

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Acquisitions Manager

Remarks: Read appraisal report and review five year property history. If there are any questions or concerns about the title or liens, please advise me so we can request a title report. Prepare all necessary paperwork to make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed: Date:_____

_____
Agent

_____
Manager

ASSIGNMENT

Project No. _____ F.A.P. No. _____ Parcel No. _____

Project Title _____

Owner: _____

Date of Assignment _____ Date to Complete _____

AGENT NAME (agent) is hereby assigned to acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Acquisitions Manager

Remarks: Read appraisal report and review five year property history. If there are any questions or concerns about the title or liens, please advise me so we can request a title report. Prepare all necessary paperwork to make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed: Date:_____

_____
Agent

_____
Manager

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to manage the consultant **(Consultant name)** with **(Agency Name),** as they acquire **(# of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #«Tax_Parcel_No»)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson,
Statewide Acquisitions & Relocation Manager

Remarks: Read appraisal report and review five year property history. If there are any questions or concerns about the title or liens, please advise me so we can request a title report. Prepare all necessary paperwork to make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Chief of Right-of-Way
___ Acquisition & Relocation Manager
___ Land Services Manager
___ Other _____

Assignment has been completed:

Date:_____

_____
Agent

_____
Manager

ASSIGNMENT

Project No. «Project_Number» F.A.P. No. «FAP_Number» Parcel No. «State_Parcel_No»

Project Title «Project_Name»

Owner or Tenant «Property_Owner»

Date of Assignment «Date_of_Assignment» Date to Complete «Date_to_Complete»

«Agent_Name» (agent) is hereby assigned to manage the consultant **(Consultant name)** with **(Agency Name),** as they acquire **(#of FEE or RW by PE) (# of PE or Aerial PE) (# of TCE)** from Tax No. **(Tax #)**

Assignment No.
«Assignment_No»

Circle Level of Difficulty A B C
(A = most difficult)

R. Richardson

Rosemary Richardson
Statewide Right-of-Way Manager

Remarks: Prepare introduction letter to owner/owner representative in advance of offer based on Waiver Valuation process. Since the potential acquisition cost are anticipated to exceed $25,000 the Subject Data form cannot be prepared by you. Coordinate with another right of way agent for preparation of the Subject Data form to avoid the Conflict of Interest as noted in 49CFR. Meet with owner to discuss project and needs. If owner/owner representative provides information that will impact Subject Data form/information, modify information in Subject Data form. If Subject Data form/information is accurate, prepare make offer in accordance with DelDOT Real Estate Manual procedures, 49CFR and Delaware Code including informing the owner of the right to an appraisal. If owner does not agree with the offer advise me so an appraisal can be ordered. Negotiate for 30 days. If negotiations are not concluded at the end of the 30 days, make a recommendation to secure right of way.

Attachments ____

cc: ___ Asst. Chief, Real Estate
___ Relocation Manager
___ Property Manager
___ Other _____

Assignment has been completed: Date:_____

_____
Agent

_____
Manager

Negotiation Record

State Project No. _____ Federal Aid Project No. _____

Project Title _____

_____ Parcel No. _____

Owner _____

Mailing Address _____

_____

Telephone No. _____

Real Estate Representative _____ Assignment Date _____

Approved Market Value $_____ By _____ Date _____

Revised Market Value $_____ By _____ Date _____

Right-of-Way Brochure given/mailed (underline one) Date _____

Letter Offer given/mailed (underline one) Date _____

Appraisal given/mailed (underline one) Date _____

Revised Offer given/mailed (underline one) Date _____

_____

Date Record Each Contact and Results

_____

5 Year Property History

State Project No. «Project_Number» Federal-Aid Project No. «FAP_Number»

Project Title «Project_Name»

Parcel No. «State_Parcel_No»

Tax Assessment Parcel No. «Tax_Parcel_No»

Property Owner (Grantee) «Property_Owner»

Mailing Address «Address_Line_1», «Address_Line_2»
«Address_Line_3»

Telephone No. «Telephone_No»

Parcel Location: «Recorded_in_County» County, «Hundred» Hundred

Property Area: Deed _____ Assessed «Area_Assessed» Calculated _____

Previous Owner (Grantor) «Previous_Owner»

Title Source «Title_Source»

DEED	WILL OR INTESTACY
Instrument «Instrument_No»	Date of Death «Date_of_Death»
Dated «DEED_DATE»	Will Book «Will_Book»
Consideration $ «Consideration»	Ltrs Grnted to «Letters_Granted_to»
U.S.I.R. Stamps $	
Realty Trans. Tax $	In Book _____ Page _____
Covenants/Restrictions	Comments
Outconveyances	

PROPERTY ASSESSMENT:		PROPERTY TAX:	
Land Assessment	$ «Land_Assessed»	County	$ «County_Tax»
Bldg Assessment	$«Building_Assessed»	City	$
Total	$«Total_Assessment»	School	$

Must Include **ALL** Conveyances Within the Last Five (5) Years

PREVIOUS CONVEYANCES

No. 2
Date «Previous_Deed_1_Date» Consideration $ «Consideration_1» Will/Deed Record «WillDeed_Record_1»
Grantor «Grantor_1»
Grantee «Grantee_1»

No. 3
Date «Previous_Deed_2_Date» Consideration $ «Consideration_2» Will/Deed Record «WillDeed_Record_2»
Grantor «Grantor_2»
Grantee «Grantee_2»

No. 4
Date «Previous_Deed_3» Consideration $ «Consideration_3» Will/Deed Record «WillDeed_Record_3»
Grantor «Grantor_3»
Grantee «Grantee_3»

REMARKS

SUBJECT PROPERTY DATA FORM

STATE PROJECT NUMBER: «Project_Number» **PROJECT NAME:** «Project_Name»

FEDERAL AID PROJECT NUMBER: «FAP_Number»

PARCEL NUMBER: «State_Parcel_No» **COUNTY:** «Recorded_in_County»

TAX I.D. NUMBER: «Tax_Parcel_No»

OWNER(S): «Property_Owner»

PROPERTY ADDRESS:

TENANT(S): N/A

OWNER(S) ADDRESS(ES): «Address_Line_1», «Address_Line_2»

«Address_Line_3»

PROPERTY DESCRIPTION, LOCATION AND SIZE OF TOTAL PROPERTY (LARGER PARCEL) BEFORE THE ACQUISITION: The subject parcel is blank in shape and situated on the blank side of blank Road, «Hundred» Hundred, «Address_County» County, Delaware. According to the DelDOT right-of-way plan calculations and the «Address_County» County calculations the parcel contains blank +/- square feet or +/- acres of land area. The site is unimproved/improved with all other related improvements.

LAND AREA OF PROPERTY TO BE ACQUIRED: One (1) Fee containing «FEE_Square_Feet» square feet («FEE_Acres» acres) and One (1) Permanent Easement containing «PE_Square_Feet» square feet («PE_Acres» acres) and One (1) Temporary Construction Easement containing «TCE_Square_Feet» square feet («TCE_Acres» acres) of land abutting the existing right-of-way line along blank Road.

CURRENT USE OF PROPERTY BEING ACQUIRED:

ZONING:

REAL PROPERTY INTEREST BEING ACQUIRED: One (1) Fee and One (1) Permanent Easement and One (1) Temporary Construction Easement based on the pro rata portion of the fee simple property rights.

ESTIMATE OF EACH SITE IMPROVEMENT TO BE ACQUIRED. Basis of value must be clearly explained, i.e., contributory value, cost new less depreciation, cost to cure, any calculations, and source of data. List each improvement separately and explain value estimate.

(A) Improvement: None	$0.00
Total Estimate of Improvement(s)	$0.00

SALES CHART				
DATA #	SUBJECT	SALE # 1	SALE #2	SALE #3
DATE				
CONSIDERATION	N/A			
LOCATION				
ZONING				
PARCEL SIZE				
UNIT RATE	N/A			

- Zoning is (explanation).

ESTIMATE OF LAND TO BE ACQUIRED:

Area	Price Per Unit of Comparison	Indicated Estimate	Rounded
«FEE_Square_Feet» sq. ft. - FEE	$0.00/sf Fee Simple	$0.00	$0.00
«PE_Square_Feet» sq. ft. – PE	$0.00/sf Fee Simple x 75% (PE)	$0.00	$0.00
«TCE_Square_Feet» sq. ft. – TCE	$0.00/sf Fee Simple x 7% x no. year(s) (TCE)	$0.00	$0.00
		Total - Land	$0.00

REMARKS OR ADDITIONAL EXPLANATION:

- A Fee Simple Unit Rate of $0.00/sf was utilized for the subject parcel.
- PE Payments are calculated at a % annual rate of return on 100% of the Fee Simple Unit Rate.
- TCE Payments are calculated at a % annual rate of return on 100% of the Fee Simple Unit Rate.

SUMMARY OF COMPENSATION

Land Estimate Rounded	$0.00
Improvements Estimate Rounded	$0.00
Total Rounded Just Compensation	**$0.00**

PREPARED BY

Right-of-Way Agent **DATE**

This valuation is consistent with the waiver process as described within 24 CFR 24 102(c). This is not an appraisal as defined in the Uniform Standards of Professional Appraisal Practice.

Delaware Department
of Transportation

Acquisition Package Approval Form

Project Name: «Project_Name»

State Project No.: «Project_Number» **State Parcel No.:** «State_Parcel_No»

Assigned Agent: «Agent_Name» **Date Offer to be Made:** _____

Notes: _____

Package Approved By: _____ **Date:** _____

Deeds Approved By: _____ **Date:** _____

Real Estate Representative, please √ in the box if attached and N/A if not needed.

Documents Needed for ALL Files	
Offer Letter (Appraisal ACQ 8 or Waiver ACQ 9) w/ Full Exhibit	
Copy of Appraisal or ACQ 5- Subject Data Form	
ACQ 39- Transfer of Agent Form	
ACQ 40- Federal W-9 for Each Individual	
Construction Plans	
Public Workshop Overview	
"Your Property and the Right-of-Way" brochure	
Self-Addressed stamped envelope	
ACQ 21-Agreement to Waive Appraisal (if waiver is over 25k)	
ACQ 13- Right of Entry Agreement	

If submitting a Temporary Construction Easement (TCE)	
ACQ 19- Temporary Easement Agreement w/Exhibit	

If submitting a Permanent Easement (PE) or Aerial PE	
ACQ 18- Agreement to Grant Easement	
ACQ 16- Permanent Easement Agreement w/Exhibits	
ACQ 17- Aerial Easement Agreement w/Exhibit (if applicable)	
ACQ 20- Mortgage Info Sheet (if combined acq's are over 15k)	

If submitting a Purchase Contract (FEE or RW by PE)	
ACQ 14- Purchase Contract w/Exhibits	
ACQ 15- RW by PE – Purchase Partial w/ Exhibit	
ACQ 20- Mortgage Info Sheet (if combined acq's are over 15k)	
Legal Description for new deed	

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … FAP No. «FAP_Number» … New Castle County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation (DelDOT) has plans to «Project_Description», and your property may be impacted.

I am writing to introduce myself and ask that you or an owner representative contact me at «Agent_Telephone» or via e-mail at «Agent_EMail» so we can discuss the project needs as well as the acquisition process.

Sincerely,

«Agent»
Right-of-Way Agent

DelDOT Right-of-Way

Document No. ACQ 7a
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

DATE:_____

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Address_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

I'm sorry I missed you. My name is «Agent_Name» and I am a Right-of-Way Agent with the Delaware Department of Transportation. I have been trying to reach you because your property at «Property_Location» may be affected by an upcoming road project. Please give me a call at your earliest convenience so we can discuss the details of this project. My direct line is «Agent_Telephone», or you can contact me at «Agent_EMail».

Sincerely,

«Agent_Name»
Right-of Way Agent III

DelDOT Right-of-Way

Document No. ACQ 7b
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … FAP No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation has a project to «Project_Description» In order to accomplish this initiative, it is necessary to acquire the following interests from your property located at «Property_Location»: One (1) Fee Acquisition (FEE) consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres). Also required are all improvements located thereon. These improvements include «FEE_Improvements» «PE_Improvements» «TCE_Improvements». Enclosed is the portion of our Right-of-Way plan showing the Fee Acquisition area colored in purple, the Permanent Easement area colored in orange and the Temporary Construction Easement area colored in brown.

The Department had an appraisal prepared by (an independent fee appraiser/a staff appraiser), in order to determine the fair market value to be offered you. Enclosed please find a copy of our reviewed and approved appraisal that was used to determine the fair market value offered to you today. The appraisal provides the rationale behind the appraiser's valuation and the comparables used to determine value.

The appraisal report that is being supplied to you is considered by the Department to be confidential work that is the property of the Department of Transportation. Any uses of the report

other than the matter of the acquisition by the Department of Transportation and the owner(s) shall be guided by the "Assumptions and Limiting Conditions" as found in the report. Failure to comply with those provisions could result in legal action being taken by the appraiser against you.

Only the Department of Transportation has been named as a party to contractual obligation as part of the appraiser-client relationship. Therefore, any questions concerning the appraisal report should be directed to me, and not the appraiser who prepared the report.

Based on the appraisal the following summary of valuations were established for the acquisition needs from your property:

ACQUISITION	PRICE
Fee Acquisition: «FEE_Square_Feet» square feet «FEE_Improvements»	$ «Total_FEE_Value_»
Permanent Easement: «PE_Square_Feet» square feet «PE_Improvements»	$ «PE_Value_»
Temporary Construction Easement: «TCE_Square_Feet» square feet «TCE_Improvements»	$ «TCE_Value_»
Total Just Compensation	**$ «Total_Compensation_»**

This offer of Just Compensation is in accordance with the full amount of the approved appraisal of the fair market value of your property as unaffected by the project or any announcement thereof. The offer is based upon the Department's review and analysis of the appraisal, made by a qualified reviewer.

This offer is made without prejudice for settlement purposes. If there is no acceptance of this offer by you, subsequent negotiations or court proceedings could result in statements, offers or declarations contrary to the Department's present position. Any counteroffers, which you wish the Department to consider, will need to be fully documented in accordance with the same format as the appraisal that is being supplied.

Enclosed for your execution please find our (Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement, Realty Transfer Tax Forms, Temporary Easement Agreement, and Right of Entry Agreement), which I hope you will sign and return in the enclosed self-addressed stamped envelope after you have had time to review the appraisal and documents. Please also include a copy of the (corporation/limited partnership/limited liability company) papers indicating who has the authority to sign for «CORPLLCLP_NAME». To further aid you I have enclosed a copy of "Your Property and the Right of Way", which will explain your rights when DelDOT must acquire private property for public improvement projects.

(ONLY PURCHASE CONTRACT and PEs) Settlement will be held within the 90 days stated on the contract. In order to expedite this matter, please fill out the enclosed mortgage information sheet in order that we may contact your mortgage company.

A DelDOT Transfer of Agent Form and Federal W-9 are enclosed for your completion and execution. DelDOT cannot invoice for compensation unless these forms are completed.

Thanking you in advance for your cooperation in this matter, and if in the meantime, you have any questions or concerns, please do not hesitate to contact me at «Agent_Telephone».

Sincerely,

«Agent_Name»
Right-of-Way Agent

Initials:initials
enclosures

- Appraisal
- Purchase Contract
- Permanent Easement Agreement
- Agreement to Grant Easement
- Realty Transfer Tax Forms
- Temporary Easement Agreement
- "Your Property and the Right of Way"
- Mortgage Information Sheet
- DelDOT Transfer of Agent Form
- Federal W-9
- Right of Entry Agreement

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … FAP No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation has a project to «Project_Description» In order to accomplish this initiative, it is necessary to acquire the following interests from your property located «Property_Location»: A Fee Acquisition (FEE) consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres). Also required are all improvements located thereon. These improvements include «FEE_Improvements» «PE_Improvements» «TCE_Improvements». Enclosed is the portion of our Right-of-Way plan showing the Fee Acquisition area colored in purple, the Permanent Easement area colored in orange and the Temporary Construction Easement area colored in brown.

The Department had an appraisal prepared by (an independent fee appraiser/a staff appraiser), in order to determine the fair market value to be offered you. Enclosed please find a copy of our reviewed and approved appraisal that was used to determine the fair market value offered to you today. The appraisal provides the rationale behind the appraiser's valuation and the comparables used to determine value.

The appraisal report that is being supplied to you is considered by the Department to be confidential work that is the property of the Department of Transportation. Any uses of the report other than the matter of the acquisition by the Department of Transportation and the owner(s) shall

be guided by the "Assumptions and Limiting Conditions" as found in the report. Failure to comply with those provisions could result in legal action being taken by the appraiser against you.

Only the Department of Transportation has been named as a party to contractual obligation as part of the appraiser-client relationship. Therefore, any questions concerning the appraisal report should be directed to me, and not the appraiser who prepared the report.

Based on the appraisal the following summary of valuations were established for the acquisition needs from your property:

ACQUISITION	PRICE
Fee Acquisition: «FEE_Square_Feet» square feet «FEE_Improvements»	$ «Total_FEE_Value_»
Permanent Easement: «PE_Square_Feet» square feet «PE_Improvements»	$ «PE_Value_»
Temporary Construction Easement: «TCE_Square_Feet» square feet «TCE_Improvements»	$ «TCE_Value_»
Total Just Compensation	**$ «Total_Compensation_»**

This offer of Just Compensation is in accordance with the full amount of the approved appraisal of the fair market value of your property as unaffected by the project or any announcement thereof. The offer is based upon the Department's review and analysis of the appraisal, made by a qualified reviewer.

This offer is made without prejudice for settlement purposes. If there is no acceptance of this offer by you, subsequent negotiations or court proceedings could result in statements, offers or declarations contrary to the Department's present position. Any counteroffers, which you wish the Department to consider, will need to be fully documented in accordance with the same format as the appraisal that is being supplied.

In the event that these negotiations result in an amicable conclusion between the Department and you, the Department will be required to present the proposed negotiated terms to the Advance Acquisition Committee ("AAC") for their review of the offer and approval of the negotiated terms. In the event the negotiated terms exceed the approved appraisal and initial offer, the AAC will evaluate the terms and either approve the terms or send the Department back to renegotiate the terms. The AAC shall not and does not have the authority to approve terms below the approved appraisal. I need to also inform you this negotiation and terms negotiated will be discussed at a public meeting with the AAC. The Department will make every effort to protect private and confidential information but, the offer amount and proposed terms will be open to the public during the AAC meeting.

Enclosed for your execution please find our (Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement, Realty Transfer Tax Forms, Temporary Easement Agreement and Right of Entry Agreement), which I hope you will sign and return in the enclosed

self-addressed stamped envelope after you have had time to review the appraisal and documents. Please also include a copy of the (corporation/limited partnership/limited liability company) papers indicating who has the authority to sign for the (corporation/limited partnership/limited liability company). To further aid you I have enclosed a copy of "Your Property and the Right of Way", which will explain your rights when DelDOT must acquire private property for public improvement projects.

(ONLY PURCHASE CONTRACT) Settlement will be held within the 90 days stated on the contract. In order to expedite this matter, please fill out the enclosed mortgage information sheet.

A DelDOT Transfer of Agent Form and Federal W-9 are enclosed for your completion and execution. DelDOT cannot invoice for compensation unless these forms are completed.

Thanking you in advance for your cooperation in this matter, and if in the meantime, you have any questions or concerns, please do not hesitate to contact me at «Agent_Telephone».

Sincerely,

«Agent_Name»
Real Estate Representative

Initials:initials
enclosures

- Appraisal
- Purchase Contract
- Permanent Easement Agreement
- Agreement to Grant Easement
- Realty Transfer Tax Forms
- Temporary Easement Agreement
- "Your Property and the Right of Way"
- Mortgage Information Sheet
- DelDOT Transfer of Agent Form
- Federal W-9
- Right of Entry Agreement

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

DATE

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Department of Transportation (DelDOT) has plans to «Project_Description». In order to accomplish this initiative, it is necessary to acquire the following property interests from your property located at «Property_Location»: A Fee Acquisition (FEE) consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres). Also required are all improvements located thereon. These improvements include «FEE_Improvements» «PE_Improvements» «TCE_Improvements». Enclosed is a portion of our Right-of-Way plan showing the Fee Acquisition area colored in purple, the Permanent Easement area colored in orange, and the Temporary Construction Easement area colored in brown.

State and federal law requires payment of compensation for lands needed in conjunction with a public improvement project. These regulations grant DelDOT the authority to pay property owners for non-complex acquisitions waiving DelDOT's requirement for having an independent appraisal prepared. In this case DelDOT has determined that a formal appraisal is unnecessary since acquisition needs are non-complex. In order to calculate compensation, recent sales of land in your area have been researched. Based on these sales, which are shown on the attached Subject Data Form, the following compensations were established for the acquisition needs from your property.

ACQUISITION	PRICE
FEE Acquisition: «FEE_Square_Feet» Square Feet «FEE_Improvements»	$ «Total_FEE_Value_»
Permanent Easement: «PE_Square_Feet» Square Feet «PE_Improvements»	$ «PE_Value_»
Temporary Construction Easement (TCE): «TCE_Square_Feet» Square Feet «TCE_Improvements»	$ «TCE_Value_»
Total Compensation	**$ «Total_Compensation_»**

This offer is made for settlement purposes and DelDOT will attempt to negotiate with you during this process. If an agreement cannot be reached based on the sales provided, then DelDOT will have an independent appraisal prepared to determine the fair market value. Please be advised that further negotiations or court proceedings could result in statements, offers or declarations contrary to the Department's present position.

Enclosed for your execution please find our Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement, Right of Entry Agreement, Realty Transfer Tax Forms and Temporary Easement Agreement, which I hope you will sign and return in the enclosed self-addressed stamped envelope after you have had time to review the documents. Please also include a copy of the (corporation papers/limited liability company/limited partnership) papers indicating who has the authority to sign for «CORPLLCLP_NAME». To further aid you I have enclosed a copy of "Your Property and the Right of Way," which will explain your rights when DelDOT must acquire private property for public improvement projects. Also enclosed is a "Subject Data Form," outlining the factual information on your property.

(ONLY PURCHASE CONTRACT and PEs) If you are in agreement with this offer, settlement will be held within the 90 days stated on the contract. In order to expedite this matter, please fill out the enclosed mortgage information sheet in order that we may contact your mortgage company.

A DelDOT Transfer of Agent Form and Federal W-9 are enclosed for your completion and execution. DelDOT cannot invoice for compensation unless these forms are completed.

Thanking you in advance for your cooperation in this matter, and if in the meantime, you have any questions or concerns, please do not hesitate to contact me at «Agent_Telephone».

Sincerely,

«Agent_Name»
Right-of-Way Agent

Initials: Initials
enclosures

- Subject Data Form
- Purchase Contract
- Permanent Easement Agreement
- Agreement to Grant Easement
- Right if Entry Agreement
- Realty Transfer Tax Forms
- Temporary Easement Agreement
- “Your Property and the Right of Way”
- Mortgage Information Sheet
- DelDOT Transfer of Agent Form
- Federal W-9

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

DATE

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Address_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Department of Transportation (DelDOT) has plans to «Project_Description». In order to accomplish this initiative, it is necessary to acquire the following property interests from your property located «Property_Location»: A Fee Acquisition (FEE) consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres). Also required are all improvements located thereon. These improvements «FEE_Improvements»«PE_Improvements»«TCE_Improvements». Enclosed is a portion of our Right-of-Way plan showing the Fee Acquisition area colored in purple, the Permanent Easement area colored in orange and the Temporary Construction Easement area colored in brown.

State and federal law requires that property owners receive payment of compensation for lands needed in conjunction with a public improvement project. Legislation grants DelDOT the authority to pay property owners for non-complex acquisitions absent of having an appraisal when the right-of-way acquisition is non-complex, and there are no damages or special benefits accruing to the remaining real property.

DelDOT has analyzed the Project's impact to your property and based on information at hand, believes that the acquisition needs are non-complex and that there are no damages or special benefits accruing to your remaining property, therefore, it is DelDOT's position that a real estate

appraisal is not necessary. However, as part of this offer DelDOT has advised you of your right to an appraisal and, for the initiation of these negotiations, you have waived your right to an appraisal. If these negotiations are not concluded you have the right to request and receive an offer based on an approved appraisal.

In order to calculate compensation, an investigation of similar type land sales has been studied. Based on these sales, the following compensations were established for the acquisition needs from your property.

ACQUISITION	PRICE
Fee Acquisition: «FEE_Square_Feet» Square Feet «FEE_Improvements»	$ «Total_FEE_Value_».00
Permanent Easement: «PE_Square_Feet» Square Feet «PE_Improvements»	$ «PE_Value_»
Temporary Construction Easement: «TCE_Square_Feet» Square Feet «TCE_Improvements»	$ «TCE_Value_»
Total Just Compensation	**$ «Total_Compensation_»**

This offer is made without prejudice for settlement purposes. If there is no acceptance of this offer by you within thirty (30) days, subsequent negotiations will continue based on having an appraisal prepared in order to determine court acceptable fair market value. These further negotiations or court proceedings could result in statements, offers or declarations contrary to the Department's present position.

Enclosed for your execution please find our Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement, Realty Transfer Tax Forms, Temporary Easement Agreement and Right-of-Entry Agreement, which I hope you will sign and return in the enclosed self-addressed stamped envelope after you have had time to review the documents. Please also include a copy of the (corporation papers/limited liability company/limited partnership) papers indicating who has the authority to sign for «CORPLLCLP_NAME». To further aid you I have enclosed a copy of "Your Property and the Right of Way," which will explain your rights when DelDOT must acquire private property for public improvement projects. Also enclosed is a "Subject Data Form," outlining the factual information on your property.

(ONLY PURCHASE CONTRACT and PEs) If you are in agreement with this offer, settlement will be held within the 90 days stated on the contract. In order to expedite this matter, please fill out the enclosed mortgage information sheet in order that we may contact your mortgage company.

A DelDOT Transfer of Agent Form and Federal W-9 are enclosed for your completion and execution. DelDOT cannot invoice for compensation unless these forms are completed.

Thanking you in advance for your cooperation in this matter, and if in the meantime, you have any questions or concerns, please do not hesitate to contact me at «Agent_Telephone» or via e-mail at «Agent_EMail».

Sincerely,

«Agent_Name»
Right of Way Agent

Initials/Initials
enclosures

- Agreement to Waive Appraisal
- Subject Data Form
- Purchase Contract
- Permanent Easement Agreement
- Agreement to Grant Easement
- Realty Transfer Tax Forms
- Temporary Easement Agreement
- Right of Entry Agreement
- "Your Property and the Right of Way"
- Mortgage Information Sheet
- DelDOT Transfer of Agent Form
- Federal W-9
- Settlement Documents

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation has a project to «Project_Description» In order to accomplish this initiative, it is necessary to acquire the following interests from your property located «Property_Location»: A Fee Acquisition (FEE) consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres). Also required are all improvements located thereon. These improvements include «FEE_Improvements» «PE_Improvements» «TCE_Improvements». Enclosed is the portion of our Right-of-Way plan showing the Fee Acquisition area colored in orange, the Permanent Easement area colored in red and the Temporary Construction Easement area colored in brown.

I am enclosing our Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement and Temporary Easement Agreement for you to review. Hopefully, if you are in agreement with this offer and its perceived benefit, you will sign and return to me.

While you are entitled to receive compensation for our project needs, DelDOT is asking you to consider waiving receipt of compensation and donating those needs in lieu of the benefit this project will provide to the remainder of your property. Your donation will help reduce project costs. In addition, DelDOT will be very appreciative of your donation and the cooperative effort demonstrated by you.

By having you sign below and returning the original letter along with the signed agreements, you acknowledge that this donation carries no conditions and is made of its free and voluntary action. Please also include a copy of corporation papers indicating who is signing for the corporation. I have enclosed a copy of this letter for you to retain until I return a fully executed copy back to you.

If you desire additional information or have questions regarding any aspect of our project or this letter, please feel free to contact me at (302) 326-4482.

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

RR:initials
enclosures
Donation Letter
Purchase Contract
Permanent Easement Agreement
Agreement to Grant Easement
Temporary Easement Agreement

«Property_Owner», having been fully informed of its right to receive just compensation as determined by an appraisal of the fee simple acquisition, permanent easement and temporary construction easement areas, has agreed to waive its right to receive said just compensation. This decision is made without undue influence or coercive action of any nature. «Property_Owner», having determined in its best interest, agrees to donate to the Delaware Department of Transportation the «FEE_Square_Feet» square foot acquisition, the «PE_Square_Feet» square foot Permanent Easement and the «TCE_Square_Feet» square foot Temporary Construction Easement described above and as shown on the copy of the attached Exhibit depicting the property referenced above.

In Witness Whereof, «Property_Owner» have hereunto set their hands and seals the day and year aforesaid.

_____ _____(Seal)
Witness By:

_____ _____(Seal)
Witness By:

Department of Transportation

Approved this _____day of _____, 20_____ A.D.

_____ By: _____
Witness

Title: ___

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

DATE

«Property_Owner»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Address_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No«State_Parcel_No»
Property of «Property_Owner»

Dear «Addressee_Name»:

As you are aware, the Department of Transportation (DelDOT) has plans to «Project_Description»

On or about _____, DelDOT acquired from and compensated you for the following real property interests:

1. Fee area consisting of _____ square feet (_____acres) for the sum of $_____.00;

2. Permanent Easement area consisting of _____ square feet (_____acres) for the sum of $_____;

3. Temporary Easement area consisting of _____ square feet (_____ ac) for the sum of $_____; and

4. Improvements known as _____ for the sum of $_____.

Due to newly approved design plan changes which affect your property located at «Property_Location», additional real property interests need to be acquired and are as follows:

1. Fee Acquisition (FEE) consisting of approximately _____ square feet (_____ acres);

2. Permanent Easement (PE) consisting of approximately _____ square feet (_____ acres); and

3. Temporary Easement (TCE) consisting of approximately _____ square feet (_____ acres).

Enclosed is a portion of our Right-of-Way plan showing the Fee Acquisition area colored in purple, the Permanent Easement area colored in orange, and the Temporary Construction Easement area colored in brown.

State and federal law requires payment of compensation for lands needed in conjunction with a public improvement project. These regulations grant DelDOT the authority to pay property owners for non-complex acquisitions waiving DelDOT's requirement for having an independent appraisal prepared. In this case DelDOT has determined that a formal appraisal is unnecessary since acquisition needs are non-complex. In order to calculate compensation, recent sales of land in your area have been researched. Based on these sales, which are shown on the attached Subject Data Form, the following compensations were established for the acquisition needs from your property.

Snip from Subject Data Sheet and Paste into this space

This offer is made for settlement purposes and DelDOT will attempt to negotiate with you during this process. If an agreement cannot be reached based on the sales provided, then DelDOT will have an independent appraisal prepared to determine the fair market value. Please be advised that further negotiations or court proceedings could result in statements, offers or declarations contrary to the Department's present position

Enclosed for your execution please find our Purchase Contract, Permanent Easement Agreement, Agreement to Grant Easement, Right of Entry Agreement, Realty Transfer Tax Forms and Temporary Easement Agreement, which I hope you will sign and return in the enclosed self-addressed stamped envelope after you have had time to review the documents. Please also include

a copy of the (corporation papers/limited liability company/limited partnership) papers indicating who has the authority to sign for «CORPLLCLP_NAME». To further aid you I have enclosed a copy of "Your Property and the Right of Way," which will explain your rights when DelDOT must acquire private property for public improvement projects. Also enclosed is a "Subject Data Form," outlining the factual information on your property.

(ONLY PURCHASE CONTRACT and PEs) If you are in agreement with this offer, settlement will be held within the 90 days stated on the contract. In order to expedite this matter, please fill out the enclosed mortgage information sheet in order that we may contact your mortgage company.

A DelDOT Transfer of Agent Form and Federal W-9 are enclosed for your completion and execution. DelDOT cannot invoice for compensation unless these forms are completed.

Thank you in advance for your cooperation in this matter, and if in the meantime, you have any questions or concerns, please do not hesitate to contact me at «Agent_Telephone».

Sincerely,

«Agent_Name»
Right-of-Way Agent

___/
Enclosures

- Agreement to Waive Appraisal
- Purchase Contract
- Corrective Permanent Easement Agreement
- Agreement to Grant Easement
- Temporary Construction Easement
- Realty Transfer Tax Forms
- Sheet Subject Data Form
- Settlement Documents

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

April 9, 2010

Mr. George Diakos
Mr. Peter Diakos
Mr. Thomas Diakos
P.O. Box 407
Cheswold, DE 19936

RE: State Project No. 25-522-01 … F.A.P. No. ESTP-N339(4) … Kent County
Delaware Airpark Expansion
Tax Parcel No. KH-00-046.11-01-03.01; State Parcel No. 11
Property of George Diakos, Peter Diakos and Thomas Diakos

Messrs. Diakos:

Based upon previously conceptual construction plans on the subject project, DelDOT had determined that it would be necessary to acquire your property for the project. On July 27, 2007 DelDOT presented you with a written offer to acquire your property. In the intervening period of time, the subject project construction needs have been further refined, and we are pleased to advise you that the acquisition from your property has been greatly reduced. Accordingly, this is to advise you that the previously tendered acquisition offer is being withdrawn, and is no longer valid.

In conjunction with the revised construction plans, we will be contacting you in the future with a revised offer letter, which we believe will only require some property easements.

We regret any inconveniences that may have occurred, but are pleased that you can now go forward with the knowledge that your property is no longer needed to be acquired for project purposes. Please feel free to contact Steve Turley with any additional questions that you may have.

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

DelDOT Right-of-Way

Document No. ACQ 12
March 14, 2025

RIGHT-OF-ENTRY AGREEMENT

STATE PROJECT NO. «Project_Number» … «ADDRESS_COUNTY» COUNTY
«Project_Name»
DELAWARE DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY SECTION

Lands of «Property_Owner»
Tax Parcel No. P/O «Tax_Parcel_No»

This **RIGHT-OF-ENTRY AGREEMENT** (hereinafter "RIGHT-OF-ENTRY") is made and entered into this _____ day of _____, 20_____ between **«Property_Owner»,** hereinafter referred to as **OWNER** and the **State of Delaware, Department of Transportation and its agents** (hereinafter referred to as the **DEPARTMENT).** The **DEPARTMENT** is granted the uninterrupted RIGHT-OF-ENTRY to and free use of a Fee Acquisition (FEE) area consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), a Permanent Easement (PE) area consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and a Temporary Construction Easement (TCE) area consisting of approximately «TCE_Square_Feet» square («TCE_Acres» acres) as shown and noted on EXHIBIT A attached hereto. The Department shall have the right to immediately commence construction of the aforementioned State Highway on the aforementioned property of Owner.

The said lands are to be acquired by the **DEPARTMENT** as a portion of the right-of-way required which «Project_Description» The said lands are a portion of a tract situated in «Hundred», «Address_County» County, Delaware, which were acquired by the **OWNER**, by Instrument No. «Instrument_No».

The consideration hereof shall be the mutual benefits to be derived by the parties hereto by entering into this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged.

State and Federal law guarantee that no **OWNER** shall be required to surrender possession of real property before the agreed purchase price is paid, or in the event of a condemnation proceeding, before the amount of the **DEPARTMENT'S** estimate of just compensation is deposited with the court, in accordance with appropriate provision of law, for the benefit of the owner in an amount not less than the approved appraisal of the market value of such property. By the granting of this non-revocable RIGHT-OF-ENTRY, the **OWNER** waives the right to receive full payment or deposit of the purchase price prior to surrendering possession of the referenced parcel of land.

This RIGHT-OF-ENTRY does not prejudice or jeopardize in any way future negotiations for the acquisition of property or any right to which the **OWNER** is entitled otherwise by State or Federal Law. This RIGHT-OF-ENTRY and possession will allow the **DEPARTMENT** to proceed with the advertisement for receipt of construction contract bids and to proceed with construction operations pending the final transfer of the required right-of-way.

The **DEPARTMENT** and the **OWNER** agree to negotiate and will attempt to reach an amicable settlement. Both parties agree that condemnation will not be initiated until a reasonable time has expired to allow for orderly negotiations. If no agreement is reached, it is agreed that condemnation will be initiated to allow the courts to determine the amount of compensation. The granting of the RIGHT-OF-ENTRY will allow the **DEPARTMENT** to proceed immediately with construction of the project. By its acceptance of the RIGHT-OF-ENTRY, the **DEPARTMENT** agrees not to cause

or permit damage or harm to the remainder of the **OWNER'S** property through unwarranted encroachment by it or its agents.

The "**DEPARTMENT**" for the State of Delaware shall cause to have its contractors indemnify and save harmless itself and "**OWNER**" from and against all claims, demands and causes of actions of every kind and character arising in favor of the contractors' employees or third party on account of personal injuries or death or damages to property, which may arise out of the exercise of the Right-of-Entry.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the date and year first aforesaid.

Signed sealed and delivered in the presence of:

«CORPLLCLP_NAME»

(SEAL)

Witness «Signatory_1»

(SEAL)

Witness «Signatory_2»

(SEAL)

Witness «Signatory_3»

Owner's E.I. No.

DEPARTMENT OF TRANSPORTATION

Approved this _____ day of _____ 20_____.

_____BY: (SEAL)

Witness Rosemary Richardson
Statewide Acquisitions and Relocation Manager

Project No. «Project_Number»
Tax Parcel No. p/o «Tax_Parcel_No»
Project Parcel No. «State_Parcel_No»

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (hereinafter "**Agreement**") is made as of this _____ day of _____, 20___ by and between «Property_Owner» (hereinafter "**Owner**") and the Department of Transportation of the State of Delaware (hereinafter "**DelDOT**").

WHEREAS, DelDOT has a transportation public use project with a State Project No. of «Project_Number» and an F.A.P. Project No. of «FAP_Number» (hereinafter "**Project**"); and

WHEREAS, the Owner is vested with the fee simple title to the property required for the Project, said property is identified as Project Parcel No. «State_Parcel_No» on the Project's Plan Sheet No(s). «Plan_Sheet_Nos» and further as County Tax Parcel No. «Tax_Parcel_No», with a street address of «Property_Location» (hereinafter "**Property**"); and

WHEREAS, DelDOT wishes to purchase a portion of the Property.

NOW THEREFORE, that in consideration of the promises and mutual covenants herein contained, the Owner, his/her/its heirs, executors, administrators, successors or assigns, and DelDOT do agree as follows:

1. Owner hereby grants and conveys, and DelDOT agrees to purchase in fee simple, the Property consisting of the following: One (1) Fee Acquisition consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres) and all damages incident thereto «All_Imrovements». This sale includes all rights, title and interest, if any, of the Owner in and to any land lying in the bed of any street, road or avenue opened or proposed to the centerline thereof.

2. DelDOT will pay to the Owner the sum of «Total_FEE_Value_Written» Dollars ($«Total_FEE_Value_») as the full purchase price of the Property.

3. Final settlement for the purchase of the Property shall be held within ninety (90) days from the date of this Agreement. However, DelDOT reserves the right to extend the settlement date if additional time is needed, through no fault of DelDOT in order to obtain clear title to the Property under Paragraph 7 of this Agreement. The Owner shall receive notice of the time and place of settlement.

4. Any written notice shall be directed to the Owner at:

   «Addressee_Name»
   «Address_Line_1»
   «Address_Line_2»
   «Address_Line_3»
   Telephone: «Owner_Phone_»

   Any notice to be given to DelDOT will be mailed to:

   State of Delaware
   Department of Transportation
   Attention: «Agent_Name»
   Right-of-Way Section
   800 S. Bay Road
   Dover, Delaware 19901

   All written notices shall be given by first class mail and shall be effective upon posting.

5. Municipal, county and school taxes will be prorated and paid at settlement when such proration equals $20.00 or more. Water rent, sewer service and heating fuel will be prorated and paid only in cases where acquisition includes the structures serviced by such utilities and such proration equals $20.00 or more.

6. In the event that the Property to be acquired is subject to a lease from the Owner to a third party, the Owner shall at the date of settlement deliver said Property free and clear of any leasehold interest, unless otherwise agreed in writing.

7. Good fee simple, marketable title shall be conveyed to the State of Delaware at DelDOT's expense. Title shall be free and clear of all liens or encumbrances of every description at or prior to settlement, unless otherwise agreed in writing. Owner represents and warrants to DelDOT that the Owner is the only fee simple title owner of the Property.

8. Possession of the Property shall be delivered by the Owner to DelDOT not later than the date of final settlement. All keys in the Owner's possession or under the Owner's control shall be delivered to DelDOT at settlement.

9. The Owner agrees to maintain the Property to be purchased hereunder in its condition as of the date of this Agreement, ordinary wear and tear excepted. DelDOT shall have the right to inspect the Property, including all improvements, fixtures, systems, machinery and equipment within 48 hours prior to settlement to determine that the Property is in the same condition as of the date of this Agreement. If there is a material change in the condition of any property being acquired, other than ordinary wear and tear, DelDOT reserves the right to renegotiate the purchase price to reflect the change in condition, or to extend the settlement date for a reasonable period of time until the Owner has returned the property being acquired to its condition on the date of this Agreement.

10. Any loss or damage to the Property by fire, windstorm or other casualty prior to settlement shall be borne by the Owner. Risk of loss or damage to the Property shall pass to DelDOT from the Owner at the time of final settlement or date of possession, whichever is earlier.

11. Owner shall not, during the terms of this Agreement, grant, convey, encumber or option the Property or any part thereof to any person, firm or association without the prior written consent of DelDOT.

12. This Agreement shall constitute the entire contract between DelDOT and the Owner, and no modification shall be binding on either party unless reduced to writing and signed by and on behalf of the Owner and by and on behalf of DelDOT.

13. As used herein, the singular terms shall include the plural, and the plural terms shall include the singular; male shall include female.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, executors, administrators, successors or assigns.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereunto have set his/her/its hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF: «CORPLLCLP_NAME»

Witness	«Signatory_1»	(SEAL)
Witness	«Signatory_2»	(SEAL)
Witness	«Signatory_3»	(SEAL)
Witness	«Signatory_4»	(SEAL)

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

DEPARTMENT OF TRANSPORTATION

Approved this _____ day of _____ 20 _____ , A.D.

Witness	BY: «Agent_Name»	(SEAL)
	TITLE: Right-of-Way Agent	

Project No. «Project_Number»
Tax Parcel No. «Tax_Parcel_No»
Project Parcel No. «State_Parcel_No»

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (hereinafter "**Agreement**") is made as of this _____ day of _____, 20___ by and between «Property_Owner» (hereinafter "**Owner**") and the Department of Transportation of the State of Delaware (hereinafter "**DelDOT**").

WHEREAS, DelDOT has a transportation public use project with a State Project No. of «Project_Number» and an F.A.P. Project No. of «FAP_Number» (hereinafter "**Project**"); and

WHEREAS, the Owner is vested with the fee simple title to the property required for the Project, said property is identified as Project Parcel No. «State_Parcel_No» and further as County Tax Parcel No. «Tax_Parcel_No», with a street address of «Property_Location» (hereinafter "**Property**"); and

WHEREAS, DelDOT wishes to purchase the entire Property.

NOW THEREFORE, that in consideration of the promises and mutual covenants herein contained, the Owner, his/her/its heirs, executors, administrators, successors or assigns, and DelDOT do agree as follows:

1. Owner hereby grants and conveys, and DelDOT agrees to purchase in fee simple, the Property consisting of the following: «FEE_Improvements». This sale includes all rights, title and interest, if any, of the Owner in and to any land lying in the bed of any street, road or avenue opened or proposed to the centerline thereof.

2. DelDOT will pay to the Owner the sum of «Total_FEE_Value_Written» Dollars ($«Total_FEE_Value_») as the full purchase price of the Property.

3. Final settlement for the purchase of the Property shall be held within ninety (90) days from the date of this Agreement. However, DelDOT reserves the right to extend the settlement date if additional time is needed, through no fault of DelDOT in order to obtain clear title to the Property under Paragraph 7 of this Agreement. The Owner shall receive notice of the time and place of settlement.

4. Any written notice shall be directed to the Owner at

   «Address_Line_1»
   «Address_Line_2»
   «Address_Line_3»;
   Telephone: «Telephone_No»

   Any notice to be given to DelDOT will be mailed to:

   State of Delaware
   Department of Transportation
   Attention: «Agent_Name»
   Real Estate Section
   800 S. Bay Road
   Dover, Delaware 19901

   All written notices shall be given by first class mail and shall be effective upon posting.

5. Municipal, county and school taxes will be prorated and paid at settlement when such proration equals $20.00 or more. Water rent, sewer service and heating fuel will be prorated and paid only in cases where acquisition includes the structures serviced by such utilities and such proration equals $20.00 or more.

6. In the event that the Property to be acquired is subject to a lease from the Owner to a third party, the Owner shall at the date of settlement deliver said Property free and clear of any leasehold interest, unless otherwise agreed in writing.

7. Good fee simple, marketable title shall be conveyed to the State of Delaware at DelDOT's expense. Title shall be free and clear of all liens or encumbrances of every description at or prior to settlement, unless otherwise agreed in writing. Owner represents and warrants to DelDOT that the Owner is the only fee simple title owner of the Property.

8. Possession of the Property shall be delivered by the Owner to DelDOT not later than the date of final settlement. All keys in the Owner's possession or under the Owner's control shall be delivered to DelDOT at settlement.

9. The Owner agrees to maintain the Property to be purchased hereunder in its condition as of the date of this Agreement, ordinary wear and tear excepted. DelDOT shall have the right to inspect the Property, including all improvements, fixtures, systems, machinery and equipment within 48 hours prior to settlement to determine that the Property is in the same condition as of the date of this Agreement. If there is a material change in the condition of any property being acquired, other than ordinary wear and tear, DelDOT reserves the right to renegotiate the purchase price to reflect the change in condition, or to extend the settlement date for a reasonable period of time until the Owner has returned the property being acquired to its condition on the date of this Agreement.

10. Any loss or damage to the Property by fire, windstorm or other casualty prior to settlement shall be borne by the Owner. Risk of loss or damage to the Property shall pass to DelDOT from the Owner at the time of final settlement or date of possession, whichever is earlier.

11. Owner shall not, during the terms of this Agreement, grant, convey, encumber or option the Property or any part thereof to any person, firm or association without the prior written consent of DelDOT.

12. This Agreement shall constitute the entire contract between DelDOT and the Owner, and no modification shall be binding on either party unless reduced to writing and signed by and on behalf of the Owner and by and on behalf of DelDOT.

13. As used herein, the singular terms shall include the plural, and the plural terms shall include the singular; male shall include female.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, executors, administrators, successors or assigns.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereunto have set his/her/its hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF: «CORPLLCLP_NAME»

Witness	«Signatory_1»	(SEAL)
Witness	«Signatory_2»	(SEAL)
Witness	«Signatory_3»	(SEAL)
Witness	«Signatory_4»	(SEAL)

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

DEPARTMENT OF TRANSPORTATION

Approved this ____ day of _____ 20 ____

Witness

BY: «Agent_Name» (SEAL)

TITLE: Right-of-Way Agent

Project No.	«Project_Number»
Tax Parcel No.	p/o «Tax_Parcel_No»
Project Parcel No.	«State_Parcel_No»

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

RIGHT-OF-WAY BY PERMANENT EASEMENT (RW/PE) PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (hereinafter "**Agreement**") is made as of this _____ day of _____, 20___ by and between «Property_Owner» (hereinafter "**Owner**") and the Department of Transportation of the State of Delaware (hereinafter "**DelDOT**").

WHEREAS, DelDOT has a transportation public use project with a State Project No. of «Project_Number» and an F.A.P. Project No. of «FAP_Number» (hereinafter "**Project**"); and

WHEREAS, the Owner is vested with the fee simple title to the property required for the Project, said property is identified as Project Parcel No. «State_Parcel_No» on the Project's Plan Sheet Nos. «Plan_Sheet_Nos» and further as County Tax Parcel No. «Tax_Parcel_No», with a street address of «Property_Location» (hereinafter "**Property**"); and

WHEREAS, DelDOT wishes to purchase a portion of the Property.

WHEREAS, «Property_Owner» previously entered into a Right-of-Way Permanent Easement Fee Acquisition Purchase with the Department of Transportation dated January 7, 2003, for 1,962.5007 square feet (0.0451 acres) of land, of record in the Office of the Recorder of Deeds, in and for Sussex County and State of Delaware in Deed Book 3794 and Page 280; and

WHEREAS, due to this project the Easement (RW/PE) area consisting of approximately «RWPE_Square_Feet» square feet («RWPE_Acres» acres) will be purchased in FEE; and

NOW THEREFORE, that in consideration of the promises and mutual covenants herein contained, the Owner, his/her/its heirs, executors, administrators, successors or assigns, and DelDOT do agree as follows:

1. Owner hereby grants and conveys, and DelDOT agrees to purchase in fee simple, the Property consisting of the following: One (1) RW/PE Fee Acquisition Purchase consisting of approximately «RWPE_Square_Feet» square feet («RWPE_Acres» acres) and all improvements: «RWPE_Improvements».

2. DelDOT will pay to the Owner «Total_RWPE_Value_Written» Dollars ($«Total_RWPE_Value_») for the RW/PE area, as the full purchase price of the Property. This sale includes all rights, title and interest, if any, of the Owner in and to any land lying in the bed of any street, road or avenue opened or proposed to the centerline thereof.

3. Final settlement for the purchase of the Property shall be held within ninety (90) days from the date of this Agreement. However, DelDOT reserves the right to extend the settlement date if additional time is needed, through no fault of DelDOT in order to obtain clear title to the Property under Paragraph 7 of this Agreement. The Owner shall receive notice of the time and place of settlement.

4. Any written notice shall be directed to the Owner at:
«Property_Owner»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»
Telephone: «Owner_Phone_»

Any notice to be given to DelDOT will be mailed to:
State of Delaware
Department of Transportation
Attention: «Agent_Name»
Right-of-Way Section
800 S. Bay Road
Dover, Delaware 19901

All written notices shall be given by first class mail and shall be effective upon posting.

5. Municipal, county and school taxes will be prorated and paid at settlement when such proration equals $20.00 or more. Water rent, sewer service and heating fuel will be prorated and paid only in cases where acquisition includes the structures serviced by such utilities and such proration equals $20.00 or more.

6. In the event that the Property to be acquired is subject to a lease from the Owner to a third party, the Owner shall at the date of settlement deliver said Property free and clear of any leasehold interest, unless otherwise agreed in writing.

7. Good fee simple, marketable title shall be conveyed to the State of Delaware at DelDOT's expense. Title shall be free and clear of all liens or encumbrances of every description at or prior to settlement, unless otherwise agreed in writing. Owner represents and warrants to DelDOT that the Owner is the only fee simple title owner of the Property.

8. Possession of the Property shall be delivered by the Owner to DelDOT not later than the date of final settlement. All keys in the Owner's possession or under the Owner's control shall be delivered to DelDOT at settlement.

9. The Owner agrees to maintain the Property to be purchased hereunder in its condition as of the date of this Agreement, ordinary wear and tear excepted. DelDOT shall have the right to inspect the Property, including all improvements, fixtures, systems, machinery and equipment within 48 hours prior to settlement to determine that the Property is in the same condition as of the date of this Agreement. If there is a material change in the condition of any property being acquired, other than ordinary wear and tear, DelDOT reserves the right to renegotiate the purchase price to reflect the change

Owner has returned the property being acquired to its condition on the date of this Agreement.

10. Any loss or damage to the Property by fire, windstorm or other casualty prior to settlement shall be borne by the Owner. Risk of loss or damage to the Property shall pass to DelDOT from the Owner at the time of final settlement or date of possession, whichever is earlier.

11. Owner shall not, during the terms of this Agreement, grant, convey, encumber or option the Property or any part thereof to any person, firm or association without the prior written consent of DelDOT.

12. This Agreement shall constitute the entire contract between DelDOT and the Owner, and no modification shall be binding on either party unless reduced to writing and signed by and on behalf of the Owner and by and on behalf of DelDOT.

13. As used herein, the singular terms shall include the plural, and the plural terms shall include the singular; male shall include female.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, executors, administrators, successors or assigns.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties hereunto have set his/her/its hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

_____	_____ (SEAL)
Witness	By: «Signatory_1»
_____	_____ (SEAL)
Witness	«Signatory_2»
_____	_____ (SEAL)
Witness	«Signatory_3»
_____	_____ (SEAL)
Witness	«Signatory_4»

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

DEPARTMENT OF TRANSPORTATION

Approved this _____ day of _____ 20 _____

_____ BY: _____
Witness «Agent_Name»
TITLE: Right-of-Way Agent

Tax Parcel No. P/O «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into as of this _____ day of _____, 20_____ by and between «Property_Owner» (hereinafter "**Owner**") and the State of Delaware, acting by and through the Department of Transportation (hereinafter "**DelDOT**").

WHEREAS, the Owner holds title to certain land located «Property_Location», as shown and noted on plans for the State Project No. «Project_Number» as Parcel No. «State_Parcel_No», which are hereby incorporated by reference and made a part hereof (hereinafter collectively "**Exhibit**"); and

WHEREAS, DelDOT is desirous of obtaining a permanent easement over, under and across Owner's land described above (hereinafter "**Property**") to the extent indicated on the Exhibit attached hereto and made a part hereof.

NOW THEREFORE, for and in consideration of «PE_Value_Written» Dollars ($«PE_Value_») and other good and valuable consideration, the Owner does by these presents grant, bargain, sell, convey and confirm unto DelDOT or its successors a permanent easement for any and all highway related purposes including the right of DelDOT to grant a public utility a franchise, permit or easement to install and maintain its facilities in, over or across said lands and premises; and

FURTHER, Owner shall not use the Property in any way which will interfere with or be detrimental to the present or future use of the Property by DelDOT; and

FURTHER, should this Agreement ever be abandoned by DelDOT or by mutual agreement, then this Agreement shall terminate, be null and void and will no longer encumber the Property and such action shall be evidenced by a recorded release of easement.

BEING a part of the same lands which «Previous_Owner», by Deed dated «DEED_DATE», and recorded in the Office for the Recorder of Deeds in and for «Recorded_in_County» County, Delaware in Deed Record and/or Instrument Number «Instrument_No», did grant and convey unto «Property_Owner», in fee.

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

«CORPLLCLP_NAME»

_____	_____ (SEAL)
Witness	«Signatory_1»
_____	_____ (SEAL)
Witness	«Signatory_2»
_____	_____ (SEAL)
Witness	«Signatory_3»
_____	_____ (SEAL)
Witness	«Signatory_4»

STATE OF :
:SS
COUNTY OF :

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, «Property_Owner», party(ies) to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her/their act and deed.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Partner(s) of «CORPLLCLP_NAME», a limited partnership of the State of , parties to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his (their) act and deed as partner(s), and the act and deed of said limited partnership.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid,

, Member(s) of «CORPLLCLP_NAME», a limited liability company of the State of , party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her (their) act and deed, as _____, and the act and deed of said limited liability company.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, , (Vice) President of «CORPLLCLP_NAME», a corporation existing under the laws of the State of , party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of said corporation, that the signature of the said thereto is in his/her own proper handwriting, and the seal affixed is the common and corporate seal of said corporation, and that this his/her act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my Hand and Seal of office, the day and year first above written.

_____
Notary Public/Attorney at Law

Tax Parcel No. P/O «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

PERMANENT EASEMENT AGREEMENT

THIS PERMANENT EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into as of this _____ day of _____, 20_____ by and between «Property_Owner» (hereinafter "**Owner**") and the State of Delaware, acting by and through the Department of Transportation (hereinafter "**DelDOT**").

WHEREAS, the Owner holds title to certain land located «Property_Location», as shown and noted on plans for the State Project No. «Project_Number» as Parcel No. «State_Parcel_No», which are hereby incorporated by reference and made a part hereof (hereinafter collectively "**Exhibit**"); and

WHEREAS, DelDOT is desirous of obtaining a permanent easement over, under and across Owner's land described above (hereinafter "**Property**") to the extent indicated on the Exhibit attached hereto and made a part hereof.

NOW THEREFORE, for and in consideration of «PE_Value_Written» Dollars ($«PE_Value_») and other good and valuable consideration, the Owner does by these presents grant, bargain, sell, convey and confirm unto DelDOT or its successors a permanent easement for any and all highway related purposes including the right of DelDOT to grant a public utility a franchise, permit or easement to install and maintain its facilities in, over or across said lands and premises; and

FURTHER, Owner shall not use the Property in any way which will interfere with or be detrimental to the present or future use of the Property by DelDOT; and

FURTHER, should this Agreement ever be abandoned by DelDOT or by mutual agreement, then this Agreement shall terminate, be null and void and will no longer encumber the Property and such action shall be evidenced by a recorded release of easement.

BEING a part of the same lands which «Previous_Owner», by Deed dated «Field1», and recorded in the Office for the Recorder of Deeds in and for «Recorded_in_County» County, State of Delaware in Deed Record and/or Instrument Number «Instrument_No», did grant and convey unto «Property_Owner», in fee.

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

«CORPLLCLP_NAME»

_____	_____ (SEAL)
Witness	«Signatory_1»
_____	_____ (SEAL)
Witness	«Signatory_2»
_____	_____ (SEAL)
Witness	«Signatory_3»
_____	_____ (SEAL)
Witness	«Signatory_4»
_____	_____ (SEAL)

STATE OF :
:SS
COUNTY OF :

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, «Property_Owner», party(ies) to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her/their act and deed.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Partner(s) of «CORPLLCLP_NAME», a limited partnership of the State of , parties to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his (their) act and deed as partner(s), and the act and deed of said limited partnership.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid,

, Member(s) of «CORPLLCLP_NAME», a limited liability company of the State of , party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her (their) act and deed, as _____, and the act and deed of said limited liability company.

BE IT REMEMBERED that on this day of , 20 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, , (Vice) President of «CORPLLCLP_NAME», a corporation existing under the laws of the State of , party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of said corporation, that the signature of the said thereto is in his/her own proper handwriting, and the seal affixed is the common and corporate seal of said corporation, and that this his/her act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my Hand and Seal of office, the day and year first above written.

_____
Notary Public/Attorney at Law

Tax Parcel No. P/O «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

****AERIAL PURPOSES ONLY****
PERMANENT AIR SPACE EASEMENT AGREEMENT

THIS PERMANENT AIR SPACE EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into this _____ day of _____, 2022, by and between «Property_Owner» (hereinafter **Owner**") and The State of Delaware by and through the Department of Transportation, (hereinafter "**DelDOT"**).

WHEREAS, the Owner is the owner of certain land located at «Property_Location», as shown and noted on maps and exhibits for the State Project No. «Project_Number» Parcel No. «State_Parcel_No», which are hereby incorporated herein by reference and made a part hereof; and

WHEREAS, the DelDOT is desirous of obtaining a permanent air space easement over and across GRANTOR's land described above.

NOW THEREFORE WITNESSETH that in consideration of «PE_Value_Written» Dollars ($«PE_Value_») and other good and valuable consideration, the Owner does by these presents grant, bargain, sell, convey and confirm unto the DelDOT or its successors a permanent air space easement as more fully described on the plot annexed hereto, and made a part hereof, as Exhibit No. 1, consisting of the permanent right to allow utility facilities to overhang the Owner property, including the right to construct, maintain, repair and replace overhead utility facilities and appurtenances; and

FURTHER, Owner shall not use the easement area in any way which will interfere with or be detrimental to the present or future use of the easement area by the DelDOT. This easement is for **aerial purposes only**. There are existing wires over the property, which will be relocated as part of State Project No. «Project_Number». Owner shall be permitted to build underneath said wires; however, the structure **shall not exceed eight feet in height** (above ground). Any trees that are located within the aerial easement area will be trimmed as to maintain a safe distance from the utility wires now or in the future; and,

FURTHER, should this permanent air space easement ever be abandoned by the DelDOT or by mutual agreement, then this Agreement shall terminate, be null and void and will no longer encumber said land and such action shall be evidenced by a recorded release of easement.

BEING over and through the property conveyed to «Property_Owner», by Deed of «Previous_Owner», dated «DEED_DATE_Day», of record in the Office of the Recorder of Deeds, in and for Sussex County and State of Delaware as Deed Record «Instrument_No».

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set his/hers/its hands and seals the day and year first above written.

Signed, sealed, and delivered
in the presence of: **«CORPLLCLP_NAME»**

_____ _____ (SEAL)
Witness

_____ _____ (SEAL)
Witness

STATE OF DELAWARE:
: SS
COUNTY OF SUSSEX:

BE IT REMEMBERED that on this _____ day of _____, 20__, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____, _____(title) of «Property_Owner», party to this Permanent Air Space Easement Agreement, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of the said «Property_Owner».

GIVEN under my Hand and Seal of office, the day and year first above written.

_____
Notary Public/Attorney at Law

Tax Parcel No. P/O «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

****AERIAL PURPOSES ONLY****
PERMANENT AIR SPACE EASEMENT AGREEMENT

THIS PERMANENT AIR SPACE EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into this _____ day of _____, 2024, by and between «Property_Owner» (hereinafter **Owner**") and The State of Delaware by and through the Department of Transportation, (hereinafter "**DelDOT"**).

WHEREAS, the Owner is the owner of certain land located at «Property_Location», as shown and noted on maps and exhibits for the State Project No. «Project_Number» Parcel No. «State_Parcel_No», which are hereby incorporated herein by reference and made a part hereof; and

WHEREAS, the DelDOT is desirous of obtaining a permanent air space easement over and across GRANTOR's land described above.

NOW THEREFORE WITNESSETH that in consideration of «PE_Value_Written» Dollars ($«PE_Value_») and other good and valuable consideration, the Owner does by these presents grant, bargain, sell, convey and confirm unto the DelDOT or its successors a permanent air space easement as more fully described on the plot annexed hereto, and made a part hereof, as Exhibit No. 1, consisting of the permanent right to allow utility facilities to overhang the Owner property, including the right to construct, maintain, repair and replace overhead utility facilities and appurtenances; and

FURTHER, Owner shall not use the easement area in any way which will interfere with or be detrimental to the present or future use of the easement area by the DelDOT. This easement is for **aerial purposes only**. There are existing wires over the property, which will be relocated as part of State Project No. «Project_Number». Owner shall be permitted to build underneath said wires; however, the structure **shall not exceed eight feet in height** (above ground). Any trees that are located within the aerial easement area will be trimmed as to maintain a safe distance from the utility wires now or in the future; and,

FURTHER, should this permanent air space easement ever be abandoned by the DelDOT or by mutual agreement, then this Agreement shall terminate, be null and void and will no longer encumber said land and such action shall be evidenced by a recorded release of easement.

BEING over and through the property conveyed to «Property_Owner», by Deed of

«Previous_Owner», dated «DEED_DATE_Day», of record in the Office of the Recorder of Deeds, in and for Sussex County and State of Delaware as Deed Record «Instrument_No».

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set his/hers/its hands and seals the day and year first above written.

Signed, sealed, and delivered
in the presence of:

«CORPLLCLP_NAME»

_____ _____ (SEAL)
Witness

_____ _____ (SEAL)
Witness

STATE OF DELAWARE:
: SS
COUNTY OF SUSSEX:

BE IT REMEMBERED that on this _____ day of 2022 personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, _____(title) of «Property_Owner», party to this Permanent Air Space Easement Agreement, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of the said «Property_Owner».

GIVEN under my Hand and Seal of office, the day and year first above written.

_____
Notary Public/Attorney at Law

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

AGREEMENT TO GRANT EASEMENT

State Project No. «Project_Number» Federal-Aid Project No. «FAP_Number»

Project Title «Project_Name»

Parcel No. «State_Parcel_No»

THIS AGREEMENT TO GRANT EASEMENT (hereinafter "**Agreement**") is made and entered into as of this _____ day of _____ 20_____ between «Property_Owner» (hereinafter "**Owner**") and the State of Delaware, acting by and through the Department of Transportation (hereinafter "**DelDOT**").

WHEREAS, DelDOT proposes to construct a State highway project as shown and noted on the plans, designated as State Project No. «Project_Number» entitled «Project_Name» which are hereby incorporated by reference and made a part hereof (hereinafter collectively "**Exhibit**"); and

WHEREAS, DelDOT is desirous of obtaining a permanent easement over, through, under and across the Owner's land described above (hereinafter "**Property**"), to the extent indicated on the Exhibit attached hereto and made a part hereof.

NOW THEREFORE, for and in consideration of the promises and mutual covenants herein contained, said Owner, his, her, its respective heirs, executors, administrators, successors or assigns, does hereby agree to grant and convey by subsequent execution of a permanent easement, and DelDOT agrees to pay to the Owner the sum of «PE_Value_Written» Dollars ($«PE_Value_») for said permanent easement, and other considerations as follows:

> A permanent easement consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and all damages incident thereto «PE_Improvements» as shown on Right-of-Way Sheet Nos. «Plan_Sheet_Nos» of the Department's Plans for Contract No. «Project_Number», State Parcel No. «State_Parcel_No», Tax Parcel No. «Tax_Parcel_No», «Address_County» County, Delaware.

FURTHER, upon the execution of this Agreement, DelDOT shall have the right of immediate entry upon the easement area described herein. The Owner hereby waive(s) the right to receive full payment prior to surrendering possession of the permanent easement area.

FURTHER, this Agreement shall be governed by and construed under the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

«CORPLLCLP_NAME»

Witness	«Signatory_1»	(SEAL)
Witness	«Signatory_2»	(SEAL)
Witness	«Signatory_3»	(SEAL)
Witness	«Signatory_4»	(SEAL)
Witness	«Signatory_5»	(SEAL)

Owner's Social Security/E.I. No. _____

Owner's Address «Address_Line_1»
«Address_Line_2»
«Address_Line_3»

DEPARTMENT OF TRANSPORTATION

Approved this _____ day of _____ 20 _____

_____ BY: _____ (SEAL)
Witness «Agent_Name»
TITLE: Right-of-Way Agent

Tax Parcel No. p/o «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into as of this _____ day of _____, 20_____ by and between «Property_Owner» (hereinafter "**Owner**") and the State of Delaware acting by and through the Department of Transportation (hereinafter "**DelDOT**").

WHEREAS, the Owner holds title to certain land located «Property_Location», as shown and noted on Plans for State Project No. «Project_Number», known as Project Parcel No. «State_Parcel_No», which plans are hereby incorporated by this reference and made a part hereof (hereinafter collectively "**Exhibit**"); and

WHEREAS, DelDOT is desirous of obtaining a temporary easement over, under, and across the Owner's land described above (hereinafter "**Property**") to the extent indicated on the Exhibit.

NOW THEREFORE, for and in consideration of «TCE_Value_Written» Dollars ($«TCE_Value_») and other good and valuable consideration, the Owner does hereby grant and convey unto DelDOT a temporary easement and right-of-way limited to the following purposes:

> The temporary use of an area consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres) and all damages incident thereto as shown on Right-of-Way Plan Sheet Nos. «Plan_Sheet_Nos» on the Department's Plans for Contract No. «Project_Number», State Parcel No. «State_Parcel_No», Tax Parcel No. «Tax_Parcel_No», «Property_County» County, Delaware.

DelDOT shall perform all work at its expense in a workmanlike and professional manner. DelDOT, its employees or agents shall not damage or harm the remainder of the Property.

DelDOT is protected from liability pursuant Delaware case law and statutory provisions; this protection is referred to as "sovereign immunity." As a result of this sovereign immunity, DelDOT is not permitted to indemnify, defend or hold harmless any parties including property owners. However, DelDOT's Contractor is required to preserve the Property from damages caused by the execution or non-execution of the work done on the Property, and to restore the Property at the Contractor's expense, as provided in the Contract. In addition, the Contractor is required to indemnify and save harmless DelDOT and its officers and employees from any and all claims, demands and causes of actions every kind and character on account of the negligence or intentional misconduct of that Contractor's employees or agents; including but not limited to responsibility of the Contractor to provide for the protection and safety of all persons and property.

Payment shall be made to Owner upon the issuance of a Notice to Proceed to DelDOT's contractor. The duration of the Agreement is expected to be «TCE_Duration». DelDOT shall have the right to terminate or extend the Agreement due to project advertisement/construction delay or cancellation and pay the Owner a pro-rata share of the land value. This Agreement is binding upon and shall inure to the benefit of the parties hereto their respective heirs, executors, administrators, successors or assigns.

BEING a part of the same lands which «Previous_Owner», by Deed dated «DEED_DATE», and recorded in the Office for the Recorder of Deeds in and for «Property_County» County, Delaware in Deed Record and/or Instrument Number «Instrument_No», did grant and convey unto «Property_Owner», in fee.

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set his/her/their/its hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

«CORPLLCLP_NAME»

_____ _____ (SEAL)
Witness «Signatory_1»

_____ _____ (SEAL)
Witness «Signatory_2»

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

Approved this _____ day of _____ 20 _____ .

DEPARTMENT OF TRANSPORTATION

_____ BY: _____ (SEAL)
Witness «Agent_Name»
TITLE: Right-of-Way Agent

Tax Parcel No. P/O «Tax_Parcel_No»

Prepared by/Return to:
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION
250 Bear-Christiana Road
Bear, DE 19701

TEMPORARY EASEMENT AGREEMENT

THIS TEMPORARY EASEMENT AGREEMENT (hereinafter "**Agreement**") is made and entered into as of this _____ day of _____, 20_____ by and between «Property_Owner» (hereinafter "**Owner**") and the State of Delaware acting by and through the Department of Transportation (hereinafter "**DelDOT**").

WHEREAS, the Owner holds title to certain land located «Property_Location», as shown and noted on Plans for State Project No. «Project_Number», known as Project Parcel No. «State_Parcel_No», which plans are hereby incorporated by this reference and made a part hereof (hereinafter collectively "**Exhibit**"); and

WHEREAS, DelDOT is desirous of obtaining a temporary easement over, under, and across the Owner's land described above (hereinafter "**Property**") to the extent indicated on the Exhibit.

NOW THEREFORE, for and in consideration of «TCE_Value_Written» Dollars ($«TCE_Value_») and other good and valuable consideration, the Owner does hereby grant and convey unto DelDOT a temporary easement and right-of-way limited to the following purposes:

> The temporary use of an area consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres) and all damages incident thereto as shown on Right-of-Way Plan Sheet Nos. «Plan_Sheet_Nos» on the Departments Plans for Contract No. «Project_Number», State Parcel No. «State_Parcel_No», Tax Parcel No. «Tax_Parcel_No», «Property_County» County, Delaware.

DelDOT shall perform all work at its expense in a workmanlike and professional manner. DelDOT, its employees or agents shall not damage or harm the remainder of the Property.

DelDOT is protected from liability pursuant Delaware case law and statutory provisions; this protection is referred to as "sovereign immunity." As a result of this sovereign immunity, DelDOT is not permitted to indemnify, defend or hold harmless any parties including property owners. However, DelDOT's Contractor is required to preserve the Property from damages caused by the execution or non-execution of the work done on the Property, and to restore the Property at the Contractor's expense, as provided in the Contract. In addition, the Contractor is required to indemnify and save harmless DelDOT and its officers and employees from any and all claims, demands and causes of actions every kind and character on account of the negligence or intentional misconduct of that Contractor's employees or agents; including but not limited to responsibility of the Contractor to provide for the protection and safety of all persons and property.

Payment shall be made to Owner upon the issuance of a Notice to Proceed to DelDOT's contractor. The duration of the Agreement is expected to be «TCE_Duration». DelDOT shall have the right to terminate or extend the Agreement due to project advertisement/construction delay or cancellation and pay the Owner a pro-rata share of the land value. This Agreement is binding upon and shall inure to the benefit of the parties hereto their respective heirs, executors, administrators, successors or assigns.

BEING a part of the same lands which «Previous_Owner», by Deed dated «DEED_DATE», and recorded in the Office for the Recorder of Deeds in and for «Property_County» County, Delaware in Deed «Instrument_No», did grant and convey unto «Property_Owner», in fee.

DelDOT's address:
P.O. Box 778
Dover, Delaware 19903

IN WITNESS WHEREOF, the parties have hereunto set his/her/their/its hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

«CORPLLCLP_NAME»

_____	_____	(SEAL)
Witness	By: «Signatory_1»	
_____	_____	(SEAL)
Witness	By: «Signatory_1»	
_____	_____	(SEAL)
Witness	By: «Signatory_1»	

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

Approved this _____ day of _____ 20____ .

DEPARTMENT OF TRANSPORTATION

_____ BY: _____ (SEAL)
Witness «Agent_Name»
TITLE: Right-of-Way Agent

MORTGAGE INFORMATION SHEET

*If you do not have a mortgage please line thru this page and write "none" sign and date

Name:_____

Mortgage Holder's Name:_____

Address shown on your Payment Statement for communications other than payment:_____

_____

Telephone No. shown on your Payment Statement:_____

Your Loan Account No.:_____

If you have a second mortgage or home equity line of credit, please provide us with the following information (a home equity line is the same as a mortgage.):

Mortgage Holder's Name:_____

Address shown on your Payment Statement for communications other than payment:_____

_____

Telephone No. shown on your Payment Statement:_____

Your Loan Account No.:_____

If you have any other liens on your property which need to be paid off or released, please list them below:

_____

_____

_____

_____

_____

This is to authorize State of Delaware, Department of Transportation, to obtain a payoff of the above referenced obligations or to obtain a release if we are only transferring a portion of our property to the State of Delaware.

Signature _____ Date _____ SSN: xxx-xx- _____

Signature _____ Date _____ SSN: xxx-xx- _____

AGREEMENT TO WAIVE APPRAISAL

WE, «Property_Owner» have been informed of the Delaware Department of Transportation's (DelDOT) Project No. «Project_Number» and its need to obtain a Fee Simple acquisition area containing «FEE_Square_Feet» square feet containing the improvement of «FEE_Improvements», and a Permanent Easement area containing «PE_Square_Feet» square feet from our property identified as Parcel No. «State_Parcel_No» located at «Property_Location», «Recorded_in_County» County Tax Map No. «Tax_Parcel_No»

WE further have been informed of our right under State and Federal Law to receive a fair market value offer based on a reviewed and approved real property appraisal.

However, WE hereby agree to waive our right to have a real property appraisal report prepared for our property required for Project No. «Project_Number»

In Witness Whereof, the Parties have hereunto caused this Instrument to be executed intending to be bound this _____ day of _____ 20___.

AGREED:

_____ _____
Witness «Signatory_1»

_____ _____
Witness «Signatory_2»

ACCEPTED:

Delaware Department of Transportation

_____ **By:** _____
Witness «Agent_Name»
Right-of-Way Agent

Agreement as to the Distribution of Proceeds

- **State Project No. TXXXXXXXXXX… F.A.P. No. XXXX-XXX… xxx County**
- **Project name**
- **Tax Parcel No. xxxxxxxx; State Parcel No. xxx**
- **Property of**

The undersigned Owner hereby authorizes and directs **Delaware Department of Transportation** to distribute the proceeds from the captioned settlement as follows:

$ _____ to _____

$ _____ to _____

$ _____ to _____

$ _____ to _____

_____ _____
By: DATE

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … FAP No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

I have been instructed by the Delaware Department of Transportation to acquire the necessary Rights-of-Way for construction and maintenance of the above captioned project. Accordingly, we had your property studied and had the interest that the Department must acquire appraised by a real estate appraiser.

«Agent_Name», Real Estate Representative, has advised me of his/her contacts with you regarding this project. In order to proceed with the construction of this project, I must ensure that possession of the proposed right-of-way is obtained. Since settlement regarding our purchase offer has not been reached, we must proceed with the condemnation process. This will ensure that the right of way is available for construction and yet still allow us the opportunity of having the court system, if necessary, determine the issue of just compensation.

The various preliminary procedural steps, which must be taken, will be completed within 8 to 10 days of the date of this letter. If, after further consideration, you will allow yourself to agree to the purchase, I would appreciate it if you would advise our office. You can reach me at 302-760-2231.

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

RR:

DelDOT Right-of-Way

Document No. ACQ 23a
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … FAP No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

I have been instructed by the Delaware Department of Transportation to acquire the necessary rights-of-way for construction and maintenance of the above captioned project. Accordingly, an approved right-of-way agent studied your property and investigated market data in order to present an offer to you for project needs.

«Agent_Name», Right-of-Way Agent, has advised me of his/her contacts with you regarding this project. In order to proceed with the construction of this project, I must ensure that possession of the proposed right-of-way is obtained. Since settlement regarding our purchase offer has not been reached, we must proceed towards the condemnation process. This will ensure that the right of way is available for construction and yet still allow us the opportunity of having the court system, if necessary, determine the issue of just compensation.

The purchase offer and any additional negotiations previously presented to you have been rescinded. DelDOT will have a formal appraisal report prepared by an approved, independent appraiser. As part of the appraisal process, the appraiser must personally inspect the property and provide you and/or your representative a reasonable opportunity to accompany during the inspection. This personal contact with the appraiser will afford you and/or your representative the opportunity to discuss pertinent aspects of this project and the affect it has on your property. The appraiser will contact you, or your representative, in the near future to schedule an appointment. Once the report

has been submitted and reviewed, «Agent_Name», will contact you with the new value for settlement consideration based on the appraisal findings.

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

RR:

IDENTITY VERIFICATION

PROJECT/PARCEL NO: _____

NAME: _____

ADDRESS: _____

_____

SOURCE OF IDENTIFICATION: Driver's License OR Other Photo Identification (circle one)

LICENSE NO: _____

IF OTHER, DESCRIBE: _____

EXPIRATION DATE: _____

_____
Right-of-Agent

_____
Printed Name

_____
Date

NOTICE OF OPTION TO REPURCHASE SURPLUS PROPERTY

State Project No. **«Project_Number»** F.A.P. No. **«FAP_Number»**
Project Title **«Project_Name»**
Tax Parcel No. **«Tax_Parcel_No»** State Parcel No. **«State_Parcel_No»**
Owner **«Property_Owner»**

The Delaware Department of Transportation (DelDOT) acquires private property by way of gift, purchase, or condemnation for transportation related needs. From time to time, all or portions of that property may be declared surplus to public necessity. If declared surplus, the property may be sold.

Delaware law requires that, before marketing surplus property for sale, the prior owner or successor in interest must be notified of the right to repurchase the property at its approved appraised value, unless that right has been waived.

Upon notification by DelDOT, the prior owner or successor in interest will have 30 days to give notice of his or her interest in repurchasing. Upon notification by DelDOT of the approved appraised value, the prior owner will have 30 days to accept or reject the offer. Settlement shall occur within 120 days of the notice of the approved fair market value. All notices shall be in writing.

If, through no fault of DelDOT, the sale is not finalized within the allotted time periods, DelDOT may void the sale and proceed with public sale.

As the current or former owner of the property identified above, you are hereby notified of your right to repurchase the property if all or any portion of it is declared surplus by DelDOT.

With this knowledge and on this _____ day of _____, 20_____, I/We hereby waive _____ / do not waive _____, my/our right to repurchase such property if it is declared surplus byDelDOT.

_____ _____
Witness

_____ _____
Witness

If you elect not to waive your right to repurchase, please write your address and telephone numbers below:
Address:_____ Telephone Day_____
_____ Evening_____
_____

RIGHT-OF-WAY AGENT CERTIFICATION

State Project No. «Project_Number» Federal-Aid Project No. «FAP_Number»

Project Title: «Project_Name»

Owner «Property_Owner» Parcel No. «State_Parcel_No»

The undersigned does hereby certify:

1. That the written agreement signed by the property owner embodies all of the considerations agreed upon between the property owner and myself as the negotiating real estate representative.

2. That the agreement was reached without coercion, promises, or threats of any kind whatsoever, by or to either party.

3. That it is understood that this parcel is acquired for use in connection with a State/Federal-Aid Highway project.

4. That I have no direct or indirect present or contemplated future personal interest in this parcel or any benefit from the acquisition of such property other than the remuneration from the State for performance of my assigned duties.

«Agent_Name» Consultant Right-of-Way Agent	Date

DelDOT Right-of-Way

Document No. ACQ 26
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

DATE

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number»
«Project_Name»
Parcel No. «State_Parcel_No»
Owner is «Addressee_Name»
Tenant is «Tenant»

Dear «Salutation»:

Please see enclosed checks for benefits of the relocation of «Tenant» and family. Check No. 0000 in the amount of $0.00 is to be used as a down payment assistance, and Check No. 0000 in the amount of $0.00 is to be used for moving expenses.

By having you sign below and returning this signed document, you acknowledge that you have received checks No. 0000 & 0000 and understand the disbursement of these funds.

Sincerely,

Rosemary Richardson
Statewide Acquisition & Relocation Manager

_____ _____(Seal)
Witness By:

SJD
Check No. 0000
Check No. 0000

DelDOT Right-of-Way

Document No. ACQ 27
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

TEMPORARY TRESPASS AGREEMENT

THIS TEMPORARY TRESPASS AGREEMENT (hereinafter **"Agreement"**) is made and entered into as of this _____ day of _____, 20____ by and between «Property_Owner» (hereafter **"Grantor"**) and the State of Delaware by and through the Department of Transportation (hereafter **"Grantee"**).

WHEREAS, the Grantor attests to being the owner of certain land located at «Property_Location», Delaware and further as «Recorded_in_County» County Tax Parcel Number «Tax_Parcel_No»;

WHEREAS, the Grantee is requesting permission to enter onto the Grantor's land described above (hereinafter **"Property"**).

NOW THEREFORE, for good and valuable consideration, the Grantor does hereby grant unto the Grantee permission to enter onto the Property to the extent only as necessary to perform the improvements within the FEE Acquisition (FEE) area consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), Permanent Easement (PE) area consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and the Temporary Easement (TCE) area consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres) for the purposes described below:

«Project_Description»

Grantee shall perform all work at its expense in a workmanlike and professional manner. Grantee, its employees or agents shall not damage or harm the remainder of the Property. All work shall be undertaken and completed by Grantee in accordance with all applicable federal, state and local laws, codes, ordinances and regulations, including, without limitation, those relating to environmental and life safety matters. Grantee shall be responsible for timely securing, at its cost, all permits, consents and approvals required for the work. Grantee shall be responsible for maintaining and supervising all safety precautions and programs in connection with the work. Grantee shall not allow any mechanic's or other liens arising from the work to be filed against the Property and in the event of any such lien Grantee shall cause the same to be discharged or released (by payment, bond or otherwise) within ten (10) days of Grantor's demand. Grantee shall promptly repair or replace (as the case may be) any portions of the Property that are damaged during the

work. Upon completion of the work Grantee shall remove and properly dispose of all waste materials and rubbish arising from the work.

Grantee is protected from liability pursuant to common law, Article I, §9 of the Delaware Constitution, 10 *Del. C*. §4001, *et seq.,* and other statutory and constitutional provisions; this protection is referred to as "sovereign immunity". As a result of this sovereign immunity, Grantee is not permitted to indemnify, defend or hold harmless any parties including property owner(s). However, Grantee shall require its Contractor(s) to indemnify, defend, and save harmless the Grantor from any and all claims, demands and causes of actions every kind and character on account of negligence or intentional misconduct of that contractor's employees or agents; including but not limited to responsibility of the Contractor to provide for the protection and safety of all persons and property.

This Agreement does not imply conveyance of any real property rights and shall terminate upon completion and acceptance of the work by Grantor.

Grantor shall be entitled to impose from time to time such rules and regulations applicable to the work as may be deemed reasonably necessary to properly pursue the work and to protect the Property and its occupants.

Grantor is making the Property available to Grantee acknowledges that it has had the opportunity to inspect and evaluate the Property and that it has determined that the Property is suitable for Grantee's purposes. Grantee's entry upon and use of the Property shall be at Grantee's sole risk and expense.

[Signature Page Follows]

IN WITNESS HEREOF, the parties hereto have set his/her/their/its hands and seals the day, month and year as written in the first paragraph of this Agreement.

By: _____ _____
Property Owner Signature Project Engineer/Supervisor

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

Approved this _____ day of _____, 20_____ .

DEPARTMENT OF TRANSPORTATION

_____ BY: _____
Witness

TITLE: _____

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

TEMPORARY TRESPASS AGREEMENT

THIS TEMPORARY TRESPASS AGREEMENT (hereinafter **"Agreement"**) is made and entered into as of this _____ day of _____, 20____ by and between «Property Owner» (hereafter **"Grantor"**) and the State of Delaware by and through the Department of Transportation (hereafter **"Grantee"**) P.O. Box 778, Dover, Delaware 19903.

WHEREAS, the Grantor attests to being the owner of certain land located at «Property_Location», Delaware and further as «Recorded_in_County» County Tax Parcel Number «Tax_Parcel_No»;

WHEREAS, the Grantee is requesting permission to enter onto the Grantor's land described above (hereinafter **"Property"**); and

WHEREAS, the Grantor is entitled to receive compensation for our project needs, the Grantee is asking you to consider waiving receipt of compensation and donating those needs in lieu of the benefit this project will provide to the remainder of your property.

NOW THEREFORE, for good and valuable consideration of Ten Dollars ($10.00), the Grantor does hereby grant unto the Grantee permission to enter onto the Property to the extent only as necessary to perform the improvements within the FEE Acquisition (FEE) area consisting of approximately «FEE_Square_Feet» square feet («FEE_Acres» acres), Permanent Easement (PE) area consisting of approximately «PE_Square_Feet» square feet («PE_Acres» acres) and the Temporary Easement (TCE) area consisting of approximately «TCE_Square_Feet» square feet («TCE_Acres» acres) for the purposes described below:

«Project_Description»

Grantee shall perform all work at its expense in a workmanlike and professional manner. Grantee, its employees or agents shall not damage or harm the remainder of the Property. All work shall be undertaken and completed by Grantee in accordance with all applicable federal, state and local laws, codes, ordinances and regulations, including, without limitation, those relating to environmental and life safety matters. Grantee shall be responsible for timely securing, at its cost, all permits, consents and approvals required for the work. Grantee shall be responsible for maintaining and supervising all safety precautions and programs in connection with the work.

Grantee shall not allow any mechanic's or other liens arising from the work to be filed against the Property and in the event of any such lien Grantee shall cause the same to be discharged or released (by payment, bond or otherwise) within ten (10) days of Grantor's demand. Grantee shall promptly repair or replace (as the case may be) any portions of the Property that are damaged during the work. Upon completion of the work Grantee shall remove and properly dispose of all waste materials and rubbish arising from the work.

Grantee is protected from liability pursuant to common law, Article I, §9 of the Delaware Constitution, 10 *Del. C*. §4001, *et seq.,* and other statutory and constitutional provisions; this protection is referred to as "sovereign immunity". As a result of this sovereign immunity, Grantee is not permitted to indemnify, defend or hold harmless any parties including property owner(s). However, Grantee shall require its Contractor(s) to indemnify, defend, and save harmless the Grantor from any and all claims, demands and causes of actions every kind and character on account of negligence or intentional misconduct of that contractor's employees or agents; including but not limited to responsibility of the Contractor to provide for the protection and safety of all persons and property.

This Agreement does not imply conveyance of any real property rights and shall terminate upon completion and acceptance of the work by Grantor.

Grantor shall be entitled to impose from time to time such rules and regulations applicable to the work as may be deemed reasonably necessary to properly pursue the work and to protect the Property and its occupants.

Grantor is making the Property available to Grantee, Grantee acknowledges that it has had the opportunity to inspect and evaluate the Property and that it has determined that the Property is suitable for Grantee's purposes. Grantee's entry upon and use of the Property shall be at Grantee's sole risk and expense.

[Signature Page Follows]

IN WITNESS HEREOF, the parties hereto have set his/her/their/its hands and seals the day, month and year as written in the first paragraph of this Agreement.

By: _____ _____
Property Owner Signature Project Engineer/Supervisor

FOR DEPARTMENT OF TRANSPORTATION USE ONLY
DO NOT WRITE BELOW THIS LINE

Approved this _____ day of _____, 20_____ .

DEPARTMENT OF TRANSPORTATION

_____ BY: _____
Witness

TITLE: _____

UNECONOMIC REMNANT PURCHASE FORM

State Project No. «Project_Number» **Federal-Aid Project No**. «FAP_Number»

Project Title: «Project_Name»

Parcel No. «State_Parcel_No» **Area of Excess Land** _____

Acquired From: «Property_Owner»

Was the excess purchased because it was an uneconomic remnant? Yes _____ No _____

1. Consideration paid for excess parcel. $ _____

2. Amount of above consideration which is Federal participating. $ _____

3. Amount of State Funds (Difference between 1 and 2). $ _____

Recommended By:

_____ _____
Right-of-Way Agent Date

Approved By:

_____ _____
Rosemary Richardson, Statewide Acquisitions and Relocation Manager Date

_____ _____
Maureen Zito, Appraisals Manager Date

DelDOT Right-of-Way

Document No. ACQ 29
March 14, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

OWNER DISCLAIMER

On this _____ day of _____, 20_____, the undersigned, _____ for and in consideration of the sum of One Dollar ($1.00), hereby renounce(s), remise(s), and forever quitclaim(s) any and all rights, titles, or interests in the improvements as described below:

_____

_____

_____

located on land which is being acquired by the State under State Project No. T00000000 and Parcel No. , and which land is all or part of a certain Indenture of Easement, dated the day of , between, , Party of the First Part, and State of Delaware by and through the Department of Transportation, Party of the Second Part, and of record in the Office of the Recorder of Deeds in New Castle County, in Deed Record or Instrument Number _____.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

Signed, sealed, and delivered
in the presence of:

_____ _____ (SEAL)
Witness

_____ _____ (SEAL)
Witness

_____ _____ (SEAL)
Witness

_____ _____ (SEAL)
Witness

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
REAL ESTATE SECTION

TENANT RELEASE

On this _____ day of _____, 20__, the undersigned, «Tenant» for and in consideration of the sum of _____ Dollars ($_____) hereby grant(s), convey(s), remise(s), release(s), and forever quitclaims unto the State of Delaware by and through the Department of Transportation all rights, titles and interests in and to (improvements) (separately held interests) as described below:

_____

_____

_____

and disclaims any interest in the lands surrounding or upon which said improvements rest, insofar as said (improvements) (separately held interests) are situate on, under and/or over a part of the land(s) of «Property_Owner» part of which land is being acquired by the State of Delaware under State Project No. «Project_Number» and Parcel No. «State_Parcel_No», and which said land is a part of a certain Indenture of (Lease) (Easement) (Agreement) dated the ____ day of _____ A.D. _____ between _____ _____ _____, Party of the First Part, and _____ _____, Party of the Second Part, and of record in the Office of the Recorder of Deeds in _____ County, in Deed Record or Instrument Number _____ _____.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

Signed, sealed, and delivered
in the presence of:

_____	_____	
Witness	«Signatory_1»	
_____	_____	(SEAL)
Witness	«Signatory_2»	
_____	_____	(SEAL)
Witness	«Signatory_3»	
_____	_____	(SEAL)
Witness	«Signatory_4»	

DEPARTMENT OF TRANSPORTATION

Approved this _____ day of _____ 20

_____	BY: _____	(SEAL)
Witness	TITLE:	

TEMPORARY TRESPASS AGREEMENT AFTER SETTLEMENT

State Project No. «Project_Number» Federal Aid Project No. «FAP_Number»

Project Title «Project_Name»

Parcel No. «State_Parcel_No»

Address: _____

This **Agreement** made and entered into this _____ day of _____, 20_____, by and between the State of Delaware, Department of Transportation, Right-of-Way Section, hereinafter referred to as "**OWNER**," and c hereinafter referred to as "**TENANT**."

Whereas, the Department is vested in the fee simple title of the real property designated as County Tax Parcel No. _____ known as _____as of _____.

Whereas, due to inclement weather conditions _____ identified as Personal Property owned by _____ was not removed from the said real property on _____.

Now Therefore, the Department hereby agrees to the _____ remaining on the real property until weather conditions permits removal.

1. INDEMNIFICATION: **Tenant** agrees to indemnify the **Owner** against any and all actions or claims which may be asserted or brought against the **Owner** that are based upon the **Tenant**'s acts or omissions in connection with **Tenant**'s use and occupancy of the demised property. In case of fire or casualty, the **Owner** is not liable to **Tenants** for any loss. It is recommended that **Tenant** obtain a tenant's insurance policy covering damage to personal property and liability.

2. The **Tenant** shall not store personal property in said _____. **Tenant** shall assure the _____ will remain empty.

3. The **Tenant** shall have the said _____ removed from _____ County Tax Parcel No. _____ known as _____ at the earliest possible date.

4. The **Tenant** shall notify the **Owner** of the date of removal and shall afford the **Owner** the opportunity to monitor said removal of the _____.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year aforesaid.

_____ _____ (SEAL)
Witness Tenant

DEPARTMENT OF TRANSPORTATION

_____ _____ (SEAL)
Witness Acquisition Manager

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

The Delaware Department of Transportation (DelDOT) has a project to «Project_Description».

While some of the work will take place within the existing State's Right-of-Way, it has been determined that your deed still reads to the center of the roadway, whereby of record, you still are the owner.

In accordance with legislation passed in 1935, the State Highway Department took over the maintenance and repair of all public roads in the state. Under Title 17, Chapter 5, §509 of the Delaware Code; all public roads, causeways and bridges laid out as such, or made by lawful authority, or which have been used as such and maintained at the public charge for 20 years or more are declared to be common highways. The usage by the public for 20 years or more of any road shall not cause the road to become a common highway or public road **unless** the same has been maintained at the public charge for 20 years or more. In essence, this amounts to each adjoining property owner donating a portion of their property to establish the required road width. Formal deeds of transference were not prepared and as such some property deeds still read ownership to the centerline of the roadway.

Whenever DelDOT has a project where these types of properties are located, we attempt to correct the situation by asking owners to transfer by deed the area within the existing roadway.

The main area of concern, we have for the property owner, is one of liability as you still are the underlying fee owner and possibly subject to being engaged in a lawsuit.

There is no guarantee that your tax base will be reduced, as the area you are being asked to deed over is small in comparison to your overall property size.

Enclosed please find a copy of our plan sheet showing the area colored in green indicating the area you are being asked to deed over. The area amounts to «RW_Square_Feet» square feet («RW_Acres» acres).

If you agree to transfer, by deed, the area within the existing right-of-way, please sign below and return to me in the self-addressed stamped envelope. Upon receipt of your agreement, we will prepare the deed for your signature and have it recorded. I have enclosed a copy of this letter for you to retain until I return a deed to you for signature.

Thank you for your assistance and cooperation in this matter. Should you have questions or concerns, please feel free to call me at «Agent_Telephone» via e-mail at «Agent_EMail».

Sincerely,

«Agent_Name»
Real Estate Representative

Initials:initials

We/I hereby agree to voluntarily deed over to the State of Delaware «RW_Square_Feet» square feet, which is within the existing roadway.

_____
«Signatory_1»

_____
«Signatory_2»

REQUEST FOR PAYMENT

Project No._____ F.A.P. No. _____

Project Title _____

Parcel No. _____

Owner _____

Account Code:	UNSPSC Category:	Amount:	Fund Affected:
_____	_____	_____	_____

Property Management use only:

Agreement No.: Expense Table I.D.:

Payee _____

Payee's Address _____

_____

_____

Payee's E.I./S.S. No._____

Invoice Number/Date:_____ Amount of Payment $_____

_____**SEPARATE CHECK TO BE PRINTED (DON'T COMBINE PROPERTIES)**

Description of payment: _____

_____**THE CHECK IS TO BE RETURNED TO THE OFFICE REQUESTING PAYMENT**

This request must be accompanied by an executed and approved acquisition document, relocation form, vendor's statement, or other supporting documentation.

I certify that this request for payment is proper and within the scope of my authority to submit as defined in the Real Estate Manual

_____ Check if 1099 is needed

_____ _____

NAME (fill in) Date

KENT COUNTY LEVY COURT

555 South Bay Rd Dover, DE 19901 (302) 744-2300 www.kentcountyde.gov

DEPARTMENT OF FINANCE

DIVISION OF ASSESSMENT

New Property Owner Information Form

WARNING: The address on this form is required by 25 Del. C. 133. Failure to provide this information may result in condemnation and sale of your real estate for failure to pay county property taxes and/or fees.

Parcel Identification Number/s:

__ __ - __ __ - __ __ __ . __ __ - __ __ - __ __ . __ __ / __ __ __

Name and Address for Receiving Assessment, Property Tax, and Fee Information and Bills. **If you will be moving soon from your current address, Use your NEW ADDRESS on the lines below:**

Name: State of Delaware, Department of Transportation

Mailing Address: P. O. Box 778

Dover, DE 19903

Phone Number (Daytime): (302) 326-5823

Name of Closing Attorney: Kenneth S. Feaster, Jr., Esq.

Attorney Phone Number: (302) 760-2158

Signature of Owner/Buyer: _____ Date: _____

Questions Concerning this form should be directed to Kent County Assessment Office at (302)744-2401

Department of Finance Form 7/10/2024

Serving Kent County With Pride!

DelDOT Right-of-Way

Document No. ACQ34
March 24, 2025

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

M E M O R A N D U M

TO: Rosemary Richardson, Statewide Acquisitions and Relocation Manager

FROM: BLANK, Right-of-Way Agent

DATE:

RE: Request for Advancement of Funds
Project No. T200511301 … FAP No. NH-2006(18) … New Castle County
US 301, Maryland State Line to SR 1
Tax Parcel Nos. 13-012.00-036 and 035; State Parcel Nos. 209 and 210
Property of Amazing Grace Outreach Ministries

This memorandum is for the request for the advancement of funds in the amount of $50,000 for professional services including but not limited to appraisal, engineering/planning and legal services. The owner being a Not for Profit entity does not have the adequate funds available to them to continue to negotiate. This will be considered as Paid out of Closing payment resulting in a reduction of just compensation owed by DelDOT at time of settlement.

OK to PAY

_____ _____
Rosemary Richardson Date
Statewide Acquisitions and Relocation Manager

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

MEMORANDUM

TO: Michelle Glackin, Paralegal

FROM: Rosemary Richardson, Statewide Acquisition and Relocation Manager

DATE: March 24, 2025

RE: **Project No. «Project_Number» … FAP No. «FAP_Number» … «Property_County» County**
«Project_Name»
Title Search Requests

Please have the following Title Searches prepared for the above referenced project. The Title Searches should be completed and delivered to the Statewide Acquisitions and Relocation Manager by DATE.

State Parcel No.	Tax Parcel No.	Owner

TRANSFER OF AGENT FORM

DELAWARE DEPARTMENT OF TRANSPORTATION – REAL ESTATE SECTION

Dear Landowner/Tenant:

Please sign below if all of the following apply:

- **You are due or will be due payment from the Department of Transportation.**
- **You have manually filled out the Federal W-9 form.**
- **You give permission to the Department of Transportation and/or the Division of Accounting to enter the information from your manual form into the online system.**
- **Check here if you are a State employee _____.**

Signature: _____

Printed Name: «Property_Owner»

Phone Number: «Contact_Phone_»

E-mail Address: noemail@yahoo.com

Date Signed: _____

DelDOT ROW Agent: «Agent_Name»

DelDOT Right-of-Way

Document No. ACQ 39
March 14, 2025

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ►

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

___ – ___ – ____

or

Employer identification number

__ – _____

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** ► **Date** ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

DelDOT Right-of-Way

Cat. No. 10231X

Form **W-9** (Rev. 10-2018)
Document No. ACQ40
March 24, 2025

RESET

NEW CASTLE COUNTY
REALTY TRANSFER TAX RETURN
AND AFFIDAVIT OF VALUE

DEPARTMENT OF ADMINISTRATION
NEW CASTLE COUNTY GOVERNMENT CENTER
87 READS WAY
NEW CASTLE, DE 19720

Form must be completed for all conveyances and presented at time of recording

PART A – SELLER'S INFORMATION (GRANTOR)		**PART B – BUYER'S INFORMATION (GRANTEE)**	
Name of Seller		Name of Buyer State of Delaware - Department of Transportation	
Address		Address P.O. Box 778	
City		City Dover	
State	Zip	State Delaware	Zip 19903

PART C- PROPERTY LOCATION		**THE PROPERTY IS:**	
Parcel No.		☐	Industrial/Commercial
Address		☐	Residential
City	County	☐	Farmland
State DE	Zip	☐	Other

PART D – COMPUTATION OF TAX

1. Conveyances with full consideration Enter the total amount of consideration **OR**	$	
2. Conveyances without full consideration a. Enter the actual full monetary worth of the property and b. Enter New Castle County's Tax Assessment of the Property	$ $	
3. Computation of Tax a. Enter the amount on Line 1 OR the higher of Lines 2a and 2b b. Multiply Line 3a. by 1.5 percent c. Tax due and payable with the filing of this document if not claiming an exemption	$	 x1.5%
4. Claim of Partial Exemption a. If you claim a partial exemption from the Tax, check here and complete the Affidavit of Exemption on the next page. b. Enter the amount from Line 3a. NOTE: if claiming the FIRST-TIME HOME BUYER exemption this amount cannot exceed $400,000 c. Multiply Line 4b. by 0.75 percent (0.75%) NOTE: if claiming the FIRST-TIME HOME BUYER exemption this amount cannot exceed $3,000 d. Tax Due and payable with the filing of this document (Line 3c minus Line 4c)	 $ $	☐
5. Claim of Full Exemption If you believe this conveyance is wholly exempt from the tax, check here and Complete the Affidavit of Exemption on the next page.		Tax Exempt ☐

PART E –

Do you consider the total sales price to be the full market value of the real estate on the date of the Sale?
If no, explain. EXEMPT FROM NCC REAL ESTATE TRANSFER TAX PER NCC CODE SECTION 14.10-001A

PART F

Seller and Buyer hereby attest that their computation of the Tax, as set forth on this Return is based on the highest value as defined by §14-11110.001(A) of the New Castle County Code, and that this affidavit (including any information presented in support of any claim of exemption) is true and correct to the best of their knowledge, information, and belief.

Seller's Signature	Buyer's Signature
Seller's Signature or Title	Buyer's Signature or Title

SWORN TO AND SUBSCRIBED before me this_____ day of _____, 20_____.

_____
NOTORIAL OFFICER (as to Seller)

SWORN TO AND SUBSCRIBED before me this_____ day of _____, 20_____.

_____
NOTORIAL OFFICER (as to Buyer)

DelDOT Right-of-Way **Document No. ACQ 41**

AFFIDAVIT OF EXEMPTION

1. I, the Undersigned, being duly sworn according to law, swear/affirm that I am the buyer in the transaction reported on this Realty Transfer Tax Return (If more than one person is taking title to the property, **ALL buyers must sign this Affidavit).**

2. I believe the transaction is exempt from the New Castle County Real Property Tax ("the Tax") on the basis of the following provision of §14-11110.001(A) of the New Castle County Code:

☐	Will or Intestacy	☐	Gift to §501 (c) (3) Organization
☐	Correctional Deed	☒	Governmental
☐	Religious Organization	☐	Parent/Child
☐	Mortgage/Mortgage Default	☐	Husband & Wife/Divorce
☐	Trustee/Straw Party	☐	Corporation/Partnership/Subsidiary
☐	Lease	☐	Housing Authority/Industrial Development
☐	Nominal Value (Under $100)	☐	First-Time Home Buyer
☐	Farm-to- Farm	☐	Other (Specify with Particularity)
☐	Sibling to Sibling		

3. If I am claiming the first-time home buyer exemption,
   a. I have **never** held any legal interest in any residential real property **anywhere**. (if a husband and wife or other individuals are purchasing in any form of co-tenancy, **none** of them has **ever** held such an interest.)
   b. I intend to occupy the property as my principal residence within 90 days.

4. If I am claiming the farm-to-farm exemption,
   a. This property is currently assessed under the State Farmland Assessment Act.
   b. I intend to continue to use this property for agricultural, horticultural, or forest use so long as I/we own it.
   c. I recognize that, if the property is put to any other use within three years after the date of this transaction, New Castle County will levy the otherwise exempted transfer tax, which will immediately become due and be payable by the then-current owner, as well as any rollback taxes that may be due under 9 Del. C. §8335 (d).

5. Upon request by New Castle County, I agree to submit all documents necessary to prove my entitlement to this exemption and, any additional documentation the County believes necessary to determine my eligibility for exemption.

6. I swear/affirm, under penalty of law, that the information contained herein, the statements below, and in any documents appended hereto is true and correct to the best of my knowledge, information, and belief.

_____(Seal) _____(Seal)
Buyer Buyer

SWORN TO AND SUBSCRIBED before me this _____day of _____,_____.

_____(Seal)
NOTARIAL OFFICER

LENDER'S CERTIFICATION
(Must be completed if first time home buyer exemption is claimed)

On behalf of _____, I, _____, hereby certify that
(Lending Institution/mortgagee) (Name)
I am familiar with the loan made by me/my institution in connection with this transaction and, to the best of my knowledge and belief, no information submitted by the buyers or reported to me or to this institution indicates that any of the persons taking title to the real property that is the subject of this transaction has ever held a legal interest in any residential real property.

_____
Signature

_____
Title

AFFIDAVIT FOR REALTY TRANSFER TAX ON UNICORPORATED AREAS IN SUSSEX COUNTY PRUSUANT TO CHAPTER 103 OF THE SUSSEX COUNTY CODE

NOTE: Affidavit is required on all transaction (incorporated or unincorporated areas)

Part A – To be Completed By GRANTOR/SELLER

NAME
ADDRESS
CITY
STATE ZIP

SOCIAL SECURITY # _____
or
EMPLOYER I.D. # _____

Part B – To be Completed by GRANTEE/BUYER

NAME **State of Delaware Department of Transportation**
ADDRESS **P.O. Box 778**
CITY **Dover**
STATE **Delaware** ZIP **19903**

SOCIAL SECURITY # _____
EMPLOYER I.D. # **51-6000279**

Part C – PROPERTY LOCATION

District _____ Map _____ Parcel _____

Part D – COMPUTATION OF THE TAX

1. CONVEYANCES WITH CONSIDERATION – Enter consideration Received $ _____
2. CONVEYANCES WITHOUT CONSIDERATION— Enter Highest Assessed Value for Local Tax Purposes $ _____
3. Enter the Greater, Line 1 or Line 2 $ _____
4. Multiply Line 3 time 1%--Tax Due and Payable $ **EXEMPT**

EXEMPT CONVEYANCES: If transportation is exempt for Transfer tax, explain the basis for the exemption:
This transfer is exempt from the Delaware Real Estate transfer tax being a conveyance from the State of Delaware pursuant to 30 Del. C. Sec. 5401 (1) (m).

First Time Home Buyer? Yes ☐ No ☒ (If "Yes", attach First time Home Buyer Affidavit)

Sworn and Subscribed before me on this _____ day of _____ , 20 _____

_____ _____
Notary

_____

OFFICE USE ONLY:

DelDOT Right-of-Way

Document No. ACQ43
March 24, 2025

Sussex Affidavit

Delaware Division of Revenue
820 N. French Street, P.O. Box 8763
Wilmington, DE 19899-8763

REAL ESTATE TAX RETURN DECLARATION OF ESTIMATED INCOME TAX

FORM 5403

Reset

Print Form

DO NOT WRITE OR STAPLE IN THIS AREA

Form 5403 must be completed for all conveyances, and must be presented at the time of recording.

1. Description and address of property transferred (include property tax parcel number):

Tax Parcel Number: County: ☐ New Castle ☐ Kent ☒ Sussex Date of Transfer: MM DD YY

2. Transferor/Seller is:

- ☒ Individual or Revocable Living Trust
- ☐ Corporation
- ☐ Trust or Estate
- ☐ Business Trust
- ☐ Partnership
- ☐ S Corporation
- ☐ Limited Liability Company
- ☐ Other:

3. Transferor or Seller acquired property by:

- ☒ Purchase
- ☐ Gift
- ☐ Inheritance
- ☐ 1031 Exchange
- ☐ Foreclosure/Repossession
- ☐ Other:

4. Transferor/Seller's name; SSN or EIN; and address to which correspondence is to be mailed after settlement. (Enter only one name and SSN or EIN per return. If more than one transferor/ seller, use separate forms for each; however, if Transferors/Sellers are spouses, enter only the primary taxpayer **name and SSN, and only file one return. If transferor/seller is not an individual, list only EIN of non-individual transferor/seller and file only one Form 5403 for such transferor/seller – no Form 5403 should be filed for the members, partners, stockholders, trustees or other individuals or entities having** an ownership interest in any such non-individual transferor/seller.)

Enter Social Security Number or Employer Identification Number of the Transferor/Seller

Name of Transferor/Seller		
Address		
City	State	ZIP Code

5. If applicable, check appropriate box. (Check no more than one box.)

- ☒ Transferor/seller is a resident (a) individual, (b) pass-through entity or (c) corporation, and not subject to withholding under 30 Del. C §§1126, 1606 or 1909;
- ☐ Sale or exchange exempt from capital gain recognition;
- ☐ Gain realized excluded from income for tax year of sale or exchange.
- ☐ Sale exempt due to foreclosure. (See Instructions)

DF24018019999

If any box in Section 5 is checked, DO NOT complete Sections 6, 7 and 8 below. No payment is due at this time.

6. Computation of payment and tax to be withheld. (See instructions.)

6.a	Total sales price	6.a $
6.b	Less selling expenses/reductions to sale price	6.b $
6.c	Net sales price (Subtract line 6.b from line 6.a)	6.c $
6.d	Adjusted basis of property or liens paid at settlement	6.d $
6.e	Total gain (Subtract line 6.d from line 6.c)	6.e $
6.f	Delaware estimated income tax due - multiply line 6.e by 8.7% for C corp., and by 6.6% for all others	6.f $

NOTE: If section 6 is not filled out or incomplete, the required 6.6% or 8.7% will be withheld from the net proceeds at settlement and submitted to the Division of Revenue as required by law.

7. ☐ Check this box if the transferor/seller is reporting gain under the installment method. No tax is payable at this time.
Note: If completing this section, when you recognize any capital gain arising from the sale of property in the State of Delaware, you must report and remit the tax due to the State of Delaware on that transaction.

8. Delaware estimated income tax paid (See instructions). $ 0.00

Under penalty of perjury, I declare that I have examined this return and to the best of my knowledge and belief, it is true, correct and complete.
If prepared by a person other than the transferor/seller, the declaration is based on all information of which the preparer has any knowledge.
Transferor/Seller, Please sign and print full name and title (if any):

Signature Name Title

(Revised 11/2018)
DelDOT Right-of-Way

Delaware Form 5403
Real Estate Tax Return
Declaration of Estimated Income Tax
Instructions

Every non-resident individual, pass through entity or corporation who makes, executes, delivers, accepts, or presents for recording any document, except those exemptions defined or described in Sections 1126, 1606 and 1909 of Title 30, or in whose behalf any document is made, executed, delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, an estimated tax payment at a rate of 8.7% for C Corporations and 6.6% for all other entities of the value of the gain on the property sold as represented by such document, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be paid by the Transferor(s)/Seller(s).

SPECIFIC INSTRUCTIONS

Line 1. Enter a description and address of the property transferred/sold, including the tax parcel number and date of transfer. If you need to describe transfer issues please do so here.

Line 2. Check the appropriate box to indicate whether the Transferor/Seller is an Individual or Revocable Living Trust, a Corporation, Trust or Estate, Business Trust, Partnership, S corporation, Limited Liability Company, or other, such as a Government Agency or Non-Profit corporation.

Line 3. Check the appropriate box to indicate how the transferor/ seller acquired the property.

Line 4. Enter the Transferor/Seller's name; SSN or EIN; and address to which correspondence is to be mailed after settlement. (Enter only one name and SSN or EIN per return. If more than one transferor/ seller, use separate forms for each; however, if Transferors/Sellers are husband and wife, enter only the primary taxpayer name and SSN, and only file one return. If transferor/seller is not an individual, list only EIN of non-individual transferor/seller and file only one Form 5403 for such transferor/seller – no Form 5403 should be filed for the members, partners, stockholders, trustees or other individuals or entities having an ownership interest in any such non-individual transferor/seller.)

Line 5. Check the appropriate box to indicate if the transferor(s)/seller(s) are resident individuals, pass-through entities or corporations that are not subject to net gain withholding; the sale or exchange is exempt from capital gain recognition because of either Federal or Delaware exemption; the gain realized will be excluded from income for tax year of sale; or the sale is exempt due to foreclosure pursuant to 30 Del. C. § 1126(b)(3a)(3). If any of the above boxes in Section 5 are checked, stop here, do not complete Sections 6, 7 and 8 below, and no payment is due at this time. Be sure to only check one box.

Line 6. On line 6.a enter the Total sales price.
On line 6.b enter the Selling expenses/reductions to sale price.
On line 6.c enter the Net sales price by subtracting line 6.b from line 6.a.
On line 6.d enter the Adjusted basis. Adjusted basis includes the original purchase price of the property, non-deductible closing costs, and the cost of improvements, reduced by any depreciation previously taken for tax purposes.
On line 6.e enter the Total gain by subtracting line 6.d from line 6.c. This is the transferor's/seller's gain for purposes of computing your estimated payment for Delaware income tax purposes.
On line 6.f enter the Delaware estimated income tax due by multiplying the amount on line 6.e by 8.7% if the taxpayer is a C corporation, and by 6.6% for all other taxpayers.

Line 7. If the transferor(s)/seller(s) is/are reporting gain under the installment method no payment is due at this time, but by law you must report and remit any capital gain tax to the State of Delaware when any capital gain as a result of the sale of property in Delaware is recognized for Federal tax purposes.

Line 8. Enter the amount of Delaware estimated income tax due from Line 6.f, unless you completed Section 7. This is the amount of estimated tax payment due to the Delaware Division of Revenue that you must remit with this form unless line 7 is completed.

The Transferor/Seller must sign Form 5403, print their full name and title, if any. This form and the estimated income tax, if any, reported due and payable on this form must be remitted with the deed to the Recorder's Office before the Recorder shall record a deed conveying title in Delaware real estate. The tax returns or reports and the amounts of tax collected pursuant to Title 30 of the Delaware Code, Sections 1126, 1606 or 1909, and the Recorder's Office and its employees or agents, shall be subject to the secrecy provisions and penalties of Title 30 of the Delaware Code, Section 368.

If you need assistance with filling out this form please contact the Division of Revenue at (302) 577-8200.

(Revised 11/2018)

DELAWARE
DIVISION OF REVENUE

FORM RTT-TAX

REALTY TRANSFER TAX RETURN AND AFFIDAVIT OF GAIN AND VALUE
Formerly 5402

PRINT RESET

Form RTT-TAX must be completed for all conveyances and must be presented at the time of recording.

PART A - TO BE COMPLETED BY GRANTOR/SELLER(S)		PART B - TO BE COMPLETED BY GRANTEE / BUYER(S)	
TAXPAYER ID NO.		TAXPAYER ID NO.	51-6000279
NAME OF GRANTOR		NAME OF GRANTEE	State of Delaware
ADDRESS		ADDRESS	Department of Transportation
ADDRESS 2		ADDRESS 2	P.O. Box 778
CITY		CITY	Dover
STATE / ZIP		STATE / ZIP	DE / 19903
THE GRANTOR / SELLER(S) IS A		THE GRANTEE / BUYER(S) IS A	
● Individual	○ Partnership	○ Individual	○ Partnership
○ Corporation	○ Fiduciary (estate or trust)	○ Corporation	○ Fiduciary (estate or trust)
○ S Corporation	○ Government Agency	○ S Corporation	X Government Agency
○ LLC		○ LLC	

TAXPAYER ID NO.		TAXPAYER ID NO.	
NAME OF GRANTOR		NAME OF GRANTEE	
ADDRESS		ADDRESS	
ADDRESS 2		ADDRESS 2	
CITY		CITY	
STATE / ZIP		STATE / ZIP	
THE GRANTOR / SELLER(S) IS A		THE GRANTEE / BUYER(S) IS A	
○ Individual	○ Partnership	○ Individual	○ Partnership
○ Corporation	○ Fiduciary (estate or trust)	○ Corporation	○ Fiduciary (estate or trust)
○ S Corporation	○ Government Agency	○ S Corporation	○ Government Agency
○ LLC		○ LLC	

TAXPAYER ID NO.		TAXPAYER ID NO.	
NAME OF GRANTOR		NAME OF GRANTEE	
ADDRESS		ADDRESS	
ADDRESS 2		ADDRESS 2	
CITY		CITY	
STATE / ZIP		STATE / ZIP	
THE GRANTOR / SELLER(S) IS A		THE GRANTEE / BUYER(S) IS A	
○ Individual	○ Partnership	○ Individual	○ Partnership
○ Corporation	○ Fiduciary (estate or trust)	○ Corporation	○ Fiduciary (estate or trust)
○ S Corporation	○ Government Agency	○ S Corporation	○ Government Agency
○ LLC		○ LLC	

TAXPAYER ID NO.		TAXPAYER ID NO.	
NAME OF GRANTOR		NAME OF GRANTEE	
ADDRESS		ADDRESS	
ADDRESS 2		ADDRESS 2	
CITY		CITY	
STATE / ZIP		STATE / ZIP	
THE GRANTOR / SELLER(S) IS A		THE GRANTEE / BUYER(S) IS A	
○ Individual	○ Partnership	○ Individual	○ Partnership
○ Corporation	○ Fiduciary (estate or trust)	○ Corporation	○ Fiduciary (estate or trust)
○ S Corporation	○ Government Agency	○ S Corporation	○ Government Agency
○ LLC		○ LLC	

DF42721019999V1

Revision 20210319

DELAWARE
DIVISION OF REVENUE

FORM RTT-TAX

REALTY TRANSFER TAX RETURN AND AFFIDAVIT OF GAIN AND VALUE
Formerly 5402

PART C - PROPERTY LOCATION AND COMPUTATION OF THE TAX

1. ADDRESS					
CITY		**STATE**		**ZIP**	
COUNTY		**DATE OF REAL ESTATE CONVEYANCE**			
If this is a transfer of an interest in real estate through a transfer of an ownership interest in an entity, check this box and enter the name and EIN of the entity here: ☐		Name			
		EIN			

2.	Enter the amount of consideration received including cash, checks, mortgages, liens, encumbrances, and any other good and valuable consideration				$	
	Was like kind properly exchanged?		Yes ☐	No ☐	(If Yes, see instructions.)	
3.	Enter the **Highest** assessed value (for local tax purposes) of the real estate being conveyed				$	
4.	Enter the **Greater** of Line 2 or Line 3				$	
5.	% rate of total Realty Transfer Tax due to the State, county, and/or municipality					4.0 %
6.	% rate of Realty Transfer Tax due to the county or municipality					%
7.	% rate reduction for contracts executed prior to 8/1/17 (see instructions)					%
8.	% rate of Realty Transfer due to the State of Delaware (**Subtract** Lines 6 and 7 from Line 5)					4.0000 %
9.	Delaware Realty Transfer Tax Before Credits. **Multiply** Line 4 by Line 8.				$	0.00
10.	% of responsibility by	Grantor / Seller(s)	50	Grantee / Buyer(s)		50
11.	Amount Due by (**Multiply** Line 10 by Line 9)	Grantor / Seller(s)	$ 0.00	Grantee / Buyer(s)	$	0.00
12.	Exclusions and Credits	Grantor / Seller(s)	$	Grantee / Buyer(s)	$	
13.	Total Amount Due by (**Subtract** Line 12 from Line 11)	Grantor / Seller(s)	$ 0.00	Grantee / Buyer(s)	$	0.00
			TOTAL PAYMENT		$	TAX EXEMPT

PART D - EXEMPT CONVEYANCES

If transaction is exempt from realty transfer tax, please complete the information in Part C that is available (including consideration paid, if any), and explain the basis for the exemption below:

THIS TRANSFER IS EXEMPT FROM THE DELAWARE REAL ESTATE TRANSFER TAX BEING A TRASNFER TO THE STATE OF DELAWARE PURSUANT TO 30 DEL. C. §5401(1)(m).

The seller authorizes the Division of Revenue or such other appropriate state agency as may be designated to obtain any appropriate or necessary federal income tax forms, including the Seller(s) attached schedules or other attachments, and any other related papers filed by such seller which relate solely to the said real estate to which title is purported to be conveyed by the deed or instrument being recorded. Delaware law requires an income tax return to be filed for the taxable year during which there was disposition of real property within this state.

SELLER SIGNATURE	SELLER SIGNATURE	SELLER SIGNATURE	SELLER SIGNATURE
TITLE OF OFFICER / PARTNER	TITLE OF OFFICER / PARTNER	TITLE OF OFFICER / PARTNER	TITLE OF OFFICER / PARTNER

Sworn to and subscribed before me on _____, 20_____

NOTARY SIGNATURE

Project No. _____
Project Name_____
Property Owner _____… State Parcel No. _____
Tax Parcel No. _____

KINGS LAW

All that certain tract, piece, or parcel of land situated in Hundred, _____County, State of Delaware, being a portion of the lands required for the construction of a public road known Project Name, being acquired for DelDOT Project Number_____, the said tract being part of _____County Tax Parcel No. _____ and being more particularly bounded and described as follows, to wit:

Legal Description…

Containing within the said metes and bounds _____square feet (_____ acres) of land, be the same more or less.

SUBJECT to all matters of record, to the extent they are valid and enforceable.

BEING a part of the same lands and premises conveyed to Property Owner by Deed of Previous Owner dated _____and recorded in the Office of the Recorder of Deeds in and for _____County, State of Delaware in Deed Book Instrument/Book and Page.

The party of the second part intends to use the land hereby conveyed, in whole or in part, for the purpose of construction and operation of an existing Right-of-Way

Chapter V

RELOCATION ASSISTANCE FUNCTION

V. RELOCATION ASSISTANCE FUNCTION

Purpose – To provide advisory assistance and monetary benefits to those displaced persons who are required to move from their place of dwelling or business, or who have personal property that is being displaced from the impacted location.

A summary and explanation of payment eligibility, payment criteria, and payment calculations are contained in Attachment B to this ROW Manual.

Authority: **State of Delaware:** Title 29, Chapter 93, Sections 9301, 9305, and 9308.

Federal: 49 CFR Part 24 The Uniform Relocation Assistance and Real Property Acquisition Policies Act. (Uniform Act)

A. Staff Organization

1. The Acquisition Manager is responsible for the oversight of the relocation assistance program, in addition to the acquisition program. Depending upon the circumstances of the relocation, one ROW agent may provide both acquisition and relocation services, or the two functions may be handled by two separate lead agents.

2. All relocation assistance staff must be familiar with the relocation assistance program or be under the supervision of a relocation assistance professional. As relocation assistance activity varies significantly in terms of complexity, it will often be a learning experience for a senior relocation assistance agent to be accompanied by a junior agent in providing relocation assistance to an impacted displaced person. The types of benefits available to displaced businesses vary significantly from those benefits available to residential occupants, and the relocation staff assignments should reflect the strengths of staff with regard to the type of displacement. Any novice relocation assistance counselor must always act under the guidance of an experienced counselor.

3. All primary relocation assistance staff must have taken a basic relocation assistance training course offered by either the National Highway Institute (NHI) or the International Right of Way Association (IRWA). While there is no professional license from the State of Delaware associated with relocation assistance expertise, numerous training courses are available, and the IRWA does recognize individuals who have achieved an advanced level of training and experience in the relocation assistance function.

B. General Responsibilities

1. Representatives of the acquisition staff will also be responsible for providing relocation assistance to the maximum level that they have appropriate experience. It is expected that all acquisition agents will gain proficiency in providing relocation assistance as an element of their ongoing work experience and activity.

2. Relocation assistance staff will be responsible to provide guidance and assistance to displaced persons regarding the variety of benefits that may be available. Both residential and business

displaced persons have a wide variety of alternative benefits available, depending upon their plans and goals subsequent to the displacement. Relocation assistance agents must be able to provide guidance and make all those impacted aware of the various alternative available benefits.

3. Relocation assistance staff will be required to describe the alternatives that may be available to accomplish similar goals, but which may vary to suit the specific needs of those being displaced. Although some ROW agents may be more knowledgeable in particular aspects of the relocation program than others, each agent must be willing to call upon the services of those other agents that have particular and in-depth knowledge of the issue of concern.

4. Relocation assistance staff are responsible for providing written materials that describe the basics of the program, and to always remind the displaced person of the availability of the benefit appeal process. While the condemnation process is the default action in the acquisition program when agreement with a real property rights owner cannot be reached, no such similar default action exists in association with the relocation assistance program. The primary avenue of expressing dissatisfaction with any aspect of relocation assistance, is for the displacee to file a relocation assistance appeal with the DelDOT organization. This option should always be clearly explained to all displacees.

5. If the displacees are not proficient in the English language, it is the responsibility of the relocation agent to assure that the relocation assistance benefits can be adequately explained and understood. In this regard, those being displaced can utilize the services of a friend or relative to translate the information. Another alternative would be for DelDOT to hire a translator to assist in the conveyance of relocation assistance information.

6. The methodology for calculating eligible relocation assistance benefits for both residential and non-residential displacees is set out in Attachment B to this Manual.

7. The relocation assistance program can be quite complex depending upon the unique circumstances and living arrangements of those being displaced. The Federal Highway Administration (FHWA), as lead federal agency in implementing the federal relocation assistance program, offers a variety of guidance on its official government website. While there may be particular and unique guidance on special issues (such as underwater mortgage or reverse mortgage situations), a variety of guidance can be found at the site established as "Uniform Act Frequently Asked Questions". Anytime the answer to a relocation assistance issue on a federal-aid project cannot be answered with a high degree of certainty, it would be prudent to consult with appropriate FHWA staff.

8. In the case of a mixed-use property, containing both residential and non-residential activities, those functions will be separated out in a reasonable manner to provide relocation assistance. Since the types of benefits available to residential and non-residential displacees vary significantly, there will be no co-mingling of these separate benefit packages.

9. In situations where either the displaced residential or non-residential person does not have adequate financial resources to initiate a relocation action, DelDOT may advance funds for

such activity with the approval of Chief of ROW. In such instance, coordination with the Finance Section will be necessary.

10. In those situations where a rental property is either not occupied, or becomes unoccupied, prior to DelDOT taking legal possession of the real property; DelDOT may make arrangements with the real property owner to forestall any new rental occupancy. If a public interest determination is made, the relocation agent and Acquisition Manager may propose an agreement with the real property owner to purchase the right of occupancy from the real property owner. Any action of this nature must be approved by the Chief of ROW, and if approved, the protective rental agreement will be assigned to the Land Services Manager to secure.

11. As DelDOT proceeds towards obtaining legal possession of occupied real property, the relocation agent will coordinate with the Land Services Manager regarding potential rental arrangements. Once DelDOT has obtained legal possession of any real property, the occupants of the real property (if still in occupancy), will be granted 30 days of rent-free occupancy. The relocation agent will coordinate with the Land Services Manager to secure a rental agreement for any occupancy of DelDOT owned real property subsequent to obtaining legal possession.

12. If the relocation assistance agent suspects any unusual aspects regarding tenant occupancy, the real property owner will be contacted to assure either lawful occupancy or trespass. This action must occur prior to the delivery of any DelDOT notice of relocation assistance eligibility.

13. In the case of a partial acquisition of a residential property that results in a displacement, and where the remainder property qualifies as a buildable lot; DelDOT will typically offer to acquire the total parcel.

C. Relocation Assistance Planning

1. A member of the relocation assistance staff should be present at all preliminary engineering project meetings where it is anticipated that displacements will occur. Providing relocation assistance can be both expensive and time consuming, and those responsible for project development need to be aware of the potential impacts of designing a project when relocation assistance will be necessary. While causing a displacement is often unavoidable, the cost and timeframe impacts of displacements should never come as a surprise to Project Managers past the point when alternative design is no longer possible.

2. Whoever attends project engineering meetings will keep their supervisor advised and document all potential relocation assistance issues. Since preparing for the future need to provide relocation assistance is one of the most important issues of overall ROW concern, there should always be full awareness of this future action. This is particularly true when the potential future displacements are unusual or complicated and would benefit from advance planning.

3. A relocation assistance study will be prepared during the NEPA process of all projects, as requested by the DelDOT environmental staff. The NEPA process requires that in conjunction with project evaluation, the social impacts of a project will be analyzed and

evaluated. In this regard, it will often be necessary to provide a study of all potential project displacements on each potential project alignment. These studies will primarily try to determine what displacements are expected to occur, and then describe what replacement business and housing is expected to be for sale and available on the private market at the time of displacement.

4. Relocation assistance staff will attend all DelDOT sponsored public meetings where issues and questions regarding displacements will be discussed. A copy of the DelDOT relocation assistance brochure will be made available to all in attendance. At the time of project development workshops, it is never a certainty that a particular residence or business will be displaced, so in speaking with potential displacee, ROW representatives should never speak as if displacement is certain to occur. A public workshop is not the place to get into specific discussion regarding displacements, and ROW representatives should give out general information, along with copies of the DelDOT Relocation Assistance Brochure. If the potential displacee is interested in more specific information, that individual's name and contact information should be obtained, and that information relayed to the Acquisition Manager.

5. Relocation assistance staff will accompany any other DelDOT staff when requested, regarding issues of relocation assistance. As relocation assistance benefits are one of the most complicated and variable of all ROW acquisition issues, it will often be appropriate for a relocation assistance advisor to be available anytime any DelDOT non-ROW representative is in preliminary discussions with potential impacted real property owners and tenants.

D. Residential Occupant Advisory Services

1. General guidelines

a. Prior to the initiation of the appraisal process, and with the written initiation from the Acquisition Manager, a relocation agent will conduct an interview with residential occupants to ascertain the nature of the occupancy and the needs of those being displaced. The agent will determine if the property is occupied by the property owner or by tenants (or by both).

b. A listing of all occupants will be compiled along with age and family relationship information. Any special needs will be noted, such as height restrictions, wheelchair accessibility, medical requirements, etc. In addition to personal attributes of those being displaced, it is important to note any special situations, such as the need to have availability of public transit; the relationship of those displaced with nearby relatives; the need to attend special schooling; the need to accommodate unusual pet ownership; etc.

c. The regulations prohibit Federal participation in relocation payments or relocation advisory services to "aliens not lawfully present in the US" but does not prohibit relocation notices. Those displaced will be notified that in order to obtain any monetary benefits, they will need to certify that they are not "aliens not lawfully present in the US". The level of review and verification regarding this issue is a matter for the relocation agent to discuss with the Acquisition Manager.

d. During the interview process, the agent will explain the relocation assistance program and provide a copy of the relocation assistance brochure to all impacted or interested individuals. The date of the interview and the fact that a relocation assistance brochure was delivered to those being displaced will be noted in the diary contact sheet.

e. The relocation agent will explain that no occupants will be required to move from the property without at least a preliminary ninety-day written notice, and a follow-up thirty day written notice. The methodology for how these notices are delivered will be explained. The occupants will also be advised that no one will be required to move until DelDOT has made available appropriate "decent, safe, and sanitary", replacement housing. At this time the relocation agent will describe how and when the thirty-day notice to vacate will be issued.

f. The relocation agent will explain the timeframes and methodology for requesting payment and cost reimbursement. Although there may be significant variations of timeframes in these situations when agreement on price of acquisition cannot be reached with owner of real property rights; in general, final relocation should occur within twelve months of displacement from the displacement site and claim for payment should be made with eighteen months of displacement from the displacement site. Depending upon unusual circumstances, these timeframes could be adjusted. Regardless of anything else, those displaced must be made aware that the replacement housing must meet the definition of "decent, safe, and sanitary", in order for payment reimbursement to occur. Those displaced will also be advised that DelDOT staff will be available to assist in the preparation of claim forms, if requested by the claimant.

g. Upon discussion of transportation issues, the displaced occupants will be offered and provided necessary and adequate transportation to search for replacement housing by DelDOT personnel, if requested.

h. If desired by those being displaced, DelDOT will seek out and provide information regarding public housing availability. Any displaced individuals currently residing in public housing programs, may relocate to similar circumstances, but are not required to do so.

i. All residential owners and tenants will be advised that they will not be eligible for any cost reimbursement until they have received a notice of relocation eligibility from DelDOT. Although those proposed to be displaced may initiate their replacement housing search options at any time, DelDOT is not obligated to follow through on any cost reimbursement until the eligibility forms have been issued.

j. The relocation agent will explain that any displaced occupant may appeal ANY decision that is made by the DelDOT ROW Unit regarding the displacement, and that such appeal will be heard by an independent third party within the DelDOT organization.

k. Reimbursement for personal property moving expenses may be incurred by; a self-move, a commercial move, a schedule allowance, or a combination of all three. **(See Attachment B)**

2. Residential owner-occupants will be provided the following explanations:

a. The process and requirements to be reimbursed for the relocation of personal property. The moving cost is generally limited to a computed distance of 50 miles from the displacement site. Temporary storage costs may be reimbursed, at the discretion of DelDOT, typically not to exceed one year.

b. Those displaced may relocate into either owner status or tenant status, and differing compensation packages will be applicable depending upon the displacement status.

c. DelDOT will undertake a survey of existing functionally similar housing, available in the market, which meets the definition of being "decent, safe, and sanitary". A cost differential payment eligibility will be calculated based on the findings of that survey, and then made available within the guidelines established for reimbursement. A variety of techniques for cost reimbursement could be employed, depending upon the unique circumstances of each displacement family. The calculation will be dependent upon whether the owner-occupant desires to relocate as an owner or a tenant, and any public housing subsidies will be accommodated.

d. If a replacement home is purchased, the displaced owner can be reimbursed for appropriate and necessary one-time closing costs. The displaced homeowner may also be entitled to reimbursement for any necessary increased mortgage interest expenses, if the new mortgage rate exceeds the existing mortgage rate.

e. A displaced homeowner who purchases a replacement home may also be entitled to a miscellaneous payment not to exceed 1% of the appraised or approved value of the dwelling acquired by DelDOT.

3. Residential tenant-occupants

a. All residential tenants will be interviewed as to their family composition, and copies of any existing lease and utility bills will be requested. All relocation assistance needs will be discussed.

b. The tenants will receive an explanation of the process for calculating a rental cost differential payment, and that any dollar amount calculated may be used to relocate into either rental or ownership housing status. If requested by the tenants, DelDOT representatives will provide a list of available replacement residences that are currently on the market. Although rental cost differential payments are typically dependent upon the current rent that that the tenants are paying; there are situations where, for a variety of reasons, the tenant is paying little or no rent. In such situations, DelDOT will typically base the cost differential payment by considering the current economic rent of the property.

c. The tenants will receive an explanation of the process for reimbursement of moving costs for personal property. The moving cost reimbursement is generally limited to a calculated distance of 50 miles from the displacement site. Temporary storage costs may be reimbursed at the discretion of DelDOT, typically not to exceed one year.

d. The relocation agent will ascertain if any of the real property being acquired is tenant owned. As long as both the tenant and the real property owner agree on the ownership of all real property, adequate reimbursement compensation can be allocated. If agreement on this issue cannot be reached, the relocation agent must discuss the issue with the Acquisition Manager to determine how to proceed.

e. The relocation agent will attempt to obtain reliable gross family income information to determine if the tenants should be treated as "low income", for rent supplement calculation purposes. The "low income" designation will be in accordance with HUD criteria. The tenants will be advised that providing legitimate gross family income information may benefit them in increased payment allowances, and that such information cannot reduce their benefits. The relocation agent will coordinate with the Acquisition Manager when it is suspected that those being displaced are not providing accurate and complete requested income documentation.

f. The tenant occupants will be advised that the tenants may move into separate housing units and that the cost differential payment availability will be adjusted accordingly on a pro rata basis.

g. Once a tenant who is entitled to a rental cost differential moves occupancy to decent, safe, and sanitary housing; they become vested in the calculated cost differential payment. DelDOT will typically disperse the full amount of the cost differential to the displaced tenant at the time of occupancy verification, unless justified otherwise, with the approval of Chief of ROW.

h. A tenant displaced person will be entitled to utilize the full calculated amount of the cost differential payment to be used to make a down payment on the purchase of replacement housing. If the calculated rental cost differential payment is less than the current statutory limit, and the displaced tenant does purchase a replacement dwelling, an amount equal to the statutory limit will be offered to the displaced tenant for down payment purposes

4. Temporary Relocation Assistance

a. Individuals and families who are not "displaced persons" will generally not be eligible for relocation assistance benefits due to typical project impacts such as; noise, lighting, dust etc.

b. In certain instances, individuals and families may be eligible for temporary project related relocation benefits, if it can be documented that unique and health and welfare concerns are at issue. Any such requests must be documented in writing by health care professionals.

c. Any approved temporary residential or non-residential relocation assistance benefits will be documented and addressed on an individual basis, with the approval of the Chief of ROW. Temporary relocation assistance will typically be limited to one year. Exceptions to the one-year limit can be made with the approval of the Chief of ROW, along with a signed document from the displaced person agreeing to a temporary relocation of greater than one year.

d. The providing of temporary relocation assistance benefits is in conformance with the guidelines as set out in the FHWA Construction Noise Handbook, Chapter 7.6.3., and federal regulations set out at 49 CFR 24.202.

e. For persons occupying a dwelling, at least one comparable dwelling must be made available prior to requiring a person to move. Payment will be provided for all out-of-pocket expenses incurred in connection with the temporary relocation as DelDOT determines to be reasonable and necessary.

f. For non-residential activities, the activity must be reimbursed for all reasonable out of pocket expenses incurred during the temporary relocation period.

E. Non-Residential (Business) Advisory Services

1. General guidelines

a. At the earliest possible date, and at the written direction of the Acquisition Manager, the relocation agent will interview the business owner to ascertain the nature of the business, and the needs relative to relocation. At a minimum, the following items will be addressed:

(1) An inventory of all equipment and furnishings, and a preliminary determination of realty or personal property status.

(2) A determination of any zoning or permit issues that will impact relocation.

(3) A preliminary listing of all equipment that will require special treatment or handling.

(4) A listing of all issues that the business operator expresses as items of concern regarding the relocation.

b. The business relocation program will be explained and a DelDOT relocation assistance brochure will be provided to all impacted individuals. The business owner will be advised that DelDOT personnel are available to assist in the search for a replacement site, at the request of the business owner.

c. The timeframes for and methodology for requesting payment and cost reimbursement will be explained.

d. The relocation agent will explain that the business will not be eligible for any cost reimbursement until a notice of eligibility has been issued by DelDOT. There will be an explanation that any displaced business may appeal ANY decision that is made by the DelDOT ROW Unit regarding displacement, and that appeal will be heard by an independent third party within DelDOT.

2. Cost reimbursement eligibility

a. Displaced businesses are eligible for reimbursement for all actual, reasonable, and necessary moving expenses as set out in applicable federal and State regulations. These reimbursement payments can be quite complicated, and a further detailed explanation of eligible reimbursements is set out in **Attachment B.**

b. Cost reimbursement is generally limited to a calculated distance of 50 miles from the location of displacement. Temporary storage expenses may be reimbursed, at the discretion of DelDOT, generally not to exceed one year.

c. Costs may be reimbursed for either self-moves or commercial moves, or a combination of both.

d. Many businesses are also eligible to incur costs and apply for a "reestablishment expense" payment.

e. The regulations allow for special treatment of personal property which may not be cost effective to move, or which may be considered obsolete for that business. In those unique instances, the business owner may be reimbursed move costs via an alternative methodology.

3. Fixed Costs (In-lieu-Of Payment)

a. Business owners are entitled to an alternative moving cost reimbursement, based upon the average net earnings of the business. All business owners must be made aware of how the fixed cost would be calculated, and advised that this option will always be available as an alternative to actual, reasonable, and necessary personal property moving costs.

b. This payment is an alternative to all eligible moving costs and may not be combined with any actual moving costs and reestablishment expenses.

F. Relocation Assistance Notices (Required as set out in Federal Regulations 49 CFR 24.203, 49 CFR 24.303, and 49 CFR 24.306

1. **DelDOT General Information Relocation Brochure ("Your Rights and Benefits as a Displaced Person").**

   a. Must be presented to all potential displaced persons as early in the project development process as reasonable, and such action will be initiated in writing from the Acquisition Manager to the relocation assistance agent. The purpose of this brochure is to provide advance knowledge of the impending project activity. The timing of the delivery should be early enough to provide advance notice, but not so early as to provide undue alarm when proposed project boundaries or project timing is not yet established. The delivery timing of this brochure is at the discretion of the Acquisition Manager, in coordination with the Design Project Manager.

   b. The DelDOT Relocation Assistance Brochure may be transmitted in person, or by certified mail, return receipt requested. In circumstances where those proposed to be displaced have given prior authorization, such brochure may be delivered by secure electronic means.

   c. This brochure conveys general information regarding the relocation assistance program, including the right to appeal any determinations.

2. **Notice of Relocation Assistance Eligibility**

   a. This notice is the official establishment by DelDOT of individuals and businesses considered to be displaced and eligible for relocation assistance benefits. Once this notice is delivered, those considered to be displaced become eligible to incur costs and expenses that may be reimbursable. For residential displacees, the notice will typically set out maximum limits of reimbursement for relocation housing payments. Allowable moving cost payments for residential personal property and business moves will generally be based upon the concept of those expenses that are actual, reasonable, and necessary.

   b. Delivery of this notice should occur at the initiation of negotiations for the property, or shortly thereafter. Typically, the notice will be made concurrently with the initial acquisition offer letter for those who are owner occupants. The notice should be delivered as soon as possible after the initiation of negotiations to any tenant occupants. All tenants should receive this notice within seven days, and in no case later than fourteen days, after the initiation of negotiations with the real property owner.

   c. Considering the importance of this notice, it is DelDOT's intent to hand deliver this notice whenever possible. If hand delivery is not possible, it may be delivered by certified mail, return receipt requested. If prior arrangements have been made, secure delivery by electronic means can be a delivery method of last resort.

   d. In situations of other than personal delivery, and where the displaced person will not verify receipt of the notice, the file must be documented to indicate the measures that were

employed to deliver the notice. Relocation agents must document that the Acquisition Manager is aware of all non-typical activities.

3. Ninety Day Notice and Thirty Day Notice to Vacate

a. This notice assures those displaced of at least ninety 90 days allowance to vacate property. The 90-day notice establishes a starting date of the minimum of 90 days, but typically will not establish a final date by which the property must be vacated. The 90-day notice will instead notify those displaced that they will receive a future 30-day notice to vacate, however, in no circumstance will the 30-day notice to vacate set a vacation date any earlier than 90 days after the issuance of the 90-day notice.

b. The 90-day notice to vacate may not be dated and delivered until after the initiation of negotiations for the property. The 30-day notice may not be dated and delivered until after DelDOT takes legal possession of the property either through negotiated agreement or by Court authorized possession through condemnation action. In unusual circumstances, and with the approval of the Chief of ROW; a 30-day notice may be delivered to a tenant/occupant prior to DelDOT obtaining legal possession of the property.

c. Considering the importance of these notices, it is DelDOT's intent to hand deliver the notices whenever possible. If hand delivery is not possible, they may be delivered by certified mail, return receipt requested. If prior arrangements have been made, delivery can be made by secure electronic means as a last resort.

d. If applicable to a residential displacement, at least one comparable DSS replacement property within their "financial means" must have been offered and made available to those displaced prior to the issuance of the 30-day notice. It is DelDOT policy to provide a list of at least three comparable decent, safe, and sanitary replacement properties to the displaced occupants, whenever possible.

4. Notice of Intent to Acquire (by individual letter)

a. In unusual circumstances, DelDOT may issue an optional letter that would establish eligibility for relocation assistance benefits prior to the initiation of negotiations on the parcel. This letter would then be followed up with the Notice of Relocation Assistance Eligibility. The purpose of this action would be to initiate relocation assistance activity in those situations where relocation is anticipated to be quite time consuming and allowing for a head start in relocation activity is deemed to be in the public interest.

b. Initiation and delivery of this letter can only be authorized by the Chief of ROW, after consultation with the Design Project Manager.

c. It is DelDOT's intention that this letter be hand delivered whenever possible. The letter may also be delivered by certified mail, return receipt requested.

G. Record Keeping

1. The relocation assistance file maintained by the relocation agent in charge, will always contain copies of all forms, documents, and agreements that had been utilized in connection with any aspect of the displacement. This file must be kept independently of any other parcel files which may exist. In addition to the specific forms related to the individual displacement, the following two general forms will be contained in all relocation assistance files.

a. A relocation control record will be utilized to set out all the basic information related to the displacement. This record will memorialize the basic parcel data and serve to indicate that point in time when the relocation is considered to be finalized.

b. A relocation assistance contact record will be utilized to record all contacts with the displacees in conjunction with the displacement. This data must be a permanent recordation, and will contain at a minimum:

(1) The date of the contact.

(2) Those in any way participating in the contact (whether or not contributing to the discussion).

(3) The method of contact; in person, telephone, electronic, mail, etc.

(4) A summary of the contact communication.

(5) A description of any commitments made by any party.

(6) The initials or signature of the individual making the entry.

(7) Any missed contacts such as unfulfilled appointments, or unanswered telephone calls should be documented at the discretion of the lead relocation agent. In those situations where the displaced person is uncooperative, such information may prove to be useful at a later date.

2. In conjunction with a residential displacement, the following forms (if appropriate) will be used in computing a maximum relocation assistance payment and must be maintained as a permanent record.

a. A comparable replacement housing analysis must be completed for each residential unit that is investigated and considered to be a comparable decent, safe, and sanitary (DSS) housing unit in conjunction with the displacement.

b. A comparable housing summary sheet must be completed combining the information obtained from the individual analysis. It is DelDOT policy that the three best comparable available units be utilized in completing the summary sheet. If three comparable units are

not available, then fewer units may be used with written documentation, and approval from the Acquisition Manager.

c. A replacement housing payment computation sheet, will calculate the maximum available replacement housing payment, as computed utilizing the payment criteria as set out in Attachment B.

d. If appropriate, the allowable Mortgage Interest Differential Payment will be calculated. (See Attachment B for further discussion).

3. Any and all written materials connected with any displacement must be maintained in the parcel file. Any documentation determined to be irrelevant may be discarded as such time as the displacement is completed, and the file purged.

H. Relocation Assistance Forms and Sample Letters

1. RA 1 - General Information Notice (Booklet)

2. RA 2 - Notice of Relocation Eligibility

3. RA 3 - 90 Day Assurance Letter

4. RA 5 - Notice to Move- Court Ordered Possession

5. RA 6 - Notice of Appeal

6. RA 7 - 30 Day Notice to Vacate Letter

7. RA 8 - Resident Occupant Interview Questionnaire

8. RA 9 - Non-Res. Occupant Interview Questionnaire

9. RA 11 - Relocation Summary Record

10. RA 12 - Relocation Contact Record

11. RA 13 - Non- Res. Personal Prop. Inventory Form

12. RA 14 - Moving & Misc. Expense Payment App

13. RA 15 - In Lieu of Fixed Payment (Non-Res ONLY)

14. RA 16 - Comparable Summary Worksheet

15. RA 17 - Comp. Replacement Housing Analysis & DSS Inspection.

16. RA 18 - Mortgage Differential Comp Form

17. RA 19 - Replacement Housing Payment Computation Form

18. RA 20 - Replacement Housing Payment APP

19. RA 22 - Re-Establishment Payment APP (Non-Res)

20. RA 23 - Economic Rent Cert. Req

21. RA 24 - Certification of Citizenship or Lawful Presence

22. RA 26- Residential Eligible Misc. Items

23. RA 27- Fixed Moving Cost Chart 2025

24. RA 28 - Building Inspection Report

NOTICE OF RELOCATION ELIGIBILITY

STATE PROJECT NO. «Project_Number»«Project_Number» **FAP NO.** «FAP_Number» **PARCEL NO.** «State_Parcel_No»

PROJECT NAME «Project_Name» **COUNTY** _____

OWNERS' NAME «Property_Owner»

OCCUPANT/TENANTS' NAME _____

☐ **90 DAY HOMEOWNER** ☐ **90 DAY TENANT** ☐ **LESS THAN 90 DAY TENANT**

☐ **BUSINESS OCCUPANT** ☐ **FARM OPERATION** ☐ **NONPROFIT ORGANIZATION**

☐ **OWNER OF RESIDENTIAL PERSONAL PROPERTY** ☐ **OWNER OF NON-RESIDENTIAL PERSONAL PROPERTY**

The above-named occupant is hereby notified of the relocation benefits to which he or she may be eligible. The Delaware Department of Transportation will reimburse you, the displaced person/business, eligible costs if within a period of **90 days** from the date established by the Delaware Department of Transportation, you incur eligible expenses provided under Federal and State laws.

For those benefits checked below, the costs cannot be determined at this time but will be computed and paid upon the determination of eligibility by the Delaware Department of Transportation and receipt of a properly documented claim from you.

A business occupant, farm operation, nonprofit organization or an owner of non-residential personal property must provide the Delaware Department of Transportation reasonable advanced notice of the approximate date of the start of the move or disposition (disposition does not apply to owners' residential personal property) of the personal property and an inventory of the personal property that is to be moved, replaced, or abandoned.

A displaced small business (500 employees or less), farm operation, or nonprofit organization who owns personal property at the above identified displacement site which must be moved may be eligible for reimbursement of reestablishment expenses incurred not to exceed $32,200.00.

A business occupant, farm operation, nonprofit organization may be eligible for a fixed payment in lieu of a payment for actual moving and related expenses, as well as actual reasonable reestablishment expenses to be no less than $1,000 and no greater than $53,200.00.

_____ $ _____ **Housing Supplement or,** _____ $ _____ **Rental Assistance or,** _____ $ _____ **Downpayment Assistance**

The above computed relocation benefit determination was made based upon a functionally similar dwelling located at:

_____

☐ **Estimated Increased Mortgage/Interest Costs of** $ _____ **based on:**

Payoff Figure (1st) $ _____, **Payoff Figure (2nd)** $ _____, **Payoff Figure (3rd)** $ _____

Remaining Term (1st) _____ **mo., Remaining Term (2nd)** _____ **mo., Remaining Term (3rd)** _____ **mo.**

Existing Interest Rate (1st) _____ **%, Existing Interest Rate (2nd)** _____ **%, Existing Interest Rate (3rd)** _____ **%**

Prevailing Interest Rate _____ **%, Points** _____

☐ **Incidental Expenses**

☐ **Moving and Related Expenses**

☐ **Reestablishment Expenses**

☐ **Miscellaneous Expenses**

The above payment limits are hereby approved pursuant to the provisions of Chapter 93, Part IX, of Title 29, Delaware Code as amended.

Approved By: _____ **Date:** _____

Statewide Acquisition and Relocation Manager

I hereby certify on this date, _____, a copy of this Notice of Relocation Eligibility was delivered by me, along with the written Notice of Appeal Procedure.

Signatures of Displaced Persons:

_____ **Date:** _____

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

Relocation Assistance Program
90-Day Notice

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No.: «FAP_Number»
«Recorded_in_County» County
«Project_Name»
Parcel No.: «State_Parcel_No»; «Property_Owner»

Dear «Salutation»:

This letter is to advise you that the Delaware Department of Transportation, Right-of-Way Section, has made an offer to acquire the property you now occupy for the construction of the above referenced highway project. Negotiations for the property were initiated on [DATE].

The actual date the Department will need the property cannot be determined at this time. However, this letter will serve to inform you that under no circumstances will you be required to move from the property before [DATE 90 DAYS FROM THIS LETTER], which is ninety (90) days from the date of this notice.

A second notice will be furnished to you at least thirty (30) days prior to the specific date on which you will be expected to move from the property. You will not jeopardize your rights to receive relocation benefits if you move before receiving the second notice.

Your understanding and cooperation in this matter is greatly appreciated. If you have any questions, please contact me at (302) 326-4482.

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

RR:

March 26, 2025

Occupant Name
XXX Main Street
Anytown, Delaware 19XXX

RE: State Project No. XX-XXX-XX … Insert County
Project Name
F.A.P. No.: Insert Number
Parcel No.: Insert Number; Property Owner Name - Owner
Tenant Name – Tenant Identification Number (Include this line if applicable)

Relocation Assistance Program

Dear Occupant Name:

Our letter of (DATE), advised that a specific date would be given by which you would be expected to move from the property you now occupy. An Order of Possession was granted to the Department by the Delaware Superior Court on (DATE).

The State will need possession of the referenced property by (DATE), and the real property must be vacated by that date.

In order to confirm your eligibility for relocation payments or if you anticipate problems in securing replacement property by the above date, please contact (NAME), Relocation Counselor, at 760-2229 for assistance.

Sincerely,

(NAME)
District Real Estate Manager

XXX:xx
Cc: Assigned Real Estate Representative

NOTICE OF APPEAL PROCEDURE

As an eligible displacee you are hereby notified of your right to apply for any relocation payment to which you feel entitled. You must submit the appropriate relocation claim form (which will be provided by the Right-of-Way Agent) in the amount you believe you should receive. You will be notified promptly in writing concerning your eligibility for the payment claimed, the amount, if any, to be received, and the time and manner in which such payment shall be made. You will have 18 months to file a claim for any relocation benefits, from:

(1) For tenants, the date of displacement; or

(2) For owner/occupants, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

If you believe the Relocation Manager has failed to properly consider your application for relocation assistance, you will have sixty (60) calendar days to file a written appeal after receiving the Relocation Manager's written notification on the submitted claims. The Department shall consider the written appeal regardless of form. The written appeal shall be submitted to:

Delaware Department of Transportation
Attn: Deputy Director of Operations and Support
P. O. Box 778
Dover, DE 19903

You have the right to be represented by legal counsel or other representation in connection with your appeal, but solely at your expense. You may inspect and copy all materials pertinent to an appeal, except materials which are classified as confidential by the Department. The Department may, however, impose reasonable conditions on your right to inspect, consistent with applicable law.

You may request to have your appeal heard in person. If you request to have the appeal heard in person, the Deputy Director of Operations and Support shall hear your appeal within thirty (30) calendar days of receipt of your request.

The Deputy Director of Operations and Support, within forty-five (45) calendar days of a hearing or, if a written appeal, of receipt of all information submitted by you in support of your appeal, shall:

a. Conduct a review of the appeal, considering all pertinent justification and other material submitted by you and all other available information that is needed to insure a fair and full review;

b. Make a written determination on the appeal which shall include an explanation of the basis on which the decision was made; and

c. Furnish you with a copy of the determination.

If the full relief requested is not granted, the Deputy Director of Operations and Support shall advise you of your right to seek judicial review.

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

Date

Relocation Assistance Notice
30 Day Notice to Vacate

«Addressee_Name»
«Address_Line_1»
«Address_Line_2»
«Address_Line_3»

RE: State Project No. «Project_Number» … F.A.P. No. «FAP_Number» … «Address_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

«Salutation»:

As you are being displaced by the above project, our previous 90-Day Notice letter, dated [90-DAY NOTICE DATE], advised you that you would not be required to vacate the property you occupy in less than ninety (90) calendar days. In that letter, you were also informed that you would be provided a future letter providing a specific thirty (30) day notice of your need to vacate the property. As DelDOT acquired legal possession of the property you occupy on [INSERT SETTLEMENT DATE], and comparable replacement housing has been made available to you in accordance with the applicable regulations; this 30-Day Notice is to advise you that you must vacate the property no later than [DATE 30 DAYS FROM THIS LETTER DATE].

In order to confirm you eligibility for reimbursement for relocation assistance payments, or if you anticipate any problems in being able to secure occupancy of replacement property by the above designated date, please contact your assigned Right-of-Way Agent, [Agent Name] for assistance at «Agent_Telephone» or via e-mail at «Agent_EMail».

Sincerely,

Rosemary Richardson
Statewide Acquisition and Relocation Manager

DelDOT Right-of-Way

Document No. RA 7
March 24, 2025

RESIDENTIAL OCCUPANT QUESTIONNAIRE

GENERAL PARCEL INFORMATION

STATE PROJECT NO. «Project_Number» **FEDERAL AID PROJECT NO.** «FAP_Number» **PARCEL NO.** «State_Parcel_No»

PROJECT NAME «Project_Name» **COUNTY** «Address_County»

OWNER (as titled on deed) «Property_Owner» **OWNER'S TELEPHONE NO.** «Owner_Phone_»

SITE ADDRESS «Address_Line_1», «Address_Line_2», «Address_Line_3»

PROPERTY DESCRIPTION _____

NEIGHBORHOOD DESCRIPTION _____

IS DWELLING DECENT, SAFE, AND SANITARY? _____ **YES** ____ **NO** **IF NO, EXPLAIN** _____

_____

IF TENANT OCCUPIED, DOES OWNER PROVIDE AS PART OF RENT CHARGED ____**ELECTRIC** ____**GAS** ____**CABLE**____ **WATER** ____**TRASH COLLECTION** ____**SEWER** ____**TELEPHONE?** **ARE TELEPHONES HARDWIRED?** _____

NO. OF TELEPHONE CONNECTIONS ____ **NO. OF TELEPHONE LINES** ____ **NO. OF CABLE CONNECTIONS** ____

OCCUPANT INFORMATION

OCCUPANT NAME _____ **TELEPHONE NO.** _____

OCCUPANT TYPE ___ **90 DAY (OWNER)** ___ **90 DAY (TENANT)** ___ **PERSONAL PROPERTY ONLY**

DATE OF OCCUPANCY _____ **TOTAL NO. OF OCCUPANTS** ____ **NO. OF CHILDREN** ____**MALE** ____**FEMALE**

OCCUPANT AND EMPLOYMENT INFORMATION					
OCCUPANT NAME (adults only)	SOCIAL SECURITY NO.	EMPLOYER	TELEPHONE NUMBER	DISTANCE FROM DWELLING	INCOME (monthly)
					$
					$
					$
					$

SERVICES AND SCHOOL INFORMATION				
SERVICE TYPE	DISTANCE FROM DWELLING	SCHOOL TYPE	DISTANCE FROM DWELLING	NUMBER ATTENDING
RELIGIOUS SERVICES		DAY CARE/ PRESCHOOL		
FOOD SHOPPING		ELEMENTARY SCHOOL		
CLOTHES SHOPPING		MIDDLE SCHOOL		
MEDICAL SERVICES		HIGH SCHOOL		
OTHER		OTHER		

MORTGAGE INFORMATION				UTILITY COSTS	
ORIGINAL PRINCIPLE	INTEREST RATE	TERM IN MONTHS	DATE INCURRED	TYPE OF UTILITY	MONTHLY AVERAGE
$	%			ELECTRIC	$
$	%			GAS	$
$	%			OIL	$
LEASE INFORMATION				SEWER	$
FORMAL LEASE	RENT PAID	TERM IN MONTHS	DATE INCURRED	TRASH	$
				WATER	$
	$			TOTAL	$

OCCUPANT INFORMATION (continued)

DO ANY OF THE OCCUPANTS USE PUBLIC OR SPECIALIZED TRANSPORTATION? ____YES ____NO

ARE ANY OF THE OCCUPANTS A VETERAN? ____YES ____NO

DO ANY OF THE OCCUPANTS HAVE A HANDICAPPING OR HEALTH CONDITION THAT REQUIRES SPECIAL HOUSING CONSIDERATION? ____YES ____NO EXPLAINATION _____

_____

DOES THE OCCUPANT REQUEST RELOCATION ASSISTANCE? ____ YES ____NO

WOULD THE OCCUPANT CONSIDER PUBLIC HOUSING IF ELIGIBLE? ____YES ____NO

WOULD THE OCCUPANT CONSIDER RETAINING AND MOVING THE DWELLING IF FEASIBLE? ____YES ____NO

INTERVIEWER'S INFORMATION

DID THE OCCUPANT RECEIVE THE BROCHURE "YOUR RIGHTS AND BENEFITS AS A DISPLACED PERSON"? ____YES ____NO

DATE THE OCCUPANT RECEIVED THE RELOCATION ASSISTANCE PROGRAM BROCHURE ____/____/____

WAS THE RELOCATION ASSISTANCE PROGRAM EXPLAINED TO THE OCCUPANTS? ____YES ____NO

WAS THE APPEAL PROCESS EXPLAINED TO THE OCCUPANT? ____YES ____NO

WERE THE RELOCATION PAYMENTS EXPLAINED TO THE OCCUPANT? ____YES ____NO

WERE THE METHODS OF MOVING COST REIMBURSEMENT EXPLAINED TO THE OCCUPANT? ____YES ____NO

METHOD OF MOVING COST REIMBURSEMENT DESIRED BY OCCUPANT ____SCHEDULED MOVE ____ACTUAL COST MOVE

MINIMUM NUMBER OF ROOMS NEEDED ____ MINIMUM NUMBER OF BEDROOMS REQUIRED ____

CERTIFICATION AND SIGNATURES

I hereby certify that the information furnished by me and contained herein is true and correct, that the Relocation Assistance Program was explained to me, that the relocation assistance brochure was given to me.

OCCUPANT'S SIGNATURE _____ DATE _____

OCCUPANT'S SIGNATURE _____ DATE _____

OCCUPANT'S SIGNATURE _____ DATE _____

OCCUPANT'S SIGNATURE _____ DATE _____

INTERVIEWER'S COMMENTS_____

_____

_____

_____

INTERVIEWER'S SIGNATURE _____ DATE _____

NON-RESIDENTIAL OCCUPANT QUESTIONNAIRE

GENERAL PARCEL INFORMATION

STATE PROJECT NO. «Project_Number» FEDERAL AID PROJECT NO. «FAP_Number» PARCEL NO. «State_Parcel_No»

PROJECT NAME «Project_Name» COUNTY «Address_County»

OWNER (as titled on deed) «Property_Owner» OWNER'S TELEPHONE NO. «Telephone_No»

SITE ADDRESS OR LOCATION OF PARCEL «Property_Location»

PROPERTY DESCRIPTION _____

_____

GENERAL FACILITY TYPE _____ OWNER OCCUPIED _____ TENANT OCCUPIED _____

OCCUPANT INFORMATION

NAME OF ENTERPRISE _____ TENANT NO. ____

OCCUPANT TYPE: BUSINESS ____ FARM OPERATION ____ NON-PROFIT ORGANIZATION ____ PERSONAL PROPERTY ____

TYPE OF ENTERPRISE: SOLE PROPRIETORSHIP ____ C CORP. ____ S CORP. ____ PARTNERSHIP ____ LLC COMPANY ____

S. S. NUMBER OR E. I. NUMBER _____ PRINCIPLE CONTACT PERSON _____

SITE ADDRESS OR LOCATION OF ENTERPRISE _____

MAILING ADDRESS OF ENTERPRISE _____

BUS. TELE. NUMBER _____ CELL TELE. NUMBER _____ E-MAIL ADDRESS _____

OPERATION DESCRIPTION _____

_____

_____

CLIENTELE: LOCAL ____ IN STATE ____ OUT OF STATE ____ FOREIGN ____ ANNUAL GROSS SALES $_____

NO. OF EMPLOYEES: F/T ____ P/T ____ DATE OCCUPIED _____ AREA OF EMPLOYEE'S RESIDENCES _____

CURRENT LEASE TERMS _____

OTHER CONTRACTUAL OBLIGATIONS _____

FINANCIAL CAPACITY OF THE BUSINESS TO ACCOMPLISH THE MOVE (____ YES) (____ No) Please explain answer below

_____

_____

_____

BUSINESS REPLACEMENT SITE REQUIREMENTS

REQUIRED UTILITIES

HEAT: GAS ____ OIL ____ ELECTRIC ____ WATER ____ SEWER OR SEPTIC ____OTHER ____ (specify) _____

OTHER REQUIREMENTS

ELECTRIC: 220V ____ 3 PHASE ____ OTHER ____ (specify) _____ NO. OF TELEPHONE LINES ___

NO. OF SETS ____ NO. OF LINES FOR COMPUTER CONNECTIONS ____ MINIMUM SQUARE FOOTAGE REQUIRED _____

ZONING REQUIRED _____ OCCUPANT'S RELOCATION PLANS AT THIS TIME? BUY ____ BUILD ____ LEASE ____

LOCATIONS TO BE CONSIDERED FOR REPLACEMENT SITES: _____

SPECIAL FEATURES REQUIRED _____

_____

REQUIRED OUTSIDE SPECIALISTS

PLANNING THE MOVE (____ YES) (____ NO) Please explain _____

_____

PERFORMING THE MOVE (____ YES) (____ NO) Please explain _____

_____

REINSTALLATION OF MACHINERY AND /PR OTHER PERSONAL PROPERTY (____ YES) (____ NO) Please explain _____

_____

_____

_____

INTERVIEWER'S INFORMATION

DOES THE OCCUPANT REQUEST RELOCATION ASSISTANCE? _____

DID THE OCCUPANT RECEIVE THE BROCHURE ON THE RELOCATION ASSISTANCE PROGRAM? _____

DATE THE OCCUPANT RECEIVED RELOCATION ASSISTANCE PROGRAM BROCHURE. _____

WAS THE RELOCATION ASSISTANCE PROGRAM EXPLAINED TO THE OCCUPANT? _____

WAS THE APPEAL PROCEDURE EXPLAINED TO THE OCCUPANT? _____

WAS THE OCCUPANT ADVISED OF THE REQUIRMENT OF CERTIFYING TO CITIZENSHIP OR LAWFULL PRESENCE IN THE UNITED STATE OF AMERICA? _____

WERE THE METHODS OF MOVING COST REIMBURSEMENT EXPLAINED TO THE OCCUPANT? _____

METHOD OF MOVING COST REIMBURSEMENT DESIRED BY OCCUPANT. _____

ESTIMATED TIME NEEDED FOR OCCPANT TO RELOCATE. _____

INTERVIEWERS COMMENTS: _____

_____

_____

_____

CERTIFICATION AND SIGNATURES

I hereby certify that the information furnished by me and contained herein is true and correct, that the Relocation Assistance Program was explained to me, and that the Relocation Assistance Program brochure was given to me.

OCCUPANT'S SIGNATURE _____ DATE _____

INTERVIEWER'S SIGNATURE _____ DATE _____

RELOCATION SUMMARY RECORD

STATE PROJECT NO. «Project_Number» **FEDERAL AID PROJECT NO.** «FAP_Number» **PARCEL NO.** «State_Parcel_No»

PROJECT NAME «Project_Name» **COUNTY** «Address_County»

OWNERS' NAME «Property_Owner»

OCCUPANT'S NAME _____ **TENANT NO.** ____

___ **90 DAY HOMEOWNER** ___ **LESS THAN 90 DAY HOMEOWNER** ___ **90 DAY TENANT** ___ **LESS THAN 90 DAY TENANT**

___ **BUSINESS OCCUPANT** ___ **FARM OPERATION** ___ **NONPROFIT ORGANIZATION**

___ **OWNER OF RESIDENTIAL PERSONAL PROPERTY** ___ **OWNER OF NONRESIDENTIAL PERSONAL PROPERTY**

DISPLACEMENT SITE ADDRESS	DISPLACEMENT MAILING ADDRESS	TELEPHONE NUMBERS
		HOME
		WORK
		CELL

APPRAISAL REPORT ASSIGNED		NUMBER OF OCCUPANTS	
APPRAISAL REPORT REVIEWED		UNDER 62	
APPROVED APPRAISED VALUE		OVER 62	
FULL AND FINAL ACQUISITION PAYMENT		RACE	
DATE OF FINAL ACQUISITION PAYMENT		RELOCATION ELIGIBILITY DATE	
SETTLEMENT DATE - DISPLACEMENT SITE		90 DAY ASSURANCE LETTER DATE	
SETTLEMENT DATE - REPLACEMENT SITE		NOTICE TO VACATE DATE	
OCCUPANCY DATE - DISPLACEMENT SITE		DATE OF OCCUPANT VACATION	

REPLACEMENT SITE ADDRESS	REPLACEMENT MAILING ADDRESS	NEW TELEPHONE NUMBERS
		HOME
		WORK
		CELL

EXPENDITURES						
INVOICE NUMBER	INVOICE DATE	OBJECT CODE	FUNCTION CODE	AMOUNT DISBURSED	CHECK NUMBER	CHECK DATE

PURDGED DATE _____ **SIGNATURE** _____
Relocation Counselor

CLOSED DATE _____ **SIGNATURE** _____
Statewide Acquisition and Relocation Manager

RELOCATION CONTACT RECORD

STATE PROJECT NO. «Project_Number» **PARCEL NO.** «State_Parcel_No» **TENANT NO.** _____

PROJECT NAME «Project_Name»

OCCUPANT NAME(S) _____

This record must be complete, concise and to the point. Each entry must be made in ink or type written, initialed and dated.

DATE	RECORD EACH CONTACT AND RESULTS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

NON-RESIDENTIAL PERSONAL PROPERTY INVENTORY FORM

STATE PROJECT NO. _____ PROJECT NAME _____ FEDERAL AID PROJECT NO. _____

PARCEL NO. _____ TENANT NO. ___ OWNER _____ OCCUPANT NAME _____ INVENTORY DATE _____

ITEM NO.	ITEM DESCRIPTION	ITEM QUANTITY	ROOM OR AREA LOCATION OF ITEM		ITEMS NOT TO BE RELOCATED				SPECIAL HANDLING			
			DISPLACEMENT SITE	REPLACEMENT SITE	ITEM TO BE ABANDONED	VALUE IN PLACE OF ITEM	ITEM TO BE REPLACED	COST TO MOVE ITEM	DISCON REQ	RECON REQ	ITEM MOD REQ	STRU MOD REQ

Signature of Occupant or Occupant's Representative Date

Signature of DelDOT Representative Date

Sheet ____ of ____

MOVING AND MISCELLANEOUS EXPENSE PAYMENT APPLICATION

STATE PROJECT NO. «Project_Number» **FEDERAL AID PROJECT NO.** «FAP_Number» **PARCEL NO.** «State_Parcel_No»

PROJECT NAME: «Project_Name» **COUNTY:** «Address_County»

OWNER'S NAME (as titled on deed): «Property_Owner»

OCCUPANT NAME(S): «Tenant» **TENANT NO.** 1

OCCUPANTS NEW MAILING ADRESS:

DATE OF MOVE: **DISTANCE OF MOVE:**

I, _____, hereby make claim for ____ a Moving Expense Payment and/or a ____ Miscellaneous Expenses in the amount of $ _____, as authorized by Chapter 93, Part IX, of Title 29, Delaware Code, as amended. I further hereby certify that the information contained in herein is true and correct; that I am the person authorized to make this claim. I understand that falsification of any items submitted herewith in support of my claim will result in forfeiture of a portion of the claim or the claim in its entirety. I also request that the payment described herein be made directly to:

Name of Person or Vendor: _____

Social Security or Employer Identification Number: _____

Mailing Address _____

If the payment is directed to an entity other than myself, the reason is_____

_____

NAME OF ENTERPRISE (If applicable) _____

CLAIMENT'S SIGNATURE _____ **DATE** _____

CLAIMENTS TITLE (If applicable) _____

SPACES BELOW TO BE COMPLETED BY DEPARTMENT OF TRANSPORTATION PERSONNEL

I recommend that the amount of this claim should be (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the recommendation is partially approved or rejected the reason is: _____

_____

_____

RECOMMENDED AMOUNT $ _____

RECOMMENDED BY _____ **TITLE** _____ **DATE** _____

This application is (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the application is partially approved or rejected in total the reason is:_____

_____

_____

APPROVED AMOUNT $ _____

APPROVED BY _____ **DATE** _____

Rosemary Richardson, Statewide Acquisition and Relocation Manage

PAYMENT COMPUTATION SHEET FOR MOVING EXPENSES AND/OR MISCELLANEUOS EXPENSES

OCCUPANT TYPE: ____ Business, ____ Farm, ____ Nonprofit, ____ Personal Property, ____ Residential

TYPE OF MOVE CLAIM: ____ Actual Cost Move, ____ Commercial Move, ____ Fixed Residential Moving Cost Schedule

$ _____ Move Cost Bid/Estimate: _____ $ _____ Move Cost Bid/Estimate: _____

$ _____ Low Bid/Estimate: _____

Moving Expenses

$ _____ Fixed Residential Moving Cost based on ____ rooms

$ _____ Moving of personal property by commercial mover

$ _____ Transportation costs of the displaced person and/or his or her property

$ _____ Packing, crating, unpacking, and uncrating of personal property

$ _____ Disconnecting, dismantling, removing, reassembling and reinstalling relocated personal property

$ _____ Storage of personal property

$ _____ Replacement value insurance for the personal property connected with the move and/or storage

$ _____ Replacement value of personal property lost, stolen or damaged during the move or in storage

$ _____ Disassembling, moving and reassembling any appurtenances attached to a mobile home which were not acquired, anchoring the unit, and utility hookup charges.

$ _____ Repairs and /or modifications to move or make a mobile home decent, safe and sanitary

$ _____ Nonrefundable mobile home park entrance fee

$ _____ License, permit, fees or certifications (based on remaining useful life of existing)

$ _____ Professional services for planning the move, moving personal property, installing relocated personal property

$ _____ Re-lettering signs and replacement of stationary on hand at the time made obsolete as a result of the move

$ _____ Actual direct loss of tangible personal property and/or the purchase of substitute personal property and/or costs incurred to sell personal property (amount is based on the sum of information obtained from the attached 27R form

$ _____ Replacement location search costs (not to exceed $2,500.00)

$ _____ Other related eligible moving expenses

RELATED NONRESIDENTIAL MOVING EXPENSES

$ _____ Impact fees or one time assessments for anticipated heavy utility usage

$ _____ Connection to available nearby utilities from the right-of-way to improvements at the replacement site

$ _____ Professional services performed prior to the purchase or lease of a replacement site to determine suitability for the operation including but not limited to feasibility studies, soil testing and marketing studies

MISCELLANEOUS EXPENSES

$ _____ Miscellaneous expenses (not to exceed 1% of the appraised value of the dwelling)

$ _____ TOTAL

FIXED PAYMENT IN LIEU OF MOVING COST APPLICATION

STATE PROJECT NO. _____ **FEDERAL AID PROJECT NO.** _____ **PARCEL NO.** _____

PROJECT NAME _____ **COUNTY** _____

OWNER'S NAME (as titled on deed) _____

OCCUPANT NAME(S) _____

I, _____, hereby make claim for A Fixed Payment In Lieu of Moving and Reestablishment Expenses in the amount of $_____, as authorized by Chapter 93, Part IX, of Title 29, Delaware Code, as amended. I further hereby certify that the information contained in herein is true and correct; that I am the person authorized to make this claim. I understand that falsification of any items submitted herewith in support of my claim will result in forfeiture of a portion of the claim or the claim in its entirety.

NAME OF ENTERPRISE _____ **CLAIMENTS TITLE** _____

CLAIMENT'S SIGNATURE _____ **DATE** _____

A BUSINESS MUST MEET ALL SIX OF THE FOLLOWING TO BE ELIGIBLE FOR THIS PAYMENT.
TO BE CHECKED OFF BY THE RELOCATION COUNSELOR

☐ **1.** **The business owns or rents personal property which must be moved in connection with the displacement, and for which an expense would be incurred in such a move: and the business vacates or relocates from its displacement site.**

☐ **2.** **The business cannot be relocated without substantial loss of its existing patronage (clientele or net earnings).**

☐ **3.** **The business is not part of a commercial enterprise having more than three other entities, which are not being acquired by the Delaware Department of Transportation, and which are under the same ownership and engaged in the same or similar business.**

☐ **4.** **The business is not operated at the displacement solely for the purposes of renting such dwellings to others.**

☐ **5.** **The business is not operated at the displacement site solely for the purpose of renting the site to others.**

☐ **6.** **The business contributes materially to the income of the displaced person during the 2 taxable years prior to displacement per 49CFR, Part 24, Section 24.2(e).**

A FARM OPERATION MUST MEET ONE OF THE FOLLOWING TO BE ELIGIBLE FOR THIS PAYMENT.
TO BE CHECKED OFF BY THE RELOCATION COUNSELOR

☐ **1.** **The farm is acquired in full; or**

☐ **2.** **The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or the partial acquisition caused a substantial change in the nature of the farm operation.**

A NON-PROFIT ORGANIZATION MUST MEET THE FOLLOWING TO BE ELIGIBLE FOR THIS PAYMENT.
TO BE CHECK OFF BY THE RELOCATION COUNSELOR

☐ **1.** **The non-profit organization cannot be relocated without a substantial loss of existing patronage (membership or clientele).**

I RECOMMEND THAT THE AMOUNT OF THIS CLAIM SHOULD BE ☐ APPROVED ☐ PARTIALLY APPROVED ☐ REJECTED.

If the recommendation is partially approved or rejected the reason is: _____

_____

RECOMMENDED BY _____ **DATE** _____
Right-of-Way Agent

THIS APPLICATION IS ☐ APPROVED ☐ PARTIALLY APPROVED ☐ REJECTED.

If the application is partially approved or rejected in total the reason is: _____

_____ **AMOUNT** $_____

APPROVED BY _____ **DATE** _____
Statewide Acquisition and Relocation Manager

NOTES:

a. If the result of line 12, line 20, or line 26 is less than $ 1,000.00, the payment is $1,000.00.

b. If the result of line 12, line 20, or line 26 is more than $ 40,000.00, the payment is $40,000.00.

NONRESIDENTIAL OCCUPANT IN OPERATION FOR TWO OR MORE YEARS		
YEAR	_____	
1	**$** _____	**Net Income or Loss**
2	**$** _____	**Wages Paid to Spouse and/or Dependents**
3	**$** _____	**Guaranteed Payments to Partners**
4	**$** _____	**Wages Paid to Owners of Corporation**
5	**$**	**Total for Year (line 1 through 4)**
YEAR	_____	
6	**$** _____	**Net Income or Loss**
7	**$** _____	**Wages Paid to Spouse and/or Dependents**
8	**$** _____	**Guaranteed Payments to Partners**
9	**$** _____	**Wages Paid to Owners of Corporation**
10	**$** _____	**Total for Year (line 6 through 9)**
AVERAGE ANNUAL NET EARNINGS		
11	**$** _____	**= (line 5) + $_____(line 10)**
12	**$** _____	**= (line 11) x 50%** ***Fixed Payment for Moving Expenses – Nonresidential Moves***

NONRESIDENTIAL OCCUPANT IN OPERATION FOR LESS THAN TWO YEARS, BUT NOT LESS THAN 12 CONSECUTIVE MONTHS		
PERIOD	**from** _____ **to** _____	
13	**$** _____	**Net Income or Loss**
14	**$** _____	**Wages Paid to Spouse and/or Dependents**
15	**$** _____	**Guaranteed Payments to Partners**
16	**$** _____	**Wages Paid to Owners of Corporation**
17	**$** _____	**Total for Year (line 13 through 16)**
18	_____	**Number of months in period**
19	**$** _____	**= (line 17) / (line 18)**
20	**$** _____	**= (line 19) x 12** ***Fixed Payment for Moving Expenses – Nonresidential Moves***

NONRESIDENTIAL OCCUPANT IN OPERATION FOR LESS THAN 12 CONSECUTIVE MONTHS		
PERIOD	**from** _____ **to** _____	
21	**$** _____	**Net Income or Loss**
22	**$** _____	**Wages Paid to Spouse and/or Dependents**
23	**$** _____	**Guaranteed Payments to Partners**
24	**$** _____	**Wages Paid to Owners of Corporation**
25	**$** _____	**Total for Year (line 21 through 24)**
26	**$** _____	**= (line 25)** ***Fixed Payment for Moving Expenses – Nonresidential Moves***

COMPARABLE HOUSING SUMMARY WORKSHEET

STATE PROJECT NO. «Project_Number» **F.A.P. NO.** «FAP_Number» **PARCEL NO.** «State_Parcel_No»

PROJECT NAME «Project_Name» **COUNTY** «Address_County»

OCCUPANT NAME(S) «Property_Owner» **TENANT NO.** _____

NOTE: Subject property column to be completed during initial occupant interview.

	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
STREET ADDRESS	«Property_Location»			
CITY				
PARCEL SIZE – square feet				
UNIT TYPE				
UNIT AGE – approximate				
TYPE OF CONSTRUCTION				
NO. OF STORIES				
SQ. FT. OF HABITABLE SPACE				
NUMBER OF ROOMS				
LIVING ROOM				
DINING ROOM				
KITCHEN				
BEDROOMS				
FAMILY ROOM				
DEN				
FULL BATHROOMS				
½ BATHROOMS				
FIREPLACES				
PORCHES				
GARAGE – no. of bays				
BASEMENT				
ATTIC				
TYPE HEAT				
WATER SOURCE				
SEWAGE DISPOSAL SOURCE				
NEIGHBORHOOD TYPE				
DISTANCE TO EMPLOYMENT				
DISTANCE TO SHOPPING				
DISTANCE TO SCHOOLS				
CONDITION OF DWELLING				
VALUE/ASK. PRICE/MO. RENT				

CORRELATION:

COMPARABLE REPLACEMENT HOUSING ANALYSIS & DSS INSPECTION

STATE PROJECT NO. _____ **F.A.P. NO.** _____ **PARCEL NO.** _____

PROJECT NAME _____ **COUNTY** _____

OWNER: _____

OR

TENANT: _____

Comparable No. _____

Address _____

_____

Listed by _____

Asking Price $ _____ **No. of Bedrooms** _____

Rent Price $ _____ **per** _____ **No. of Full Baths** _____

Parcel Size _____ acres **No. of ½ Bath** _____

Habitable Sq. Ft. _____ **No. of Rooms** _____

NEIGHBORHOOD INCOME TYPE:	**STATE OF REPAIR:**	**PUBLIC UTILITIES:**
☐ Low	☐ Poor	☐ Electric
☐ Middle	☐ Fair	☐ Sewer
☐ High	☐ Good	☐ Water
	☐ Excellent	☐ Gas

REMARKS: _____

Photo Here

COMPARABLE REPLACEMENT HOUSING ANALYSIS & DSS INSPECTION

	Yes	No
DOES DWELLING CONFORM TO STATE AND LOCAL HOUSING CODES AND ORDDIANCES?	☐	☐
DOES DWELLING HAVE A CONTINUING ADEQUATE SUPPLY OF POTABLE WATER?	☐	☐
DOES THE KITCHEN CONTAIN A SINK IN GOOD WORKING ORDER CONNECTED TO HOT AND COLD WATER?	☐	☐
IS THE KITCHEN SINK CONNECTED TO AN ADEQUATE SEWAGE SYSTEM?	☐	☐
ARE SPACES WITH PROPER OUTLETS FOR A STOVE AND REFRIGERATOR PROVIDED?	☐	☐
DOES THE DWELLING CONTAIN A HEATING SYSTEM CAPABLE OF SUSTAINING A TEMPARATURE OF 70 DEGREES?	☐	☐
IS THE BATHROOM WELL LIGHTED, VENTILATED, AND PROVIDE PRIVACY TO THE USER?	☐	☐
DOES THE BATHROOM CONTAIN A BATHUB OR SHOWER STALL, SINK, AND TOILET?	☐	☐
ARE BATHROOM FIXTURES PROPERY CONNECTED TO AN ADEQUATE SUPPLY OF HOT AND COLD RUNING WATER?	☐	☐
ARE BATHROOM FIXTURES PROPERLY CONNECTED TO A SEWAGE DISPOSAL SYSTEM?	☐	☐
ARE THE BATHROOM FIXTURES IN GOOD WORKING ORDER?	☐	☐
DOES DWELLING HAVE AN ADEQUATE AND SAFE WIRING SYSTEM FOR LIGHTING AND APPLIANCES?	☐	☐
IS THE DWELLING STRUCTURALLY SOUND, WEAHTERTIGHT, AND IN GOOD REPAIR?	☐	☐
DOES THE DWELLING HAVE UNOBSTRUCTED ENGRESS TO SAFE OPEN SPACE AT GROUND LEVEL?	☐	☐
IS THE DWELLING ADEQUATE IN SIZE TO ACCOMMODATE THE OCCUPANT?	☐	☐

I certify that I have inspected the property on _____, 20____ and that it appears to meet the decent, safe, and sanitary requirements of Chapter 93, Part IX, Title 29, Delaware Code, as amended.

_____ _____

Right-of-Way Agent Date

MORTGAGE INTEREST DIFFERENTIAL, DEBT SERVICE COST, AND MORTGAGE INSURANCE PREMIUM COMPUTATION FORM

STATE PROJECT NO. _____ **FEDERAL AID PROJECT NO.** _____ **PARCEL NO.**_____

PROJECT NAME _____ **COUNTY** _____

OWNER'S NAME (as titled on deed) _____

OCCUPANT'S NAME(S) _____

INCREASED MORTGAGE INTEREST COSTS CALCULATION DATA

1. Outstanding principle balance of mortgage on acquired dwelling $ _____
2. Monthly principle and interest payment on acquired dwelling $ _____
3. Mortgage interest rate on acquired dwelling _____ %
4. Number of months remaining until last payment is due for mortgage on acquired dwelling _____ Months
5. Prevailing annual interest rate _____ %
6. Points required by mortgage lending institutuion to obtain prevailing interest rate _____ Points

PRELIMINARY DEVELOPMENT OF INCREASED MORTGAGE INTEREST COSTS PAYMENT USING HP-12C KEYBOARD

7. $ _____ (line 2) [PMT]
8. _____ Months (line 4) [n]
9. _____ % (line 5) [g] [i] [PV] [CHS] = $ _____ Reduced Mortgage Amount
10. $ _____ (line 1) -- $ _____ (line 9) = $ _____ Mortgage Interest Differential
11. $ _____ (line 9) x _____ % (line 6) = $ _____ Debt Service Cost
12. $ _____ (line 10) + $ _____ (line 11) = $ _____ Preliminary Increased Mortgage Interest Costs

DEVELOPMENT OF INCREASED MORTGAGE INTEREST COSTS PAYMENT USING HP-12C KEYBOARD

13. Prevailing annual interest rate or new annual interest rate obtained by the diplaced person _____ % (use most cost effective rate) and Debt Service Cost _____ % (points)
14. $ _____ (line 2) [PMT]
15. _____ (line 4) [n]
16. _____ % (line 13) [g] [i] [PV] [CHS] = $ _____ Reduced Mortgage Amount
17. $ _____ (line 1) -- $ _____ (line 16) = $ _____ Mortgage Interest Differential
18. $ _____ (line 16) x _____% (points line 13) = $ _____ Debt Service Cost
19. $ _____ (line 17) + $ _____ (line 18) = $ _____ Increased Mortgage Interest Cost Payment

DEVELOPMENT OF MORTGAGE INSURANCE PREMIUM REINBURSEMENT (if required at settlement)

MORTGAGE INSURANCE PREMIUM RATE TABLE				
TERM	15 YEARS	20 YEARS	25 YEARS	30 YEARS
M. I. P. RATE	2.344%	2.913%	3.475%	3.660%

_____% M. I. P. RATE (from rate table) x $ _____ (line 16) = $ _____ M.I.P.

ACTUAL MORTGAGE IS SMALLER THAN CALCULATED REDUCED MORTGAGE AMOUNT FROM LINE 16

20. $ _____ Actual Mortgage Amount Obtained / $ _____ (line 16) = _____ % Ratio

21. $ _____ (line 19) x _____ % (line 20) = $ _____ Actual Increased Mortgage Interest Costs

ACTUAL MORTGAGE HAS SHORTER TERM THAN OLD MORTGAGE CALCULATED USING HP-12C KEYBOARD

22. $ _____ (payoff - displacement prop. Line 1) [PV]

23. _____% (line 3) [g] [i]

24. _____ New Term (in years) [g] [n] [PMT] [CHS] = $ _____

25. _____ % (line 13) [g] [i]

26. $ _____ (line 24) [PMT]

27. _____ New Term (in years) [g] [n] [PV] [CHS] = $ _____ Buydown Amount

28. $ _____ (line 27) x _____ % Points on New Mortgage = $ _____ Debt Service Cost

29. $ _____ (line 22) - $ _____ (line 27) = $ _____ Mortgage Differential

30. $ _____ (line 29) + $ _____ (line 28) = $ _____ Increased Mortgage Interest Cost

ACTUAL MORTGAGE OBTAINED IS A SMALLER AMOUNT AND HAS A SHORTER TERM

31. $ _____ Actual Mortgage / $ _____ (line 27) = _____ %

32. $ _____ (line 30) x _____% (line 31) = $ _____ Increased Mortgage Interest Cost

ALTERNATIVE METHOD OF CALCULATING INCREASED MORTGAGE INTEREST COSTS PAYMENT

An alternate method which can be used would be to find out from a lending institution how many points would be required to buydown the current prevailing interest rate of the new mortgage on the acquired dwelling. This may not be possible because of the lending institution not making loans available at the interest rate or if they will, the points may be so high it would not be cost effective. Every possible combination should be computed before having an Increased Mortgage Interest Rate approved.

33. $ _____ (line 1) x _____ % Actual Points = $ _____Increased Mortgage Interest Costs

I certify that the above calculated Replacement Housing Payment is $ _____ as of _____; that the above amount is to be used in connection with a transportation project as allowed under Chapter 93, Part IX, of Title 29, Delaware Code, as amended; and that I have no direct or indirect, present nor contemplated personal interest in this transaction. Nor will I derive any benefit from the Replacement Housing Payment. The determination of this portion of the Replacement Housing Payment is base upon current mortgage interest rates and debt service costs.

SIGNATURE _____ DATE _____
Real Estate Representative

SIGNATURE _____ DATE _____
Operations Support Manager

REPLACEMENT HOUSING PAYMENT COMPUTATION FORM

STATE PROJECT NO. _____ **FEDERAL AID PROJECT NO.** _____ **PARCEL NO.** _____

PROJECT NAME _____ **COUNTY** _____

OWNER'S NAME (as titled on deed) _____

OCCUPANT NAME(S) _____

HOUSING SUPPLEMENT COMPUTATION FOR 90 DAY HOMEOWNER OCCUPANTS

HOUSING SUPPLEMENT PAYMENT COMPUTATION FOR 90 DAY HOMEOWNER OCCUPANTS

COMPARABLE ADDRESS	ASKING PRICE
1. _____	$ _____
2. _____	$ _____
3. _____	$ _____

COMPARABLE NO. ____

ASKING PRICE	$ _____
LESS ACQUISITION PAYMENT	$ _____
HOUSING SUPPLEMENT PAYMENT A	$ _____
REPLACEMENT DWELLING COST	$ _____
LESS ACQUISITION PAYMENT	$ _____
HOUSING SUPPLEMENT PAYMENT B	$ _____

HOUSING SUPPLEMENT – LESSER OF A OR B

RENTAL ASSISTANCE COMPUTATION FOR 90 DAY OCCUPANTS

RENTAL ASSISTANCE PAYMENT COMPUTATION FOR 90 DAY OCCUPANTS

COMPARABLE ADDRESS	RENT PER MONTH	AVERAGE MONTHLY UTILITIES	BASE MONTHLY RENT
1. _____	$ _____	$ _____	$ _____
2. _____	$ _____	$ _____	$ _____
3. _____	$ _____	$ _____	$ _____

COMPARABLE NO. ____

COMPARABLE MONTHLY RENT & UTILITIES x 42	$ _____
LESS MONTHLY RENT OR ECONOMIC RENT & UTILITIES x 42	$ _____
RENTAL ASSISTANCE PAYMENT A	$ _____
REPLACEMENT MONTHLY RENT AND UNTILITIES x 42	$ _____
LESS MONTHLY RENT OR ECONOMIC RENT & UTILITIES x 42	$ _____
RENTAL ASSISTANCE PAYMENT B	$ _____

RENTAL ASSISTANCE – LESSER OF A OR B

INCIDENTAL EXPENSES COMPUTATION

AMOUNT OF COMPARABLE	$ _____
A. MORTGAGE PAYOFF(S)–displacement dwelling	$ _____
B. REDUCED MORTGAGE AMOUNT–calculated from RA18	$ _____
C. AMOUNT OF NEW MORTGAGE–replacement dwelling	$ _____
LOAN ORIGINATION FEE _____%- lesser of A, B. or C	$ _____
LOAN DISCOUNT FEE _____%-lesser of A, B, or C	$ _____
APPRAISAL FEE	$ _____
ASSUMPTION FEE	$ _____
TAX SERVICE FEE	$ _____
EXPRESS MAIL FEE	$ _____
CREDIT REPORT FEE	$ _____
SETTLEMENT OR CLOSING FEE	$ _____
TITLE SEARCH FEE	$ _____
TITLE EXAMINATION FEE	$ _____
DOCUMENT PREPARATION FEE	$ _____
NOTARY FEE	$ _____
LENDER'S TITLE INSURANCE (based on amount of buydown)	$ _____
OWNER'S TITLE INSURANCE (based on amount of buydown)	$ _____
MORTGAGE INSURANCE (if full amount is required)	$ _____
RECORDING FEE – DEED/MORTGAGE	$ _____
CITY/COUNTY TRANSFER TAX (based on comparable)	$ _____
LAND SURVEY	$ _____
OTHER:	$ _____
OTHER:	$ _____
OTHER:	$ _____
TOTAL	$ _____

DOWNPAYMENT ASSISTANCE PAYMENT COMPUTATION

SELLING PRICE OF REPLACEMENT DWELLING	$ _____
A. AMOUNT PLACED DOWN – replacement dwelling	$ _____
B. MINIMUM DOWN PAYMENT REQ. – replacement dwelling	$ _____
C. MAXIMUM DOWNPAYMENT ELIGIBILITY	$ _____
D. STATE PARTICIPATION (lesser of A, B, or C)	$ _____
E. STATE PARTICIPATION – incidental exp. (C minus D)	$ _____

I certify that the above calculated Replacement Housing Payment is $_____ as of _____; that the above amount is to be used in connection with a transportation project as allowed under Chapter 93, Part IX, of Title 29, Delaware Code, as amended; and that I have no direct or indirect, present or contemplated personal interest in this transaction. Nor will I derive any benefit from this Replacement Housing Payment. The determination of this Replacement Housing Payment is based upon comparable housing available on the private market at the time of displacement.

SIGNATURE _____ **DATE** _____

Relocation Counselor

SIGNATURE _____ **DATE** _____

Statewide Acquisition and Relocation Manager

DelDOT Right-of-Way

Document No. RA 19
March 21, 2025

REPLACEMENT HOUSING PAYMENT APPLICATION

STATE PROJECT NO. _____ FEDERAL AID PROJECT NO. _____ PARCEL NO._____

PROJECT NAME _____ COUNTY _____

OWNER'S NAME (as titled on deed) _____

OCCUPANT NAME(S) _____ TENANT NO. ____

CLAIMANT'S SOCIAL SECURITY NO. _____--____--_____ OCCUPANT'S NEW TELEPHONE NO. _____--_____--_____

OCCUPANT'S OLD MAILING ADDRESS _____

OCCUPANT'S NEW MAILING ADDRES _____

I, _____, hereby make claim for a Replacement Housing Payment in the amount of $_____ , as authorized by Chapter 93, Part IX of Title 29, Delaware Code, for displacement from a owner occupied or tenant occupied dwelling which I lawfully resided in for at least 90 days prior to the initiation of negotiations by the State of Delaware for the acquisition of the above referenced parcel.

I certify to the best of my knowledge the replacement dwelling which I currently occupy meets the standards for decent, safe and sanitary housing as required under Delaware law and that I am eligible for the requested payment.

I request that the payment described herein be made directly to _____ (social security or employer identification no. _____) who's mailing address is _____ _____. If the payment is directed to an entity other than myself, the reason is

_____

CLAIMANT'S SIGNATURE _____ DATE _____

SPACES BELOW TO BE COMPLETED BY DEPARTMENT OF TRANSPORTATION PERSONNEL

PAYMENT TYPE
(check appropriate types and attach corresponding worksheet and documentation)

HOUSING SUPPLEMENT PAYMENT ____

RENTAL ASSISTANCE PAYMENT ____

INCIDENTAL EXPENSE PAYMENT ____

INCREASED MORTGAGE INTEREST COSTS PAYMENT ____

DOWNPAYMENT ASSISTANCE PAYMENT ____

I recommend that the amount of this claim should be (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the recommendation is partially approved or rejected the reason is: _____

_____

RECOMMENDED BY _____ TITLE _____ DATE _____

This application is (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the application is partially approved or rejected the reason is: _____

_____ AMOUNT $_____

APPROVED BY _____ DATE _____
Statewide Acquisition and Relocation Manager

REESTABLISHMENT EXPENSE PAYMENT APPLICATION

STATE PROJECT NO. _____ FEDERAL AID PROJECT NO. _____ PARCEL NO._____

PROJECT NAME _____ COUNTY _____

OWNER'S NAME (as titled on deed) _____

OCCUPANT NAME(S) _____ TENANT NO. ___

OCCUPANTS MAILING ADRESS _____

I, _____, hereby make claim for a Reestablishment Expense Payment in the amount of $ _____, as authorized by Chapter 93, Part IX, of Title 29, Delaware Code, as amended. I further hereby certify that the information contained in herein is true and correct; that I am the person authorized to make this claim. I understand that falsification of any items submitted herewith in support of my claim will result in forfeiture of a portion of the claim or the claim in it's entirety. I also request that the payment described herein be made directly to:

Name of Person or Vendor: _____

Social Security or Employer Identification Number: _____

Mailing Address _____

If the payment is directed to an entity other than myself, the reason is_____

_____

NAME OF ENTERPRISE _____ CLAIMENTS TITLE _____

CLAIMENT'S SIGNATURE _____ DATE _____

SPACES BELOW TO BE COMPLETED BY DEPARTMENT OF TRANSPORTATION PERSONNEL

$ _____ Repairs or improvements required by Federal, State or local law, code or ordinance.

$ _____ Modifications to the replacement property to accommodate the business or make replacement structure suitable for conducting the business.

$ _____ Construction and installation costs for exterior signing to advertise the business.

$ _____ Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

$ _____ Advertisement of the replacement location.

$ _____ Estimated increased costs of operation during the first 2 years at the replacement site for such items as lease or rental charges, personal or real property taxes, insurance premiums and utility charges excluding impact fees.

$ _____Other eligible reestablishment expenses.

$ _____ TOTAL

I recommend that the amount of this claim should be (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the recommendation is partially approved or rejected the reason is: _____

_____

RECOMMENDED BY _____ TITLE _____ DATE _____

This application is (APPROVED) (PARTIALLY APPROVED) (REJECTED). If the application is partially approved or rejected the reason is: _____

_____ APPROVED AMOUNT $_____

APPROVED BY _____ DATE _____
Statewide Acquisition and Relocation Manager

ECONOMIC RENT CERTIFICATION REQUEST

STATE PROJECT NO. _____ FEDERAL AID PROJECT NO. _____ PARCEL NO. _____

PROJECT NAME _____ COUNTY _____

OWNER _____

OCCUPANT NAME(S) _____ TENANT NO. ___

SITE ADDRESS _____

COMPARABLE NO. ____

TO: _____

Please establish economic rent for the referenced dwelling unit.

COMMENTS:

_____

SIGNED _____ Date _____

TO: _____

I certify that I have inspected the referenced dwelling unit on _____ and the economic rent for this dwelling is $ _____ per mo.

COMMENTS:

_____

SIGNED _____ Date _____

DelDOT Right-of-Way

Document No. RA 23
March 21, 2025

CERTIFICATION OF CITIZENSHIP OR LAWFUL PRESENCE IN THE UNITED STATES OF AMERICA

STATE PROJECT NO. _____ **F.A.P NO.** _____ **PARCEL NO.**_____

PROJECT NAME _____ **COUNTY** _____

OWNER'S NAME (as titled on deed)

_____

OCCUPANT NAME(S) _____
TENANT NO. _____

RELOCATION OF PERSONAL PROPERTY

_____ To meet the eligibility requirement for receiving relocation assistance, I certify that I am legally present in the United States of America as a U.S. Citizen, or an alien lawfully present in the United State of America, or a Citizen National of the United States of America.

RELOCATION OF A RESIDENTIAL OCCUPANT

_____ To meet the eligibility requirement for receiving relocation assistance, I certify all of the occupants residing at the location identified above are U.S. Citizens, or an alien lawfully present in the United States of America, or a Citizen National of the United States of America.

RELOCATION OF A NON-RESIDENTIAL OCCUPANT

_____ To meet the eligibility requirement for receiving relocation assistance, I certify that I, as a Sole Proprietor, or all corporate officers, or partners for the business operation, or farm operation, or nonprofit organization at the location identified above are U.S. Citizens, or aliens lawfully present in the United States of America, or a Citizen Nationals of the United States of America.

I fully understand falsification of this certification document will result in my ineligibility for relocation payments and assistance as provided under Title 29, Part IX, Chapter 93 of the Delaware Code.

OCCUPANT: _____ **Date:** _____

WITNESS: _____ **Date:** _____

SAMPLE OF ELIGIBLE RESIDENTIAL MISCELLANEOUS ITEMS

ITEMS MADE OBSOLETE BY THE MOVE & EXPENSES MUST BE INCURRED WITHIN 30 DAYS OF MOVE DATE (NEED PAID RECEIPTS)

blinds
cost of professional painter and paint
curtain rods
curtains, drapes, swags, valances
drapery hooks
inside shutters
masking tape
paint
pet fees (actual, reasonable, & necessary) for instance; boarding during packing/unpacking and move process)
sandpaper
sealer paint
spackling paint
wall/joint compound
wallpaper
wallpaper border
wallpaper paste

MAIL BOX (NEW CONSTRUCTION ONLY)

(NO PAINTING TOOLS, BRUSHES, CLOTHS, PANS, ETC.)

Additionally, receipts can be presented for payment on a case-by-case basis for various items and determined at that time by the statewide manager whether or not the department will participate in the reimbursement. If the statewide manager determines that the department will not participate the displaced owner has the option to file an appeal.

Fixed Moving Cost Schedule (Residential Moves Only)

Last updated August 26, 2021

Occupant Owns Furniture								
1 Room	12 Rooms	13 Rooms	14 Rooms	15 Rooms	Is Rooms	17 Rooms	Ia Rooms	1 Addt'l Room
$7001	$9001	$1,1001	$1,3001	$1,5001	$1,7001	$1,9001	$2,1001	$150

Occupant Does Not Own Furniture
$500 for the first room, $100 for each additional room.
$100 for occupant of a dormitory.

BUILDING INSPECTION REPORT

State Project No. _____ F.A.P. No. _____

Project Title _____ County Sussex

Parcel No. _____ Owner _____

Occupant _____

Address _____

Inspection Prior to Settlement

Condition of Building: _____ Excellent _____ Good _____ Fair _____ Poor

Mark only items that are included in the purchase.

Refrigerator _____ Yes _____ No Range _____ Yes _____ No

Dishwasher _____ Yes _____ No Microwave _____ Yes _____ No

Heater _____ Yes _____ No Water Heater _____ Yes _____ No

Air Conditioning – Number of Units _____ _____ Yes _____ No

Washer _____ Yes _____ No Dryer _____ Yes _____ No

Bathroom Fixtures _____ Yes _____ No _____ Lighting _____ Yes _____ No

Other: _____

Lease Agreement Needed At Settlement? _____ Yes _____ No

Comments: _____

I have inspected the above referenced property on _____ and found the improvements to be present and in the same condition (normal wear and tear excepted) as they were on the date of the approved acquisition agreement.

_____
Real Estate Representative Date

Authorization to conduct settlement on this parcel is hereby given, provided all other Departmental standards have been met.

_____
Manager Date

Release of Property

We, _____, have vacated the above referenced property on _____ and relinquish all rights to property, real or personal, left at that location to DelDOT, and DelDOT may dispose of said property as it sees fit.

_____

Signature Date

_____

Inspection Before Release of Escrow

I have inspected the above referenced property on _____ after it was vacated and found the improvements to be present and in the same condition (normal wear and tear excepted) as they were on the date of settlement.

_____

Real Estate Representative, Date



DELAWARE DEPARTMENT OF TRANSPORTATION

RIGHT-OF-WAY SECTION

RELOCATION ASSISTANCE PROGRAM

Your Rights and Benefits as a Displaced Person

GENERAL INFORMATION NOTICE



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
DIVISION OF PLANNING
RIGHT-OF-WAY SECTION

RELOCATION ASSISTANCE PROGRAM

Fellow Delaware Citizen:

_____ has been assigned as your Right-of-Way and Relocation Agent. Any questions regarding relocation assistance and payment benefits are to be directed to your assigned agent.

Your agent's telephone number is: _____

Your agent's Office is located at: _____
_____
_____

Please do not hesitate in contacting your agent to set up appointments or ask questions regarding any aspect of your relocation. You are being provided this notice due to the possibility of becoming eligible for relocation assistance and benefits due to the following transportation project:

_____

_____

Please refer to this project in all correspondence you have with your agent. Contact your agent prior to entering any contract to assure that you qualify for any payment benefit you wish to apply for. Your agent is here to assist you.

NOTE

If you have obtained this brochure at a public workshop or through any means of distribution other than directly from an assigned Right-of-Way and Relocation Agent and you have questions pertaining to any aspects of the Relocation Assistance Program, please contact our Right-of-Way office nearest you.

Right-of-Way Office
250 Bear Christiana Road
Bear, Delaware 19701
Telephone: (302) 326-4472

Right-of-Way Office
800 Bay Road
Dover, Delaware 19903
Telephone: (302) 760-2228

TABLE OF CONTENTS

Introduction 3
Important Terms Used in This Booklet 4

Section I – Relocation Advisory Services

Residential Assistance 7
Business, Farm, and Nonprofit Organization Assistance 8

Section II – Individuals and Families

Moving Costs 9
Miscellaneous Expenses 10
Replacement Housing 10
Replacement Housing – Purchase Supplement 14
Replacement Housing – Rental Assistance 16
Replacement Housing – Downpayment 17
Fair Housing Laws 18

Section III – Business, Farms, and Nonprofit Organizations

Moving Cost Reimbursement 19
Related Eligible Expenses 20
Reestablishment Expenses 21
Fixed Payment for Actual Moving Expenses
(In Lieu Payment) 21
Project Office 22
Relocation Payments Are Not Considered to be Income 22
Right to Appeal 23

Appendix A – Fixed Moving Cost Schedule 24

INTRODUCTION

Government programs designed to benefit the public as a whole often result in acquisition of private property, and sometimes in the displacement of people from their residences, businesses, nonprofit organizations, or farms.

To provide uniform and equitable treatment for persons displaced, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and amended it in 1987. This law, called the Uniform Act, is the foundation for the information discussed in this brochure.

Acquisition and relocation policies and provisions for all Federal and federally assisted programs and projects are contained in the government-wide rule published in the Federal Register on January 4, 2005. The rules are reprinted each year in the Code of Federal Regulations (CFR), Title 49, Part 24. All Federal, State, local government agencies, and others receiving Federal financial assistance for public programs and projects that require the acquisition of real property must comply with the policies and provisions set forth in the Uniform Act and the regulations.

The acquisition itself does not need to be federally funded for the rules to apply. If Federal funds are used in any phase of the program or project, the rules of the Uniform Act apply. If no federal funds are used, but state funds are used the same federal rules apply per state law (Title 29 Chapter 93).

Section 1 provides information about relocation assistance advisory service. Section 2 contains information if you are being displaced from a residence. Section 3 contains information for displaced businesses, farms, and nonprofit organizations.

If you are required to move because of a Federal, federally assisted or state program or project, a relocation agent will contact you. The agent will answer your specific questions and provide any additional information you may need. If you have a disability that prevents you from reading or understanding this brochure, you will be provided appropriate assistance. You should notify DelDOT if you have special requirements for assistance.

This brochure explains your rights as an occupant of real property to be acquired for a federally funded program or project. The requirements for the acquisition of property are explained in a brochure entitled “Your Property and the Right-of-Way”. Also, acquisition and relocation information can be found on the Federal Highway Administration Office of Real Estate Services website https://www.fhwa.dot.gov/real_estate/index.cfm.

IMPORTANT TERMS USED IN THIS BOOKLET

Agency

Relocation assistance advisory services and payments are administered at the local level by an Agency responsible for the acquisition of real property and/or the displacement of people from property to be used for a federally funded program or project. The Agency may be a Federal agency, a State agency, such as DelDOT, a local agency, such as a county or a city, or a person carrying out a program or project with Federal financial assistance. The Agency may contract with a qualified individual or firm to administer the relocation program. However, the Agency remains responsible for the program.

Alien Not Lawfully Present

The law provides that if a displaced person is an alien not lawfully present in the United States such person is not eligible for relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

Business

Any lawful activity, with the exception of a farm operation, conducted primarily for the purchase, sale, lease, and rental of personal or real property; or for the manufacture, processing, and/or marketing of products, commodities, or any other personal property; or for the sale of services to the public; or solely for the purpose of the Uniform Act, an outdoor advertising display or displays, when the display(s) must be moved as a result of the project.

Comparable

A comparable replacement dwelling must be DSS and functionally equivalent to your present dwelling. While not necessarily identical to your present dwelling, a comparable replacement dwelling should provide for the same utility and function as the dwelling from which you are being displaced.

Decent, safe, and sanitary (DSS) dwelling

The DSS standard means the replacement dwelling meets the minimum requirements established by Federal regulations and conforms to applicable local housing and occupancy codes.

DelDOT

Delaware Department of Transportation

Displaced Person

Any person (individual, family, partnership, association or corporation) who moves from real property, or moves personal property from real property as a direct result of (1) the acquisition of the real property, in whole or in part, (2) a written notice from the Agency of its intent to acquire, (3) the initiation of negotiations for the purchase of the real property by the Agency, or (4) a written notice requiring a person to vacate real property for the purpose of rehabilitation or demolition of improvements, provided the displacement is permanent and the property is needed for a Federal or federally assisted program or project.

Dwelling

The term dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Dwelling Site

The term dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

Farm

Any activity conducted solely or primarily to produce one or more agricultural products or commodities, including timber, for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Financial Means

For a homeowner, if a purchase supplement is needed and provided, in addition to the acquisition price for your dwelling, then the replacement dwelling is considered to be within your financial means.

For a tenant, the monthly rent and estimated average monthly utility (electricity, gas, other heating and cooking fuels, water and sewer) cost for a comparable replacement dwelling is considered to be within financial means if, after receiving rental assistance, this amount does not exceed the base monthly rent (including average monthly utility cost) for the dwelling from which the tenant is displaced.

Last Resort Housing

The term Last Resort Housing is an administrative procedure authorized by law to address those times when comparable replacement housing is not available under statutory limits specified in law. The law and regulation allow DelDOT to provide a replacement housing payment in excess of the statutory maximums of $9,570 and $41,200.

Nonprofit Organization

A public or private entity that has established its nonprofit status under applicable Federal or State law.

Program or Project

An activity or series of activities undertaken by a federal agency, or an activity undertaken by a State or local agency with Federal financial assistance in any phase of the activity, or an activity undertaken by a state or local agency with only state financial assistance.

Small Business

A business having not more than 500 employees working at a site which is the location of economic activity, and which will be acquired for a program or project or is displaced by a program or project. A site occupied solely by an outdoor advertising sign(s) does not qualify for purposes of the reestablishment expense benefit.

SECTION 1 – RELOCATION ADVISORY SERVICES

A relocation agent will contact you to offer relocation assistance service.

Any individual, family, business or farm displaced by a Federal or federally assisted program shall be offered relocation assistance services for the purpose of locating a suitable replacement property. Relocation services are provided by qualified personnel employed by DelDOT. It is their goal and desire to be of service to you and assist in any way possible to help you successfully relocate.

Remember, your relocation agent is here to **help** and **advise** you, so please be sure to make full use of the agent's services. Do not hesitate to ask questions to assure you fully understand all your rights and benefits.

An individual with a disability will be provided the assistance needed to locate and move to a replacement dwelling or site. The individual should notify DelDOT of any special requirements for assistance.

RESIDENTIAL ASSISTANCE

A relocation agent from DelDOT will contact and interview you to find out your needs. Relocation services and payments will be explained in accordance with your eligibility. During the initial interview your housing needs and desires will be determined as well as your need for assistance.

The agent will offer assistance and provide a current listing of comparable properties. You will be provided a written determination of the amount of replacement housing payment for which you qualify. The agent can supply information on other Federal and State programs in your area.

Transportation will be offered to inspect housing referrals. DelDOT will provide counseling or help you get assistance from other sources as a means of minimizing hardships in adjusting to your new location. You cannot be required to move unless at least one comparable decent, safe, and sanitary (DSS) replacement dwelling is made available to you.

Please let your agent know if you locate a replacement dwelling so that it can be inspected to assure that it meets DSS standards.

BUSINESS, FARM, AND NONPROFIT ORGANIZATION ASSISTANCE

A relocation agent from DelDOT will contact and interview you to find out your needs and replacement site requirements and estimate the time needed to accomplish the move. Relocation services and payments will be explained in accordance with your eligibility. It is important to explain to the agent any anticipated problems. During the initial interview the relocation agent will ask many questions to determine your financial ability to accomplish the move, including lease terms and other obligations.

The agent will help determine the need for outside specialists to plan, move, and reinstall personal property. The agent will identify and resolve any issues regarding the Federal Relocation Assistance Program what is real estate and what is personal property to be relocated. The agent will explore and provide advice as to possible sources of funding and assistance from other local, State, and Federal agencies. In addition, as needed, the relocation agent will maintain listings of commercial properties and farms.

The goal is to achieve a successful relocation back into the community.

Social Services Provided by Other Agencies

Your relocation agent will be familiar with the services provided by other public and private agencies in your community. If you have special problems, the agent will make every effort to secure the services of those agencies with trained personnel who have the expertise to help you. Make your needs known in order that you may receive the help you need.

SECTION 2 – INDIVIDUALS AND FAMILIES

MOVING COSTS

If you qualify as a displaced person, you are entitled to reimbursement of your moving costs and certain related moving expenses. Displaced individuals and families may choose to be paid either on the basis of actual, reasonable moving costs and related expenses, **or** according to a fixed moving cost schedule. To assure your eligibility and prompt payment of moving expenses, you should contact the relocation agent from DelDOT prior to your move.

Actual, Reasonable Moving Costs

You may be paid for your actual, reasonable moving costs by a professional mover plus related expenses, **or** you may move yourself. In most cases, reimbursement will be limited to a 50-mile distance. Related expenses involved in the move may include:

- Packing and unpacking personal property.
- Disconnecting and reconnecting household appliances.
- Temporary storage of personal property.
- Insurance while property is in storage or transit.
- Transfer of telephone service and other similar utility reconnections.
- Other expenses considered eligible by DelDOT.

All expenses must be considered necessary and reasonable by DelDOT and supported by paid receipts or other evidence of expenses incurred.

Fixed Moving Cost Schedule

You may choose to be paid on the basis of a fixed moving cost schedule established for your State of Delaware residency (See Appendix A on page 25). The amount of the payment is based on the number of rooms in your dwelling. Your relocation agent will be able to tell you the exact amount you will be eligible to receive if you select this option. The schedule is designed to include all of the expenses incurred in moving, including those services that must be purchased from others.

If you are the owner of a displaced mobile home, you may be entitled to a payment for the cost of moving the mobile home to a replacement site on an actual cost basis. Displaced mobile home occupants (owners or tenants) may also be eligible for a payment for moving personal property from the mobile home such as furniture, appliances and clothing on an actual cost basis, or on the basis of a moving cost schedule. For a complete explanation of all moving cost options involving a mobile home, please discuss the matter with your relocation agent.

Miscellaneous Expenses

Owners and tenants of the State of Delaware displaced from a residential dwelling by a program or a project may receive reimbursement for miscellaneous expenses incurred within thirty days of moving from the displacement dwelling. Expenses must be directly attributable to the move from the displacement dwelling and have been in fact paid and for which a receipt can be shown. In no event shall the payment by the Department exceed **1% of the appraised residential value of the residence acquired**. Your agent will provide you with the dollar limitations you can spend.

REPLACEMENT HOUSING

There are three types of replacement housing payments: purchase supplement, rental assistance, and downpayment. To understand replacement housing payments, you first need to become familiar with the terms **Comparable; Financial Means; Decent, Safe, and Sanitary (DSS); and Last Resort Housing.**

Comparable

A comparable replacement dwelling must be DSS and functionally equivalent to your present dwelling. While not necessarily identical to your present dwelling, a comparable replacement dwelling should provide for the same utility and function as the dwelling from which you are being displaced. In addition, a comparable replacement dwelling should be:

- Adequate in size to accommodate the occupants (e.g., you and your family).
- Located in an area that is not subject to unreasonable adverse environmental conditions.
- Located in an area that is not less desirable than your present location with respect to public utilities and commercial and public facilities.
- Reasonably accessible to your place of employment.
- Located on a site that is typical in size for residential development with normal site improvements.
- Currently available on the private market.

• Within your financial means.

Financial Means

For a homeowner, if a purchase supplement is needed and provided, in addition to the acquisition price for your dwelling, then the replacement dwelling is considered to be within your financial means.

For a tenant, the monthly rent and estimated average monthly utility (electricity, gas, other heating and cooking fuels, water and sewer) cost for a comparable replacement dwelling is considered to be within financial means if, after receiving rental assistance, this amount does not exceed the base monthly rent (including average monthly utility cost) for the dwelling from which the tenant is displaced.

DelDOT may need to calculate the base monthly rent using 30% of the displaced tenant's total monthly gross household income, if that income qualifies as low income in accordance with established low-income amounts determined by the U.S. Department of Housing and Urban Development (HUD).

DelDOT will also evaluate the amounts designated for shelter and utilities for a tenant that receives government assistance.

The rental assistance payment will be computed using the lesser of the three (rent and average monthly utility cost; 30% of the total monthly gross household income for a qualified low-income tenant; or the total amount designated for shelter and utilities for a tenant receiving government assistance). To ensure the maximum benefit, it is important to provide DelDOT appropriate evidence of total monthly household income when asked. There are some amounts that are not included as monthly household income, including income earned by dependents. DelDOT will explain this procedure in greater detail.

Decent, Safe, and Sanitary

The DSS standard means the replacement dwelling meets the minimum requirements established by Federal regulations and conforms to applicable local housing and occupancy codes. The dwelling shall:

• Be structurally sound, weathertight, and in good repair.

• Contain a safe electrical wiring system adequate for lighting and other devices.

• Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees Fahrenheit) except in those areas where local climatic conditions do not require such a system.

• Be adequate in size with respect to the number of rooms and area of living space to accommodate the displaced person.

• Contain a well-lighted and ventilated bathroom providing privacy to the user and containing a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and sewage drainage system.

• Contain a kitchen area with a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, with adequate space and utility connections for a stove and refrigerator.

• Have unobstructed egress to safe, open space at ground level.

• Be free of any barriers which prevent reasonable ingress, egress or, in the case of a handicapped displaced person, use of the dwelling.

IMPORTANT NOTICE

Please understand that the replacement dwelling inspection for decent, safe, and sanitary requirements is conducted by DelDOT personnel for the sole purpose of determining your eligibility for a relocation payment. It is not to be interpreted as approved assurance or guarantee that there are no deficiencies in the dwelling or in its fixtures and equipment that may be discovered at a later date. It is your responsibility to protect your best interest and investment in the purchase or rental of your replacement property and you must clearly understand that DelDOT will assume no responsibility if structural, mechanical, legal, or other unforeseen problems are discovered after the inspection has been conducted.

Last Resort Housing

The term Last Resort Housing is an administrative procedure authorized by law to address those times when comparable replacement housing is not available under statutory limits specified in law. The law and regulation allow DelDOT to provide a replacement housing payment in excess of the statutory maximums of $9,570 and $41,200. Because this provision is commonly used, the statutory maximums will not be restated throughout this brochure.

DelDOT must provide comparable replacement housing, that is DSS and within your financial means, before you are required to move. DelDOT may provide the necessary housing in several ways, such as:

• Making a replacement housing payment in excess of the maximum $9,570 or $41,200 statutory limits.

• Purchasing an existing comparable residential dwelling and making it available to you in exchange for your dwelling.

• Moving and rehabilitating a dwelling and making it available to you in exchange for your property.

• Purchasing, rehabilitating or reconstructing an existing dwelling to make it comparable to your property.

• Purchasing land and constructing a new replacement dwelling comparable to your dwelling when comparables are not otherwise available.

• Purchasing an existing dwelling, removing barriers or rehabilitating the structure to accommodate a handicapped displaced person when a suitable comparable replacement dwelling is not available.

• Providing a direct loan which will enable you to construct or contract for the construction of a decent, safe, and sanitary replacement dwelling.

Freedom of Choice

All eligible displaced persons have the freedom of choice in the selection of a replacement dwelling. DelDOT does not require you, without your written consent, to accept the replacement dwelling provided by DelDOT for calculation purposes. If you decide not to accept the replacement housing offered by DelDOT, you may secure a replacement dwelling of your choice and still be eligible for benefits as long as it meets the DSS standard.

If you are eligible for Last Resort Housing, your relocation agent will thoroughly explain the program to you.

Length of Occupancy – Basic Occupancy Requirements

The type of payment you are eligible for depends on whether you are an owner or a tenant, and how long you have lived in the property being acquired prior to the initiation of negotiations. “Length of occupancy” simply means the number of days that you occupied the dwelling before the date of initiation of negotiations by DelDOT for the purchase of the property.

The term “initiation of negotiations” is usually the date DelDOT makes the first personal contact with the owner of real property, or his/her representative, to provide a written offer to purchase the property being acquired.

Owners who were in occupancy 90 days or more prior to the initiation of negotiations may be eligible for a purchase supplement or a rental assistance payment.

Tenants who were in occupancy 90 days or more prior to the initiation of negotiations may be eligible for a rental assistance payment or a downpayment.

If you were in occupancy at the time of the initiation of negotiations, but less than 90 days prior to that date, you are considered a displaced person entitled to relocation assistance advisory services and moving payments. You may be entitled to a rental assistance payment if comparable replacement rental housing is not available within your financial means. DelDOT will use the financial means test described earlier in this brochure. This involves checking to see if you qualify as low income using the HUD definition. If so, and you are required to pay rent and utilities in excess of 30% of your average monthly gross household income for a comparable replacement dwelling unit, you may be eligible for a rental assistance payment under Last Resort Housing because comparable replacement housing is not available within your financial means. You should meet with your relocation agent for an explanation of the relocation benefits that you may be eligible to receive.

REPLACEMENT HOUSING – PURCHASE SUPPLEMENT

For Owner Occupants of 90 Days or More

If you have owned and occupied your home for at least 90 days prior to the initiation of negotiations for your property, you may be eligible - in addition to the fair market value of your property - for a supplemental payment necessary to purchase a comparable DSS replacement dwelling. DelDOT will compute the maximum payment you are eligible to receive. You must purchase and occupy a DSS replacement dwelling within one year from the date of the date we settle or the date you move. A purchase supplement has three components: a price differential, an amount for increased mortgage interest and incidental expenses associated with settlement. The purchase supplement is in addition to the acquisition price paid for your property.

Price Differential

The price differential payment is the amount by which the cost of the comparable or your replacement dwelling exceeds the acquisition cost of the displacement dwelling.

Increased Mortgage Interest

You may be reimbursed for increased mortgage interest costs if the interest rate on your new mortgage exceeds that of your present mortgage. To be eligible your acquired dwelling must have been encumbered by a bona fide mortgage which was a valid lien for at least 180 days prior to the initiation of negotiations.

Incidental Expenses

You may be reimbursed for other expenses such as reasonable costs incurred for title search, recording fees, and certain other closing costs, but not for prepaid expenses such as real estate taxes and property insurance.

Example of a Price Differential Computation

Example A: Assume DelDOT purchases your property for $100,000. After a thorough study of available comparable residential properties on the open market, DelDOT determines that comparable replacement property is asking $116,500. If you purchase the comparable dwelling or any DSS replacement property for at least $116,500, you will be eligible for a price differential payment of $16,500.

Example B: If you purchase a DSS replacement property costing more than $116,500, you pay the difference.

Example C: If your purchase price is less than $116,500, the price differential payment will be based on your actual cost.

DelDOT Computation of Maximum Price Differential Payment	Cost of Comparable Replacement Acquisition Price of Your Property **Maximum Price Differential Payment**	$116,500 - 100,000 **$ 16,500**
Example A	Actual Cost of Replacement Property (Same Purchase Price as Comparable) Acquisition Price of Your Property **Price Differential Payment**	$116,500 - 100,000 **$ 16,500**
Example B	Actual Cost of Replacement Property Acquisition Price of Your Property Difference **Price Differential Payment DelDOT eligible for:** You Are Responsible for This Amount	$125,000 - 100,000 $ 25,000 **$16,500** $8,500
Example C	Actual Cost of Replacement Property Acquisition Price of Your Property **Price Differential Payment DelDOT eligible for:** Payment is Based on Actual Cost	$114,000 - 100,000 **$ 14,000**

90-Day Owners Who Elect to Rent

A rental computation will be computed based on the agency determining the fair market rent for the acquired dwelling compared to a comparable rental dwelling currently available on the market. Any difference will be multiplied by 42. In no circumstances will the rental assistance payment exceed the amount the owner would have received as a price differential described previously.

For Owner Occupants and Tenants of 90 Days or More

Owner occupants and tenants of 90 days or more may be eligible for a rental assistance payment. To be eligible for a rental assistance payment, tenants and owners must have been in occupancy at least 90 days immediately preceding the initiation of negotiations for the acquisition of the property.

This payment is designed to enable you to rent a comparable decent, safe, and sanitary replacement dwelling for a 42-month period. If you choose to rent a replacement dwelling and the cost of rent and utilities are higher than you were paying, you may be eligible for a rental assistance payment. DelDOT will determine the maximum payment you may be eligible to receive in accordance with established procedures.

The rental assistance payment will be paid in a lump sum unless DelDOT determines that the payment should be paid in installments. You must rent and occupy a DSS replacement dwelling within one year to be eligible.

Example

Assume you have been paying $500 per month rent for the dwelling unit occupied by you and purchased by DelDOT. You also pay $103 per month for utilities (electricity, gas, other heating and cooking fuels, water, and sewer). The rental assistance payment computation always includes the cost of basic utilities (electricity, gas, other heating and cooking fuels, water, and sewer), as well as the cost of rent. If rent includes utilities, a separate computation is not necessary.

After a study of the rental market, DelDOT determines that replacement rental unit, that is DSS and comparable to your unit, is available for $600 per month. It is estimated that average monthly utility costs for the replacement unit will be $175 per month. The maximum rental assistance payment you can receive is $172 per month for a 42-month period, or a total of $7,200.

Example A: If you select a DSS replacement dwelling unit that rents for $650 per month plus $175 for utilities, despite the availability of comparable DSS replacement rental units that rent for $600 per month plus $175 for utilities, you will receive the maximum amount

computed by DelDOT, or $7,200. You will be required to pay the additional $50 per month yourself.

Example B: If you select a DSS replacement dwelling unit that rents for more than your present unit, but less than amount determined by DelDOT as necessary to rent a comparable unit, your payment will be based on actual cost. For example, assume you select a replacement dwelling unit that rents for $575 per month plus $165 for utilities. On the basis of actual cost, you will be eligible for a payment of $90 per month for 42 months, or $3,780.

DelDOT Computation of Maximum Rental Assistance Payment	Rent You are Currently Paying Plus Cost for Utilities You are Paying Rent for a Comparable DSS Dwelling Estimated Cost for Utilities Difference ($775-650=$125) x 42 months **Maximum Rental Assistance Payment**	$600 +150 $650 $600 +175 $775 $5250 **$5250**
Example A	Actual Rent for DSS Replacement Property Plus Estimated Cost for Utilities Difference ($825-650=$175) x 42 months **Rental Assistance Payment**	$650 +175 $825 $7350 **$7200**
Example B	Actual Rent for DSS Replacement Property Plus Estimated Cost for Utilities Difference ($740-650=$90) x 42 months **Rental Assistance Payment**	$575 +165 $740 $3780 **$3780**

REPLACEMENT HOUSING – DOWNPAYMENT

Owner Occupants of 90 Days and Tenants of 90 Days or More

Owner occupants of 90 days and tenants of 90 days or more may be eligible for a downpayment and incidental expenses. DelDOT will determine the maximum downpayment you may be eligible to receive based on its computation for a rental assistance payment. However, the payment for a displaced owner occupant shall not exceed the amount that would have been received by a 90-day owner for the same property.

To be eligible for the full amount of the downpayment assistance payment, the entire payment must be used to purchase a DSS replacement dwelling. The payment may be utilized for a downpayment toward the purchase price and/or eligible incidental expenses. Incidental expenses include the reasonable costs of title search, recording fees, and certain other closing costs but do not include prepaid expenses such as real estate taxes and

property insurance. You may be eligible for the reimbursement of loan origination or loan assumption fees if such fees are normal to real estate transactions in your area and do not represent prepaid interest. The combined amount of the downpayment and incidental expenses cannot exceed the amount DelDOT computed as your maximum rental assistance payment.

The relocation agent will explain how DelDOT determines the maximum downpayment assistance payment.

DSS REMINDER

It is very important to remember that the replacement dwelling you select must meet the basic DSS standard. Do not execute a sales contract or a lease agreement until a representative from the Agency has inspected and certified in writing that the dwelling you propose to purchase or rent meets the DSS standard. Please do not jeopardize your right to receive a replacement housing payment by moving into a substandard dwelling.

FAIR HOUSING LAWS

Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 set forth the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. These Acts and Executive Order 11063 make discriminatory practices in the purchase and rental of residential units illegal if based on race, color, religion, sex, or national origin.

Whenever possible, a minority person shall be given reasonable opportunity to relocate to a DSS replacement dwelling which is not located in an area of minority concentration, that is within their financial means. This policy does not require DelDOT to provide a displaced person with a larger payment than is necessary to enable the person to relocate to a comparable replacement dwelling.

SECTION 3 – BUSINESS, FARM, AND NONPROFIT ORGANIZATIONS

MOVING COST REIMBURSEMENT

Owners or tenants may be paid on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if you move yourself. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

You must provide DelDOT with an inventory of the personal property to be moved and advance notice of the approximate date of the move, unless DelDOT specifically tells you these notices are not necessary.

DelDOT has the right to inspect the personal property at the displacement and replacement sites, and to monitor the move.

Actual Cost Move

You may be paid the actual, reasonable and necessary cost of your move when the move is performed by a professional mover or when you elect to move yourself, however, all your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property.

Other expenses such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications may also be reimbursable. This is not an inclusive list of moving related expenses. Your relocation agent will provide you with a complete explanation of reimbursable expenses.

Estimated Cost Move

If you agree to take full responsibility for all or part of the move of your operation, DelDOT may approve a payment not to exceed the lower of two acceptable bids or estimates obtained by DelDOT from qualified moving firms you choose, moving consultants, or a qualified DelDOT staff employee. A low cost or uncomplicated move may be based on a single bid or estimate at DelDOT's discretion. The advantage of this moving option is that it relieves you from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate. DelDOT may make the payment without additional documentation.

Direct Loss of Tangible Personal Property

Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result of the move or discontinuance of the operation. This payment is based on the lesser of the value of the item for continued use at the displacement site less the proceeds from its sale, or the estimated cost of moving the item. Your relocation agent will explain this procedure in detail if this is a consideration for you.

Low Value High Bulk Property

If DelDOT considers a personal property item to be of low value and high bulk, and moving costs are disproportionate to its value (such as minerals, metals, rock, or topsoil), the allowable moving cost payment shall not exceed the lesser of the amount which would be received if the property were sold at the site, or, the replacement cost of a comparable quantity delivered to the new business location.

Searching Expenses for Replacement Property

Displaced businesses, farms, and nonprofit organizations are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed $5,000. Expenses may include transportation, meals, and lodging when away from home; the reasonable value of the time spent during the search; and other expenses determined to be reasonable and necessary by DelDOT.

Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, exclusive of any commissions or fees related to the purchase of the site. Commissions and fees related to the purchase of a replacement site are not eligible relocation expenses and will not be reimbursed.

RELATED ELIGIBLE EXPENSES

In addition to the moving expenses listed above, costs for these items may be reimbursed if DelDOT determines they are actual, reasonable, and necessary:

- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.

- Professional services to determine a sites' suitability for the displaced person's operation.

- Impact fees or one-time assessments for heavy utility usage as determined necessary by DelDOT.

Please discuss this with your relocation agent before incurring these costs to assure that they are reimbursable.

REESTABLISHMENT EXPENSES

A small business, farm, or nonprofit organization may be eligible for a payment, not to exceed $33,200.00, for expenses actually incurred in relocating and reestablishing the enterprise at a replacement site. To qualify, the business, farm, or nonprofit organization must have no more than 500 employees working at the site who will be displaced by a program or project.

Reestablishment expenses may include, but are not limited to:

- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.

- Modifications to the replacement real property to make the structure(s) suitable for the operation.

- Construction and installation costs of exterior advertising signs.

- Redecoration or replacement such as painting, wallpapering, paneling, and carpeting when required by the condition of the replacement site.

- Advertising the replacement location.

- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges (excluding impact fees).

- Other items that DelDOT considers essential for reestablishment.

FIXED PAYMENT FOR ACTUAL MOVING EXPENSES (IN LIEU PAYMENT)

Displaced businesses, farms, and nonprofit organizations may be eligible for a fixed payment in lieu of (in place of) actual moving expenses, personal property losses, searching expense, and reestablishment expenses. The fixed payment may not be less than $1,000 nor more than $53,200.00.

For a business to be eligible for a fixed payment, DelDOT must determine the following:

- Business owns or rents personal property that must be moved due to the displacement.

- Business cannot be relocated without a substantial loss of its existing patronage.

• Business is not part of a commercial enterprise having more than three other businesses engaged in the same or similar activity which are under the same ownership and are not being displaced by DelDOT.

• Business contributed materially to the income of the displaced business operator during the two taxable years prior to displacement.

Eligibility requirements for nonprofit organizations are slightly different than business requirements. The computation for nonprofit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for the two-year period specified. If you are interested in a fixed payment, please consult your relocation agent for additional information.

Computation of Your Fixed Payment

The fixed payment for a displaced business or farm is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced, or a two-year period deemed more representative by DelDOT. You must provide DelDOT with proof of net earnings to support your claim. Proof of net earnings can be documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to DelDOT.

Fixed Payment Example

2023	2024	2025
Annual Net Earnings $16,500	Annual Net Earnings $18,500	Year Displaced
Average annual net earnings $16,500 + $18,500 = $35,000 / 2 = $17,500 Fixed Payment = $17,500		

PROJECT OFFICE

DelDOT may establish a relocation office near the project. Project relocation offices are usually open during hours convenient to persons being displaced, including evening hours when necessary. If DelDOT opens a project office, the staff will be happy to assist you, answer questions, and will maintain various types of information.

RELOCATION PAYMENTS ARE NOT CONSIDERED TO BE INCOME

No relocation payment received will be considered as income for the purpose of the Internal Revenue Code. No relocation payment received will be considered income for the purposes of determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance).

RIGHT TO APPEAL

Any aggrieved person may file a written appeal to DelDOT's Appeal Officer if the person believes DelDOT has failed to properly determine his or her eligibility for relocation assistance advisory services, or the amount of a relocation payment.

If you have a grievance, you will be given a prompt and full opportunity to be heard. You will also have the right to be represented by legal counsel or other representative in connection with the appeal, but solely at your own expense.

DelDOT will promptly review your appeal and consider all pertinent justification and information available to ensure a fair and full review. DelDOT will provide you with a written determination as well as an explanation of the decision. If you are still dissatisfied with the relief granted, DelDOT will advise you of your right to seek judicial review of DelDOT's decision.

An alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under 49 CFR Part 24.

This brochure is provided to assist you in understanding your rights and benefits. If you have questions regarding your relocation, please contact your DelDOT representative.

Additional information on Federal relocation and acquisition requirements, the law, and the regulation can be found at https://www.fhwa.dot.gov/real_estate/index.cfm.

Fixed Moving Cost Schedule (Residential Moves Only)

Last updated August 26, 2021

Occupant Owns Furniture								
1 Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	Addt'l Room
$700	$900	$1,100	$1,300	$1,500	$1,700	$1,900	$2,100	$150

Occupant Does Not Own Furniture
$500 for the first room, $100 for each additional room.
$100 for occupant of a dormitory.

NOTES



Provided by the Delaware
Department of Transportation
Right-of-Way Section

Document No. RA1

Chapter VI

LAND TITLES AND SETTLEMENTS

VI. LAND TITLES AND SETTLEMENTS

Purpose – To establish the quality and quantity of real property title required when acquiring such real property and real property rights. This section also establishes the methods for achieving proper and adequate title.

A. Staff Organization

1. The Acquisition Manager supervises staff and provides assignments.

2. DelDOT staff is required to attend training that is assigned and provided by the DelDOT organization. DelDOT staff is encouraged to obtain certifications and designations as provided by the IRWA and other organizations representing the field of ROW.

3. The Office of the Attorney General (AG) will provide representation in order to facilitate land title and settlement activities. DelDOT staff will confer with AG representatives on all relevant legal matters. For purposes of this Chapter, many of the procedural duties may be performed by either DelDOT or AG representatives, depending upon available resources.

4. Outside legal counsel services may be obtained at the discretion of the Acquisition Manager, in consultation with the Chief of ROW. On-call legal services may be arranged via a service contract, in conjunction with anticipated needs.

B. General Responsibilities and Procedures

1. The Acquisition Manager is responsible for distributing primary ownership and title information gathering between representatives of the AG's Office, consultant legal counsel, and DelDOT staff.

2. The Acquisition Manager is responsible for verifying and assuring that adequate funds are available prior to any settlement or other required payment from a DelDOT project.

3. DelDOT staff is responsible for assuring and confirming the nature of the property rights being acquired and whether the acquisition is considered to be a total take or a partial take.

4. DelDOT staff is responsible for assuring that all settlements take place in a timely manner, including all existing mortgages; liens; and title defects.

5. DelDOT staff is responsible for assuring that all settlement documents are properly recorded in accordance with the specific legal requirements of each County in the State of Delaware.

6. DelDOT staff is responsible for maintaining a status report regarding all parcel activities which are ongoing within the Section.

7. DelDOT staff is responsible for assuring that any real property interest being acquired is in the same general condition on the date of settlement, as the condition that the property was in on the date that the property had previously been appraised.

8. DelDOT staff is responsible for obtaining a "Good Standing Certificate" from the Secretary of State's Office for all corporate property owner entities. If such "Certificate" cannot be obtained due to nonpayment of fees, DelDOT staff will request that the business either; (1) settle all accounts with the Secretary of State's Office, or (2) allow DelDOT to deduct a specified amount from the settlement proceeds adequate to settle all accounts with the Secretary of State's Office.

C. Request for Title Report

1. Any ROW Manager or legal counsel may initiate a request to obtain a title report, depending upon the purpose of the real property action. In the typical project development process, any ROW Manager or legal counsel can initiate the request for project title reports. This request will typically occur upon the receipt of semi-final ROW plans for any given project.

2. Title reports may be requested either individually or on a large-scale basis.

3. Title reports shall include all mortgages, liens, and/or other encumbrances applicable to the time period being investigated.

4. A review of all title reports will be made to determine if there are any impediments to obtaining clear title through the acquisition process.

   a. Any item of concern within the title report will be referred to a legal representative (typically the AG representative) for review and comment.

   b. DelDOT Staff will recommend potential pathways to obtaining clear title in those situations where conflicts or problems are evident.

5. DelDOT staff will continually update the requested ROW Manager regarding the status of the completion of the various title reports being obtained and processed.

D. General Property Settlement Guidelines

1. Upon completion of the acquisition process, and after a settlement agreement has been reached and signed by all appropriate parties to the transaction, all documents will be forwarded from the Acquisition Manager to the DelDOT staff. The Land Services Manager will also be advised of all settlement activities that will require DelDOT property management oversight. If there are any modifications to the acquisition agreement subsequent to the file being transferred for settlement, the modifications will be made on an Addendum Agreement.

2. DelDOT staff and/or legal counsel will prepare all necessary settlement paperwork and provide the same to the property owner for review and/or signature. Real property owners will have to sign an Owner's Affidavit of ownership or corporate accountability, depending upon the nature of the ownership. In the case of a real property right in "estate" status, an indemnification letter will be required.

3. The property settlement may either be conducted in person, or by mail or other authorized secure electronic means, which are in accordance with current IT standards and shall meet the approved guidelines outlined in 49 CFR 24.5(e). While the preference of the real property owner will try to be accommodated, there may be situations where DelDOT staff may have to dictate the method of settlement. If acquisition funds are to be distributed in any manner divergent from the existing ownership records, the current owners will be provided with a Distribution of Proceeds form, which must be completed and returned authorizing the distribution.

4. Settlements should be conducted as expeditiously as possible, with a target of no later than ninety (90) days subsequent to the final purchase agreement having been signed by a DelDOT representative.

5. All settlement activities must be coordinated with the acquisition, land services, and relocation assistance staff, as appropriate.

6. Prior to settlement, a title search will be conducted, to assure the marketability of title to the property.

7. In conjunction with the settlement, acquisition funds will be appropriately distributed to all those with a financial interest in the property rights being acquired. Recordable documents will be promptly filed in accordance with County legal requirements.

8. In conjunction with the settlement where there are acquisitions with improvements, the DelDOT staff will obtain all keys and other implements necessary to assure safe entry onto the property.

9. Copies of all settlement documents will be given to all parties having an interest in the transfer of real property rights. DelDOT staff shall assure that copies of all settlement documents are stored for maintenance and retrieval.

E. Fee Simple and Permanent Easement Settlement Guidelines and Procedures

1. Fee simple acquisitions will require the preparation of a deed which will contain a metes and bounds description of either the whole property being acquired, or the portion of the whole property being acquired, together with a copy of the fee exhibit.

2. Permanent easement acquisitions will require the preparation of a Permanent Easement Agreement.

3. Settlement activities involving the acquisition of tenant owned improvements will be similar to all other settlement requirements.

4. DelDOT staff will prepare all other related settlement documents.

5. Subsequent to the completion of the acquisition payment process, settlement staff will prepare and distribute Federal IRS disbursement form 1099-S for all acquisitions involving either a fee or a permanent acquisition of over $600.00.

F. Temporary Easement Guidelines

1. The acquisition of temporary easements will require the preparation of a Temporary Easement Agreement. If the temporary easement is being acquired in conjunction with a fee simple acquisition or a permanent easement, the Temporary Easement Agreement may be combined with those other agreements.

2. A Temporary Easement Agreement will provide the basis and timeline for the initiation of the period of occupancy that is being acquired.

3. Temporary Easement documents will be filed in the appropriate County Courthouse if the temporary easement value exceeds $25,000, or if otherwise determined to be appropriate by the Acquisition Manager.

G. Title Insurance

1. In special circumstances, and in coordination with legal counsel, the Operation Services Manager may request the obtaining of title insurance for any real property rights acquisition.

2. Approval for the purchase of title insurance is required to be obtained from the Secretary of Transportation.

3. In lieu of title insurance, DelDOT staff will issue a Title Certificate which will be reviewed and approved by legal counsel and will be for DelDOT internal use only.

H. Request for Payment (RFP)

1. DelDOT staff will generate a RFP through DelDOT's current financial system and will provide all supporting documentation for money to be paid through the settlement process or for other disbursements.

2. Designated DelDOT staff will be responsible for reviewing and approving the RFP and attachments.

3. Payments for settlement must be verified as received in DelDOT's Real Estate Account prior to any disbursement.

I. Liens

1. In conjunction with each title search, and then again prior to settlement, a listing will be compiled of any existing mortgages or other liens applicable to the property to be acquired.

2. DelDOT staff will determine whether it is appropriate to contact the mortgage or lien holder in association with the real property rights acquisition. This determination will be made in conjunction with legal counsel and take into account the nature of the acquisition and the specific encumbrance.

3. When deemed to be appropriate, the DelDOT staff will contact mortgage and lien holders in writing prior to settlement, to request either a release of the encumbrance or a request for payment in conjunction with the acquisition settlement.

4. For all properties, a mortgage release shall be requested for all acquisitions over $15,000.00, unless determined to be unnecessary by the Chief of ROW. In those situations where DelDOT receives no reply to a written request in a timely manner, a staff member will attempt to make telephone or other electronic contact with the mortgage or lien holder. In the event there is no reply from the mortgage or lien holder, DelDOT staff will make a determination on proceeding with the settlement. Such determination will be made in writing and entered into the acquisition file report.

5. Title defects need to be cured prior to settlement, and if such cannot be done in a timely manner, then a written determination must be prepared regarding the handling of the situation.

J. Tax Implications and Reporting

1. Taxes will be computed, prorated, and appropriately distributed for all real property interest acquisitions.

2. Internal Revenue Service reporting requirements will be followed for all real property interest transactions involving a fee or permanent easement acquisition. The reporting of funds distributed relating to the acquisition of temporary easements will be transferred to the DelDOT Finance Section, for preparation of IRS 1099-Misc. documentation. DelDOT staff will also follow any existing guidelines for maintenance and distribution of transaction records.

K. Forms and Documents

1. SS 1 - Addendum to Purchase Agreement for DE Real Property
2. SS 2 - Owners Affidavit (Individual)
3. SS 3 - Owners Affidavit (Corporate)
4. SS 4 - Non-Foreign Affidavit (Individual)
5. SS 5 - Non-Foreign Affidavit (Corporate)
6. SS 6 - Judgment Affidavit
7. SS 7 - Name Affidavit
8. SS 8 - Resolution of
9. SS 9 - Indemnification Letter
10. SS 10 - Distribution of Proceeds
11. SS 18 - Mortgage Satisfaction Piece
12. SS 19 - Mortgage Satisfaction Affidavit
13. SS 20 - Partial Release of Mortgage Form
14. SS 21 - Consent to Easement
15. Federal IRS disbursement form 1099-S

ADDENDUM TO PURCHASE AGREEMENT
FOR DELAWARE REAL PROPERTY

SELLER:

BUYER:

PROPERTY:

SALE PRICE: $

DATE:

Buyer and Seller agree that the settlement date on the above closing has been changed from _____, 20__ to _____, 20__.

All remaining terms and conditions of the Purchase Agreement remain unchanged and in full force and effect.

SELLER:

_____ _____
Witness

_____ _____
Witness

BUYER:
State of Delaware
Department of Transportation

By:_____

_____
Witness

OWNERS AFFIDAVIT
(Individual)

PREMISES:

STATE OF DELAWARE)
)SS.
COUNTY OF _____)

ON _____, 20__, personally appeared before me, the Subscriber Notary Public for the State and County aforesaid, _____, who being duly sworn according to law and intending to be legally bound, depose(s) and say(s) that the following statements are true and correct and to the best of my/our knowledge and belief:

THAT the Grantor(s) herein is/are the owner(s) of the premises referenced above and the same Grantee(s) as named in Instrument Number _____.

THAT there are no mortgages, judgments, encumbrances, easements, bankruptcies, or pending suits adversely affecting the Grantor(s) and the premises which are known to the Grantor(s) and not being properly provided for in this transaction.

THAT any line of credit associated with the property has been closed, and no further draws, checks or other withdrawals have been or will be made.

THAT there have been no repairs, additions or improvements made, ordered or contracted to be made on or to the premises within nine (9) months from the date hereof, nor are there any improvements or fixtures attached to said premises which have not been paid in full; and that there are no outstanding or disputed claims for any such work or items.

THAT there has been no work done, or notice received that work is to be done, by any municipal or governmental authority, or at its direction, in connection with the installation of sewer or water or for improvements such as paving or repaving of streets or alleys, or the installation or repair of curbs or sidewalks on or abutting the premises, except as contained in the Purchase Agreement and/or Agreement to Grant Easement with the Delaware Department of Transportation dated _____.

THAT no notice has been served by any governmental authority for the removal or abatement of any nuisance, for the violation of any zoning regulations or concerning the condemnation of any portion of said premises.

THAT there has been no violation of any restrictions affecting the premises, and there are no disputes with any adjoining owners as to the location of property lines or encroachments by any improvements.

THAT there are no purchase money obligations being created in this transfer.

THAT the Grantor(s) in this transaction is/are in actual possession of the entire premises, and that there are no leases or agreements affecting the premises or any part thereof outstanding other than those that are presently being assigned, if applicable.

THAT the present transaction is not made for the purpose of hindering, delaying, or defrauding any creditors of said Grantor(s) and does not come with the provisions of any bankruptcy or Insolvency Acts.

THAT the Grantor(s) in this transaction are over eighteen (18) years of age and in every respect competent to convey or encumber the title to the premises in question.

THAT the said Grantor(s) have never been divorced from each other, if applicable.

THAT in the event that this Affidavit shall be breached by the existence of a lien or encumbrance not identified or disposed of on the Settlement Sheet, or by the filing of one or more mechanic's liens relating back to a date prior to the date of this Affidavit, the undersigned covenants and agrees, in consideration of the immediate release to him/her of all unescrowed net settlement proceeds, to indemnify, defend and save harmless the settlement agent the ("Settlement Agent") and the title insurance company, if any, undertaking to insure title to the premises (the "Title Company"), and their respective successors and assigns, from any and all claims arising on account of said lien(s) and to pay off and have satisfied of record any such lien on demand.

THAT, if applicable, the lien release and satisfaction figures set forth on the Settlement Sheet have been supplied by the lienholder(s) and may be subject to subsequent correction by the lienholder(s). In the event that a lienholder shall demand additional funds in connection with a lien payoff, the undersigned agree to pay such additional sum upon demand (either by the lienholder or Settlement Agent) reserving the right to contest the validity of the lienholder's demand directly with the lienholder.

This affidavit is made for the purpose of inducing the State of Delaware, acting by and through the Department of Transportation, to hold settlement on the above premises and to make disbursement to said Grantor(s), and the undersigned avers (i) the foregoing statements are true and correct to the best of his/her knowledge and belief; and (ii) the obligations herein shall be binding upon the undersigned and his/her heirs, successors or assigns.

IN WITNESS WHEREOF, the said party(ies) herein have hereunto set their/her/his Hand(s) and Seal(s), the day and year aforesaid.

_____{SEAL}

_____{SEAL}

SWORN TO AND SUBSCRIBED before me on
_____, 20__.

_____
Notary Public
My Commission Expires:

OWNERS AFFIDAVIT
(Corporate)

PREMISES:

STATE OF DELAWARE)
)SS.
COUNTY OF _____)

ON _____, 20__, personally appeared before me, the Subscriber Notary Public for the State and County aforesaid, _____, who being duly sworn according to law and intending to be legally bound, depose(s) and say(s) that the following statements are true and correct and to the best of my/our knowledge and belief:

THAT the Grantor(s) herein is/are the owner(s) of the premises referenced above and the same Grantee(s) as named in Instrument Number _____.

THAT to the best of my knowledge and belief, there are no mortgages, judgments, encumbrances, easements, bankruptcies, or pending suits adversely affecting the Grantor and the premises which are known to the Grantor and not being properly provided for in this transaction.

THAT to the best of my knowledge and belief, any line of credit associated with the property has been closed, and no further draws, checks or other withdrawals have been or will be made.

THAT to the best of my knowledge and belief, there have been no repairs, additions or improvements made, ordered or contracted to be made on or to the premises within nine (9) months from the date hereof, nor are there any improvements or fixtures attached to said premises which have not been paid in full; and that there are no outstanding or disputed claims for any such work or items.

THAT to the best of my knowledge and belief, there has been no work done, or notice received that work is to be done, by any municipal or governmental authority, or at its direction, in connection with the installation of sewer or water or for improvements such as paving or repaving of streets or alleys, or the installation or repair of curbs or sidewalks on or abutting the premises, except as contained in that certain Purchase Agreement and/or Agreement to Grant Easement with the State of Delaware, Department of Transportation dated _____.

THAT to the best of my knowledge and belief, no notice has been served by any governmental authority for the removal or abatement of any nuisance, for the violation of any zoning regulations or concerning the condemnation of any portion of said premises.

THAT to the best of my knowledge and belief, there has been no violation of any restrictions affecting the premises, and there are no disputes with any adjoining owners as to the location of property lines or encroachments by any improvements.

THAT there are no purchase money obligations being created in this transfer.

THAT the Grantor in this transaction is/are in actual possession of the entire premises, and that there are no leases or agreements affecting the premises or any part thereof outstanding other than those that are presently being assigned, if applicable.

THAT the present transaction is not made for the purpose of hindering, delaying, or defrauding any creditors of said Grantor and does not come with the provisions of any bankruptcy or Insolvency Acts.

THAT the Corporation, Limited Liability Company or Partnership has been duly formed according to the laws of its incorporation or formation and is in good standing.

THAT the Premises in question does not constitute 51% or more of the real estate or assets of said Corporation, Limited Liability Company, or Partnership.

THAT there are no corporate taxes due by said Corporation or Limited Liability Company.

THAT all parties signatory to documents in this transaction are duly authorized to execute the same on behalf of the Corporation, Limited Liability Company or Partnership.

THAT no shareholder consent is required by the Corporation, nor member consent required by the Limited Liability Company, nor limited partnership consent required by the Partnership, nor are any other approvals or consents required by others in this transaction.

THAT the signatory to the Grantor in this transaction is over eighteen (18) years of age and in every respect competent to convey or encumber the title to the premises in question.

THAT in the event that this Affidavit shall be breached by the existence of a lien or encumbrance not identified or disposed of on the Settlement Sheet, or by the filing of one or more mechanic's liens relating back to a date prior to the date of this Affidavit, the undersigned covenants and agrees, in consideration of the immediate release to him/her of all unescrowed net settlement proceeds, to indemnify, defend and save harmless the settlement agent the ("Settlement Agent") and the title insurance company, if any, undertaking to insure title to the premises (the "Title Company"), and their respective successors and assigns, from any and all claims arising on account of said lien(s) and to pay off and have satisfied of record any such lien on demand.

THAT, if applicable, the lien release and satisfaction figures set forth on the Settlement Sheet have been supplied by the lienholder(s) and may be subject to subsequent correction by the lienholder(s). In the event that a lienholder shall demand additional funds in connection with a lien payoff, the undersigned agree to pay such additional sum upon demand (either by the lienholder or Settlement Agent) reserving the right to contest the validity of the lienholder's

demand directly with the lienholder.

This affidavit is made for the purpose of inducing the State of Delaware, acting by and through the Department of Transportation, to hold settlement on the above premises and to make disbursement to said Grantor, and the undersigned avers (i) the foregoing statements are true and correct to the best of his/her knowledge and belief; and (ii) the obligations herein shall be binding upon the undersigned and his/her heirs, successors or assigns.

IN WITNESS WHEREOF, the said party herein has hereunto set its Hand and Seal, the day and year aforesaid.

_____

By: _____ (SEAL)

_____ *(Title)*

SWORN TO AND SUBSCRIBED before me on
_____, 20__.

_____
Notary Public
My Commission Expires:

NON-FOREIGN AFFIDAVIT

(INDIVIDUAL)

STATE OF DELAWARE :
: ss
COUNTY OF _____ :

Section 1445 of the Internal Revenue code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that the withholding of tax is not required upon disposition of a U.S. real property interest by me, I, _____, hereby certify the following:

1. I am not a non-resident alien for the purposes of U.S. Income taxation;

2. My U.S. taxpayer identification number (Social Security Number) is: _____; and

3. My home address is:

   _____

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and, to the best of my knowledge and belief, it is true, correct and complete.

_____(Seal)

Date: _____

SWORN TO AND SUBSCRIBED before me, the undersigned, a Notary Public for the jurisdiction aforesaid, on _____, 20__.

_____
Notary Public
My commission expires _____

NON-FOREIGN AFFIDAVIT

(CORPORATE)

STATE OF DELAWARE :
COUNTY OF _____ :

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____ ("Transferor"), the undersigned hereby certifies the following on behalf of "Transferor":

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in Sec. 1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is _____; and
4. Transferor's office address is:

   _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of _____.

_____ By _____ (SEAL)
Date

_____ *(Title)*

SWORN TO AND SUBSCRIBED before me on _____.

_____
Notary Public
My commission expires _____

DELDOT REAL ESTATE DOCUMENT NO. SS5
August 2017

JUDGMENT AFFIDAVIT

File No.

RE:

The undersigned, having first been duly sworn, hereby states and affirms that his/her name is _____, his/her Social Security Number is _____, and that he/she has never been known by any other names.

The undersigned further acknowledges that neither he/she nor his/her husband/wife is the same person named in the following:

Judgment: _____ vs. _____, filed _____, 20____, of record in the Office of the Prothonotary, in and for _____ County, in Judgment Docket _____.

The undersigned hereby makes this affirmative oath with the specific understanding that such oath is being relied upon by **Delaware Department of Transportation**, to insure the title to the captioned property for the benefit of the **Delaware Department of Transportation**. The undersigned hereby agrees to defend, indemnify and save and hold harmless **Delaware Department of Transportation** for any claims arising from the above stated judgments lien if any action is brought against the captioned and insured property.

Witness my hand and seal this _____**, 20__**.

_____

State of _____)
)SS.
County of _____)

Subscribed and sworn to before me, the undersigned this _____**, 20___**.

_____
Notary Public

My Commission Expires: _____

NAME AFFIDAVIT

STATE OF _____

COUNTY OF _____

On this day before me, the undersigned authority authorized to administer oaths, personally appeared

who, after being duly sworn, did depose and say that

and

are one and the same person, and is the same person who is a party to a loan application for property located at _____, and is not known by any other name undisclosed which would adversely affect the interests of the other parties to said settlement.

_____

Sworn to and subscribed before me on _____, 20____.

_____
Notary Public
My commission expires _____

RESOLUTION OF

_____

I, _____, Secretary of _____, a _____ corporation (the "Company"), do hereby certify that the following is a true and correct copy of the resolutions adopted by the Company at a meeting held at the Company's offices on _____, 20___, at which time a quorum was present:

RESOLVED, that _____ sells and conveys unto the State of Delaware, acting by and through the Department of Transportation ("**DelDOT**"), the real property described as all that certain land located in _____, Sussex County and State of Delaware known as _____, Delaware.

FURTHER RESOLVED, that _____, the President of the Company is hereby authorized and empowered to execute and deliver to DelDOT any and all deeds, permanent and temporary easements, affidavits, settlement sheets and such other documents and agreements relating to the foregoing transaction.

IT IS HEREBY CERTIFIED THAT:

_____ is the President of the Company, and _____ is the Secretary thereof, and that the foregoing resolutions remain in full force and effect.

IN WITNESS WHEREOF, said _____, Secretary has set his/her hand and seal this ____ day of _____. 20___.

_____(SEAL)
Name:
Title:

Indemnification Letter

_____
_____
_____

_____, 20___

Department of Transportation
250 Bear-Christiana Road
Bear, DE 19701
Attention: Real Estate Department

RE: Estate of

Dear Sir/Madam:

I understand that the estate of _____ has not been issued final clearance by the _____ County Register of Willis office. In order for the Delaware Department of Transportation ("**DelDOT**") to be able to acquire fee title to a portion of the property known as _____, I will certify that all debts, taxes, administration expenses pertaining to the estate of _____ have been paid; or if not paid, have been provided for and will be paid in due course. I further indemnify and save harmless DelDOT against any and all losses or damages which it might sustain in the event the debts, taxes and administration expenses of the Estate of _____ are not paid and discharged in the course of the administration of the estate.

Sincerely,

Agreement as to the Distribution of Proceeds

Settlement Date:
File No.
Re:

The undersigned Owners hereby authorize and direct **Delaware Department of Transportation** to distribute the proceeds from the captioned settlement as follows:

$ _____ to _____

$ _____ to _____

$ _____ to _____

$ _____ to _____

_____(SEAL)
Name

_____(SEAL)
Name

Tax Map and Parcel #

Prepared By/Return to:
Delaware Department of
Transportation
P.O. Box 778
Dover, DE 19903
File No.:

MORTGAGE SATISFACTION PIECE

YOU ARE HEREBY requested and authorized to enter satisfaction of, and cancel record of the following mortgage:

Parcel Number:
Mortgagor(s):
Mortgagee:
Dated:
Recorded:
Amount:
Book/Page:
Address of Property:

IN WITNESS WHEREOF, Name of Lender has executed this satisfaction piece this _____ day of _____, _____.

NAME OF LENDER

_____ BY: _____ (SEAL)
Witness

STATE OF DELAWARE :
: ss.
COUNTY OF KENT :

This instrument was acknowledged before me on this _____ day of _____, _____, by _____ (name), _____ (title) of Name of Lender, on behalf of the corporation.

_____
Notary Public
My commission expires _____

AFFIDAVIT CERTIFYING MORTGAGE PAYOFF
AND REQUEST FOR MORTGAGE SATISFACTION
PURSUANT TO 25 DEL. C. §2120

STATE OF DELAWARE }
}SS.
COUNTY OF _____ }

I, the undersigned, an attorney authorized to practice law in the state of Delaware, after first been duly sworn, depose and say as follows:

(1) The mortgage proposed to be marked fully paid and satisfied appears in Mortgage Record ____, Volume _____, Page _____;

(2) The full name and address of the original mortgagee is _____;

(3) The name of the original mortgagor(s) is (are) _____;

(4) The original date of the mortgage is _____;

(5) The amount of the mortgage is $_____;

(6) A satisfactory description of the Property which is encumbered by the Mortgage, including, but not limited to the following is:

(a) The property address and/or lot number is _____;

(b) Subdivision name, if any, _____; and

(c) The county tax parcel number assigned to such property is _____;

(7) After the original mortgage was recorded, the mortgage was subsequently assigned of record to each of the following entities on the date and at the Book and Page there noted:

To _____ on _____ in Book/Volume _____ and Page _____

(8) The full name and address of the last mortgagee in interest on the mortgage is _____;

(9) The full name and address of the creditor or mortgage loan servicer who was fully paid is _____;

(10) _____, who is the creditor or mortgage loan servicer that was fully paid, is other than _____, the last mortgagee in interest which appeared of record on the date of said payment. I did, however, obtain the written payoff statement from the creditor or mortgage loan servicer on account of said mortgage, and, in accordance with the

reliance on the payoff statement, I made payment or caused payment to be made of the outstanding debt to the creditor or mortgage loan servicer;

(11) I have, where applicable, instructed the mortgagee, in writing, effective the date and time of receipt of the mortgage "payoff figure", to close and decline any further advances on the home equity or other consumer open line of credit which was secured by the affected mortgage;

(12) The date on which the debt was fully paid is _____;

(13) At least 4 months have elapsed since the debt was fully paid the amount of the debt so paid is not in dispute;

(14) I fully paid or caused to be fully paid such debt to the creditor or mortgage loan servicer and I retain evidence of the payment;

(15) After a minimum of fifteen (15) days notice by me, by certified mail, return receipt requested, the last mortgagee in interest has failed to take appropriate steps to accomplish satisfaction of the mortgage in the mortgage record, volume and page where such mortgage appears in the public record;

(16) I request the Recorder of Deeds in _____ County to indicate in the record of said County that such mortgage is fully paid and satisfied;

(17) I have personally reviewed all of the information and each of the facts contained in this affidavit and request; and

(18) The information contained in this Affidavit and Request is true and correct to the best of my knowledge.

BY: _____
Name of Attorney, Attorney-At-Law, Delaware

STATE OF DELAWARE }
}SS.
OUNTY OF NEW CASTLE }

BE IT REMEMBERED, that on this _____ day of _____, 20__, personally appeared before me, the Subscriber, a Notary Public for the state and County aforesaid, Name of Attorney, Attorney-At-Law, Delaware, party to the Affidavit and Request, personally known to me to be such, and acknowledged this Affidavit and Request to be his act and Deed.

My Commission Expires:

_____

_____
Notary Public

TAX MAP NO: (part of)
PREPARED BY AND RETURN TO:
Delaware Department of Transportation
Real Estate Section
250 Bear-Christiana Road
Bear, DE 19701

PARTIAL RELEASE OF MORTGAGE

WHEREAS, there is of record in the Office of the Recorder of Deeds in and for New Castle County and State of Delaware, the following Mortgage(s) to wit:

	*	Date:
	*	Original Amount:
	*	Instrument:
	*	Assigned:
	*	Instrument:
Mortgagor,	*	
	*	
to:	*	
	*	
	*	
	*	
Mortgagee.	*	

which said Mortgage constitutes and is a lien, among other lands, upon and against the lands and premises hereinafter mentioned and described; and

WHEREAS, the said , Mortgagee named in the above stated Mortgage, having been requested to release the lands and premises hereinafter mentioned and described of and from the lien of the said Mortgage, and the said , being willing to comply with said request.

NOW, THEREFORE, **KNOW ALL MEN BY THESE PRESENTS**, that the said , in consideration of the premises and the sum of ONE DOLLAR ($1.00), lawful money of the United States of America, to it paid, the receipt whereof is hereby acknowledged, has released, acquitted, exonerated, and discharged, and by these presents does hereby release, acquit, exonerate, and discharge a portion of each property for purposes of fee simple conveyances for State maintained roadway, as follows, to wit:

of and from the lien, force, operation, and effect of the above-recited Mortgage and of and from any and all process which may or can be issued thereon and thereunder, so that the said property can be transferred to the State of Delaware, shall hold and enjoy the said lands and tenements free, clear and discharged of the above-stated Mortgage and of any and all process which may be issued in execution thereof.

PROVIDED, that nothing herein contained shall in anyway impair or affect the lien, operation and effect of the above stated Mortgage upon any lands or tenements except only those hereinabove particularly mentioned and described.

IN WITNESS WHEREOF, the said , has hereunto set its hand and seal this _____ day of _____, 20____.

_____
Witness

By: _____ (SEAL)
Name: _____
Title: _____
[CORPORATE SEAL]

STATE OF _____)
) SS.:
COUNTY OF_____)

BE IT REMEMBERED, that on this _____ day of_____, 20__, personally came before me, the subscriber, a Notary Public for the State and County aforesaid, _____, _____ on behalf of , , party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his/her act and deed and the act and deed of said .

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

_____
Notary Public

Print Name:_____
My commission expires: _____

EXHIBIT "A"

Tax Parcel No:

Prepared by/Return to:
Delaware Department of Transportation
Real Estate Section
250 Bear-Christiana Road
Bear, DE 19701

CONSENT TO EASEMENT

The undersigned is the holder of a Mortgage executed by _____, dated _____ and recorded _____, of record in the Office of the Recorder of Deeds, in and for _____ County and State of Delaware, in Deed Book _____, Page _____ or Instrument Number _____ (the "Mortgage"), which encumbers the property which is described in the foregoing Permanent Easement Agreement and depicted on Exhibit(s) attached hereto.

The undersigned hereby consents to the easement created in the foregoing Permanent Easement Agreement and subordinates the lien of the Mortgage thereto.

Lender Name

_____
Witness

By:_____(SEAL)
Name
Title President

STATE OF :
:SS.
COUNTY OF :

THAT on this _____ day of _____, 20__, before me appeared _____, to me personally known, who did say that he/she is the Vice President of _____, and that this Instrument was executed on behalf of the corporation (or association), by authority from its Board of Directors, and that he/she acknowledged the instrument to be the free act and deed of the corporation (or association).

_____
Notary Public
My Commission Expires:

☐ CORRECTED (if checked)

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number	1 Date of closing	OMB No. 1545-0997 Form **1099-S** (Rev. April 2025)	**Proceeds From Real Estate Transactions**
	2 Gross proceeds $	For calendar year ____	

FILER'S TIN	TRANSFEROR'S TIN	3 Address (including city, state, and ZIP code) or legal description	**Copy B** **For Transferor**
TRANSFEROR'S name Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code		4 Transferor received or will receive property or services as part of the consideration (if checked) . . . . ☐ 5 If checked, transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) . . . . . ☐	This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
Account number (see instructions)		6 Buyer's part of real estate tax $	

Form **1099-S** (Rev. 4-2025) (keep for your records) www.irs.gov/Form1099S Department of the Treasury - Internal Revenue Service

Instructions for Transferor

For sales or exchanges of certain real estate, the person responsible for closing a real estate transaction must report the real estate proceeds to the IRS and must furnish this statement to you. To determine if you have to report the sale or exchange of your main home on your tax return, see the Instructions for Schedule D (Form 1040). If the real estate was not your main home, report the transaction on Form 4797, Form 6252, and/or the Schedule D for the appropriate income tax form. If box 4 is checked and you received or will receive like-kind property, you must file Form 8824.

Federal mortgage subsidy. You may have to recapture (pay back) all or part of a federal mortgage subsidy if **all** the following apply.

- You received a loan provided from the proceeds of a qualified mortgage bond or you received a mortgage credit certificate.
- Your original mortgage loan was provided after 1990.
- You sold or disposed of your home at a gain during the first 9 years after you received the federal mortgage subsidy.
- Your income for the year you sold or disposed of your home was over a specified amount.

This will increase your tax. See Form 8828 and Pub. 523.

Transferor's taxpayer identification number (TIN). For your protection, this form may show only the last four digits of your TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)). However, the issuer has reported your complete TIN to the IRS.

Account number. May show an account or other unique number the filer assigned to distinguish your account.

Box 1. Shows the date of closing.

Box 2. Shows the gross proceeds from a real estate transaction, generally the sales price. Gross proceeds include cash and notes payable to you, notes assumed by the transferee (buyer), and any notes paid off at settlement. Box 2 does not include the value of other property or services you received or will receive. See *Box 4*.

Box 3. Shows the address or legal description of the property transferred.

Box 4. If checked, shows that you received or will receive services or property (other than cash or notes) as part of the consideration for the property transferred. The value of any services or property (other than cash or notes) is not included in box 2.

Box 5. If checked, shows that you are a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust).

Box 6. Shows certain real estate tax on a residence charged to the buyer at settlement. If you have already paid the real estate tax for the period that includes the sale date, subtract the amount in box 6 from the amount already paid to determine your deductible real estate tax. But if you have already deducted the real estate tax in a prior year, generally report this amount as income on the "Other income" line of Schedule 1 (Form 1040). For more information, see Pub. 523, Pub. 525, and Pub. 530.

Future developments. For the latest developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/Form1099S*.

Free File Program. Go to *www.irs.gov/FreeFile* to see if you qualify for no-cost online federal tax preparation, e-filing, and direct deposit or payment options.

Chapter VII

CONDEMNATION ACTIONS

VII. CONDEMNATION ACTIONS

Purpose – To facilitate the acquisition of real property interests via eminent domain action, when mutual agreement cannot be reached in a reasonable timeframe by administrative negotiation.

DE Legal Authority: Title 10, Chapter 61

Title 29, Chapter 25, Section 2504

Title 29, Chapter 95, Sections 9503 thru 9506

Superior Court Civil Rule 71.1

Federal Authority: 23 CFR 710.305

49 CFR 24.102

A. Staff Organization

1. The Operation Services Manager supervises staff and provides assignments.

2. DelDOT staff is expected to attend training that is assigned and provided by the DelDOT organization. Staff members are encouraged to obtain certifications and designations as provided by the IRWA and other organizations representing the field of ROW.

3. The Office of the Attorney General (AG) will provide representation in order to facilitate condemnation actions and activities. DelDOT staff will confer with AG representatives on all relevant legal matters.

4. Outside fee legal counsel services will be obtained at the discretion of the Operation Services Manager, in consultation with the Chief of ROW. On-call consultant legal services will be arranged and established via a service contract for each County in the State of Delaware.

B. General Responsibilities and Procedures

1. The Operation Services Manager is responsible to provide ROW project cost estimates relevant to condemnation activities at various intervals to support overall project cost estimates. The Manager is also responsible to maintain a status listing of all pending condemnation actions, participate in all attempts to resolve outstanding condemnation actions in conjunction with legal staff, and provide responses to any interrogatory documents as requested by legal counsel.

2. DelDOT staff will transfer a condemnation hand-off package that will be presented to appropriate legal counsel to facilitate the filing of the condemnation action. The package will recommend a possession date that meets construction project needs.

3. DelDOT staff will prepare all documents necessary to facilitate the Court deposit that must accompany the filing of the condemnation action.

4. Condemnation staff will verify all properties on or before the effective date of the taking to verify the condition of the real property as of that date. Appropriate actions, including dated photographs, will be taken to document and support the condition of the real property.

5. Coordination with other staff/functions will be necessary to fulfill the duties of the condemnation staff. A condemnation recommendation package will be obtained from the Acquisition Manager that will explain and justify why an agreement could not be reached, and why condemnation action is necessary. The Acquisition Manager shall also prepare a schedule in relation to project construction timing, which will be a part of the condemnation recommendation package.

6. The condemnation staff will coordinate with the Appraisal Unit to assure that an appraisal as of the date of possession will be available as required.

7. DelDOT staff will coordinate with the appropriate relocation assistance personnel, in order that an appropriate 30-day notice to vacate will be prepared and presented regarding any relocation assistance matters.

8. DelDOT staff will coordinate with Land Services personnel so that any appropriate lease arrangements will be put into place upon DelDOT obtaining possession of the real property being condemned.

9. The Acquisition Manager will determine if there is a need to address possible unknown ownership rights.

C. Negotiations at an Impasse

1. When an acquisition agreement cannot be reached with the property owner, it is typically due to conflicts relating to valuation issues or ownership title issues, or a combination of both. In cooperation with the acquisition staff, Operation Services must provide a written analysis of the situation so that all parties involved in the condemnation action are aware of the primary conflict issues.

2. Valuation differences of opinion may be predicated upon issues such as value judgements of the property owner, disagreement over damages to remainder property, application of non-compensatory impacts, disagreement over the classification of items as either real property or personal property, or general unawareness of appraisal valuation principals.

3. Title issues which may preclude reaching an acquisition agreement may include items such as conflicting title documents, disputes over real property ownership, existing mortgages or outstanding liens, or pre-emptive property rights.

D. Legal Coordination

1. Legal services assisting the ROW Unit are generally obtained through either the Office of the AG, or the contracting of legal services from outside legal counsel.

2. The DelDOT organization has assigned representation from the AG, and that representation is available to assist the ROW Unit, upon request. The AG representative also provides services specifically to assist the ROW Unit on matters generally related to closing of acquisition actions.

3. DelDOT makes consultant legal services available to the ROW staff on a continuing contract basis by County, and which is renewed on a scheduled basis.

4. Whenever legal advice is necessary regarding an eminent domain action, the Operation Services Manager may call upon the services of either the AG representative or outside legal counsel.

5. Whenever the filing of a condemnation action needs to occur, the Operation Services Manager will typically employ the services of outside legal counsel.

E. Condemnation Complaint Action

1. Prior to filing a condemnation complaint action with the Court, legal counsel will obtain a current and valid property title report.

2. DelDOT legal staff will file the condemnation complaint in the Superior Court in the County in which the property is located.

3. The condemnation complaint shall contain at a minimum, the following information: the names of the real property owners with a legal interest in the action; an adequate description of the property and the interest in the property to be acquired; the authority for the acquisition; and the public use for which the property is being acquired.

F. Order of Possession Process

1. In order to possess necessary property rights within DelDOT control and the obtaining of an "Order of Possession" from the Court, will be scheduled to provide a time cushion to accommodate potential legal delays.

2. DelDOT is required to make a monetary deposit into the Court for the use of the property owner, of an amount not less than DelDOT's estimate of just compensation for the property.

3. To facilitate the order of possession process, the Acquisition Manager will request the initiation of the condemnation action in a transmittal sent to the Chief of ROW. Upon approval, the Chief of ROW will provide Operations Services with the necessary documents to initiate the condemnation action.

4. After the filing of the "Order of Possession" by DelDOT, the property owner has the right to contest such request for possession. Should a Court hearing be requested and approved, a DelDOT legal representative shall attend and defend the DelDOT position at any scheduled hearing.

5. In conjunction with obtaining an "Order of Possession" and depositing DelDOT's estimate of just compensation with the Court.

G. Settlement Process During the Condemnation Process

1. At such time after a condemnation complaint has been filed, the DelDOT legal counsel (AG) becomes the lead official in the settlement process. Since the ROW staff have been actively engaged in acquisition negotiations up until that point, legal representatives will include appropriate DelDOT staff in the settlement process.

2. DelDOT staff or legal counsel may order new appraisals or request any additional information for their consideration relative to a proposed legal settlement.

3. All legal settlements must receive written concurrence from the Chief of ROW.

H. Alternative Dispute Resolution (2 Del. Admin. C. Sec. 2407)

1. In an attempt to settle valuation disputes without resorting to trial proceedings, both DelDOT and the property owner may agree to the alternate dispute resolution process as set out in the Delaware Regulatory Implementing Order # 2407. This process is required to be authorized by DelDOT on a per project basis.

2. Even if the process is authorized on the subject project, both DelDOT and the property owners must agree in writing to utilize the process.

3. Process administrative expenses will be borne by DelDOT.

4. The process may be considered to be either binding or non-binding, based upon the mutual agreement of DelDOT and the property owners.

5. An agreement to proceed to the alternate dispute resolution process may occur at any point in the acquisition process; however formal initiation of the process may only occur after the granting of an "Order of Possession" by the Court.

6. For DelDOT to participate in the alternate dispute resolution process, there must be written approval from the Chief of ROW.

7. The basic format involves the appointment of three qualified real property appraisers, who independently estimate value, and then meet and agree on a common estimate of market value.

8. If the process is binding, then the value as established by the three-member committee is the official established amount of just compensation. If the process is non-binding, then both parties must accept the value, or else the condemnation process will resume.

I. Court Trial Process

1. Pre-trial coordination will take place between legal counsel and various representatives of the ROW staff that are able to provide background assistance. DelDOT staff will explain the basis of the market value offer. DelDOT staff will explain the negotiations that had previously occurred and provide insight as to any property owner issues or misinterpretations.

2. Legal Counsel will need to understand if there are any relocation assistance issues that become intertwined with acquisition issues.

3. DelDOT staff will provide the names of potential expert witnesses from a planning, design, engineering, or an acquisition perspective.

4. Appropriate DelDOT staff will be present at all pre-trial meetings at the request of legal counsel.

5. Appropriate DelDOT staff will be present at all trial sessions at the request of legal counsel.

6. Subsequent to a trial award, appropriate DelDOT staff will evaluate the proceedings in conference with legal counsel. Within an appropriate timeframe, either DelDOT or the property owner may file an appeal of the Court decision.

7. Legal counsel must prepare and submit a trial summary report to DelDOT within one month of the completion of the trial process.

J. Payment of Award and Interest

1. If neither party enters an appeal of the Court Award, then DelDOT shall pay any balance of the award to the Court within two months after the entry of the confirmed award.

2. If either party appeals the Court Award, then DelDOT shall pay any balance of the award to the Court within one month of any final entry award entered pursuant to the mandate of the Delaware Supreme Court.

3. Interest accrues and will be paid to the property owner, at the defined legal rate on any balance owed the property owner from the date of possession until the date of the award. The property owner shall also be entitled to receive any interest that accumulates on the Court deposited funds.

K. Condemnation Expenses

1. The costs associated with all routine condemnation proceedings, including commissioner's fees, shall be paid by DelDOT.

2. The costs of all property owner litigation expenses, including attorney fees, expert witness, and engineering expenses, **shall not be the responsibility** of DelDOT, unless so ordered by the Court.

3. Depending upon the Court awarded amount of just compensation in relation to the testimony as presented during the condemnation proceedings, the property owner may request DelDOT reimbursement for certain property owner expenses incurred in connection with the Court proceedings.

4. Depending upon the Court awarded amount of just compensation in relation to DelDOT's final documented offer to reach settlement prior to condemnation proceedings, DelDOT may apply for reimbursement from the property owner for certain expenses of the condemnation proceedings.

L. Vesting of Title via Condemnation

1. Title is vested to the State upon completion of the three following actions:

   a. Payment of deposit of the final award;

   b. The filing of a memorandum or certification of payment to the Prothonotary;

   c. Obtaining a certified abstract of the record of the condemnation proceedings from the Prothonotary.

2. A certified abstract of the record of the condemnation proceedings shall be recorded in the respective Recorder of Deeds within thirty (30) days of the memorandum showing the amount of the award paid or deposited.

M. Condemnation Forms

1. COND 2 – Memo Offer Approval Memo to Secretary
2. COND 3 – Affidavit of Necessity
3. COND 4- Condemnation Overview
4. Superior Court Civil Rule 71.1

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

SHANTÉ A. HASTINGS
SECRETARY

MEMORANDUM

TO: Shanté Hastings, Secretary of Transportation

VIA: Mark Luszcz, Chief Engineer, Transportation Solutions

VIA: Mark Buckalew, Deputy Director of Operations and Support, Transportation Solutions

VIA: Monroe C. Hite III, Chief of Right of Way

FROM: Rosemary Richardson, Statewide Acquisitions and Relocation Manager

DATE:

SUBJECT: State Project No. «Project_Number» … FAP No. «FAP_Number» … «Recorded_in_County» County
«Project_Name»
Tax Parcel No. «Tax_Parcel_No»; State Parcel No. «State_Parcel_No»
Property of «Property_Owner»

Per Department of Transportation Real Estate Manual Section 7.2.F.1 (b) (owner contact and initiation of negotiations) I am seeking approval to present an "offer" to the owners of the referenced property. The appraisal considered the referenced parcel under different ownership as one larger parcel and valued the entire entity as such.

Attached you will find a copy of the certificate of appraisal review and a copy of the appraisal upon request.

Approval is requested that this office be allowed to proceed with making a fair market value offer based on the appraisal review certificate in the amount of:

Two Million Seventy Five Thousand Three Hundred Dollars
$2,075,300

Once approved, kindly return to this office so that a fair market value offer can be made.

Attachment

APPROVED:

_____ _____

Shanté Hastings Date
Secretary of Transportation

AFFIDAVIT OF NECESSITY

STATE OF DELAWARE)
) ss:
KENT COUNTY)

Shanté Hastings, being duly sworn according to law, deposes and states as follows:

1. I am Secretary of the State of Delaware Department of Transportation ("DelDOT") and its Chief Administrative Officer. I make this Affidavit pursuant to Superior Court Civil Rule 71.1.

2. DelDOT has determined that the property and/or interests in property described in the attachment to this Affidavit and incorporated herein by reference are required for immediate possession and necessary for a public purpose; that is, the construction or reconstruction of a state highway.

_____
Shanté Hastings, Secretary of DelDOT

SWORN TO AND SUBSCRIBED before me this ___ day of _____, 20___.

_____
Notary Public

State Project No: «Project_Name»… «Address_County» County
F.A. Project No: «FAP_Number»
Project Title: «Project_Name»
Project Parcel No.: «State_Parcel_No»
Landowner: «Property_Owner»

Condemnation Overview

Project Name: «Project_Name»
Project No.: «Project_Number»
F.A.P. No.: «FAP_Number»
Project Parcel No.: «State_Parcel_No»
Owner: «Property_Owner»

Interests Being Acquired:	One Fee Acquisition, One Permanent Easement Acquisition with Improvements, Two Temporary Construction Easements
Area(s) Being Acquired:	One FEE area totaling «FEE_Square_Feet» square feet («FEE_Acres» acres), One Permanent Easement area totaling «PE_Square_Feet» square feet («PE_Acres» acres), One Temporary Construction Easement totaling «TCE_Square_Feet» square feet («TCE_Acres» acres)
Plat:	See attached
Date offer made:	October 9, 2020
DelDOT offer:	$«Total_Compensation_»
Counteroffer:	Revised offer made March 3, 2021

Purpose of the Acquisitions: The Delaware Department of Transportation has a road project to begin at US 113 and travel along existing Arrow Safety Road. At the intersection of South Bedford Street and Arrow Safety Road, a fourth leg will be added that will carry a new Park Avenue alignment to tie back into existing Park Avenue east of the Delmarva Central Railroad tracks, south of the Delaware Coastal Airport. The proposed improvements include a roundabout at the Arrow Safety/South Bedford/Park Avenue intersection, a railroad crossing, and an acceleration lane on northbound US 113 from the Arrow Safety Road intersection.

The PS & E date for this project is: May 2021

Area: FEE area «FEE_Square_Feet» Square Feet
Permanent Easement Area: «PE_Square_Feet» Square Feet
Temporary Construction Easement Area: «TCE_Square_Feet»Square Feet

Date Negotiations Began: October 9, 2020

Revised Offer: March 3, 2021 at $42,289.00

- Agent called the Owner on October 9, 2020 and answered several questions. Owner demanded DelDOT erect a fence and requested acquisition documents be mailed to her due to Covid-19. Agent mailed acquisition document package

- Agent called Owner on December 18, 2020 and left voicemail requesting callback to answer questions or to witness and notarize documents

- Agent called Owner on December 28, 2020, answered multiple questions, and offered to meet with Owner to go over documents and project plans. Owner declined to meet or to sign and return documents

- Agent called Owner on January 15, 2021 and left voicemail requesting a return call to discuss documents

- Agent mailed an approved 10 Day Letter on January 19, 2021

- Owner emailed Agent on February 1, 2021 stating she has questions

- Owner emails Agent on February 2, 2021 with questions

- Agent emails answers to questions posed by Owner on February 5, 2021 and again offers to meet and discuss or witness, and notarize

- Owner emails additional questions and a request that DelDOT compensate for additional shrubs and also erect a fence

- On March 1, 2021, Agent mails 2 copies, 1certified and 1 first class mail, of revised acquisition documents including additional $1,000.00 towards Owner erecting a fence and $289.90 for 2 additional shrubs, along with a cover letter stating that after March 7, 2021, DelDOT will proceed through legal means to

acquire the necessary Right of Way needed for the project. Agent also emails the Owner letting her know revised documents have been mailed.

- Certified Return Receipt, signed on March 3, 2021, was received at DelDOT on March 8, 2021

- Agent updated Negotiation Record and turned condemnation documents to Rosemary Richardson, Statewide Acquisition and Relocation Manager on March 15, 2021.

  Due to the Owner showing no signs of moving towards executing the acquisition documents, and a PS&E date of May 2021, it is in DelDOT's best interest, to acquire through Eminent Domain.

RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE

Rule 71.1. Condemnation of property.

In a condemnation proceeding instituted by a public agency, such as an agency of the State, a county, a municipality or a school district, an order of possession of the property to be taken shall be entered forthwith, pursuant to 10 Del. C. § 6110(a), upon 10 days' written notice of intent to present such order, to be given to the property owner or his attorney of record, supported by an affidavit of necessity executed by the chief administrative officer of the condemning agency, unless the property owner by affidavits, depositions, and/or verified answer shall show good cause why such order of possession should not be entered forthwith. Any hearing on the issue of good cause shall be held without delay and on such affidavits, depositions, and/or verified answer. Disposition of the issue of good cause shall be made by the Court without delay.

This Rule shall be applicable solely to the condemnation proceedings brought by such public agencies.

In all such condemnation proceedings the burden shall be upon the property owner to overcome the presumption of regularity and the prima facie case of necessity for a public use presented by the institution of such proceeding.

Nothing herein contained shall affect the power of the Court, in its discretion, to enter an order of possession ex parte and without notice, as is provided by 10 Del. C. § 6110(a), upon proper cause being shown by the public agency.

History. Added, effective July 20, 1962

Chapter VIII

LAND SERVICES FUNCTION

VIII. LAND SERVICES FUNCTION

Purpose - To establish standards for the management of both personal and real property that falls under the control and supervision of the DelDOT organization.

Delaware Legal Authority: Title 17, Ch. 1, Sec. 137

Federal Legal Authority: 23 CFR Part 710 Subpart D

A. Staff Organization

1. The Land Services Manager supervises staff and provides assignments.

2. All Land Services staff must be familiar with the land services program or be under the supervision of a land services staff professional.

3. All Land Services staff are encouraged to take accredited Right of Way courses, providing a basic knowledge of the overall Right of Way program. Staff is encouraged to attend an educational course program leading to qualifying designations within the IRWA organization.

4. All Land Services staff need to become familiar with reading and interpreting right-of-way construction plans. They must also be familiar with property leasing and sales contracts.

B. General Responsibilities

1. Staff is responsible for all real property during the transition stage between having been acquired by DelDOT for project construction, until the project construction administrator is given notice to proceed to construction. This may include personal property that is considered abandoned by the personal property owner.

2. Staff is responsible for all excess real property that is in DelDOT ownership with the intention of being disposed as soon as possible.

3. Staff is responsible for all real property interests in conjunction with the existing DelDOT transportation network.

4. Staff is responsible for all real property that is currently within the defined existing right of way, which is considered excess to DelDOT needs. This right of way will typically be considered for “right-of-way or roadway abandonment/vacation”.

5. The Land Services staff must maintain adequate records to assure that all categories of relevant data are entered into the appropriate Data Management System.

6. For each land services activity action there must be an appropriate parcel property management file. This includes a thorough review of all previous appraisal and acquisition activity.

7. Each parcel file must maintain a complete and thorough contact log regarding all parcel related communications. Prior commitments regarding real and/or personal property must be documented in the parcel file. This file will typically be received after settlement.

8. Personal contact must be arranged to meet or otherwise deliver land services documents to personnel involved in demolition activities, rodent control, asbestos abatement, and environmental mitigation activities.

9. All Land Services staff must be capable and available to explain the DelDOT property management process. There are property management actions that involve various levels of approval or rights of first refusal.

   a. For real property interests purchased with federal participation, federal approvals will be obtained in accordance with the State/Federal Stewardship Agreement (See Attachment E).

   b. Most land services activities will involve the valuation of real property interests. All agents must be familiar with the general principles of valuing real property and real property interests.

   c. Staff must maintain open communications with any property owner that remains in occupancy on acquired property at such time as legal ownership has been transferred to DelDOT.

> **Note**: The DelDOT Land Services Section shall maintain an active list and accounting of all potentially excess properties. In accordance with HB 312, DelDOT shall provide to the Governor and the General Assembly on or before December 31 of each year a summary of surplus property activity. To the greatest extent practicably, the report shall identify by size and location all properties being held for projects, properties deemed surplus or excess to needs, dates of acquisition, purchase price, previous owner, dates of surplus or excess determination, estimate of real property market value, and current marketing activity. If any properties are deemed to be unmarketable, they shall be identified as such. The report shall identify all properties disposed of in the previous year by; size and location, date of disposition, estimated value, compensation received from disposition, and the name of purchaser or owners, including any equitable owners.

C. Coordination with Appraisal Staff

1. All excess/surplus property must be appraised prior to disposal, as both State and federal regulations require that market value be the benchmark for consideration of whether a transaction is warranted.

2. When consideration of a disposal becomes active, a request for valuation of real property interests will be made in writing from the Land Services Manager to the Appraisal Manager. The request will provide all necessary parcel data information, along with a date by which the valuation is needed.

3. Any time a waiver valuation is being considered for use in lieu of an appraisal, there must be written approval from the Chief of ROW.

D. Coordination with Relocation Assistance Staff

1. The relocation staff will advise the land services staff at least fifteen days in advance of a proposed closing, of all situations whereby either occupancy or personal property is expected to remain on DelDOT owned real property. This will allow the lands services staff to prepare leasing documents if the property owner will not be able to vacate the property as of the date of closing.

2. If it appears that occupants may retain occupancy of any period of time subsequent to DelDOT taking legal possession of the property, Land Services staff will coordinate with relocation staff to explain leasing arrangements to the occupants. All occupants will be entitled to 30 days free rent subsequent to transfer of ownership, as long as the occupants sign an appropriate lease at the time of closing. An extension of the free rent period may be made depending upon individual circumstances, and with the approval of the Chief of ROW.

3. When it appears that occupants may not be willing to, or be able to, vacate acquired property in time for construction activities to commence, representatives of the relocation staff and land services staff will coordinate with the Chief of ROW to determine a course of action.

4. All salvage values of previously acquired real property must have the written approval of the Land Services Manager, prior to being offered for sale to either the original property owner, or any other interested purchaser.

E. Coordination with Acquisition Staff

1. The acquisition agent will notify the Land Services staff anytime the acquisition will result in future real property disposition issues. This will typically be the case when DelDOT is acquiring an uneconomic remnant, or any other real property interest that is not needed for project purposes.

2. The Land Services staff must be aware and should document any potential issues regarding the need to dispose of personal property which has been abandoned and is located within the acquired right of way.

3. The Land Services staff may be required to establish salvage values for certain types of acquired real property which the property owner would like to repurchase from DelDOT. Depending on the nature of the real property, salvage values may be established by either the appraisal staff or the land services staff.

F. Property Maintenance

1. Inspection Requirements

a. All DelDOT owned unimproved property either awaiting project action, or listed as excess land, should be inspected whenever land services staff are in the vicinity of the property while making routine nearby visits.

b. All DelDOT owned improvements awaiting demolition or disposal must be inspected at least every fifteen days. This timeframe may be adjusted for more frequent inspection depending upon the nature and condition of the improvements.

c. All DelDOT owned improvements that are under a valid lease arrangement must be inspected and documented both externally and internally at least once every three months.

2. Maintenance Requirements

a. All real property under DelDOT ownership shall be maintained in a safe condition.

1. All vacant property will be mowed on a regular basis during the growing season, and arrangements will be in place to remove any material which is illegally deposited on the property.

2. All improved property will be maintained in a condition that does not qualify as a public nuisance. If any particular property is the subject of routine illegal depositing, either more frequent monitoring will be required, or other safety arrangements will be made.

b. A pre-qualified list of public and private maintenance personnel will be kept available. Since actions may be required during off-duty hours, at least two representatives of Land Services will keep the maintenance list with them at all times.

c. Provisions for 24-hour contact will be made in the case of emergencies. Any lawful occupant of DelDOT property will be provided contact information for at least two representatives of the land services staff in case of emergency.

3. Right-of-Way Clearing

a. As soon as advised in writing by a member of the acquisition/relocation staff, provisions will be made to clear all improvements from DelDOT owned property. Prior to issuing any

demolition contract, an inspection must be made of all improvements to determine if there is a need for asbestos abatement or rodent control.

b. A determination will be made regarding whether the improvements will be sold to the public, or whether the improvements will be demolished or otherwise removed.

1. Although an improvement may have salvage value, it may not be prudent to attempt to dispose of the improvement to the public if it is at all likely that such disposal may conflict with the proposed notice to proceed to construction for the project.

4. Real Property Leasing

a. Prior to any property being made available for lease, approval must be obtained in writing from the Land Services Manager. Necessary considerations include;

1. Proposed dates of future needs.

2. Structural stability of any improvements, and whether substantial maintenance will be required.

3. If leasing is for farming purposes, consideration of crop harvesting time frames should be taken into account.

4. Any potential safety impacts to the traveling roadway.

b. Short term leases will be executed for temporary occupancy of less than five years.

c. Long term leases of five years or longer will be executed for property that will either not be needed for project purposes in the immediate future, or that can be defined as "real property interests" not impacting the operational integrity of the right-of-way**.**

d. All use agreements or leases will provide for the protection of DelDOT interests and will be at fair market rental terms unless justified below.

1. Permissible Exceptions for Leases Less Than Fair Market Rent

a. 23 CFR 710.403(e) Permissible Exceptions to charging Fair Market Rent Value

1. 23 CFR 710.403(e) states that acquiring agencies shall charge current fair market value or rent for the use or disposal of all real property interests, including access control, if those real property interests were obtained with Title 23, United States Code, funding. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

2. When it is in the overall public interest based on social, environmental, or economic benefits, or is for a non-proprietary governmental use.

3. Use by public utilities in accordance with 23 CFR Part 645.

4. Use by railroads in accordance with 23 CFR Part 646. • Uses under 23 USC Section 142(f), Public Transportation. For public transportation purposes, whenever the public interest will be served, by publicly owned mass transit authorities where this can be accomplished without impairing automotive safety or future highway improvements.

5. Use for other transportation projects eligible for assistance under Title 23 of the United States Code, provided that a concession agreement shall not constitute a transportation project exempt from fair market value requirements.

b. Process for approving less than Fair Market Rent Value exceptions listed in 23 CFR 710.403(e)

1. DelDOT shall require the potential lessee to provide DelDOT a Public Purpose Statement (PPS) for any real property sought to be leased for less than fair market value rent.

2. In the PPS, the applicant must provide a statement of the public need for the real property and how the proposed conveyance will address the public need, including a description of the benefits the public will receive by DelDOT leasing the real property at less than fair market rent.

3. DelDOT shall evaluate the potential lessee's PPS and upon approval, shall submit to FHWA the justification that the lease for less than fair market rental rate is in the public interest for social, environmental, economic purpose or nonproprietary government use.

2. Extenuating Circumstances and Hardship Cases:

a. There may be infrequent special cases wherein a tenant of State-owned property, due to circumstances beyond his or her control, can no longer pay the established rental rate.

b. It may also be true that the best interest of the State will be served if the rental rate is reduced, with or without compensatory services from the tenant.

c. If the Land Services Unit Manager is notified that such a case exists, the manager will assign an agent to investigate and gather all available information.

1. If the agent believes that a rent reduction is in the best interest of the DelDOT, the following steps will be initiated:

i. the agent will prepare a memo to the Manager, the Land Services Section, setting forth all the evidence, and requesting authority to reduce the rent in an amount commensurate with the seriousness of the situation.

ii. If the request is approved, the agent will take the actions necessary to implement the rent reduction and place the memo and all other documentation into the parcel Rental File.

2. If the agent does not believe that a rent reduction is in the best interest of the State, the agent will notify the Land Services Manager, who will start the eviction process.

5. Rental rates shall be established by the Appraisal Services Unit using accepted appraisal methodology. The rental rate shall reflect considerations such as the location of the premises, the quality of the improvements, competition and the terms of the lease.

6. Real property interest leases will typically but not always be located on the operating right of way, where the occupancy will not be a detriment to roadway operations. A typical example would be the leasing of vehicle parking beneath a structure. In this occurrence, please refer to Policy Implement #R-04 (Joint Use of Right of Way Beneath Roadway Structures).

7. Provisions will be made for routine rent collection, and a notification system will be implemented to provide alerts for late or missed rental payments. Two separate spreadsheets will be maintained on the Shared "N" drive, with one spreadsheet listing basic information regarding each active lease, and the other spreadsheet providing a status of payments received. These spreadsheets can only be accessed by land services staff and the Chief of ROW.

G. Demolition Process

1. Real Property

a. Occurs as soon as possible after DelDOT takes possession and property is vacated.

b. Will typically require asbestos study and abatement.

c. Will typically require rodent control study and treatment.

d. Will typically require deposit of fill material to prevent any safety concerns.

2. Personal Property

a. Demolition or removal after personal property is considered to be abandoned.

b. Coordination with Relocation Assistance staff is required.

3. A step-by-step procedure to accomplish demolitions is maintained by the Land Services Manager.

H. Right-of-Way and Road Abandonment/Vacation Activities

1. Whenever the alignment of an existing roadway is changed or altered, some of the previously acquired right of way may become excess to future DelDOT needs.

2. Request are obtained by either a neighboring property owner/developer or the Department.

3. During investigation/research of request, the assigned Land Services agent will determine if the request can be completed administratively or referred to Superior Court.

4. Coordination with IT Department for Advertisement

5. A step-by-step procedure to accomplish road vacations is maintained by the Land Services Manager.

I. Sale and Transfer of Real Property Interests

1. Initiation of Action

   a. May be initiated within the DelDOT organization as a desire to dispose of real property determined to be excess to DelDOT needs.
   b. May be initiated as the result of a formal inquiry to purchase from a party outside of the DelDOT organization.

   2. Approval Process – See Manual Attachment "C"

J. Handling of Funds Received

1. Land Services staff will receive routine leasing payments on a regulated basis on accounts from those properties being leased. Payments may also be received from the sale of excess/surplus property.

2. All payments received must be documented on the Land Services property spreadsheet, and then hand carried to a representative of the Finance Section by closing of business, if practicable. The Finance Section representative will provide a receipt for the funds, and all documentation will be maintained in a Land Service parcel file. Land Services will follow the established procedures for processing ROW receipts.

K. Land Services Forms and Sample Letters

1. FORM -LS1 - Improvement Inventory Form
2. FORM -LS2 - Rodent Control Inspection Form
3. FORM -LS3 - Encroachment Report
4. FORM -LS4 - Lease Review Form
5. FORM -LS5 - Land Services Comment Form

6. FORM -LS6 - Excess Property Disposition Approval Form
7. FORM -LS7 - Registration of Bidders
8. FORM -LS8 - Public Auction Sale Summary
9. FORM -LS9 - Excess Land Sealed Bid
10. FORM -LS10 - Excess Land Sealed Bid Summary Sheet
11. FORM -LS11 - Agreement of Sale
12. FORM -LS12 - Sales Contract
13. FORM -LS13 - Real Property Use Agreement
14. FORM -LS14 - Real Property Interest Agreement
15. FORM -LS15 - Real Property Interests Agreement for DelDOT Projects
16. FORM -LS16 - Notice to Asbestos Consultant To Proceed
17. FORM -LS17 - Recommendation for Contract Award
18. FORM -LS18 - Contractors Notice to Proceed
19. FORM -LS19 - Notice of Abatement Completion
20. FORM -LS20 - Approval to Demolish
21. FORM -LS21 - Disposition of Improvements Checklist
22. FORM -LS22 - Notice of Contract Award
23. FORM -LS23 - Procurement Procedures Quotation Summary
24. FORM -PM24 - Recommendation for Bid Award
25. FORM -LS25 - Contract Completion Certification
26. FORM -LS26 - Notice of Option to Purchase Surplus Property

IMPROVEMENT INVENTORY FORM

State Project No.: _____

Federal Aid Project No.: _____

Parcel No.: _____ Former Owner: _____

Land Inventory No. N - _____ K - _____ S - _____

Date of Legal Possession: _____ Date of Inventory: _____

By: _____
Right of Way Agent

LEGENDS:

Condition:
E – Excellent
G – Good
F – Fair
P – Poor

Disposition: Demo – Demolition
Slvg – Salvaged by DelDOT
Sold – Sold for Removal

Inventory:

A.	Buildings/Structures	Condition	Disposition/Date
1.			
2.			
3.			
4.			
5.			
6.			
B.	Severable Items		
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
C.	Personal Property		
1.			
2.			
3.			
4.			

* Attach additional pages if necessary.

DELDOT RIGHT OF WAY DOCUMENT NO. LS1

RODENT CONTROL INSPECTION FORM

Project No. _____ _____ County

F.A.P. No. _____ Parcel No. _____

Project Title: _____

Owner: _____

Address/Location: _____

Land Inventory No.: _____

This property was inspected by the undersigned for evidence of rodent infestation and was found to be:

_____ Free from infestation

_____ Infested (If infestation is indicated, see below)

Infestation:

Extermination action taken: _____

_____

_____

Extermination completion date:

Remarks: _____

_____

_____

_____
Right of Way Agent

_____
Date

ENCROACHMENT REPORT

County: _____ Land Inventory No.: _____

Property Location _____

Site Inspection Date: _____ How Many Encroachments? _____

Site Inspection Made By: _____

If encroachments, explain: _____

_____

_____

If no encroachments, report on condition of property: _____

_____

_____

Picture 1 Picture 2

_____

(Description of Pictures)

_____

_____

LEASE REVIEW FORM

Recommendation for Renewal/Termination

TO:

Land Services Manager

RE: **Tenant:**

Property Address:

Lease Expiration Date:

Property Identification

Project No. _____ … _____ County
Project Title: _____
Parcel No./Tax Id No.: _____
Land Inventory No.: _____

Items Reviewed

Project Status: _____

_____

Date of Original Lease Approval: _____
Conditions of Approval: _____

_____

Condition of Improvements: _____

_____

Needed Repairs, with Cost Estimate: _____

_____

Rental Payment - Any Change Warranted? (Check One): ☐ Yes ☐ No

If Yes, … from Current $ _____ to $ _____

Other: _____

_____

Recommendation(s):

☐ Terminate Lease – Issue 60-day Notice to Vacate
☐ Renew Lease - ☐ Month to Month; ☐ 6-Month ☐ 1 Year ☐ Other (State): _____

_____

☐ Initiate Process to Sell Property

REMARKS: _____

_____

_____

Approved:

_____	_____	_____	_____
Right of Way Agent	Date	Land Services Manager	Date

DELDOT RIGHT OF WAY DOCUMENT NO. LS4

COMMENTS

SUBJECT: Routing Requesting Comments:
… County
Parcel No:
Land Inventory No.:
Road (Portion)

Support w/w-out conditions: _____

Object: _____

Need additional information: _____

Comments:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

_____ _____
Signature Date

_____
Title

Please return by: **Monday, May 29, 2025**
to:
Right-of-Way Agent

DEPARTMENT OF TRANSPORTATION
EXCESS PROPERTY
DISPOSITION APPROVAL FORM

SUBJECT: Land Inventory No.: _____

The referenced excess parcels have been routed internally and determined to be no longer necessary for transportation purposes.

The Right-of-Way Section received full support and is prepared to proceed with the disposal. Your approval is solicited.

Disposition will occur in accordance with applicable state law.

Location Map are attached for your reference.

DEPARTMENT OF TRANSPORTATION

RECOMMENDED:

Chief of Right of Way	Date
Chief Engineer	Date

APPROVED FOR DISPOSITION:

Secretary of Transportation	Date

REGISTRATION OF BIDDERS

PLEASE WRITE YOUR NAME AS YOU WOULD WANT THE DEED PREPARED IF YOU WERE THE SUCCESSFUL BIDDER: etc. (John Doe and Jane Doe Husband and Wife with Rights of Survivorship.)

NAME _____

ADDRESS _____

_____

SOCIAL SECURITY/EI NO. _____

_____

DAYTIME TELEPHONE NO. _____

EVENING TELEPHONE NO.
(AFTER 4:30 P.M.) _____

PRESENTED CERTIFIED OR CASHIERS CHECK DRAWN ON

BANK _____

CHECK NUMBER _____

DATE OF CHECK _____

AMOUNT OF CHECK _____

AMOUNT OF HIGH BID WAS RECORDED AS $ _____

RECORDER: _____

AUCTIONEER: _____

BALANCE DUE AT SETTLEMENT _____

DATE OF AUCTION _____

PROPERTY PLOT NO. _____

PUBLIC AUCTION SALE SUMMARY

DelDOT Attendees

LAND INVENTORY NO.: _____

DATE: _____

TIME: _____ AUCTIONEER: _____

APPROVED APPRAISED VALUE/MINIMUM BID: $ _____

BIDDERS

	NAME		ADDRESS		DOLLAR AMOUNT OF BID
1.					$
2.					$

RECORDED BY: _____ DATE: _____
Right of Way Agent

RECOMMENDED FOR: ☐ Acceptance
☐ Rejection (If rejected, state cause) _____

RECOMMENDED BY: _____ DATE: _____
Land Service Manager

APPROVED BY: _____ DATE: _____
Chief, Right of Way

EXCESS/SURPLUS LAND SEALED BID

For the proposed sale of:

RE: State Owned Lands _____ County

Land Inventory No.: _____

Approved Appraised Value: $ _____

Bid amounts must be written in words and shown in figures. Bid amounts will not be accepted in an amount less than the Approved Appraised Value.

Bid Submitted in the amount of:

_____ /100 Dollars $ _____

By: _____
Addressee's Name

_____
Address

_____ _____
Signature Date

Bid to be returned not later than _____ _____, _____ a.m./p.m.

by mail to: DelDOT
Land Services/ROW
Attn: _____
Right of Way Agent
800 Bay Road
Dover, DE 19901

OR

by personal
delivery to: DelDOT Administration Building
Right of Way Section
Land Services
Attn: _____
Right of Way Agent
800 Bay Road
Dover, Delaware 19901

EXCESS/SURPLUS LAND SEALED BID SUMMARY SHEET

Bid Opening: _____, _____, _____ AM/PM

County _____

Land Inventory No. _____

Approved Appraised Value and Minimum Bid $ _____

BID TABULATION

Bidder

	Name		Address		Dollar Amount of Bid
1.					$
2.					$
3.					$
4.					$
5.					$

_____ Acceptance

_____ Rejection (If rejected, state cause) _____

_____ _____

Right of Way Agent Date

AGREEMENT OF SALE

This Agreement of Sale, made this ____ of _____, 20___, between _____ hereinafter referred to as the **BUYER** and the State of Delaware, Department of Transportation, Right-of-Way Section hereinafter referred to as **SELLER**.

WHEREAS, the **SELLER** acquired from _____ a parcel of land for the purpose of constructing State Project No._____, also known as Parcel No._____, Right-of-Way Tract No._____, County Tax Assessment No._____, on which is located a real property improvement identified as follows: (Insert description of property improvement(s), serial number, etc.); and

WHEREAS, the **SELLER** is desirous of selling the improvement(s); and

WHEREAS, SELLER warrants that it has good and marketable title to said property, free and clear of any liens, encumbrances and adverse claims of third parties; that it has the right, power and authority to sell and deliver said property to **BUYER**; and that it will defend **BUYER'S** title to said property against the claims of all persons, firms or entities.

NOW THEREFORE WITNESSETH: The **BUYER** will pay to the **SELLER** the sum of Dollars ($_____) as the full purchase price of the improvement(s).

The **BUYER** hereby submits to the **SELLER** the sum of _____ Dollars ($_____) as deposit and downpayment, the receipt of which is hereby acknowledged by the **SELLER**. The balance of Dollars ($_____) shall be paid by the **BUYER** to the **SELLER** at final settlement.

Final settlement for the purchase of the herein described property improvement(s) shall constitute full and complete payment by the **BUYER** to the **SELLER**, receipt of a fully approved and executed Agreement of Sale from the **SELLER**, and fulfillment of Agreement herein for removal of the improvement(s) from the premises within the stated time period.

For and in consideration of the payment of the full purchase price of _____ Dollars ($_____), the **SELLER** hereby grants, sells, assigns, and transfers the said improvement(s) to the **BUYER** as his separate property, as is, with no representations or warranties as to said improvement's fitness for use.

It is further expressly agreed between the parties hereto that the **BUYER** will assure the **SELLER** that said improvement will not be placed on a parcel of land that would be needed for any active project of the **SELLER** which would cause the structure to be repurchased by the **SELLER**.

It is further agreed between the parties hereto that for the consideration mentioned above, the **BUYER** does hereby covenant and agree that he will move or cause to be removed the above described improvement(s) within ___ calendar day(s) from the date of approval of this Agreement of Sale, at his own expense, from the above mentioned parcel in accordance with the **SELLER**'s specifications which are hereby attached and made a part of this Agreement of Sale.

Should said improvement not be removed within the ___ calendar day(s), the title to the improvement shall revert to the **SELLER** and the sum paid under this Agreement of Sale by the **BUYER** shall be forfeited as liquidated damages for the failure to remove the improvement(s) within the maximum time herein specified.

Furthermore, the **BUYER** shall save harmless the State of Delaware and the Department of Transportation from any and all claims or causes of action which may arise as the result of the removal of said improvement from the premises.

It is further agreed that the removal process will be in accordance with the notice of Public Auction, which is made a part of this Agreement of Sale. (Include this paragraph only if applicable, otherwise, include the terms/conditions required for removal in this agreement.)

IN WITNESS WHEREOF, SELLER and **BUYER** have executed this Agreement of Sale the date first above written.

BUYER

Witness _____ Date _____

SELLER

Date _____ By: _____

STATE OF DELAWARE

SALES CONTRACT

State Project No. _____ Federal Aid Project No. _____

Project Title: _____

Parcel No. _____ Land Inventory No. _____

This Contract of Sale is made this _____ day of _____, _____, by and between _____ hereinafter referred to as BUYER, and the Department of Transportation, of the State of Delaware, hereinafter referred to as SELLER.

1. The SELLER is the owner of a _____ tract of land identified as _____ County Tax Map No.(s) _____ located on the _____. Said parcel is more fully shown and highlighted in blue on Real Estate Plot No. _____, a copy of which is attached as Exhibit "A" and hereby made a part of this Contract.

2. The SELLER is vested with fee simple title to the property to be conveyed, and in accordance with 17 Del Code, Section 137 in addition to Section 13 of HB300 FY21, has determined that the said property is no longer needed for highway/transportation purposes.

3. SELLER does hereby agree to sell, and the BUYER agrees to purchase, the property designated in Exhibit "A" attached hereto with any and all improvements located thereon.

4. The BUYER will pay to the SELLER the sum of SELLER is the owner of _____ Dollars ($_____) as the full purchase price of the property.

5. The BUYER hereby submits to the SELLER the sum of _____ Dollars ($_____) as deposit and down payment, the receipt of which is hereby acknowledged by the SELLER. The balance of _____ Dollars ($_____) shall be paid by BUYER to the SELLER at final settlement.

6. Final settlement for the purchase of the herein described property shall be held within ninety (90) days from the date this contract is approved by the SELLER. However, the SELLER reserves the right to extend the settlement date if additional time is needed through no fault of the SELLER.

7. In the event the BUYER is unable to obtain financing for the purchase of the property, said down payment shall be returned to the BUYER. Except in the event of default by the SELLER, this shall be the sole reason that the SELLER returns said down payment. If settlement is canceled for any other reason by the BUYER except as a result of a default by the SELLER, the SELLER shall keep the down payment as liquidated damages.

8. Any written notice shall be mailed to the BUYER at _____. Telephone _____. Any notice to be given to the SELLER will be mailed to:

Department of Transportation
Right of Way Section
Land Services
Attention: _____
P.O. Box 778
Dover, DE 19903

All notices shall be given by first class mail and shall be effective upon posting.

9. In the event that the land to be purchased is subject to a lease from the SELLER to a third party, the SELLER shall at the date of settlement deliver said property free and clear of any leasehold interest unless otherwise agreed in writing.

10. Good fee simple, marketable title shall be conveyed to the BUYER at the SELLER'S expense. BUYER shall be responsible for obtaining any title insurance. This transaction shall be exempt from State of Delaware Realty Transfer Tax. The deed is to be recorded by the SELLER at the BUYER's expense.

11. NOTICE TO BUYER: If the property being purchased hereunder is an unimproved parcel of land, BUYER should consult with the appropriate public authorities to ascertain whether central sewerage and water facilities are available or, if not, whether the property will be approved by appropriate public authorities for installation of a well and private sewerage disposal system. If central sewage and water facilities are not available, then this Contract is contingent upon: 1) a satisfactory site evaluation that will allow the installation of an approved on-site disposal system, in accordance with the regulations promulgated by the Department of Natural Resources & Environmental Control, that is acceptable to the BUYER; 2) the availability of a water supply; and 3) the lot conforming with the local zoning ordinance; or this Contract shall become null and void, and all deposits shall be returned to the BUYER. The (buyer/seller/authorized agent) shall request the site evaluation on or before _____. Buyer shall pay all costs complying with these provisions. The BUYER and SELLER may modify these provisions or the BUYER may waive these provisions of the Contract by attaching an addendum signed by the SELLER and the BUYER.

12. SELLER shall not, during the term of this Contract, grant, convey, encumber or option the above described premises or any part thereof to any person, firm or association without the prior written consent of the BUYER.

13. The following clauses shall be included in the deed conveying title:

    a. The grantee, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this deed for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the grantee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

    b. The grantee, for himself, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

    c. That in the event of breach of any of the above nondiscrimination covenants, the State of Delaware, shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the State of Delaware, and its assigns.

14. This Contract includes _____ Addendum attached hereto and incorporated herein by reference. All Addenda will be separately executed by both parties.

15. As used herein, the singular terms shall include the plural, and plural shall include the singular; male shall include female.

16. This Contract shall be binding upon the heirs, executors, administrators, or assigns of the parties hereto.

17. This Contract shall constitute the entire contract between the SELLER and the BUYER, and no modification shall be binding on either party unless reduced to writing and signed by and on behalf of the SELLER and by and on behalf of the BUYER.

18. Having been apprised of item number 11 regarding Notice of BUYER of public sewage and water facilities as required under 25 Del. Code, Section 313, BUYER hereby agrees to waive said provision.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
In the Presence of:

BUYER:

_____ _____ (Seal)
Witness

_____ _____ (Seal)
Witness

Social Security No.: _____
Employee Identification No. _____

SELLER:

Department of Transportation
Land Services

Approved this _____ day of _____, _____, A.D.

_____ BY: _____ (Seal)
Witness Chief of Right of Way

REAL PROPERTY USE AGREEMENT

PARCEL IDENTIFICATION:
Land Inventory No. _____
Co. Asmt. Parcel No. _____
Location: _____

This Agreement made and entered into this _____ day of _____, A. D. 20__, by and between the State of Delaware, Department of Transportation, Right-of-Way Section, hereinafter referred to as "**OWNER**", and _____
_____,
hereinafter referred to as "**TENANT**".

The **OWNER** leases to **TENANT** the following described real property:_____
_____
_____
in _____ Hundred, _____ County, Delaware, Tax Assessment Parcel No. , upon the following terms and conditions:

1. TERM: This Agreement shall commence on _____ and terminate on _____.

2. RENT: Rent has been established at _____ Dollars ($_____) per month. **TENANT** agrees to pay, without demand, said rent for the premises.

   The **OWNER** at execution of this agreement hereby acknowledges receipt of rent in the amount of Dollars ($_____) for the following period:_____. Rent shall be due and payable, in advance, thereafter on the first day of each calendar month at the office at the following address:

   Department of Transportation
   Right of Way Section
   Land Services
   P. O. Box 778
   Dover, Delaware 19903

   Payments made fifteen (15) days after the due date shall be considered late and _____ Dollars ($_____) shall be the monthly rent due.

3. INSPECTION AND CONDITION OF PREMISES: **TENANT** shall have seven (7) days after occupancy to provide the **OWNER** with a written list of any defective conditions of the property which comes to **TENANT**'s attention that **TENANT** does not wish to have repaired at their expense upon vacation. Excepting the above mentioned written list, **TENANT** stipulates that the property has been inspected, including the grounds and all buildings and improvements, and that they are, at the time of this Agreement, in good order and repair and in a safe and clean condition.

4. SECURITY DEPOSIT: On execution of this Agreement, **TENANT** shall deposit with the **OWNER** the sum of _____ Dollars ($_____), receipt of which is hereby acknowledged by the **OWNER**, as security for the faithful performance by **TENANT** of the terms hereof. The security deposit shall accumulate no interest. The **OWNER** may, but shall not be obligated to, apply all or portions of said

days or allow the **OWNER** to tender payment for the repairs from the security deposit. Acceptance of the difference by **TENANT** shall constitute agreement on the damages as specified by the **OWNER**. Failure by the **OWNER** to provide a list of damages within twenty (20) days shall constitute acknowledgment by the **OWNER** that no damages are due and the full amount of the security deposit shall be returned within twenty (20) days from the expiration or termination of this Agreement.

5. USE OF PREMISES: The real property interests shall not be used nor occupied by **TENANT** at any time during the term of this Agreement for the purpose of carrying on any business, profession, or trade of any kind, except as stated in the additional provisions of this agreement.

6. QUIET ENJOYMENT: The **OWNER** covenants that on paying the rent and performing the covenants herein contained, **TENANT** shall peacefully and quietly have, hold, and enjoy the real property interests for the agreed term.

7. ENTRY AND INSPECTION: **TENANT** shall permit the **OWNER** or the **OWNER**'s agent to enter the property at reasonable times and upon reasonable notice for the purpose of inspecting the premises or showing the same to prospective tenants or purchasers, or for any other reasonable purpose.

8. NOTICES: Any notice which either party may or is required to give, may be given by mailing the same, by registered or certified mail, to **TENANT** or to the **OWNER** in care of the Property Manager at the aforementioned address or at such other places as may be designated by the parties from time to time.

9. INDEMNIFICATION: **TENANT** agrees to indemnify **OWNER** against any and all actions or claims which may be asserted or brought against the **OWNER** that are based upon the **TENANT**'s acts or omissions in connection with **TENANT**'s use and occupancy of the demised property. In case of fire or casualty, **OWNER** is not liable to **TENANT** for any loss. It is recommended that **TENANT** obtain a tenant's insurance policy covering damage to personal property and liability.

10. MAINTENANCE, REPAIRS AND ALTERATIONS: **TENANT** shall insure, at **TENANT**'s expense, that the property is maintained in compliance with all governmental regulations relating to the use and appearance of the property. **TENANT** shall maintain the property, at **TENANT**'s expense, in a good state of repair and be responsible for correcting any damage to the property caused by **TENANT**, normal wear excepted. **TENANT** shall make no alterations to the property without first receiving the written consent of the **OWNER**. **TENANT** shall not post barricades nor erect fences which would prevent access to the demised property by the **OWNER**.

11. DANGEROUS MATERIALS: **TENANT** shall not keep any items whatever of a dangerous, flammable, or explosive character that might be of high risk to human health or unreasonably increase the danger of fire or explosion on the property.

12. ASSIGNMENT AND SUBLETTING: **TENANT** shall not assign this Agreement, or sublet the real property interest or any part thereof.

13. RENEWAL OR TERMINATION: **TENANT** shall advise the **OWNER** sixty (60) days prior to the expiration of this Agreement of **TENANT**'s intention to renew or terminate this Agreement. If this Agreement is extended, it shall be renewed on a month to month basis with a sixty (60) day notice to terminate required from the **OWNER** or **TENANT**. If this Agreement is extended beyond the term herein, the monthly rental rate will be reviewed and, if warranted, modified to meet current economic market conditions.

14. TERMINATION FOR A PUBLIC IMPROVEMENT PROJECT: **TENANT** acknowledges that the property may be required for a public improvement project and that, if required for a public improvement project, the **OWNER** shall have the right to terminate this Agreement by providing **TENANT** with a written notice sixty (60) days prior to the date the property is needed.

15. DEFAULT: Any failure of **TENANT** to pay rent when due, or comply with any term hereof, shall, at the option

of the **OWNER**, terminate all rights of **TENANT** hereunder.

16. WAIVER: No failure of the **OWNER** to enforce any term hereof shall be deemed a waiver, nor shall any acceptance of a partial payment of rent be deemed a waiver of the **OWNER**'s right to the full amount thereof.

17. SUMMARY OF LANDLORD-TENANT CODE: **TENANT** hereby acknowledges receipt of a copy of a summary of the Landlord-Tenant Code, as prepared by the Attorney General of the State, in fulfillment of the requirements of 25 Del. Code § 5118.

18. The **TENANT**, any heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which the Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19. The **TENANT**, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the **TENANT** shall use property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

20. That in the event of breach of any of the above nondiscrimination covenants, the State of Delaware, shall have the right to terminate the lease and to re-enter and repossess said real property and the facilities thereon, and hold the same as if said lease had never been made or issued.

21. ADDITIONAL PROVISIONS:

22. ENTIRE AGREEMENT: The foregoing Agreement constitutes the entire agreement between the **OWNER** and **TENANT** and may be modified only by a writing signed by both parties.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year aforesaid.

Tenant: _____

Address: _____

_____

_____

_____ _____(SEAL)
Witness Tenant

_____ _____(SEAL)
Witness Tenant

DEPARTMENT OF TRANSPORTATION

_____ _____(SEAL)
Witness Name
Land Services Manager

REAL PROPERTY INTERESTS AGREEMENT

This Real Property Interest Agreement herein called "Lease", made this _____ day of _____, 20___, by and between the Department of Transportation, Right-of-Way Section of the State of Delaware hereinafter called the "**DEPARTMENT**" and _____ hereinafter called "**LESSEE**,"

WITNESSETH:

Whereas, the **DEPARTMENT** is owner in fee of a certain tract of land, consisting of _____, known as known as_____ in _____ County, State of Delaware and more particularly shown and outlined in yellow on Right-of-Way Plot No. _____ annexed hereto as Exhibit "1" and is more particularly bounded and described on Exhibit "2" attached hereto; and

Whereas, the **LESSEE** has requested the **DEPARTMENT** to lease said tract of land to the **LESSEE** for _____; and

Whereas, the **DEPARTMENT** is desirous of cooperating with the **LESSEE** to this end:

NOW, therefore, it is agreed by the parties hereto in consideration of the following annual lease payment; _____ The **DEPARTMENT** hereby demises and leases to the **LESSEE** the herein described premises for a period of one (1) year commencing on _____ and terminating on _____. Subsequent one-year term renewals will be reviewed upon receipt of written request 60 days prior to the end of the term of the lease. Said lease and subsequent renewals will be granted until such time that this parcel is required by the **DEPARTMENT.** The rental rate will be reviewed and extended or modified at that time by the **DEPARTMENT**, in accordance with the then market conditions.

This Lease shall be subject at all times to the following terms and conditions:

1. No use of the area shall impair the full use and safety of the **DEPARTMENT**; or otherwise interfere with the free flow of traffic.

2. All access, be it vehicle or pedestrian, will be permitted to said area to and from _____.

3. The leased premises shall be used by **LESSEE** for the sole purpose of _____.

4. No improvements shall be placed on the leased premises, nor alterations made on or to the rental space without prior written consent of the **DEPARTMENT** and the **FHWA**.

5. This Lease shall not be assigned or sublet without prior written consent by the **DEPARTMENT** and the **FHWA**.

6. **LESSEE** shall, at its own cost and expense, keep the leased premises in good repair. The **LESSEE** shall yield the immediate possession of the leased premises back to the **DEPARTMENT** upon termination or revocation of this lease and said premises shall be restored to its original condition. In the event **LESSEE** fails in its maintenance obligation, the **DEPARTMENT** may enter onto the premises for such purpose and the **LESSEE** shall be responsible for any and all costs incident hereto.

7. **LESSEE** shall not permit any unlawful or immoral practice to be committed or carried on by any person(s) whatsoever on the leased premises, nor shall **LESSEE** permit or allow the sale, dispensing, or consumption or alcohol or illegal drugs on the premises.

8. **STORAGE:** Any storage of materials or other items for purposes deemed by the **DEPARTMENT** or the **FHWA** to be a potential fire or other hazard to the Interstate Highway and the operation and maintenance of the space will be subject to regulation by the **DEPARTMENT** and the **FHWA** to protect against fire or other hazards impairing the use, safety, and appearance of the highway. **LESSEE**'s use and occupancy of the leased premises shall not permit hazardous, noxious, or objectionable fumes, vapors, or odors to rise above the rental space. There shall be no hazardous materials of any kind stored or located under any structure or within the identified areas or DelDOT right of way at any time. The identification of what items constitute "hazardous materials" shall be as determined by **DEPARTMENT** and/or the **FHWA**, in its sole reasonable discretion, to include any items that may cause damage to any structures and/or the right of way areas. This shall include, but not be limited to, a prohibition of any long-lasting combustible materials such as wooden pallets, tires, plastic traffic cones/barrels, or other rubber or plastic items. This shall further include a prohibition of storage tanks of any kind as well as any items including, but not limited to, those identified in 49 CFR Part 172. There shall be no storage of any enclosed trailers, sheds, shipping containers, or other enclosed items within the identified areas at any time. No vehicles or materials shall be parked or stored within ten (10) feet of any side of a pier or column of any structure within the identified areas. Further, there shall be no vehicles or materials parked or stored within ten (10) feet of the underside of girders or any other structural elements, nor any items or materials that may fall or lean against any pier or column. Further, there shall be no materials stored that shall exceed a height of fifteen (15) feet from ground level anywhere within the identified areas.

9 No signs will be permitted on the leased premises.

10. **LESSEE** agrees to pay all taxes and assessments that may be of tenancy; to pay all charges for any utilities (sewer, water, electric, gas) supplied to or upon any part of the leased premises.

11. INDEMNIFICATION: **LESSEE** agrees to indemnify the **DEPARTMENT** and **FHWA** against any and all actions or claims which may be asserted or brought against the **DEPARTMENT** and **FHWA** that are based upon the **LESSEE**'s acts or omissions in connection with **LESSEE**'s use and occupancy of the demised property. In case of fire or casualty, the **DEPARTMENT** and **FHWA** is not liable to tenant for any loss. It is required that tenant obtain a tenant's insurance policy covering damage to personal property and liability.

12. This Lease is revocable for non-compliance with the foregoing and following provisions by the **LESSEE** or for cessation of the use of the leased premises. The **DEPARTMENT** and the **FHWA** shall be the sole judge of non-compliance. In the event that you shall violate any terms of the lease agreement and shall not remediate such violations within five (5) business days of receiving notification from **DEPARTMENT** of such violations, then **DEPARTMENT** shall have the authority to terminate said lease agreement for your failure to comply. The **DEPARTMENT** shall have the right to terminate said lease agreement for any reason whatsoever, upon sixty (60) days written notice.

13. **ACCESS:** The **DEPARTMENT** reserves the right for itself, employees, agents, or contractors of free, uninterrupted entry upon the leased premises for the purpose of inspecting the leased premises for the protection or maintenance of the highway facilities and the **DEPARTMENT** further reserves the right to take possession thereof in the case of national or other emergency. Police, first responders, and the local fire department shall have immediate access to the identified areas at all times, including those times outside of normal business hours.

14. The **LESSEE**, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said leased premises described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the **LESSEE** shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

15. The **LESSEE**, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that **LESSEE** shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

16. That in the event of breach of any of the above nondiscrimination covenants, the **DEPARTMENT** shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

17. If all or part of the leased premises is ever needed for highway purposes, this agreement shall be rescinded or modified at the sole discretion of the **DEPARTMENT**, and any land needed by the **DEPARTMENT** will revert for its use at no cost or expense to the **DEPARTMENT**.

18. It is expressly understood and agreed that whereas the **DEPARTMENT**'s consent or agreement is required under any provision of this lease, the concurrence of the **FHWA** is also required.

19. All notices, consents, or approvals required to be given by either party to the other hereunder shall be in writing, addressed and mailed as follows:

Department of Transportation
Right-of-Way
Land Services
P. O. Box 778
Dover, DE 19903
Telephone No.: (302)
FAX No.: (302) 739-2881

20. ADDITIONAL PROVISIONS: **LESSEE** agrees to provide adequate insurance and to hold the **FHWA** and **DEPARTMENT** and its officers and employees harmless from any and all claims relating to this Agreement, including but not limited to any issues relating to the fitness of the site for the intended use as a parking facility. The **DEPARTMENT** neither approves or disapproves of the design of the parking facility, and **LESSEE** agrees that it is not relying upon the engineering judgement of the **DEPARTMENT**'s in entering into this Agreement.

In witness whereof, the parties have executed this lease of Real Property Interests and affixed their respective seals the day, month, and year first written above.

AGREED:

Witness:

Department of Transportation

RECOMMENDED:

RECOMMENDED:

Land Services Manager

INDEX OF EXHIBITS

Exhibit 1 –

Exhibit 2 -

REAL PROPERTY INTERESTS AGREEMENT
FOR DELDOT PROJECTS

This Real Property Interest Agreement for DelDOT Projects herein called "License", made this day of _____ 202_, by and between the Department of Transportation of the State of Delaware hereinafter called the "**DEPARTMENT**" and _____ hereinafter called "**LICENSEE**,"

WITNESSETH:

Whereas, the **DEPARTMENT** is owner in fee of a certain tract of land, tax parcel _____, consisting of approximately X.XX acres +/-, known as _____, located at _____, in _____ County, State of Delaware and more particularly shown on the attached Exhibit "A"; and

Whereas, the **LICENSEE** has requested the **DEPARTMENT** to license a portion of said land interests hereby considered to be the designated "Contractor Area" consisting of _____ as outlined in red on the attached Exhibit "B" to the **LICENSEE** for a storage area for DelDOT Project T_____, titled _____, " by DelDOT's Division of _____, hereinafter called the "**PROJECT"**; and

Whereas, the **DEPARTMENT** is desirous of cooperating with the **LICENSEE** to this end:

NOW, therefore, it is agreed by the parties hereto in consideration of the following annual License payment; One Dollar ($1.00). The **DEPARTMENT** hereby demises and licenses to the **LICENSEE** the herein described premises for a period of _____ (X) years commencing on _____ and terminating on _____. Subsequent requests for renewals will be reviewed upon receipt of written request 60 days prior to the end of the term of the License. Said License and subsequent renewals will be received and reviewed by the **DEPARTMENT**. At no point shall the term of the License extend past the acceptance of the **PROJECT**; it shall be considered null and void at such time.

This License shall be subject at all times to the following terms and conditions:

1. No use of the area shall impair the full use and safety of the **DEPARTMENT**; or otherwise interfere with the free flow of traffic.

2. All access, be it vehicular or pedestrian, will be permitted to said area to and from _____.

3. **USE OF THE CONTRACTOR AREA:** The licensed premises shall be used by **LICENSEE** for a storage area exclusively for the **PROJECT**, and for materials approved for such storage by the **DEPARTMENT** as listed below under **STORAGE**. Under no circumstances shall **LICENSEE** use this premises for storage of any other material and/or for any other purpose, including conducting any business, profession, or trade of any kind. The **DEPARTMENT** shall be entitled to fair compensation should the licensed premises be used for anything other than the approved uses, with such compensation to be determined by the **DEPARTMENT** in its sole reasonable discretion.

4. **ALTERATIONS:** No improvements shall be placed on the licensed premises, nor alterations made on or to the licensed premises without prior written consent of the **DEPARTMENT**. The

LICENSEE will make the following improvements to the premises as part of the **STORAGE** listed below including: _____

_____

as directed by the **DEPARTMENT** Engineer. The cost of these improvements will be borne by **DEPARTMENT** under agreed upon Contract prices under the **PROJECT**. Furthermore, the **LICENSEE** is permitted to install, maintain, and remove a porta-potty at their cost for the duration of material **STORAGE**, for use by its personnel.

5. **ENTRY AND ACCESS: LICENSEE** shall permit the **DEPARTMENT** and/or the **DEPARTMENT**'s agent to enter the Contractor Area at all times, without notice, for the purpose of inspecting the Contractor Area or showing the same to prospective **LICENSEE**s, or for any other reasonable purpose. The **DEPARTMENT** further reserves the right to take possession thereof in the case of national or other emergency. The **DEPARTMENT**, police, first responders, and the local fire department shall have immediate access to the licensed area at all times, including those times outside of normal business hours and shall be provided with a physical key to any lock and/or a currently valid entrance code to a keypad on any and all gates to ensure immediate access to all identified areas at all times.

   Access to the property by the **LICENSEE** shall be restricted to the following hours. Changes to the schedule must be coordinated with the **DEPARTMENT** in writing prior to any deviations.

   Monday through Friday: _____ AM to _____ PM OR _____ Full Access Granted

   Pre-Approval Required for the After Hours: YES / NO / N/A (circle one)

   Weeknights: _____ PM to _____ AM/PM; _____ N/A

   Weekends: _____ AM to _____ PM; _____ N/A

6. **INSPECTION AND CONDITION OF CONTRACTOR AREA: LICENSEE** shall have seven (7) calendar days after the date of first occupancy to provide the **DEPARTMENT** with a written list of any defective conditions of the Contractor Area which comes to **LICENSEE**'s attention that **LICENSEE** does not wish to have repaired at its expense upon vacation of the Contractor Area at the time of termination of this Agreement. Said written list shall be effective only if accepted, in writing, by the **DEPARTMENT** as a true, correct, and accurate listing of defects. Excepting the above mentioned written list, **the LICENSEE** stipulates thatit has inspected the Contractor Area, including the grounds and all buildings and improvements contained within, and that they are, at the time of this Agreement, in good order and repair and in a safe and clean condition and in compliance with all applicable laws, regulations, and other requirements.

7. **INSPECTION BY THE DEPARTMENT:** The **DEPARTMENT** shall have the right to conduct condition inspection of the Contractor Area and provide inspection reports to the **LICENSEE**. The **LICENSEE** shall comply with all inspection reports within a time period to be determined by the **DEPARTMENT** upon completing such inspection(s), including but not limited to Certified Construction Review (CCR) inspection reports and Industrial National Pollutant Discharge Elimination System (NPDES) inspection reports, provided by the **DEPARTMENT** or the **DEPARTMENT**'s agent. If two or more unsatisfactory inspection reports are received, the **DEPARTMENT** shall have the right to terminate this Agreement per the TERMINATION BY

THE DEPARTMENT provision. In the event that the **DEPARTMENT** shall decline to terminate this Agreement in any such circumstances, the **DEPARTMENT** reserves the right to terminate this Agreement in the event of any subsequent unsatisfactory inspection(s) and that shall not be deemed as a waiver of the **DEPARTMENT**'s rights.

8. **USE BY SUBCONTRACTOR(S):** This License shall not be assigned or sublet without prior written consent by the DEPARTMENT. In the event that such permission is given, such subcontractor shall be deemed subject to the terms of this Agreement. The **LICENSEE** shall communicate the requirements of this Agreement to any and all subcontractors associated with the **PROJECT** that are using the Contractor Area. The **LICENSEE** shall be fully and absolutely responsible and liable, without limitation, for all actions of any subcontractors utilizing the Contractor Area.

9. **MAINTENANCE AND REPAIRS: LICENSEE** shall, at its own cost and expense, keep the licensed premises in good repair and in compliance with all governmental regulations relating to the use and appearance of the property. **LICENSEE** shall maintain the property, at **LICENSEE** 's expense, in a good state of repair and be responsible for correcting any damage to the premises caused by **LICENSEE**.

10. **TERMINATION BY THE DEPARTMENT**: The **LICENSEE** acknowledges that the Contractor Area may be required for use by the **DEPARTMENT** and that the **DEPARTMENT** shall have the right to terminate this Agreement for any reason whatsoever by providing **LICENSEE** with a thirty (30) calendar day written notice. In the event of such termination, **LICENSEE** shall remove all of its personal property prior to the expiration of said 30-day period. In that event, **LICENSEE** shall be responsible for acquiring any other property rights necessary for its purposes, including, but not limited to, its staging and storage needs. In such event, the **LICENSEE** shall bear full and absolute responsibility for any costs associated therewith. Further, in such event, the **LICENSEE**'s inability to access, use, or occupy the Contractor Area shall not, in any manner whatsoever, revise, change, or limit the **LICENSEE**'s duties or obligations under its contract(s) associated with the **PROJECT** connected with this Agreement. For further clarification and the avoidance of doubt, such inability shall not, in any circumstances, be grounds to make any revisions to deadlines nor costs associated therewith.

11. **VACATION OF CONTRACTOR AREA:** The **LICENSEE** shall yield the immediate possession of the licensed premises back to the **DEPARTMENT** upon termination or revocation of this License and said premises shall be restored to its original condition. The **LICENSEE** shall move all equipment, supplies, and other materials from the Contractor Area prior to the **PROJECT's** Primary Inspection, if not already done so. The Contractor Area shall be restored to equal or better conditions than prior to use by the **LICENSEE**. In the event **LICENSEE** fails in its maintenance obligation, the **DEPARTMENT** may enter onto the premises for such purpose and the **LICENSEE** shall be responsible for any and all costs incident hereto. Maintenance includes the overall condition of the grounds and any improvements made to the property thereto (e.g., access road, fencing and erosion and sediment, etc.). Project Acceptance shall not occur until the Contractor Area has been restored to the satisfaction of the **DEPARTMENT**.

12. **LICENSEE** shall not permit any unlawful or immoral practice to be committed or carried on by any person(s) whatsoever on the licensed premises, nor shall **LICENSEE** permit or allow the sale, dispensing, or consumption or alcohol or illegal drugs on the premises.

13. **STORAGE:** Only advanced purchased materials, including _____, and/or similar material, are permitted to be stored on this property. The property will be used for storage purpose only for the **PROJECT**, and will not serve as a laydown area. The **LICENSEE** is not permitted to store any other materials or equipment on the property without written approval from the **DEPARTMENT**. Any unauthorized storage of materials than those listed above or other items for purposes deemed by the **DEPARTMENT** to be a potential fire or other hazard to the highway and the operation and maintenance of the space will be subject to regulation by the **DEPARTMENT** to protect against fire or other hazards impairing the use, safety, and appearance of the highway. **LICENSEE**'s use and occupancy of the licensed premises shall not permit hazardous, noxious, or objectionable fumes, vapors, or odors to rise above the licensed space. The identification of what items constitute "hazardous materials" shall be as determined by **DEPARTMENT**, in its sole reasonable discretion, to include any items that may cause damage to any structures and/or the right of way areas. Any and all use of the identified areas shall be consistent with federal, state, and local laws, regulations, and requirements. Any staging and/or stockpile area(s) outside the project's Limit of Construction that individually or cumulatively are larger than 10,000 square feet must be approved by the **DEPARTMENT**'s Archaeologist.

14. **CONFORMITY TO DEPARTMENT POLICIES:** The **LICENSEE** shall adhere to all applicable **DEPARTMENT** policies. Explicitly, the Occupancy and Storage requirements set forth in Section B of P.I. R-04, *Joint Use of Right of Way Beneath Roadway Structures*, and copied below, shall be applicable to all locations where the Contractor Area is adjacent to or beneath an above-grade roadway structure.
    - B.1. No Hazardous Materials of any kind will be permitted under a structure or within the DelDOT right of way at any time. These include, but are not limited to, items listed in federal regulations at 49 CFR, Part 172.
    - B.2. No vehicles or materials will be permitted to be stored within ten feet of the underside of girders or other structural elements, or within ten feet of any side of a pier or column.
    - B.3. No storage material may exceed a height of fifteen feet above ground level.
    - B.4. All permanent storage materials must be fenced in a manner as described in the property lease.
    - B.5. No material or vehicles may be stacked or stored in a manner that obstructs or interferes with DelDOT's ability to inspect and maintain the bridge.
    - B.6. No long lasting combustible materials such as tires, plastic traffic cones, wooden pallets, or other rubber or plastic items may be stored, regardless of location.
    - B.7. No items may be stored which could emit noxious fumes or odors.
    - B.8. No items may be stored which could fall or lean against any pier or column.
    - B.9. No smoking is permitted on the property.
    - B.10. No heating equipment will be permitted on the property.
    - B.11. No materials may be permitted which are deemed by DelDOT to be hazardous, or may cause damage to the structure or the right of way.

15. **ENVIRONMENTAL FINES:** The **LICENSEE** shall be absolutely responsible for any and all violations incurred by the **DEPARTMENT** within the designated Contractor Area during the time which the **LICENSEE** is accessing, using, and/or occupying the Contractor Area, or if the **LICENSEE** has failed to properly restore the Contractor Area at the termination of this contract. The **LICENSEE** shall indemnify and hold harmless the **DEPARTMENT** in connection with any such violations.

16. **SIGNS:** No new signs will be permitted on the licensed premises without prior consent from **DEPARTMENT**.

17. **INDEMNIFICATION**: **LICENSEE** agrees to indemnify the **DEPARTMENT,** and their respective officers and employees, against any and all actions or claims which may be asserted or brought against the **DEPARTMENT** that are based upon the **LICENSEE**'s acts or omissions in connection with **LICENSEE**'s use and occupancy of the demised property. **LICENSEE** agrees to hold the **DEPARTMENT**, and their respective officers and employees, harmless from any and all claims relating to this Agreement, including but not limited to any issues relating to the fitness of the site for the intended uses and purposes as stated herein, including any environmental fines incurred by the **DEPARTMENT** due to the actions of the **LICENSEE** while leasing the land. In case of fire or casualty, the **DEPARTMENT** is not liable to **LICENSEE** for any losses. The **DEPARTMENT** neither approves or disapproves of the design of the facility or any uses and **LICENSEE** agrees that it is not relying upon the engineering judgement of the **DEPARTMENT** in entering into this Agreement.

18. The **LICENSEE**, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said licensed premises described in this License for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the **LICENSEE** shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

19. The **LICENSEE**, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that **LICENSEE** shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

20. That in the event of breach of any of the above nondiscrimination covenants, the **DEPARTMENT** shall have the right to terminate the License and to re-enter and repossess said land and the facilities thereon and hold the same as if said License had never been made or issued.

21. If all or part of the licensed premises is ever needed for highway purposes, this agreement shall be rescinded or modified at the sole discretion of the **DEPARTMENT**, and any land needed by the **DEPARTMENT** will revert for its use at no cost or expense to the **DEPARTMENT**.

22. It is expressly understood and agreed that whereas the **DEPARTMENT**'s consent or agreement is

required under any provision of this License.

23. All notices, consents, or approvals required to be given by either party to the other hereunder shall be in writing, addressed and mailed as follows:

Department of Transportation
Right-of-Way
Land Services Section
P. O. Box 778
Dover, DE 19903
Telephone No.: (302) 760-2240
FAX No.: (302) 739-2881

Contractor Information to Follow

In witness whereof, the parties have executed this License of Real Property Interests and affixed their respective seals the day, month, and year first written above.

FOR THE LICENSEE

AGREED:

Witness	Name, Title Company

FOR THE DEPARTMENT OF TRANSPORTATION

APPROVED Administering Section of Project:

Witness	Name Title, Section

APPROVED Administering Section of the Property:

Witness	Name Title, Section

INDEX OF EXHIBITS

Exhibit “A”: Site Plan

Exhibit “B”: Licensed Area

Exhibit "A"
Site Plan

Exhibit "B"
Licensed Area

DATE

NAME OF CONSULTANT
COMPANY NAME OF CONSULTANT
ADDRESS
CITY, STATE ZIP

RE: State Project No. _____ … _____ County
Project Title
F.A.P. No._____
Parcel No. _____; Owner's Name – Owner
Task Number _____

Dear (NAME):

Please consider this letter as your Notice to Proceed with visual inspection, sampling, and bulk sample analysis for the above referenced property. Attached is a drawing marked with buildings to be tested. The location of the property is (ADDRESS).

Please contact (NAME), Real Estate Representative at (TELEPHONE NUMBER) in order to coordinate entry into the buildings.

If testing proves positive, prepare a scope of work, cost estimate, and obtain an appropriate number of bid proposals. Only obtain bids once you have an approved scope of work and cost estimate from the Office of Management and Budget, Division of Facilities Management, Environmental Services.

Do not obtain bids if the cost estimate requires public bidding.

Sincerely,

NAME
Right of Way Agent

INITIALS
Attachment
Cc: NAME, Manager's Title

TO: NAME
TITLE

FROM: NAME
Right of Way Agent

DATE:

RE: State Project No. _____ ... _____ County
Project Title
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner

Attached for your recommendation are the submitted bid proposals as shown on the enclosed Quotation Summary form for the above referenced project. I recommend (Name of Vendor), be awarded the (Type of Contract) contract in the amount of $_____.

Thank you.

Initials

DATE

NAME OF VENDOR
COMPANY NAME OF VENDOR
ADDRESS
CITY, STATE ZIP

RE: State Project No. _____ … _____ County
Project Title _____
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner

Dear (NAME):

Enclosed are fully executed Contract and Contract Bond Agreements on the above referenced project.

Your official "Notice to Proceed" date is (DATE).

Your contract completion date is (DATE).

In the event you are ready and wish to commence work prior to the proceed date, you must contact my office to obtain authorization to commence work prior to the "Notice to Proceed" date. The specified contract time shall begin on the day work actually starts, and the contract completion time would be adjusted accordingly.

Sincerely,

NAME
Right of Way Agent

INITIALS
Enclosures
Cc: NAME, Manager's Title

TO: NAME
TITLE

FROM: NAME
Right of Way Agent

DATE:

RE: State Project No. _____ … _____ County
Project Title
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner

Asbestos abatement on the parcel has been completed. Disposition of the improvements may proceed accordingly.

Thank you.

Initials

TO: NAME
Land Services Manager

FROM: NAME
Title

DATE:

RE: State Project No. _____ … _____ County
Project Title
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner
Land Inventory No._____

We are in possession of this property and initial inspections and security of the premises are complete.

It is recommended to proceed with demolition of the structures on the property.

Your approval to undertake the demolition process is hereby requested.

Thank you.

Initials

APPROVED:

_____ _____
NAME Date
Land Services Manager

DISPOSITION OF IMPROVEMENTS CHECKLIST

State Project No.: _____ _____ County

Parcel No.: _____

Former Owner: _____

Private:

	DATE
Approval to Demolish/Sell at Public Auction (by Assistant Director, Real Estate Services)	
Asbestos Program Initiation	
Asbestos Testing/Abatement Completion	
Solicitation of Bids (Date sent out)	
Bid Opening Date/Date of Sale	
Approval of Bid(s)/Sale	
Written Notice of Award of Bid to Contractor/Purchaser (Send Demolition Contract/Bill of Sale to Contractor/Purchaser for execution AND submission of Performance Bond(s), proof of liability insurance, purchase price, etc., as applicable. Receipt required within 20 days.)	
Receipt of Demolition Contract/Bill of Sale	
Approval of Contract/Bill of Sale by DelDOT	
Written Notice to Proceed to Contractor/Purchaser with Executed Contract(s) by Real Estate Representative (letter date)	
Forward Performance Bond, monies, to Fiscal Control	
Notice to Proceed Date	
Contract Completion Date Deadline	
Actual Completion Date (Inspection/100% Completion Certification by Real Estate Representative required.)	
Memorandum by Real Estate Representative to Division of Planning Administrative Support Unit (Fiscal Control) to release performance bond. Fiscal Control will return the bond directly to the Contractor/Purchaser by letter. (With copy to Operation Support Unit for file.)	
Payment to Contractor for Demolition	
Close/purge file, Memo to Operation Support Manager	

Remarks:

DATE

NAME OF VENDOR
COMPANY NAME OF VENDOR
ADDRESS
CITY, STATE ZIP

RE: State Project No. _____ … _____ County
Project Title
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner

Dear (NAME):

Your bid for the referenced project has been accepted, and you are awarded the contract at the prices contained in your proposal of (DATE), totaling $_____.

[Enclosed are two (2) original copies of the documents which must be executed as indicated on the Contract and Bond Agreements.] (Use if applicable)

[Power of Attorney for the Surety Agent must be attached to each copy of the bond, and in the event it is issued out of the State, the Bond must be countersigned by a resident Delaware Agent of Surety Company unless the Non-Resident Agent holds a current Delaware Non-Resident Agent Certificate of Authority.] (Use if applicable)

[All documents sent to you must be returned to this office within twenty (20) days where they will be executed on behalf of the Department of Transportation. You and your Surety will be sent a fully executed copy of these documents.] (Use if applicable)

Do not proceed with work covered by this Contract until you receive an official written "Notice to Proceed" from the Department of Transportation.

Sincerely,

NAME
Right of Way Agent

INITIALS
Enclosures
Cc: NAME, Manager's Title

Procurement Procedures Quotation Summary

Dept/Div/Section:	Approved by:	Telephone:
PO Number:	Amount: $	Date Awarded:
Description of item(s):		
Please state: One time purchase or continuous purchases (if repetitive, how frequently?):		
Vendor selected:		
Explanation for selection if other than low bid:		

Vendor solicited:

Vendor Name	Written or Phone	Contact Person (if phone)	Dollar Amount Quoted/Bid
	W or P		$
	W or P		$
	W or P		$
	W or P		$

TO: NAME
Land Services Manager

FROM: NAME
Right of Way Agent

DATE:

RE: State Project No. _____ … _____ County
Project Title
F.A.P. No. _____
Parcel No. _____; Owner's Name – Owner

Attached for your recommendation are the submitted bid proposals as shown on the enclosed Quotation Summary form for the above referenced project. I recommend (Name of Vendor) be awarded the (Type of Contract) contract in the amount of $_____.

CONTRACT COMPLETION CERTIFICATION

Project No.: _____ County: _____

Parcel No.: _____ Land Inventory No. _____

Former Owner: _____

Work Performed: _____

_____

The above referenced work has been completed in accordance with the terms of the approved contract and has been accepted.

_____ _____

Right of Way Agent Date

NOTICE OF OPTION TO PURCHASE SURPLUS PROPERTY

State Project No. _____ Federal Aid Project No. _____

Project Title _____

Parcel No. _____ Land Inventory No. _____

Owner _____

The Delaware Department of Transportation (DelDOT) acquires real property by way of gift, purchase, or condemnation for transportation related needs. From time to time, all or portions of that property may be declared surplus to public necessity. If declared surplus, the property may be sold.

Delaware law requires that, before marketing surplus property for sale, the prior owner or successor in interest must be notified of the right to repurchase the property at its approved appraised value, unless that right has been waived.

Upon notification by DelDOT, the prior (tenant or owner) (circle appropriate) in interest will have 30 days to give notice of his or her interest in repurchasing. Upon notification by DelDOT of the approved appraised value, the prior owner will have 30 days to accept or reject the offer. Settlement shall occur within 120 days of the notice of the approved fair market value. All notices shall be in writing.

If, through no fault of DelDOT, the sale is not finalized within the allotted time periods, DelDOT may void the sale and proceed with a public sale.

As the current or former owner of the property identified above, you are hereby notified of your right to repurchase the property if all or any portion of it is declared surplus by DelDOT.

With this knowledge and on this _____ day of _____, 20__, I/we hereby waive ____ / do not waive (please initial one), my/our right to repurchase such property if it is declared surplus by DelDOT.

_____ _____
Signature

_____ _____
Signature

If you elect not to waive your right to repurchase, please write your address and telephone numbers below for future reference.

Address _____ Telephone - Day _____

_____ Evening _____

_____

Chapter IX

INTERNAL CONTROLS

IX. INTERAL CONTROLS

A. Project Delivery; Plans, Specifications, and Estimates (PS&E)

1. At such time as an acquisition project is assigned to the ROW Unit for action, the Transportation Solutions Project Manager will provide a proposed (PS&E) date, by which it is expected that the ROW Unit will be able to certify to full physical and legal possession of all real property interests necessary to construct the project.

2. The ROW Acquisition/Relocation Manager and/or Operation Services Manager will provide routine updates regarding project acquisition activity. Particular interest will be paid to any parcels where it appears that DelDOT will not have full physical and legal possession by the proposed (PS&E) date. These updates will contain an explanation of why the (PS&E) date may be missed, and when full possession is expected for that particular parcel. The update will also include any situations where it is believed that condemnation action may have to be initiated.

3. The Acquisition/ Relocation Manager and/or Operation Services Manager will attend routine project status meetings as established by the Director, Transportation Solutions to provide ROW acquisition updates upon request.

B. ROW Certifications

1. The final step in the project development process is to certify the project as clear for construction. The ROW certification is a written statement that summarizes the status of all ROW related matters of a project, and it declares that the acquiring agency has complied with the requirements of applicable statutes and regulations. The certification provides the following information and assurances:

a. Sufficient property rights to construct, operate, and maintain the facility, as shown on the PS&E, have been acquired. This includes parcels needed for construction purposes only, such as TCEs or permits. If limited access rights need to be acquired, the transaction must be completed prior to construction.

b. The ROW is clear of encroachments and includes the entire ROW, not just the area of the traveled way or project improvements. Any encroachment that will be allowed to remain in the right of way must be there legally (i.e. under an airspace lease).

c. ROW has been acquired in accordance with the Uniform Act requirements and/or Federal Land Transfer processes.

d. Relocation assistance has been completed in accordance with the Uniform Act.

e. Parcel specific information is provided in the certification.

f. Properties acquired in advance of NEPA clearance (including donations) are identified by parcel number.

2. All project PS&E packages are required to contain a ROW certification. This certification will be prepared by the Acquisition/Relocation Manager and/or Operation Services Manager, with the approval of the Chief of ROW. Coordination will be necessary with the Acquisition

Services Manager and Operation Services Manager to ascertain the status of any ongoing closing actions or condemnation proceedings. For any parcel where legal possession of the real property interests, an estimated date of full possession will be contained in the ROW certification. Particular interest will be paid to any parcel where the displacement of residential occupants, business occupants, or personal property has not been fully accomplished. In such situations, a full and complete discussion of the situation must be provided. Coordination with the DelDOT project manager will be necessary to determine if any special conditions may be necessary to include in the project bidding package.

3. The ROW certifications will be prepared in conformance with the federal regulations as set out at 23 CFR 635.309. The Chief of ROW will proactively contact the FHWA to discuss any ROW certification issues, if necessary. Even if the project did not require the current purchase of any real property interests, a ROW certification shall be prepared indicating that it was not necessary to acquire any real property interests for the project, and that any previously acquired real property interests had been accomplished in accordance with appropriate procedures in place at that point in time.

4. There are numerous reasons why DelDOT may not have full physical and legal access to a particular project parcel at the time that the PS&E package is being prepared for transmittal to the FHWA. These reasons may be due to minor acquisition timing items such as mortgage satisfaction approval, payment delivery concerns, condemnation processing, etc. There may be other major concerns such as occupied properties awaiting final relocation action. The Chief of ROW will thoroughly weigh the risks of advertising with limitations and have an action plan in place to deal with each particular limitation. This action plan will accompany the PS&E package transmittal to the FHWA. If there is any possibility that DelDOT will not have full physical and legal possession of any project parcel at the time that the construction contract will be awarded, limitations will be placed in the contract documents to prohibit the contractor from entering those properties not yet cleared for project activities. The Chief of ROW will always be available to discuss with the project manager the possibility of reevaluating the need to adjust either the advertising or the letting date of the project.

5. Whenever a conditional ROW certification (as set out in 23 CFR 635.309, Level 2 or 3) is issued in conjunction with the (PS&E) package, that certification will be updated prior to the opening of bids for the project, or at any other point in time there is an appropriate update in status of acquisitions.

6. There are two types of certifications which state that sufficient rights have been acquired and the project is ready to be advertised and constructed.

- **Certificate 1 – All Right-of-Way Acquired** – All rights have been acquired. All occupants have vacated the Right-of-Way, and the agency has the right to remove any remaining improvements (except those that are to remain in the Right-of-Way under an airspace lease).

- **Certificate 2 – Right to Occupy All Right-of-Way** – Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the Right-of-Way and the agency has the right to remove any remaining improvements (except those that are to remain in the Right-of-Way under an airspace lease).

7. There is a third type of certification states that some Right-of-Way remains to be acquired.

   - **Certificate 3 – All Right-of-Way Not Acquired** – Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. It is recommended that the ad date be deferred or moved in these situations. However, these types of certifications may be used if the agency can adequately explain why certification should take place before acquisition is complete and why it is in the public's interest.

     Although the federal regulations in 23 CFR 635.309(c)(3) provide for a single type of certificate when there are still some parcels to be acquired and/or displaced persons to be relocated, there are two distinct situations that can occur:

     - Since the federal regulations require the certification prior to advertising for construction, there are situations where the circumstances necessitating a certificate # 3 will be cleared prior to bid opening, award, or start of construction. In these situations, Right-of-Way clearance prior to construction will result in an upgrade of the certification to a # 1 or # 2 certification before notice to proceed with construction is issued to the contractor. This type of certification # 3 may be referred to as "Time-Based", because the project Right- of-Way is expected to be cleared within one of the time intervals prior to the notice to proceed: Between the ad date and bid opening; between the ad date and the award of the contract; or, between the ad date and the issuance of the notice to proceed.
     - In some cases, Right-of-Way may not be cleared prior to the issuance of the notice to proceed and the start of construction. In such situations, the contractor would have to work around any remaining uncleared parcels until they have been cleared. This type of certification # 3 may be referred to as a work-around, or an "Excepted Parcel" certificate # 3.

Time Based Certificate 3 - Agreement Reached & Use of time between Ad and Bid Opening

A Time-Based certificate # 3 can be used if agreements have been reached on all parcels and there is a reasonable expectation that payment and relocation will be completed prior to bid opening. In some cases, and with the prior approval of FHWA, the interval for clearance may extend to the award of contract or to the issuance of the notice to proceed to the contractor.

A. In the case of a Time-Based certificate # 3, the agency must document why it is in the public's interest for this project to go to ad, award, or notice to proceed prior to having all of the parcels acquired. Some of the reasons why a Time-Based certificate # 3 might be in the public's interest is if there is work that must be completed within an environmental window which, otherwise, might be missed; or, the project schedule is such that the remaining parcels will not be required until a much later date or even into a new construction season.

B. The certification document must list the outstanding parcels, the issues remaining, and an estimated clear date that is supported as realistic.

C. The certification will indicate both the ad date and anticipated bid opening date and include a statement that bids are not to be opened prior to submittal of a certificate that has been upgraded to a certificate # 1 or #2. If, for federally funded projects, FHWA has approved a

time period extending to either the award of the contract or notice to proceed to the contractor, an upgraded certificate must occur prior to the approved action.

D. In the event that DelDOT is responsible for an LPA Project, it is the expectation that the LPA is responsible for compliance and assuring that the necessary local agency staff are informed of the requirements and, in fact, bids are not opened prior to recertification.

Design Bid Build Certifications

After Right-of-Way acquisition has been completed and no later than one month before the federal aid project is to be advertised for contract, the Right-of-Way certificate must be submitted to Program Management.

Design Build Certifications

In order to comply with the requirements of 23 CFR 635.309 on design-build projects utilizing federal funds, a preliminary certification statement which meets the requirements of 23 CFR 635.309(b) will be prepared prior to advertising for a design-build contractor. The purpose of this statement is to certify to FHWA, when there are federal funds in the project, that the design-build contract will include necessary arrangements for right of way clearance work and to inform the contractor that a Right-of-Way Certification 1, 2, or 3 must be completed and approved prior to the issuance of a notice to proceed to construction on any phase or segment of the project.

Each of the construction segment certifications will be prepared in accordance with the requirements of this chapter and will include the right of way contained within the specific construction segment being certified. If right of way has not been cleared within a construction segment prior to the issuance of a notice to proceed, a Certification 3 must be prepared in accordance with the requirements in this chapter for certification. The agency shall coordinate with FHWA on the conditions that will apply to the approval of this certification.

Definitions

Certification – A statement certifying that all right of way clearance, including relocation assistance, has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedule. The purpose of this certification is to inform the contractor of the status of right of way clearance and to certify that the requirements of the Uniform Act have been met on federally-funded projects.

Combination of Relocation Types – This is when there is more than one type of relocation on a project. Specifically, this is when there is some combination of residential and non-residential relocation, including PPO. This type of relocation is project-wide, not parcel specific.

Existing Right-of-Way – This is land that is already incorporated into the roadway facility or land certified under a previous federal aid project. Permits, easements, temporary construction easements (TCE), and slope easements are generally considered Right-of-Way acquisition.

No Right of Way Acquisition – This is where the proposed project can be built entirely within the existing roadway facility (the facility may be something other than roadway for transportation enhancement projects).

Note: If any property interest is required outside the existing right of way, such as a temporary construction easement or a slope easement, the project cannot be certified as "no right of way required". Also, if property was acquired specifically for the project, but was acquired under any of the "early acquisition" options, this will necessitate a right of way certification 1, 2 or 3—it does not meet the criteria for a "no right of way required" determination.

Non-Residential Relocation – Relocation/displacement of businesses, farms, and nonprofit organizations. PPO relocations are usually treated as non-residential relocations because they do not require DSS assurances.

Residential Relocation – Relocation/displacement of individuals and families from a dwelling.

Sufficient Property Rights – Per 23 CFR 1.23 and 23 CFR 710.201(e), the real property interest acquired for federal aid projects by the acquiring agency must be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public. For instance, if there is a highway embankment, the acquiring agency must acquire permanent property rights for the slope area, since the slope area is integral to the structural integrity of the roadbed.

The acquiring agency must acquire any property needed for mitigation and any staging areas required by the NEPA document in the certification. This also means Right-of-Way shown as needed on the PS&E, not just the Right-of-Way plan, needs to be certified.

For property that is not permanently needed for the project, but is necessary for construction of the project, temporary construction easements, leases, license agreements, permits, and/or rights of entry may be appropriate.

DelDOT normally acquires fee simple title for Right-of-Way and limited access. This policy should be considered by local agencies. There are instances where something less than full fee acquisition is sufficient, such as when the property is owned by the federal or state government, railroads, and Indian Nations or if it is only needed to construct the project (e.g., temporary construction easements or driveway reconnect permits).

Right of Entry – A personal right that gives the agency the right to perform certain tasks or work defined within the document. If a right of entry is proposed for construction activities, it should only be used in emergency situations (slides, floods, culverts) or when the property is owned by another state or local agency and additional time is needed to get through their process.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended – This is the federal statute that sets forth the requirements for appraisals, acquisitions, and relocation assistance for federal projects.

Note: The project certification process is not addressed in the Uniform Act.

General

This section outlines the steps necessary to prepare project certification. Advertisement for project construction is the point at which the acquiring agency commits the Right-of-Way to the terms of the construction contract. Bids submitted by contractors are based

on the acquiring agency's delivery of a clear Right-of-Way by the start of construction. If a contractor does not have access to a property because sufficient property rights are not acquired or certain properties remain occupied, damages for delay of work may result and the project may not be completed on schedule.

Federal and state law assures property owners and displaced occupants (residents and owners) of specific rights and protections and the delivery of certain entitlements before possession is taken of the property. The most important of these are:

- Owners must be paid the full amount established as just compensation, or the amount deposited in court for their benefit, before the agency takes possession of the property.
- Residential displaced persons must be offered comparable replacement housing that is within their financial means and available for occupancy no less than 90 days before being required to move

Policy

The final step in the project development process is to certify the project as clear for construction. The Right-of-Way certification is a written statement that summarizes the status of all Right-of-Way related matters for a project, and it declares that the acquiring agency has complied with the requirements of applicable statutes and regulations. The certification provides the following information and assurances:

A. Sufficient property rights to construct, operate, and maintain the facility, as shown on the PS&E, have been acquired. This includes parcels needed for construction purposes only, such as TCEs or permits. If limited access rights need to be acquired, the transaction must be completed prior to certification.

B. Right-of-Way has been acquired in accordance with the Uniform Act requirements and/or Federal Land Transfer processes.

C. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of Chapter 5 of the DelDOT Right-of-Way Manual.

E. Parcel-specific information is provided in the Certification Worksheet

F. Properties acquired in advance of NEPA clearance (including donations) are identified by parcel number. (This information can take the form of an address or a county tax ID if parcel numbers are not assigned.

C. ROW Manual Maintenance

1. The Manual will be maintained by the Chief of ROW, who is responsible for all changes and updates. Significant changes to the Manual will be made within fourteen days of approval of the change by the Chief ROW. Minor changes which do not affect the substance of the Manual, will be made at routine intervals, and documented accordingly.,

2. The Manual will be maintained in electronic format, with "read only" access for anyone other than the Chief of ROW and ROW Management staff. The complete Manual will be available on the DelDOT intranet. The Manual will be available to the general public via DelDOT website on the internet. All proposed updates to the Manual will be submitted to the Chief of ROW with justification. To assure a regulated flow of proposed changes, all updates shall be submitted by an appropriate Manager or the Chief of ROW.
3. Significant Manual updates will require written approval from the local FHWA Division Office. Examples of significant updates could include a change in policy, impacts to just compensation criteria, change in entitlements, new case law, or new legislation.
4. The entire Manual will be reviewed for accuracy whenever there is a change to any applicable law or regulation, or on a routine basis as mandated by the FHWA.

D. ROW Plan Review Process

1. Survey Plans typically do not provide any specific project acquisition information and are just logged and documented so that the ROW Unit is aware of the upcoming proposed projects.
2. Preliminary ROW plans are distributed to the Acquisition/Relocation Manager, Appraisal Manager, Operation Services Manager, and Land Services Manager. The various Managers will be asked to review the Preliminary plans and respond with any comments by a specific date. Once the plans have been reviewed, the ROW Agent will coordinate the comments and respond in writing to either the Engineering Project Manager or appropriate Team Support reviewer.
3. Semi-Final ROW Plans will be delivered to each of the ROW managers. This process will also be followed regarding the submission of any revised semi-final plans. Depending upon the complexity of the proposed project, the Appraisal Section may initiate the process to obtain appraisal reports. The decision as to whether to initiate appraisal activity at this phase of plan completeness will be made by the Appraisal Manager.
4. Upon the receipt of Final ROW plans, the Chief of ROW will verify the date of NEPA approval. The Acquisition/Relocation Manager and/or Operation Services Manager will also verify that appropriate funding is in place and confirm the proposed PS&E date.
5. All revisions to any set of ROW plans will initially be submitted to the Acquisition/Relocation Manager, Appraisal Manager and Operation Services Manager, who will make the appropriate plan distribution.
6. Depending upon the nature of the project, at some point prior to the initiation of the valuation process, the Acquisition/Relocation Manager and/or Operation Services Manager will send out an introduction ROW letter to all real property owners identified on the plans as being impacted by the project.

E. Internal Process Reviews

1. The ROW functions will be reviewed on a rotating basis, as established in three-year cycles by the ROW management team. Adjustments to the three-year schedule may be made depending upon activity, need, or risk assessment.

F. Sub-Grantee Oversight (Local Public Agency – (LPA))

1. Historically, DelDOT has very few LPA administered transportation projects other than the Transportation Alternatives Program (described in Chapter VIII). An LPA can be any publicly recognized municipality that has the authority to manage its own publicly funded transportation project. Typically, within Delaware, this authority could be delegated to any City, Town, or County. Should any Delaware municipality undertake its own transportation improvement project, it can acquire necessary real property rights with the understanding that all applicable regulations and procedures are followed.
2. In the acquisition of real property rights, LPA's can utilizethe services of their own staff, or they can rely on the service of consultant providers, or a combination of both. DelDOT will provide guidance on the procurement of ROW services, if requested by the LPA.
3. Any LPA that undertakes the acquisition of real property rights in conjunction with a DelDOT funded project has the option of either following the procedures as set out in this Manual, or it may submit its own Real Estate Acquisition Management Plan (RAMP), as an alternative. Any submitted RAMP would have to be approved for use by DelDOT, prior to its utilization.
4. **LPA Oversight Process**

   a. The Chief of ROW will appoint an LPA coordinator who is responsible for assuring that LPA's are aware of their ROW responsibilities. The LPA coordinator must, at a minimum of at least once every six months contact the Office of the Director of Transportation Solutions, to determine if any LPA administered transportation projects are in the pipeline.

   b. Depending upon LPA activity, the LPA coordinator will provide either individual or group training sessions. It is essential that prior to undertaking any real property rights acquisitions, that an LPA will be advised by the LPA coordinator of the responsibilities of such activity. All LPA's will be advised that failure to follow appropriate real property acquisition procedures would likely prevent State and/or federal participation in the entire project, including construction.

   c. Should an LPA proceed to acquire real property rights in conjunction with project activities, the LPA coordinator will maintain oversight consistent with the level of the real property acquisition activity.

   d. At the conclusion of the real property acquisition process, the LPA will be required to submit a ROW certification, in accordance with the procedures as set out in Paragraph E of this Chapter.

G. Fee Acquisition Services

1. The ROW Unit will maintain a pre-qualified list of consultants available to perform acquisition services.

2. For any fee consultant service, the consultant will be required to adhere to the requirements of the Right of Way Consultant Agreement, which must be executed.

3. All consultants are required to participate in a competitive bid process to be selected for each individual project. The successful consultant is assigned by the Acquisition/Relocation Manager and/or Operation Services Manager to a DelDOT ROW staff who will manage the consultant process. Throughout the acquisition process, the assigned ROW staff will report all progress to the appropriate Manager on a routine basis.

a. A project kick-off meeting between DelDOT representatives and the selected consultant will be held subsequent to the receipt of final plans. At the kick-off meeting guidelines and timetables will be established, plans will be reviewed, and all process actions and activities will be discussed and confirmed. Essential actions include:All acquisition offers must be reviewed and approved by ROW staff prior to presentation to the property owner.

b. All acquisition offers must be on DelDOT letterhead and signed by the appropriate ROW staff.

c. All waiver valuation documents are to be approved and signed by ROW staff prior to offer being made. Waiver valuation services may be provided by either the acquisition consultant or other valuation professionals, with concurrence of the ROW staff.

d. All proposed administrative settlements must be pre-approved by ROW staff, in accordance with the administrative settlement guidelines as set out in Chapter IV, Section H, of this Manual.

e. Any written communication which commits DelDOT to any financial or performance obligation must be signed by an appropriate DelDOT representative.

4. If the acquisition consultant is responsible for obtaining appraisal or appraisal review services, essential actions include:

a. Review of the right of way plans, and in consultation with ROW staff; determine the need for either appraisal reports or waiver valuations. If appraisals are needed, appraisal services must be obtained in accordance with the provisions of Chapter II of this Manual. If the consultant desires to utilize any appraisal service from someone who is not on the current approved list of appraisers or review appraisers, they must obtain written approval from the DelDOT Appraisal Manager

b. The use of any specialty valuation services which will be incorporated into an appraisal must be approved in writing by the DelDOT Appraisal Manager.

5. The appropriate ROW staff will be responsible for tracking costs and expenses submitted by the acquisition consultant.

6. When the consultant completes successful negotiations with a parcel property owner, they are to submit a purged, but complete, file to the ROW staff for review.

7. After a completed consultant acquisition project, the appropriate ROW staff will prepare and submit a thorough summary of the project activity to the Chief of ROW. The summary will include an analysis of the consultant accomplishments, and any suggestions for future improvement.

8. The designated ROW staff will be the acquisition program contact for coordination with the settlement coordinator and will also provide continuing data throughout the acquisition process to the Acquisition/Relocation Manager and/or Operation Services Manager.

9. The assigned ROW staff will be responsible for conducting all annual consultant evaluations.

Note: If relocation assistance actions are required on a fee acquisition project, a DelDOT representative will be responsible for such relocation assistance, and coordinate with the acquisition consultant.

H. Project Tracking

1. The Acquisition/Relocation Manager and/or Operation Services Manager will maintain a database to enable tracking of all ROW projects and project activities.
2. The ROW database (status workbooks) will enable a general view of project process, and will have sub-layers for a more specific view of specific project activities, such as;

a. Right-of-Way data

b. Cost estimates

c. Appraisal Activities

d. Acquisition activities

e. Relocation activities

f. Condemnation actions

g. Settlement activities

3. The Acquisition/Relocation Manager and/or Operation Services Manager will be responsible for maintaining a list of all required reporting actions and assuring that ROW activity reports are submitted on time to the appropriate organization or agency.

I. Design/Build Process

1. Design/Build project activity may occasionally be utilized as an alternative to traditional project activity, which is typically notated as Design/Bid/Build. Under a Design/Build contract, the contractor who is responsible for constructing the project will typically also be responsible for acquiring the real property rights and providing relocation assistance. The Design/Build contract may be developed in a variety of different ways, at the discretion of DelDOT.
2. It is important that the ROW Unit have input into any Design/Build contract to ensure that the contractor must comply with all appropriate DelDOT procedures and regulations. Specific federal ROW requirements concerning Design/Build projects are contained in federal regulations at 23 CFR 710.309.
3. Whenever a Design/Build project is being proposed which will entail the acquisition of real property rights, the Operation Services Manager will coordinate with the engineering project manager to ensure and verify that ROW concerns are addressed in the selection of a ROW sub-contractor.
4. All Design/Build advisory information and contracts must state that all ROW sub-consultants must utilize approved DelDOT forms and documents. Since Design/Build activities can be developed in a variety of ways, it is possible that the DelDOT ROW Unit may provide some, or all, of the ROW activities within the Design/Build project.
5. Although Design/Build contracts by their inherent nature allow greater flexibility in project development activities in the hopes of achieving greater efficiency, many ROW acquisition requirements cannot be abbreviated. The vast majority of ROW acquisition requirements are meant to provide various protections to those owned real property rights and is not subject to abbreviated techniques and processes.

a. The Chief of ROW will appoint an employee to be the Design/Build ROW project manager, who will be supervised by the Operation Services Manager. The ROW project manager will be the liaison between the DelDOT engineering project manager, the Design/Build contractor, and the Design/Build ROW subcontractor. The Design/Build ROW subcontractor may utilize the appraisal services of the DelDOT appraisal section, or they may employ their own Delaware appraisal staff, as long as all appraisers are licensed by the Delaware Division of Professional Regulation.

b. Regardless how the valuation process is undertaken, a DelDOT employee must sign off on the offer of just compensation. This means that if an appraisal is reviewed by someone other than a DelDOT employee, then an additional step is required to gain DelDOT approval, prior to an acquisition offer being delivered to the owner of any real property rights.

c. All real property acquisition procedures, as set out in Chapter IV of this Manual must be followed, unless a specific waiver is granted.

d. All relocation assistance procedures, as set out in Chapter V of this Manual must be followed, unless a specific waiver has been granted.

e. The demolition and clearing of all acquired real property from the ROW must be coordinated with the Land Services Manager. All arrangements will be coordinated by the DelDOT Design/Build ROW project manager.

6. If the condemnation of real property rights becomes necessary, all actions will be handled by the Operation Services Manager of the DelDOT ROW Unit. The Design/Build ROW subcontractor will coordinate all such activities with the DelDOT ROW Unit.

7. All project ROW certifications will be prepared by the DelDOT Operation Services Manager, based upon input from the Design/Build ROW subcontractor.

J. Closing Forms

1. Form - CLOS 1- Settlement Package File Order

2. Form - CLOS 2- Pertinent File Information

3. Form - CLOS 3- Project Right of Way Agreement

SETTLEMENT PACKAGE FILE ORDER

Project No. _____ **Parcel No.** _____

LEFT SIDE OF FILE (Bottom to Top, secured and w/o staples)

- ☐ ***ACQ 3- Negotiation Record***. Updated.
- ☐ ***ACQ 27- Right-of-Way Representative Certification*** (Consultants), Completed, signed, and dated.
- ☐ ***ACQ 2- Agent Assignment***. Signed & dated.

RIGHT SIDE OF FILE (Bottom to Top, secured and w/o staples)

- ☐ Deed
- ☐ Plots (if applicable)
- ☐ ***ACQ 4- Property History*** (last 5 years)
- ☐ Tax Information
- ☐ Pictures of Parcel (Google images at the very least)
- ☐ Exhibits
- ☐ Construction Plans (title page, legend, & construction plan sheet/s)
- ☐ Project Overview from Public Workshop
- ☐ Parcel Impact Form
- ☐ Comparables & Estimates (if waiver)
- ☐ ***ACQ 5- Subject Data Sheet*** (If Waiver)
- ☐ Emails, letter, and/or other correspondences.
- ☐ ***ACQ 7a- Intro Letter***, ***Offer Letter***, and ***Revised Offer Letter*** (If Applicable) with attachments and certified receipts.
- ☐ ***Administrative Settlement Memo.*** (If Applicable)
- ☐ Purge file of all extraneous paperwork and duplicates of signed documents.
- ☐ ***ACQ 6- Acquisition Package Approval.***
- ☐ ***CLOS 1-Settlement Package File Order.*** (This document)

TOP OF FILE/SETTLEMENT PACKAGE (Bottom to Top)

- ☐ Record in REM
- ☐ ***Non-Foreign Affidavit*** (if applicable)
- ☐ ***Owners Affidavit*** (if applicable)
- ☐ ***1099-S*** (if applicable)
- ☐ ***Settlement Statement*** (if applicable) (HUD)
- ☐ ***ACQ 19- Temporary Construction Easement*** (TCE) w/ TCE Exhibit
- ☐ ***ACQ-16 Permanent Easement*** (PE) with applicable Transfer Tax Affidavits & PE Exhibit
- ☐ DEED with applicable Transfer Tax Affidavits & Fee Exhibit
- ☐ ***ACQ-18 Agreement to Grant Easement*** (PE)
- ☐ ***ACQ-14 Purchase Contract*** (FEE) w/ Fee Exhibit
- ☒ ***ACQ-13 Right-of-Entry Agreement*** (ROE) w/ Full Exhibit
- ☐ Corporate Resolution, LLC Agreement, LP Agreement (if applicable)
- ☐ ***ACQ 39- Transfer of Agent Form*** and ***ACQ 40- Federal W-9***

☐ ***ACQ 20- Mortgage Information Sheet*** (if over 15k)
☐ ***CLOS 3-Project Right-of-Way Agreement.*** Completed and dated.
☐ ***CLOS 2- Pertinent File Information Sheet.***

Consultant Negotiator: _____Date_____
(if applicable)

DelDOT Agent:_____ Date_____

PERTINENT FILE INFORMATION SHEET

Project Number: «Project_Numbe r» **Parcel Number:** «State_Parcel_N o» **County:** «Address_County»

Project Name: «Project_Name»

Owner: «Property_Owner»

AGENT INFORMATION

Agent Name: _____ **Date Assigned:** _____

Re-assignment information. (If applicable)

Agent Name: _____ **Date Assigned:** _____

GENERAL INFORMATION

Fill in the number of acquisitions being acquired for each acquisition type.

FEE: _____ **RW/PE:** _____ **PE:** _____ **Aerial PE:** _____ **TCE:** _____

	(circle/highlight one)	
Appraisal:	YES	NO
Waiver:	YES	NO
Donation:	YES	NO
Condemnation:	YES	NO
Total Acquisition:	YES	NO
Will property management be required?	YES	NO
Will there be relocation?	YES	NO
Will there be demolition?	YES	NO
Legal Description Complete/Enclosed:	YES	NO
Possession After Settlement:	YES	NO
Transfer of Agent & W-9 included in file:	YES	NO
Lease:	Short Term	Long term

Administrative Settlement: YES NO

Original Offer: _____

Admin Sett. Amount: _____

Revised Total: _____

Revised Offer: YES NO

Original Offer: _____

Revised Offer: _____

Reason for Revision _____

PROJECT DELIVERY INFORMATION

Attorney: Kenneth S. Feaster, Jr., Esq. **Sit Down Settlement Requested:** YES NO

Contract Settlement Date: _____

SPECIAL CONTRACT CONDITIONS/NOTES:

_____

_____

_____

FILE PURGE INFORMATION

TO THE BEST OF MY KNOWLEDGE AND BELIEF I CERTIFY ALL REQUIRED DOCUMENTATION (PRIOR TO SETTLEMENT ACTIVITIES) IS IN THE FILE AND FILE AS BEEN PURGED.

First action is taken upon execution of acquisition documents or file being relinquished for condemnation.

Right-of-Way Agent	**Date**

(Do not fill out below this line. This will be signed throughout the settlement process by the designated agent.)

FIRST REVIEW BEFORE BEING SENT TO SETTLEMENT

Right-of-Way Agent	**Date**

APPROVAL FROM THE ACQUISITION & RELOCATION MANAGER OR OPERATIONS SUPPORT MANAGER

Manager	**Date**

SECOND REVIEW BEFORE BEING SENT TO SETTLEMENT

Right-of-Way Agent	**Date**

ACQUISITION DOCUMENTS SENT TO LAND SERVICES

Right-of-Way Agent	**Date**

PROJECT RIGHT-OF-WAY AGREEMENT

Date: April 22, 2025

Project No. «Project_Number» «Recorded_in_County» County
Project Title: «Project_Name»
Parcel No. «State_Parcel_No» Owner: «Property_Owner»
Station: _____

Conditions: **All Interests Acquired as per Right of Way Plans**

APPENDIX



DEFINITIONS AND ACRONYMS

APPENDIX – DEFINITIONS AND ACRONYMS

Acquiring Agency – State agency which has the authority to acquire property by eminent domain.

Administrative Settlement – A settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized official.

Air Rights – The right to undisturbed use and control of a designated space within the perimeter of a stated land area and within stated elevations.

Alternate Dispute Resolution – Process to enable DelDOT to establish just compensation via a process as set out in State law; 2 DE Administrative Code 2407.

Appraisal – A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Appraisal Review – A written critical review of an appraisal report.

Appraisal Scope of Work – A statement that defines the general parameters of the appraisal and reflects the needs of the acquiring agency. It should be developed cooperatively by the assigned appraiser and the agency official who is competent to represent the agency's needs and respect valid appraisal practice.

Appraiser – An individual who possesses the necessary qualifications, ability, and experience to execute the appraisal of real property.

Business – A lawful activity that meets the definition as set out in 49 CFR 24.2 .

Circuity of Travel – Governmental changes in traffic patterns, street closures, the relocation of streets, or changes in roadway widths, which have an adverse effect on access to or from a property.

Commercial Move – Move of personal property by a professional mover.

Comparable Replacement Dwelling – A replacement dwelling which meets the definition as set out in 49 CFR 24.2.

Condemnation – The act or process of enforcing the right of eminent domain.

Contribute Materially – A term reflecting business income which meets the definition as set out in 49 CFR 24.2.

Cost to Cure – The amount of money necessary to remedy something that is depressing the value of real property. An appraisal technique to measure damage payments.

Damages – The loss in the value attributable to remainder property due to the severance or consequential damages, as limited by law, that arise when only part of an owner's real property is acquired.

Decent, Safe, and Sanitary – A dwelling which meets local housing and occupancy codes.

Displaced Person – Any person who moves from real property or moves personal property from real property as set out in 49 CFR 24.2.

Donation – The voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available, for the benefit of a public transportation project without compensation or with compensation at less than market value.

Dwelling – A place of permanent or customary and usual residence of a person, as set out in 49 CFR 24.2.

Dwelling Site – A land area that is typical in size for similar dwellings located in the same neighborhood or rural area, as set out in 49 CFR 24.2.

Easement – An interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

Eminent Domain – The right of government to take private property for public use upon the payment of just compensation.

Farm Operation – Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Fixture – An item of personal property that by reason of its annexation to real property and adaption to continuing use with the realty is considered a part of the realty.

Functionally Equivalent – A dwelling that performs function as set out in 49 CFR 24.2.

Grantee – Party to whom property is transferred (buyer).

Grantor – Party to whom property is transferred from (seller).

Highest and Best Use – The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

Household Income – The total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full-time students under 18 years of age.

Initiation of Negotiations – The date of the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative to purchase the real property for the project, as set out in 49 CFR 24.2.

Just Compensation – In condemnation, the amount of loss for which a property owner is compensated when their property is acquired; should put the owner in as good a position as that owner would have been if the property had not been acquired.

Legal Settlement – A settlement reached by an authorized legal representative after the filing of a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the Court in which condemnation action has been filed.

Market Value (Fair Market Value – The price which would be agreed upon by a willing seller and willing buyer under usual and ordinary circumstances, without any compulsion whatsoever upon the seller to sell or upon the buyer to buy (official DE definition).

Mobile Home – A complete livable dwelling unit equipped with wheels, so that it may be towed from place to place by a truck; including manufactured homes and recreational vehicles used as residences.

Mortgage - A class of liens that are commonly given to secure to secure advances on, or the unpaid purchase price of real property, under the laws of the State in which the real property is located.

Nonprofit Organization – A business entity that uses its surplus revenues to further achieve its purposed mission, rather than distributing its surplus income as profits or dividends.

Personal Property – Consists of every kind of property that is not real property; movable without damage to itself or the real estate.

Persons Not Displaced – Individuals not eligible to be treated as displaced persons for relocation assistance purposes, as set out in 49 CFR 24.2.

Proximity Damage – The loss in market value of a property resulting from encroachment and/or proximity to a highway or other type of construction.

Real property or Real Property Interest – Any interest in land and any improvements thereto; including fee and less than fee interests.

Reestablishment Expense – A relocation assistance benefit available to displaced non-residential entities as set out in 49 CFR 24.304.

Relinquishment – The conveyance of a portion of a highway right of way or facility by a highway agency to another government agency.

Right of Way – Real property and rights therein used for the construction, operation, or maintenance of a transportation facility.

Salvage Value – The price expected for an item for removal and use elsewhere.

Self-Move – Move of personal property by the displaced person.

Small Business – A business having not more than 500 employees working at the site being acquired or displaced as set out in 49 CFR 24.2.

Special Benefit – Those benefits that which accrue directly and solely to the advantage of the property remaining after a partial taking.

Summary Statement – A written statement of the basis of the offer of just compensation as set out in 49 CFR 24.102(e).

Temporary Development Restriction – The purchase of a right to temporarily control or restrict development or redevelopment of property. This right is for an agreed to time, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

Tenant – A person who occupies and uses the property of another under a lease.

Uneconomic Remnant – A parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner. 49 CFR 102(k)

Voluntary Acquisition – The acquisition requirements of 49 CFR Subpart B do not apply to actions that conform with the requirements of 49 CFR 24.2.

Waiver Valuation – A valuation estimate technique employed when an appraisal is determined to be unnecessary, and in accordance with the provisions of 49 CFR 24.2.

Within Financial Means – Financial ability to purchase a replacement dwelling in accordance with the provisions of 49 CFR 24.2.

List of Abbreviations:

CFR – Code of Federal Regulations

DSS – Decent, Safe, and Sanitary

DelDOT – Delaware Department of Transportation

FHWA – Federal Highway Administration

HLR – Housing of Last Resort

ION – Initiation of Negotiations

LPA – Local Public Agency

MIDP – Mortgage Interest Differential Payment

RHP – Relocation Housing Payment

URA – Uniform Relocation Assistance and Real Properties Acquisition Act

USPAP- Uniform Standards of Professional Appraisal Practice

ATTACHMENTS

DelDOT

Attachments A, B, C, D, E, F and G

ATTACHMENT A



APPRAISAL METHODS AND REPORT STANDARDS

ATTACHMENT A

APPRAISAL METHODS AND REPORT STANDARDS

PART A – APPRAISAL AUTHORITIES

Uniform Standards of Professional Appraisal Practice (USPAP)

1. Federally mandated appraisal *standards* for all real property appraisals related to federally insured or related transactions.

2. The standards are applicable to all appraisal reports prepared by any Delaware licensed real property appraiser.

3. Requires licensing of appraisers through individual State oversight agencies.

4. Provides standards of appraisal and appraisal review report preparation, as well as ethical conduct and record keeping.

5. Has a provision for a "jurisdictional exception" when a USPAP standard is in conflict with a competing appraisal requirement based in State or Federal law or regulation. If such is the case, the appraisal report must document the application of the "jurisdictional exception".

Federal Regulations; contained in 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended

1. Federally mandated *regulations* applicable to real property appraisals and appraisal review, when the acquisition is under the authority of eminent domain action, and any aspect of the project is receiving federal participation.

2. The regulations are generally compatible with the USPAP standards, although there are some notable differences, such as:

   a. Requirement to disregard project influence on property value in the before scenario.

   b. Requirement to disregard non-compensable damages to remainder.

   c. Requirement to disregard "UASFLA marketing exposure time" as an element of market value.

3. Partial acquisitions of a property are not an emphasis area under USPAP, however, are commonplace in eminent domain situations involving longitudinal projects such as roadway development and improvement.

Uniform Appraisal Standards for Federal Land Acquisitions ("Yellow Book" or UASFLA)

1. Prepared by the Appraisal Foundation in cooperation with the U.S. government.

2. Sets appraisal *standards* for appraisal reports prepared in conjunction with federal or federally funded acquisitions, where the eminent domain action would take place in federal court.

PART B – BASIC APPRAISAL REPORT REQUIREMENTS

Federal Regulation Requirements for Appraisals

1. Appraisal reports will be prepared in conformance with the "scope of work" which is developed and agreed to by both the appraiser and the Agency appraisal representative.

2. To the maximum extent possible, appraisal reports will be consistent with the requirements as set forth in federal regulations at 49 CFR, Part 24; as well as the standards contained in USPAP and the UASFLA.

3. Fee appraisers will have an appropriate license.

4. The appraiser will provide the real property owner (or the property owner's representative) an opportunity to accompany the appraiser during the inspection of the property. Documentation of such opportunity will be contained within the appraisal report.

    a. If the property owner does accompany the appraiser during the inspection, the date of such activity will be documented.

    b. If the property owner or owner's representative does not accompany the appraiser during the inspection, an explanation of the circumstances will be documented.

    c. If the property owner does not respond to attempted contact, the appraiser will send a certified return receipt letter and include the receipt in the appraisal.

    d. Any "tenant owner" of real property will be treated as a property owner.

5. In preparing the appraisal report, the appraiser will disregard any increase or decrease in the value of the property due to influence of the project for which the property is being acquired.

6. When the appraisal is a partial acquisition of a larger parcel, the appraiser will note and disregard any items of damage to the remainder that are generally non-compensable under Delaware State law. These circumstances include such items as:

    a. Circuity of travel, when there is no substantial reduction in highest and best use.

    b. Loss of business;

    c. Temporary diversion or rerouting of traffic;

    d. Increase or decrease in traffic volume;

    e. Regulation of traffic that falls under police power actions;

    f. Access control activity during project construction.

7. The appraisal report will contain a minimum 5-years sales history of the property being acquired.

8. For those items which could be considered either real property or personal property, the appraisal report will resolve the way that an item is being treated. If there are numerous items of questionable categorization, a separate real property/personal property itemization will be contained in the report. 49 CFR 24.103

    a. The appraiser will coordinate with the DelDOT appraisal representative, if necessary.

    b. A legal opinion may be required in some instances from the office of the Attorney General.

9. All tenant owned items of real property will be listed separately in the appraisal report.

10. The principal elements of comparable sales will be described; including all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a named party involved in the transaction within the appraisal report.

11. The appraiser will certify as to being unbiased in the preparation of the appraisal report.

12. All benefits or damages to a remainder property in a partial acquisition will be separately stated.

13. All appraisals will state the market value of the proposed acquisition as of a specific date.

Federal Regulation Requirements for Review Appraisals

1. All appraisal reports will have a written review by a competent review appraiser.

2. Agency and Independent Fee review appraisers will have an appropriate license from the Delaware Division of Professional Regulation.

3. The appraisal review shall insure that the information and analysis in the appraisal reports is credible and accurately supports the estimated market value, in accordance with the complexity of the appraisal problem.

4. The review appraiser has the following three options regarding completion of the review:

    a. The report is approved and recommended as the basis of just compensation for the acquisition,

    b. The report is acceptable, but not recommended as the basis for an offer of just compensation for the acquisition,

    c. The report is not acceptable.

5. The review appraiser will certify as to being unbiased in the preparation of the appraisal review report.

6. The review appraiser will be responsible to assure that any element of compensable and non-compensable damages are clearly described.

7. The review appraiser has the responsibility to recommend for determination by DelDOT whether any remainder portion of a property is an “uneconomic remnant”.

Basic Appraisal Report Guidelines

1. If an appraisal is being prepared for a voluntary acquisition (not under authority of eminent domain), all appraisal requirements remain in effect. The property owner will be advised in writing that if negotiations fail, DelDOT will not at any time in the reasonable future resort to the use of eminent domain to acquire the property.

2. If an appraisal report is being prepared by DelDOT for uses such as internal cost estimates or disposal of excess land purposes, USPAP appraisal guidelines will be followed.

3. All appraisers are bound by the Code of Ethical Conduct as set forth in USPAP.

4. An appraisal report shall be prepared by an individual appraiser and shall not be co-signed unless prior written approval is obtained from DelDOT. If the appraiser is an employee of

an appraisal company or organization, the appraisal report will solely be the product of the individual appraiser.

5. All appraisal reports will be based upon a set of approved rights-of-way, construction, and / or excess parcel plans as distributed to the appraiser by DelDOT.

    a. Any hypothetical conditions, extraordinary assumptions and Jurisdictional exceptions contained in the appraisal report will be established with a written understanding between the appraiser and DelDOT. Any hypothetical condition would likely be in conjunction with some type of commitment from DelDOT relating to the impacted property, and instructions to the appraiser should be contained in the appraisal scope of work.

6. The appraisal report shall not give any consideration to any relocation assistance benefit entitlements available to the property owner.

7. Tenant owned improvements shall be valued independent of lease terms. Any tenant owned improvements should be valued as if they could remain throughout their usual life as extended by normal maintenance.

8. Leasehold interests should not be valued in the appraisal report unless specifically required in the appraisal scope of work.

9. The need for a sales data book, if necessary, will be established in the appraisal scope of work.

10. The USPAP requirement to address "exposure time" is generally disregarded in eminent domain appraisal reports. The appraisal report may make a statement relative to exposure time, if the element of exposure time has no impact on the appraisal report definition of market value.

11. Appraisal reports may not be handwritten.

12. An appraisal report is considered to be a reliable indicator of value for a period of up to six months from the date of the appraisal report. If market conditions change, it is the responsibility of the DelDOT appraisal staff to re-determine the validity of the appraised market value. During periods of extreme market volatility, the DelDOT appraisal staff will determine the credibility of the appraisal report. If it has been determined the market conditions have changed, a new appraisal assignment will be performed. If condemnation action is initiated, a before and after appraisal for condemnation purposes will be performed as of the court determined date of possession.

PART C – APPRAISAL METHODOLOGIES

Basic Reporting

1. DelDOT requests appraisers to prepare one of three basic types of appraisals reports;

    a. Partial Acquisition Appraisal Report – (strip methodology appraisal)

    b. Before and After Appraisal Report

    c. Total Property Appraisal Report

2. DelDOT land acquisition needs are typically in relation to linear projects and thus partial acquisitions are the norm. Appraisals for partial acquisitions are uncommon to the routine real property appraisal industry but routine for utility companies and government agencies. Partial acquisitions are necessary to acquire only a portion of an existing economic larger parcel of land.

3. Although there may be many variations of partial acquisitions, they are typically divided in to one of two categories. A strip methodology appraisal is used when there are no damages to the remainder. The second appraisal method for partial acquisition purposes is a Before and After appraisal used to measure potential damages. After damages are determined, a cost-to-cure approach may or may not be possible.

    a. Strip methodology appraisals are used to recommend compensation to the property owner for the value of the property acquired where the remainder property does not suffer any consequential damages from the acquisition.

    b. Before and After methodology appraisals are used where potential impacts may cause damages to the remainder property and need to be analyzed as part of the appraisal process.

Partial Acquisition Appraisal Report

1. The strip appraisal method is used for relatively uncomplicated acquisitions, where a portion of the property is being impacted (there is no maximum dollar value for this format type).

2. The acquisition may be for a fee simple acquisition, a permanent easement, a temporary easement, or a combination of any of the three.

3. The strip appraisal methodology appraisal report may include minor site improvements which are reimbursements and not truly damages. A cost-to-cure is measured against damages, and therefore cannot be determined with a strip appraisal method valuation.

4. The strip appraisal methodology appraisal is inappropriate if significant improvements are being acquired, or if there are any consequential damages to the remainder property.

5. If in the course of preparing a strip methodology appraisal, if the appraiser suspects damages to the remainder, the appraiser alerts DelDOT to the need for a Before and After method valuation.

Before and After Appraisal Method

1. This appraisal method is used whenever a partial acquisition has the potential to result in consequential damages to the remainder property.

2. The valuation method necessitates two appraisal valuations within the body of one report. There will be an analysis of the property value before project impacts, and an analysis of property value after project impacts.

3. Any appraised damages to the remainder due to the acquisition must be explained in detail and supported by market evidence to the extent available and detailed separately from the value of acquired property.

4. An analysis of any special benefits to the remainder due to project impacts are included in the appraisal report.

Total Property Appraisal Report

1. This appraisal report is used for a wide variety of real property appraisal problems where the total economic unit is being acquired or valued, and which may include a separate specialty appraisal for machinery and equipment.

2. The appraisal problems may include the valuing of vacant lots, improved residential, industrial, and commercial properties. Other valuation scenarios may include a variety of unique items, such as church properties, utility providers, and abandoned railroad corridors.

3. USPAP is a set of professional appraisal standards and ethics standard applicable to all appraisal types including real property, personal property, intangible assets, machinery and equipment and business valuation.

Permanent Easements

1. Permanent easement acquisitions may be necessary for a variety of purposes, including; slope maintenance, drainage, utility needs (above grade, at grade, or below grade), access needs and or maintaining sight distance.

2. For valuation purposes, the appraisal will determine the appropriate percentage of loss in value to the highest and best use of the property being impacted. All percentage figures will be explained in adequate detail to support the adjustment being applied to the property.

3. Depending upon the type of permanent easement, and the impact to the property, the percentage loss figure may range from a few percent up to near or at full fee value. It is also possible that a permanent easement could result in damages to the remainder property.

4. In all appraisal reports that include a permanent easement, the description and area of the easement, along with the valuation impact of the easement, will be described separately in the summary of the acquisition. If there is more than one permanent easement on a parcel, the impacts of each easement will be separately described in the summary.

Temporary Easements

1. A temporary easement may be necessary for a variety of purposes, including; providing working room for project construction, allowing for driveway tie-in, allowing access to remove improvements, and storage of materials during project construction.

2. For valuation purposes, a temporary easement is treated as a rental of the property for a specific period of time. The fee simple market value of the temporary easement area will be determined, and then a lease rate and term will be established based upon real estate industry investment criteria and project duration.

3. The timeframe for a temporary easement will depend on the project needs. As the temporary easement will generally commence on the date of closing, the total timeframe will be the time necessary in the construction contract plus the time period estimated from the date of acquisition until the project initiation. For unusual acquisitions such as early acquisition or other unique circumstances, the timeframe of the temporary easement will be established by the appraisal services manager.

4. The timeframe will be determined by the state project manager and the appraisal services manager and is provided to the appraiser in the scope of work for utilization in the appraisal report.

5. In all appraisal reports that include a temporary easement, the description and the area of the easement, along with the valuation impact of the easement, will be described separately in the summary of the acquisition.

Mandatory Minimum Requirements for all Appraisal Reports

1. Must be consistent with the provisions of USPAP and the requirements of applicable federal regulations.

2. Must have an appropriate Scope of Work, which is developed and agreed upon by both the appraiser and DelDOT. In developing the Scope of Work, the DelDOT appraisal staff is an informed employer.

3. All appraisers must have an appropriate and valid license, as issued by the State of Delaware, Division of Professional Regulation for appraising real property.

4. Must contain a letter of transmittal incorporating:

    - Date of the letter of transmittal.
    - Identification of the property.
    - Name of owner(s).
    - Location of property.
    - Delaware Department of Transportation project number.
    - Federal-aid project number, when applicable.
    - Delaware Department of Transportation project parcel number.
    - The county tax assessment number of the property.
    - Interest in the property being appraised.
    - Statement that an inspection of the property required owner contact and the necessary investigation and analyses were made by the appraiser.
    - Effective date which the market value is estimated.
    - The estimate of market value for the acquisition with reasonable allocation of such compensation to property (land and improvements) to be acquired and to any damage and/or benefit to the remainder.

5. Must state the effective date of valuation, the date of the appraisal report, the signature of the appraiser, and all appropriate certifications as to compliance with appraisal standards.

6. Must identify the real property owner, appropriate DelDOT and Federal-aid project number, and project parcel number.

7. Must demonstrate that the property owner (or owner's representative) was given a reasonable opportunity to accompany the appraiser during the physical inspection of the

property. The date of the inspection must be noted, along with information regarding property owner accompaniment.

8. Must include the official State of Delaware definition of Fair Market Value.

    a. "The price which would be agreed upon by a willing seller and willing buyer under usual and ordinary circumstances, without any compulsion whatsoever upon the seller to sell or the buyer to buy". Wilmington Housing Authority V. Harris 47 DelDOT. 469 (1952)

9. Must have an adequate description of the physical characteristics of the property being appraised. If it is a partial acquisition, the appraisal report must have a similarly adequate description of the remainder property.

10. Must contain any appropriate statement of assignment conditions, hypothetical and/or extraordinary conditions, or jurisdictional exceptions.

11. If any property under consideration could potentially be characterized as either real property or personal property, the appraisal must determine whether that property is being addressed as real or personal property.

12. Must contain reference to any known or observed encumbrances and note if any environmental reviews are associated with the real property.

13. Must describe if the property has any official historic designations or is located within an historic district.

14. Must contain adequate information to locate the property, including tax identification number, address, an appropriate sketch and photograph of the property.

15. Must contain title information along with existing zoning.

16. Must contain a statement and analysis of the current use of the property as well as the "highest and best use" of the property.

17. Must contain at least a five-year sales history of the subject property.

18. All relevant approaches to value must be utilized, unless there is an explanation as to why an approach was determined to be inappropriate. The Scope of Work may identify any pre-determined unnecessary approaches to value.

19. If more than one approach to value is utilized, there shall be a reconciliation of the various approaches. It is not acceptable to simply average or apply any set formula, to arrive at a final value figure when more than one approach is utilized.

20. The Sales Comparison Approach to value requires a minimum of three comparable sales, with a preference of five if available, to be analyzed. A comparative analysis market data grid is required to clearly and efficiently communicate to the reader. A list and brief discussion of competitive listings of similar property types within the market area shall be presented and considered in the valuation analysis.

21. Must contain an adequate description of all comparable sales utilized to estimate the value of the subject property, including, but not limited to;

    a. A description of the physical attributes of the property.

    b. The names of the parties in the transaction.

    c. All legal and economic factors attributable to the sale.

    d. Source and method of financing the sale.

    e. Verification of the terms of the sale by a knowledgeable party to the transaction.

    f. A map showing the location of the comparable sales in relation to the subject property.

    g. A photograph with the date taken of each comparable sale along with a map of the comparable sale with a cross street shown and identified.

22. Must contain a statement that the appraiser has disregarded any decrease or increase in the market value of the real property caused by the project for which the property is being appraised.

23. If the property is not owner-occupied, the appraiser must inquire about and identify any real property that is a tenant owned improvement.

24. When there is a remainder parcel from a partial acquisition, analysis of the remainder's independent utility and value must be included in the appraisal report.

25. Must contain a statement of market value of the real property being acquired, and in a before and after appraisal, a statement of any damages or special benefits that apply to the remaining real property.

26. Must have a statement of Assumptions and Limiting conditions.

27. Must have the Certificate of Appraiser.

Additional Requirements of a Partial Acquisition Appraisal Method

1. Appraisals for partial acquisition purposes are to determine an overall property value of the whole and apply the pro rata share to the area of acquisition in recognized real property economic units of measure, typically being dollars per square foot or dollars per acre. The pro rata share of the fee simple estate and easement value while considering any encumbrances, is determined in the appraisal process by the appraiser.

2. Impacted minor above or below ground real property improvements are included in the appraisal report. Above ground improvements include items such as trees, shrubs, fencing, signs, or pavement. Below ground improvements include items such as wells, septic systems, or irrigation systems.

3. Partial acquisition appraisals include the pro rata share of the part taken and reimbursement of any site improvements impacted by the project within the acquisition area. Examples are, but not limited to; signs, landscaping (bushes, trees, and shrubs), agricultural crops, hardscaping, irrigation, wells, and septic systems.

4. Valuation of reimbursable site improvements may be determined by the real property appraiser utilizing an industry standard cost estimating service. When an improvement is impacted by the project and is beyond the expertise of the real property appraiser, a separate valuation from an expert may be obtained.

5. Costs or value for minor improvements may be based upon a variety of methodologies, depending upon the nature of the improvement. The valuation methodology should be recommended in the parcel scope of work, and include the following valuation techniques:

    a. Replacement cost new of the feature, minus depreciation, if any,

    b. “Cost to Cure” the loss of the feature via relocation,

    c. Fair market value – Contributory market value,

    d. Orderly liquidation value.

6. Depending upon the nature of the improvement being impacted by the acquisition, the appraisal services manager may call for a separate “specialty appraisal”, which would then be made available to the appraiser to include in the appraisal report. The appraiser may utilize the “specialty appraisal” as the appraiser sees fit to reach a final estimate of market value of the acquisition.

7. For temporary easement valuations, the appraisal services manager will specify the duration of the easement, for use by the appraiser.

Additional Requirements for a Before/After Analysis

1. This analysis requires at least two valuations within one report.

2. If the remainder property is not considered to be a "larger parcel", each separate parcel of property must be treated based upon its own economic viability and value.

3. Typically, the remainder property will require a separate set of comparable sales than those that were used to establish the before value. Although there may be some situations where it would be appropriate to utilize the same comparable sales, this would usually not be an acceptable technique. In the event that the same comparable sales are utilized, a separate analysis with appropriate adjustments are required.

4. While the impact of the project on subject property values must be disregarded in the before situation, the impact of the project to the remainder must be considered in the after situation.

5. The appraisal must specify any damages to the remainder that are determined to be non-compensable.

6. All damages and special benefits to the remainder must be separately described in the appraisal report.

7. While the appraisal report must address the after scenario, including remnants that have little or no utility or value to the property owner, the appraisal report should not refer to these portions of property as "uneconomic remnants".

Additional Requirements for a Total Property Appraisal

1. An appraisal report is required for all total acquisitions, which includes a wide variety of properties, including:

    a. Vacant parcels with all types of highest and best use,

    b. Agricultural properties containing farm buildings,

    c. Single and multi-family residential properties,

    d. Commercial properties,

    e. Industrial properties,

    f. Special use properties, including: religious use, utility stations, communication towers, and public use facilities.

2. All three approaches to value must be considered.

3. An interior inspection of all improvements must be made, if possible.

4. A description of the project neighborhood is required.

5. Photos, descriptions, and dimensions of all improvements are required.

6. A map showing the subject property and the location of all comparable sales is required.

7. Any building cost reference materials must be cited so that such documentation can be obtained and verified by the review appraiser.

8. For a total acquisition of a single-family residential property on a typical lot, the appraisal report may be prepared on a format as provided by an appraisal software provider, as long as the format is not developed for mortgage financing purposes. Prior approval for any single-family software appraisal format should be obtained from the DelDOT Appraisal Services Manager.

Specialty Appraisal Reports

1. The obtaining of specialty appraisal reports will be contracted by the DelDOT appraisal services manager, unless specifically authorized by written contract with the appraiser.

2. Each specialty item being appraised shall be identified and described to the maximum extent practicable.

3. Specialty item values will typically include:

    a. Replacement cost new,

    b. Depreciated value in place (market value in place),

    c. Orderly liquidation value of item (market value for removal),

4. When applicable, the specialty report will contain any certification statements that are typical for the type of report being produced.

5. If the specialty report is for an item whereby a State of Delaware licensed individual is required to prepare such report, appropriate certifications will be contained within the report.

Attachment B

DelDOT

RELOCATION ASSISTANCE PAYMENTS AND STANDARDS

Attachment B

RELOCATION ASSISTANCE PAYMENTS AND STANDARDS

PART A – MOVING EXPENSE REIMBURSEMENT

General Requirements

1. The provisions of this section apply to all individuals and entities that meet the definition of being considered a "displaced person".

2. Any claim for relocation payment shall be supported by adequate documentation. DelDOT will provide reasonable assistance to aid in the preparation of claim forms.

3. All claims for reimbursement will be reviewed expeditiously.

4. If the displaced person demonstrates the need for an advance relocation assistance payment to avoid a hardship, DelDOT shall make such payment available with adequate safeguards as appropriate.

5. For real property owners, claim for payment must be filed within 18 months of the later of the date of displacement or the date of final payment for the real property being acquired.

6. For tenants, claim for payment must be filed within 18 months of the date of displacement.

7. If any portion of a claim is denied, DelDOT will provide a written explanation to the claimant.

8. A displaced person has the right to appeal any DelDOT decision regarding relocation assistance matters and will be provided an appeal form upon request.

9. Moving cost payments are divided into two categories: (1) residential and (2) business (non-residential). Business moving costs represent all non-residential entities, and include businesses, non-profit operations, and farms.

10. Unless using an approved cost allowance schedule, **all moving payments must be considered to be ACTUAL, REASONABLE, and NECESSARY.** Actual means that a lawful expense was incurred and paid. Reasonable and necessary means that the cost is what would be typically incurred in a business or financial decision if the cost would not be reimbursed. In issues of questionable eligibility for reimbursement, the displaced residence or business should reach prior written agreement with DelDOT.

Business (nonresidential) Moving Expense Requirements

1. The property to be moved must have been defined as personal property (as opposed to real property).

2. The personal property may be moved via a commercial move or as a self-move, or a combination of both.

3. For all moving expense activity, the displaced business may choose any moving company or incur any costs at their discretion; however maximum reimbursement will be established in advance by DelDOT, in consultation with the displaced business. DelDOT will always be available to review and adjust maximum reimbursement limits in view of unknown or unanticipated relocation concerns.

4. Reimbursement for a commercial move will be based upon the lower of at least two bids prepared by commercial movers. For moves estimated to be of an amount less than $5,000, reimbursement may be based upon one bid.

5. Reimbursement for a self-move may be based upon one or a combination of the following;

    a. The lower of two bids or estimates by a commercial mover. If estimated moving cost is to be below $5,000, only one estimate or bid will be required.

    b. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees preforming the same activity, and equipment rental fees should be based on the actual rental cost of the equipment, but not to exceed the cost paid by a commercial mover.

6. Advertising signs determined to be personal property shall be eligible for the lesser of;

    a. The depreciated reproduction cost of the sign, less the proceeds from its sale.

    b. The estimated cost of moving the sign, but with no allowance for storage.

7. Unless otherwise authorized by DelDOT, the displaced business must provide DelDOT reasonable advance notice of the approximate start date of the move, along with an inventory of the items to be moved.

8. The displaced business must allow DelDOT to make a reasonable and timely inspection of the personal property at both the displacement and replacement sites, and to monitor the move.

9. In accordance with applicable law, the displaced business will transfer to DelDOT, ownership of any personal property that has not been moved, sold or traded in.

Eligible Business (non-residential) Moving Expenses

1. Costs of transportation of personal property for a distance of up to 50 miles from the displacement site. Any reimbursement for costs exceeding 50 miles must be approved by DelDOT.

2. Packing, crating, unpacking, and uncrating of the personal property.

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property. This includes machinery, equipment, substitute personal property, and connections to utilities within the building. It also includes modifications to the personal property, including those mandated by Federal, State, or local law, code, or ordinance, necessary to adapt it to the replacement structure, the replacement site, and the utilities at the replacement site. Also includes modifications necessary to adapt the utilities at the replacement site to the personal property.

4. Storage of personal property for a period not to exceed 12 months unless DelDOT determines that a longer period is necessary.

5. Insurance for the replacement value of the property in connection with the move and necessary storage.

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced business representative) where insurance covering such loss, theft, or damage is not reasonably available.

7. Any license, permit, fees, or other certification required of the displaced business at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees, or certification.

8. Professional services deemed reasonable and necessary for; (1) planning the move of the personal property, (2) moving the personal property, and (3) installing the personal property at the replacement location.

9. Re-lettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

10. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

11. Connection to available nearby utilities from the right of way to improvements at the replacement site.

12. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced business operation. This includes, but is not limited to, soil testing and feasibility and marketing studies. Any fees or commissions directly related to the purchase or lease of the replacement site are not eligible for reimbursement under this category.

13. Impact fees or one-time assessments for anticipated heavy utility usage.

14. Other reasonable and necessary moving related expenses that are not listed as ineligible in a below paragraph.

Specialized Business (non-residential) Payment Eligibility

1. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business. This payment will consist of the lesser of;

    a. The fair market value in place of the item, as is for continued use, less the proceeds from its sale, (if appropriate for sale).

    b. The estimated cost of moving the item as is to the replacement site, but not including any allowance for storage or for reconnecting the equipment if it is not being utilized at the acquired site. If the business is being discontinued, the cost of moving the item shall be based on a moving distance of 50 miles.

2. Purchase of substitute personal property will be reimbursed if an item is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site. The payment shall be the lesser of;

a. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item.

b. The estimated cost of moving and reinstalling the replaced item, but with no allowance for storage.

3. When DelDOT makes the determination that the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value, the allowable moving cost payment will be the lesser of;

a. The amount of money which would be received if the property would be sold at the site at its market value.

b. The replacement cost of a comparable quantity of similar material delivered to the new business location.

Ineligible Moving and Related Business (nonresidential) Expenses

1. The cost of moving any real property structure or other real property improvement.

2. Interest on a loan to cover moving expenses.

3. Loss of goodwill, profit, or trained employees.

4. Any additional operating expenses incurred at a new location, except as provided for under "reestablishment expenses".

5. Personal injury.

6. Any legal fee or other cost for preparing a claim for relocation payment or for representing the displaced business before DelDOT.

7. Physical changes to the real property at the replacement location, except as provided for under "reestablishment expenses".

8. Costs for storage of personal property on real property already owned or leased by the displaced business.

9. Refundable security and utility deposits.

Eligible Business (nonresidential) Reestablishment Expenses

1. In addition to reimbursement for moving expenses, a displaced business is eligible for reimbursement up to a total amount of $33,200 for a combination of eligible items as listed below.

2. Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.

3. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

4. Construction and installation costs for exterior signing to advertise the business.

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

6. Advertisement of replacement location.

7. Estimated increased costs of operation during the first two years at the replacement site for items such as;

    a. Lease or rental charges

    b. Personal or real property taxes

    c. Insurance premiums

    d. Utility charges, excluding impact fees

8. Other items that DelDOT considers essential to the reestablishment of the business.

Ineligible Business (non-residential) Reestablishment Expenses

1. Purchase of capital assets, such as; office furniture, filing cabinets, machinery, or trade fixtures.

2. Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of business operations.

3. Interest on money borrowed to make the move or purchase replacement property.

4. Payment to a part-time business in the home which does not contribute materially to the household income.

Business (non-residential) Fixed Payment for Moving Expenses

1. A business may choose a fixed payment in lieu of all eligible moving and reestablishment expenses in an amount of not less than $1,000, and not more than $53,200 , as long as;

    a. The business owns or rents personal property which must be moved in connection with the displacement, and for which an expense would be incurred in such move and, the business vacates or relocates from its displacement site.

    b. The business cannot be relocated without a substantial loss of existing patronage.

    c. The business is not part of a commercial enterprise having more than three other entities which are not being acquired, and which are under the same ownership and engaged in the same business activities.

    d. The business is not operated at the displacement dwelling or site solely for the purpose of renting such dwelling or site to others.

    e. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement.

2. Determining the number of businesses entitled to a separate fixed payment will be based upon;

    a. Sharing of the same premises and equipment.

    b. Whether substantially identical or interrelated business functions are carried out and business and financial affairs are comingled.

c. Whether the entities are held out to the public, and to those customarily dealing with them, as one business.

d. Whether the same person or closely related persons own, control, or manage the affairs of the entities.

3. Determining whether a farm operation is eligible for the fixed payment will be based upon;

   a. Whether the full or partial acquisition of the land caused the operator to be displaced from the farm operation on the remaining land.

   b. Whether the partial acquisition caused a substantial change in the nature of the farm operation.

4. The determination of the fixed payment of not less than $1,000 and not more than $40,000 for displaced businesses and farm operations will be determined as follows;

   a. By determining one half of the business average annual net earnings before Federal, State, and local income taxes, for the two taxable years prior to the taxable year in which the entity was displaced.

   b. If the displaced entity was not in operation for the full two taxable years prior to displacement, net earnings will be based upon actual earnings, then projected to an annual rate.

   c. Average annual net earnings may be based upon a different period of time, when DelDOT determines that a different timeframe would be a more equitable determining factor.

   d. The amount of net earnings includes any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents.

   e. The owner of the displaced business or farm is required to provide proof of net earnings to DelDOT through income tax returns, certified financial statements, or other reasonable evidence.

5. The determination of the fixed payment of not less than $1,000 and not more than $40,000 for a non-profit organization; will be calculated by determining the average gross revenues less administrative expenses, for the two 12-month periods prior to the acquisition.

Eligible Search Expenses for Business and Farm Displacements

1. A displaced business or farm operation is eligible for reimbursement of $1,000 in costs incurred in searching for a replacement location, as long as an appropriate application is made.

2. The maximum reimbursement is $5,000 , and includes documented items such as;

    a. Transportation costs.

    b. Meals and lodging away from home.

    c. Time spent searching, based upon reasonable salary or earnings

    d. Fees paid to a real estate broker or agent to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

    e. Time spent obtaining permits and attending zoning hearings.

    f. Time spent negotiating the purchase of a replacement site based upon reasonable salary or earnings.

Residential Moving Expense Requirements

1. The property to be moved must have been defined as personal property (as opposed to real property).

2. The personal property may be moved as a commercial move or a self-move, or a combination of both.

3. For all moving expense activity, the displaced owner of personal property may choose any mover or incur any costs at their discretion; however maximum reimbursement will be established in advance by DelDOT, in consultation with the displaced persons.

4. If a mobile home is determined to be personal property, it is eligible for residential moving expense reimbursement.

5. Reimbursement for a commercial move will be based upon the lower of at least two bids prepared by commercial movers. For moves estimated to be less than $5,000, reimbursement may be based upon one bid.

6. Reimbursement for a self-move may be based upon one or a combination of the following;

    a. The DelDOT fixed residential moving cost schedule.

    b. Actual costs which are supported by receipted bills for labor and equipment. (Cost reimbursement based upon the lower of two bids or estimates, is not applicable for residential moves).

    c. A moving cost estimate prepared by a DelDOT staff person as developed from the review of the personal property to be moved. Hourly labor rates should not exceed the cost paid a commercial mover for moving staff. Costs for moving special handling items should not exceed the hourly rate for a specialist. The maximum payment under this methodology shall not exceed $5,000.

    d. Based on the lower of two bids from a commercial mover.

Eligible Residential Moving Expenses

1. Cost of transportation of personal property for a distance of up to 50 miles. Any reimbursement for costs exceeding 50 miles must be approved by DelDOT.

2. Packing, crating, unpacking, and uncrating of the personal property.

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.

4. Storage of personal property for a period not to exceed 12 months unless DelDOT determines that a longer period is necessary.

5. Insurance for the replacement value of the property in connection with the move and necessary storage.

6. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced property owner) where insurance covering such loss, theft, or damage is not reasonably available.

7. Other reasonable and necessary moving related expenses that are not listed as ineligible in the below paragraph.

Ineligible Residential Moving and Related Expenses

1. The cost of moving any structure or other real property improvement.

2. Interest on a loan to cover moving expenses.

3. Personal injury.

4. Any legal fee or other cost for preparing a claim for relocation payment or for representing the displaced person before DelDOT.

5. Costs for storage of personal property on real property already owned by the displaced person.

6. Refundable security and utility deposits.

PART B – RESIDENTIAL REPLACEMENT HOUSING PAYMENTS

Owner-Occupants Who Choose to Re-Purchase

1. Applies to all owner-occupants who have owned their homes for at least 90 days prior to the initiation of negotiations for the property.

2. In order to receive reimbursement, the displaced person must purchase and occupy replacement housing defined as decent, safe, and sanitary, within one year of displacement. The one-year timeframe may be defined in various ways depending upon the nature of the acquisition.

3. The maximum replacement payment is limited by statute to $41,200 , but would likely be increased to the maximum dollar amount actually calculated by formula, under the provision of Replacement Housing of Last Resort (to be defined later in this Part).

4. Displaced owner-occupants who purchase a replacement residence are potentially eligible for reimbursement for four categories of expenses; price differential, increased mortgage interest costs, incidental expenses, and miscellaneous expenses.

5. Price Differential Expense Formula

    a. The amount of dollars that must be added to the purchase price of the acquired dwelling to enable the displaced person to acquire a comparable decent, safe, and sanitary dwelling.

    b. The upper limit of the comparable dwelling cost should be determined by utilizing at least three dwellings (if available), that are most nearly representative of, and equal to, or better than, the displacement dwelling.

    c. This payment is limited to the purchase price of the decent, safe, and sanitary dwelling actually purchased by the displaced person.

6. Increased Mortgage Interest Expenses

    a. Provides for a one-time payment to compensate for increased mortgage interest payments at the replacement dwelling as compared to the existing mortgage interest rate at the acquired dwelling.

    b. The payment takes into account the existing interest rate and balance at the acquired dwelling, as well as the new interest rate and mortgage balance at the replacement dwelling.

    c. Required administrative fees, purchaser's points, and origination fees associated with the new mortgage are also generally eligible for reimbursement as long as they are considered to be actual, reasonable, and necessary.

    d. Existing mortgage must have been in place for at least 180 days prior to the initiation of negotiations in order to trigger eligibility for this reimbursement expense.

    e. Reverse Mortgages fall under this category of reimbursable expenses and are discussed in detail in the Appendix A of the 49 CFR, Part 24 regulations.

7. Incidental Expenses are those actual, reasonable and necessary expenses that are customarily paid by a purchaser of a replacement residence, and may include;

    a. Legal closing and related costs.

    b. Mortgage lender application and appraisal fees.

c. Professional home inspections.

d. Credit reports.

e. Costs associated with secure title.

f. Escrow agent fee.

g. Applicable transfer taxes.

h. Such other costs as DelDOT should determine to be incidental to the purchase of the replacement dwelling.

8. Miscellaneous Expenses at the replacement dwelling.

   a. Available to owner/occupants who repurchase, or to tenant/occupants who purchase (rather than rent) a replacement dwelling.

   b. Limited to 1% of the appraised and approved value of the acquired displacement dwelling.

   c. Expenses must be incurred with one month of purchase of replacement dwelling.

   d. Allows for actual reimbursement of costs to incur non-capital expenditures which are not covered by other allowances. This includes costs related to the replacement, cleaning, and repairing of existing household items at the replacement dwelling.

9. Displaced owners who choose to retain, move, and occupy the displacement dwelling shall have their purchase price determined to be the sum of;

   a. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move.

   b. The cost of making the unit a decent, safe, and sanitary dwelling.

   c. The current market value of the replacement dwelling site.

   d. The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

Tenants and Owner-Occupants Who Choose to Rent

1. Applies to tenants and owner-occupants who have been in residence at least 90 days prior to the initiation of negotiations for the property. (This provision also applies to all less than 90-day occupants under the provisions of "Last Resort Housing").

2. In order to receive reimbursement, the displaced person must lawfully occupy replacement housing defined as decent, safe, and sanitary, within one year of displacement. The one-year timeframe may be defined in various ways depending upon the nature of the acquisition.

3. The maximum replacement is limited by statute to $9,570 but would likely be increased to the maximum dollar amount actually calculated by formula, under the provisions of Replacement Housing of Last Resort (to be defined later in this Part).

4. The maximum rental assistance calculation will be made by subtracting the existing monthly rental (including utilities), from the monthly cost (including utilities) of the comparable decent, safe, and sanitary rental unit. That difference in monthly rent will be multiplied by 42 times.

5. The maximum payment will be limited by the actual rent at the displacement location.

6. DelDOT will disburse the full rental replacement dollar eligibility, at such time as the displaced tenant has secured lawful replacement residency in a decent, safe, and sanitary dwelling; and has made an appropriately supported claim for payment.

7. Special Provisions

    a. For tenants who pay little or no rent, the base rent of the acquired dwelling will typically be determined to be the market rent.

    b. For tenants who are defined as "low income" by the U.S. Department of Housing and Urban Development, the base rent at the displacement location shall be considered as the lesser of, (1) 30% of the displacement household's monthly income, or (2) the actual rent (including utilities).

    c. For defined "low income" tenants, failure to provide accurate monthly income records, will negate the use of the 30% rule.

    d. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.

e. The contribution of any welfare assistance payments will be taken into account in the calculations.

f. A displaced owner –occupant who chooses to rent, may not receive a replacement rental payment greater than the calculated owner to owner payment.

g. If displaced owner-occupant chooses to rent replacement housing, the rent at the displacement location will be based upon market rent (plus utilities); and the displaced person will not be eligible for any calculations utilizing the 30% rule.

Tenants Who Choose to Purchase

1. A tenant who chooses to purchase replacement housing may utilize all of their computed tenant to tenant replacement housing payment, as down payment assistance to purchase a decent, safe, and sanitary dwelling.

2. The computed tenant to tenant maximum payment may be applied to any of the typical costs associated with the purchase of a residence.

3. All tenants who choose to purchase a replacement dwelling are entitled to a minimum of $9,570 down payment availability, regardless of the computed tenant to tenant calculation.

4. A tenant who purchases a replacement dwelling, is eligible to receive the 1% miscellaneous payment, upon proper documentation.

Displacement of Mobile Homes

1. Depending upon circumstances relating to local laws and the structural integrity of the mobile home, mobile home structures may be treated as either real property or personal property.

2. For replacement housing calculation purposes, the occupants of the mobile home may either own or rent the structure. Similarly, the occupants may either own or rent the mobile home site. This leads to six possible initial replacement scenarios;

a. Those displaced own the structure as real property, and own the site. These displaced persons will be treated under complete owner-to-owner provisions.

b. Those displaced own the structure as personal property, and own the site. These displaced persons will receive moving costs for the structure, and owner-to-owner provisions for the site.

c. Those displaced own the structure as real property, and rent the site. These displaced persons will receive owner-to-owner provisions for the structure, and rental provisions for the site.

d. Those displaced own the structure as personal property, and rent the site. These displaced persons will receive moving costs for the structure, and rental provisions for the site.

e. Those displaced rent the structure and own the site. These displaced persons will receive owner-to-owner provisions for the site, and rental provisions for the structure.

f. Those displaced rent the structure and the site. These displaced persons will be treated under complete rental provisions.

3. Depending upon which of the six scenarios is applicable, the displaced occupants may be entitled to a variety of replacement housing entitlements, with each ownership or tenant status receiving an appropriate calculation. The possibility will also exist for making changes in owner or rental status in conjunction with the displacement.

4. Depending upon the real or personal property status of the structure, and upon the ownership or rental status of the occupancy, an appropriate replacement housing package will be assembled and presented to those displaced.

Additional General Provisions

1. All claims for payment must be made within eighteen months from the defined date of displacement, unless this provision is waived by DelDOT for good cause.

2. In evaluation of comparable sales or rental units, DelDOT will attempt to utilize at least three dwelling units which are most nearly representative of, and equal to, or better than, the displacement dwelling.

3. If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, then the value of such attribute will be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

4. To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood from which the dwelling was located, or if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

5. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of the payment that would have been made if the occupants had moved together to a comparable replacement dwelling. Should DelDOT determine that two or more occupants maintain separate households within the same dwelling, such occupants will have separate entitlements to relocation payments.

6. DelDOT will deduct the amount of any advance relocation payment from the relocation payment which a displaced person is otherwise entitled. DelDOT will not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

7. If the displacement dwelling is part of a mixed use property or is located on a site larger than typical for residential purposes, then only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

8. Prior to authorizing a replacement housing payment, a DelDOT representative shall assure that the replacement dwelling meets the definition of decent, safe, and sanitary.

9. A displaced person will be considered to have purchased a replacement dwelling if any of the following has occurred;

    a. Purchase of a replacement dwelling.

    b. Purchase and rehabilitation of a substandard dwelling.

    c. Relocation to a dwelling owned or previously purchased.

    d. Construction of, or contract for the construction of, a dwelling on a site owned or purchased.

    e. Currently owns a previously purchased dwelling and site, the valuation of which shall be on the basis of current market value.

10. No person shall be denied eligibility for a replacement housing payment due to any occupancy requirement, solely due to circumstances outside their control.

11. A displaced person has a one-year period from the date of displacement to change relocation options, and payments will be recomputed. Any portion of a payment previously disbursed will be deducted from the recomputed new payment.

12. Upon the death of a displaced person, any remaining undisbursed payment shall not be payable to the heirs or assigns, except;

    a. The amount attributable the person's actual occupancy at the replacement housing.

    b. Any unreimbursed payment will be distributed to the remaining members of the displaced household, if any.

    c. Any unreimbursed payment necessary to satisfy legal commitments associated with the displacement.

13. Any insurance proceeds attributable to the displacement dwelling will be included in the defined acquisition cost of the displacement dwelling, if such proceeds would constitute a duplicate payment to the displaced person.

Replacement Housing of Last Resort

1. Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants as described, DelDOT will provide additional or alternative assistance, as set out as allowed under "Replacement Housing of Last Resort".

2. Justification for utilizing Replacement Housing of Last Resort will be documented on either a project or a case-by-case basis, and such justification will be included in the relocation assistance file.

3. Basic rights of displaced residential occupants, include;

    a. No person shall be required to move from a displacement dwelling unless comparable replacement is available.

    b. No person may be deprived of any rights they may have as a displaced person.

    c. DelDOT will not require any displaced person to accept any provided replacement dwelling in lieu of any acquisition or relocation payment for which that person may otherwise be eligible.

4. The allowable methods for providing Replacement Housing of Last Resort include, but are not limited to;

    a. A replacement housing payment in excess of the established statutory limits.

    b. Rehabilitation and/or providing additions to an existing replacement dwelling.

    c. The construction of a new replacement dwelling.

    d. The providing of direct loans to facilitate the displacement.

    e. The relocation and rehabilitation of a dwelling.

    f. The purchase and subsequent sale of property, by DelDOT to the displaced person.

    g. The removal of barriers for persons with disabilities.

5. Any displaced residential tenant who does not qualify for a replacement housing payment due to failure to meet the length of occupancy requirements, and who cannot find replacement housing within their financial means as defined at 49 CFR 24.2 (6) (viii) (C), is eligible for an appropriate rental replacement housing payment to cover a period of 42 months. (This provision applies to both less than 90-day occupants and subsequent occupants).

Part C - Definitions Specifically Related to Relocation Assistance Payments and Standards

Business – Any lawful activity, except a farm operation, that is conducted;

1. Primarily for the purchase, sale, or lease of personal or real property; and for the manufacture, processing, or marketing of products, commodities and/or any other personal property.

2. Primarily for the sale of services to the public.

3. By a non-profit organization that has established its non-profit status under applicable federal or State law.

4. Solely for purposes of determining relocation eligibility, primarily for outdoor advertising display purposes when the display must be moved as a result of the project.

Carve-out – The method used in making a typical home-site determination, whereby that portion of the parcel to be acquired which is typical for residential use in the area, is separated from the entire tract for the purpose of computing a replacement housing eligibility.

Comparable Replacement Dwelling – Meets the following criteria:

1. Functionally equivalent to the displacement dwelling. It must perform the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, DelDOT may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or less living space than the displacement dwelling.

2. Adequate in size to accommodate the occupants.

3. In an area that is not subject to unreasonable adverse environmental conditions.

4. Is not generally less desirable than the location of the displaced persons dwelling with respect to public utilities and commercial facilities and is reasonably accessible to the person's place of employment.

5. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses.

6. Currently available to the displaced person on the market. For a person receiving government housing assistance before displacement, any requirements of the government housing assistance relating to the size of the replacement dwelling shall apply.

Contributes Materially – During the two taxable years prior to the taxable year in which the displacement occurs, or during other such period as DelDOT determines to be more equitable, a business or farm operation;

1. Had average annual gross receipts of at least $5,000.

2. Had average annual net earnings of at least $1,000

3. Contributed at least one-third of the owner's or operator's average annual gross income from all sources.

4. If the application of the above criteria creates an inequity or hardship in any given case, DelDOT may approve the use of other criteria as deemed appropriate.

Decent, Safe, and Sanitary Dwelling – A dwelling which meets local housing and occupancy codes.

Displaced Person – A displaced person is defined as any person;

1. Who moves from the real property or moves his or her personal property from the real property. This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act.

2. Who moves as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.

3. Who moves as a direct result of rehabilitation or demolition for a project.

4. Who moves as a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such a person under this paragraph applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

5. A further definition of "persons not displaced" is contained in Chapter V of the ROW Manual.

Fair Market Value In-Place – The value established by a qualified appraiser for personal property owned by a business or farm operation, based on its continued use at the displacement site. For good held for sale, it is the cost of the goods to the business or farm operation as it relates to personal property.

Household Income – The total gross income received for a twelve-month period from all sources (earned and unearned), including but not limited to; wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full-time students less than eighteen years of age.

Initiation of Negotiations – The date of delivery of the written offer of just compensation to the property owner or the property owner's representative.

Major Exterior Attribute – a major appurtenant structure to the exterior of the residential dwelling, or an aesthetically valuable view which contributes to the value of the parcel being acquired.

Notice of Intent to Acquire – A written notice furnished to a person to be displaced, prior to the initiation of negotiations, which establishes relocation assistance benefit eligibility.

Owner of a Dwelling – A person who holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extensions with at least 50 years to run from the date of acquisition. This includes having a contract for such ownership,

2. An interest in a cooperative housing project which includes the right to occupy a dwelling,

3. Any other interest which in the judgement of DelDOT warrants consideration to be considered as an owner.

Small Business – A business having not more than 500 employees working at the site being acquired or displaced. Sites occupied solely by outdoor advertising signs, displays or devices, do not qualify as small businesses for re-establishment expense eligibility.

Tenant – A person who has temporary use and occupancy of real property owned by another.

Unlawful Occupant – A person who has been ordered to move by a Court of competent jurisdiction prior to the initiation of negotiations, or is determined by DelDOT to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under State law.

Utility Costs – Expenses for electricity, gas, and other heating and cooking fuels, water, and sewer.

Within the Financial Means of the Displaced Person – When in conjunction with securing replacement housing;

a. A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to the initiation of negotiations; when that homeowner is eligible to receive all applicable price differential, increased interest, and incidental payments as calculated.

b. A replacement dwelling rented by an eligible displaced person; when that person's monthly rent and established monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displaced dwelling.

c. For a displaced person not eligible to receive a replacement housing payment because of a failure to meet length of occupancy requirements, when appropriate; rental assistance is calculated and offered in accordance with (b) above. This rental assistance will be paid under the provisions of "Housing of Last Resort".

d. For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance.

Attachment C

DelDOT

DISPOSAL OF EXCESS/SURPLUS REAL PROPERTY RIGHTS

Attachment C

DISPOSAL OF EXCESS/SURPLUS REAL PROPERTY RIGHTS

DelDOT may come into possession of excess real property and real property rights through a variety of actions. The most common of these include:

1. Purchase of property not needed for project purposes, or when such property is determined to be in excess to transportation purposes.

2. Property previously purchased for project purposes, but later became excess due to changes in roadway alignment. This may occur when the alignment of an existing roadway is shifted or abandoned in favor of a new alignment.

3. Property that had been purchased early in the project development process, and then that project development plan is either abandoned or no longer needed.

Whenever DelDOT determines that it is in possession of excess real property that is no longer needed for foreseeable project activity, that property is inventoried and maintained on a list within the Right of Way Land Services Section. These properties normally fall into two general categories; (1) those that have independent utility and would typically be a viable economic property unit as considered by the general public, and (2) those with limited independent utility which would only have viable use to an abutting property owner. Whether or not an individual property has independent utility makes a substantial difference on the property value, and how the excess/surplus property should be marketed in conjunction with the disposal process.

Prior to initiating the disposition process for most property or property rights, the Land Services Section must determine if the property is of transportation necessity for foreseeable DelDOT purposes. In order to accomplish this goal, the proposed disposal action will be distributed on a prescribed routing through the Department internally to see if any of the operating units would recommend against disposing of the excess property. Once the disposition has been approved and the property has been declared excess/surplus, Land Services may proceed with the disposal.

DELAWARE PROPERTY DISPOSAL LAWS

Although Title 29, Chapter 94, applies in general to disposal of real property owned by Agencies of the State of Delaware, a more specific law cited at Title 17, Chapter 1, Section 137, applies to the disposal of real property owned by DelDOT. It appears that DelDOT is subject to this more specific law, due to the large number of excess properties owned by DelDOT, and due to more specific requirements imposed on DelDOT by the Delaware legislature. Under the provisions of Title 17, Chapter 1, Section 137, DelDOT owned excess/surplus real property may follow one of two paths for disposal, depending on whether the property is judged to be, (1) of independent

utility or with an estimated value of $3,000 or more, or (2) with minimal independent utility and with an estimated value of less than $3,000.

Federal regulations require that the local FHWA Office must approve any dispositions of excess/surplus real property located on the Interstate Highway System. Additionally, FHWA must grant approval for any real property disposition in which federal funds participated if the disposition price is to be less than market value. Specific details and wording on this issue, as well as all other FHWA approval requirements, can be found in the State/Federal Stewardship Agreement, which is an Attachment to the ROW Manual.

House Bill 312, effective 5/25/16, provides additional guidance on the disposal of excess property whereby the highest offered amount does not equal at least 85% of the appraised market value.

DISPOSAL PATH FOR PROPERTIES WITH INDEPENDENT UTILITY (and estimated value of $3000 or more)

The prescribed disposal process is as follows:

1. If the subject property has been subject to a revenue producing lease arrangement for at least the previous five years, then that tenant lessee shall have a thirty day right of first refusal to purchase the excess/surplus property at the current approved appraised value;

2. If the property had been acquired by DelDOT within the previous five years, and a lease arrangement (as established in No. 1 above) is not at issue, then the previous owner of the property will have a thirty day right of first refusal to purchase the excess/surplus property at the current approved appraised value;

3. If neither item No. 1 nor 2 above apply, then the property will go to public auction. DelDOT will have the authority to accept the highest bid that is at least 85% of the approved appraised value;

4. In event that DelDOT does not receive an acceptable bid, the public sale shall be deemed concluded. DelDOT may proceed to dispose of the property through an absolute auction for whatever maximum price may be obtained, subject however to the unanimous written approval of the selling price from both the Controller General and the Director of the Office of Management and Budget. FHWA approval shall be warranted if the bid is under fair market value.

Additional qualifying conditions:

1. If the estimated value of the excess property is $10,000 or less, then the estimated value may be established by either a qualified DelDOT employee or a qualified independent fee appraiser, and then reviewed and approved by a DelDOT Review Appraiser.

2. If the estimated value of the excess/surplus property is estimated to be greater than $10,000, then the estimated value must be established by a qualified independent fee appraiser, and then reviewed and approved by a DelDOT Review Appraiser.

3. Regardless of any other provision, the excess/surplus property may be conveyed to a public utility for public utility purposes, at a price not less than the approved appraised value.

4. Regardless of any other provision, the excess/surplus property may be conveyed to any other governmental entity for a governmental purpose, at terms acceptable to DelDOT.

5. Regardless of any other provision, the excess/surplus property may be exchanged for other property being acquired by DelDOT, at an exchange value not less than the approved appraised value.

DISPOSAL PATH FOR PROPERTIES WITH LIMITED INDEPENDENT UTILITY (and valued at less than $3,000)

The prescribed disposal process is as follows:

1. DelDOT may sell or otherwise convey the excess/surplus property to an abutting property owner or civic association, at terms agreed to via negotiations.

2. If more than one abutting owner expresses interest in purchasing the excess/surplus property, the property may be offered for sale via sealed bid. DelDOT may also choose to divide the excess/surplus property to accommodate the desires of all interested adjacent owners.

DELDOT ADMINISTRATIVE PROCEDURES

The following additional issues are addressed in greater detail in the Land Services Section of the ROW Manual:

1. The DelDOT Land Services Section will maintain an active list and accounting of all potentially excess properties. In accordance with HB 312, DelDOT shall provide to the Governor and the General Assembly on or before December 31 of each year a summary of surplus property activity. To the greatest extent practicably, the report shall identify by size and location all properties being held for projects, properties deemed surplus or excess to needs, dates of acquisition, purchase price, previous owner, dates of surplus or excess determination, estimate of real property market value, and current marketing activity. If any properties are deemed to be unmarketable, they shall be identified as such. The report shall identify all properties disposed of in the previous year by; size and location, date of disposition, estimated value, compensation received from disposition, and the name of purchaser or owners, including any equitable owners.

2. Anytime there is a federal financial interest in the excess property, approval from the appropriate federal agency is required if the property is to be sold at less than the approved market value. (Other approvals as set out in the State/FHWA Stewardship Agreement may apply).

3. Methodology for notifications and conduct of public sale is described in the ROW Manual.

Definitions Specifically Related to Disposal of Excess/Surplus Real Property Rights

Excess Property – Land interests originally acquired for a transportation project or other operational needs which has been determined to be no longer necessary for a transportation project or other operational needs.

Surplus Property - Real property deemed excess to transportation projects or other operational needs and has been authorized for disposal by the Department's Secretary.

Federal Code References

23 CFR § 620.203 Procedures

23 CFR Part 645 Utilities

23 CFR Part 646 Railroads

23 CFR 710.201(h) Assignment of FHWA approval actions to an SDOT

23 CFR 710.405 ROW Use Agreements

23 CFR 710.409 Disposal of excess real property

23 CFR Part 771 Environmental Impact and Related Procedures

23 CFR § 1.23 Rights-of-Way

40 CFR §745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures

23 U.S.C. 142(f) Availability of Rights-of-Way.

Attachment D

Additional Information

1. Relevant Case Law
2. Environmental Document Flow Chart
3. Guide for Preparing an Appraisal Scope of Work
4. Appraisal Report Checklist
5. LPA Appraisal Function - Job Aid
6. Review Appraiser - Flow Chart
7. Review Appraiser's Responsibilities
8. Review Appraisers Checklist
9. Acquisitions Process - Flow Chart
10. Federal ROW Requirements for LPA
11. Residential Displacement Interview Guide
12. Business Displacements Interview Guide
13. Business Interview Guide Addendum
14. Residential Moves - Flow Chart
15. Business Moves - Flow Chart
16. Tips of Performing an Inventory
17. Tips on Monitoring a Move
18. Uniform Act Frequently Asked Questions
19. Frequently Asked Questions, 23 CFR Parts 635, 710 and 810

Relevant Eminent Domain Case Law

1. Date of Taking

a. New Castle County v. 16.89 Acres of Land - 404A2d 135, 1979
The date of taking is the date that the acquiring agency deposits the estimate of just compensation with the Court.
The likelihood of a future zoning change is admissible as valuation testimony at just compensation trial, but not at an order of possession hearing.

b. Barsky v. City of Wilmington - 578 F. Supp 170-1984
A public announcement of a proposed project in accordance with accepted project development procedures, does not establish a date of taking.

c. State v. Thetavest, Inc. WL 108659 (Del. Super.) - 1995
The public announcement of a proposed project in accordance with accepted project development procedures, and which does not deprive the owners of all practical use of the property, does not establish a date of taking.

d. Legal Opinion from Wali Rushdan, II to Gregory Williams, July 30, 2014
Analysis of Delaware Court decisions in reaching the conclusion that the Courts will generally presume a taking for which just compensation is due to occur, upon entry of an order of possession by the Court.

2. Land Services Leasing

a. Troumouhis v. State of Delaware, DOT - C.A. No. 04C-01-104 WCC-2006
The provisions of a lawfully enacted DelDOT lease, overrides the provisions of the DE landlord/tenant code.

3. Valuation of Acquired Improvements

a. DelDOT v. Lesko and 485.4545 Square Feet of Land - C.A. No. S13C-01-032 RFS -2015
The proper measure of damages for acquired improvements is their contributory value to the whole property.

4. Special Benefits

a. Acierno and 55.4261 Acres of Land v. DelDOT- 643 A.2d 1328 - 1994
Special benefits may be offset against both the value of the taking and damages to the remainder.
The evidence in the case demonstrates that the Acierno property remainder enjoyed benefits beyond those general benefits flowing to the surrounding community. This created a factual issue for the consideration in fixing the value of the taking.

5. Order of Possession

a. Del DOT v. Caputo - C.A. No. 85C-FE-69 -1985
The acquiring agency request for order of possession should not be denied due to controversy over compensation or impacts of the proposed acquisition. Possession approved.

b. DE Dept. of Administrative Services v. Dorzback - No. 90C-SE-7 -1991
The acquiring agency may not arbitrarily disregard the provisions of the Real Property Acquisition Act, and then obtain an order of possession. Possession denied.

c. Del DOT v. Amin - 2007 WL 1784187 (Del. Super) - 2007
The acquiring agency must exhaust all reasonable attempts to acquire property via negotiations and may not mislead the property owner, prior to employing condemnation action. Possession denied.

d. DelDOT v. Teague - CA No. 08C-09-065 JAP - 2009
The acquiring agency may negotiate in good faith, and file for condemnation based on a "strip valuation" appraisal. Possession approved.

e. Lawson v. DelDOT - CA No. N12C-01-128-2013
The acquiring agency did not negotiate in good faith when negotiating acquisition based on a "strip valuation" appraisal. If there is any likelihood of damage to a remainder property, the negotiations must be based on a "before/after" appraisal. Possession denied.

f. DelDOT v. Hess Retail Stores - CA No. N15C-07-208 CEB - 2015
An acquiring agency request for possession should not be postponed because the property owner has a suspicion of "fraud, bad faith, or gross abuse of discretion", and wishes further time to investigate the charges. Possession approved.

6. Inverse Condemnation - Due Process

a. The Village v. DE Dept. of Agriculture - No. 98C-02-021- 2000
Discussion of issues regarding whether "setback" zoning rises to the level of an eminent domain taking. No conclusion reached as due process not exhausted.

7. Loss of Business Damages

a. Del DOT v. Catawba Associates - CA No. 97C-03-042-JEB - 2005
Damages for loss of business are not compensable in Delaware eminent domain cases.

8. Property Owner Valuation Testimony

a. Eastern Shore Natural Gas v. Glasgow Shopping Center-WL 3112476 (Del. Super) -2007
A property owner may testify to value as a lay witness but may not utilize technical appraisal statistics developed by a certified appraiser, in the testimony.

9. Reasonable Access

a. Bryan Corp. v Del DOT -259 A.2d 378 -1969

A commercial property owner is not entitled to damages for loss of access, if the remainder access remains reasonable to conduct the business.

b. Smythe v. Del DOT - CA No. 1029 -1978

A commercial property owner is not entitled to damages for loss of access, if the remainder access remains reasonable to conduct the business.

c. Brandywine Transmission v Del DOT- 577 A.2d 751-1990

A complex case involving reasonable access and application of damages. Original Court decision in 1989 denied damages, followed by a Supreme Court decision in 1990 remanding the case for further review by the lower Court. Eventually concluded by administrative settlement.

d. Speedway v. DelDOT-C.A. N16C-01-189 CEB -2016

Currently unresolved

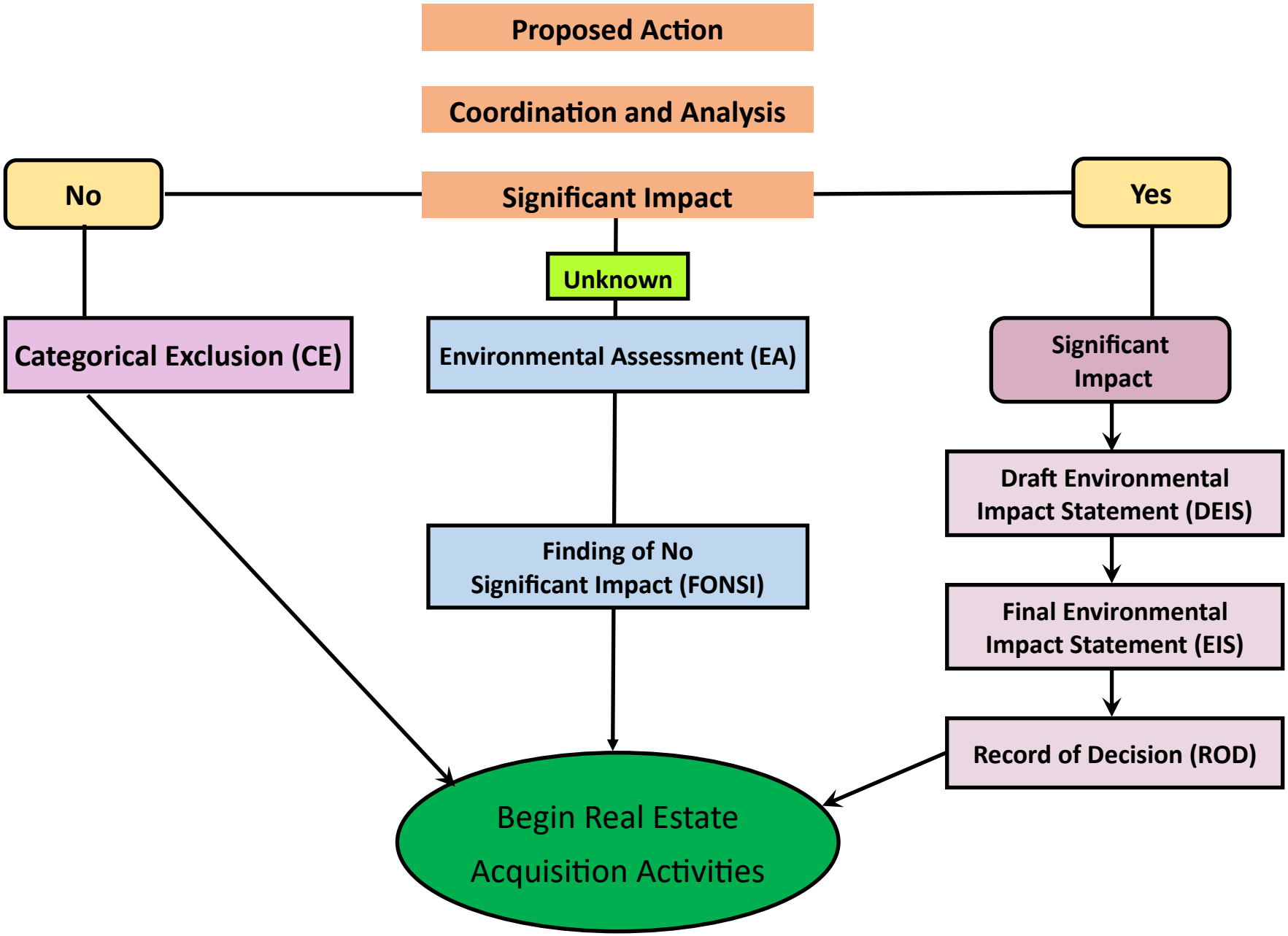
10. Condemnation Procedure

a. Delaware Code -Rules of Civil Procedure 71.1

This Rule establishes the procedures for public agencies in Delaware to initiate condemnation proceedings.

Links provided to available online orders/opinions.

Environmental Document Process



GUIDE FOR PREPARING AN APPRAISAL SCOPE OF WORK

The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of fair market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-of-Way or Appraisal Manual. The Scope of Work must address the unique, unusual, and variable appraisal performance requirements of the appraisal. Either the appraiser or the agency may recommend modifications to the initial Scope of Work, but both parties must approve changes.

SCOPE OF WORK:

The appraiser must, at a minimum:

1. Provide an appraisal meeting the agency's definition of an appraisal. *The definition of appraisal should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual. For Federal-aid projects the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).*

2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property. *How this is to be handled should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.*

3. Perform an inspection of the subject property. *This should be specified in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.* The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:

    - The extent of the inspection and description of the neighborhood and proposed project area,

    - The extent of the subject property inspection, including interior and exterior areas,

    - The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property),

4. In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. *Also, it should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales as called for in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.*

5. In the appraisal report, include items required by the acquiring agency, usually including the following list: *This should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.*

    - The property right(s) to be acquired, e.g., fee simple, easement, etc.,
    - The value being appraised (usually fair market value), and its definition
    - Appraised as if free and clear of contamination (or as specified),
    - The date of the appraisal report and the date of valuation,
    - A realty/personalty report is required per 49 CFR 24.103(a)(2)(i),
    - The known and observed encumbrances, if any,
    - Title information,
    - Location,
    - Zoning,
    - Present use, and
    - At least a 5-year sales history of the property.

6. In the appraisal report, identify the highest and best use. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.

7. Present and analyze relevant market information. *Specific requirements for market information should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual and should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.*

8. In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. *If necessary, the appraiser may cite the Jurisdictional Exception under USPAP to ensure compliance with USPAP while following this Uniform Act requirement.*

9. Report his or her analysis, opinions, and conclusions in the appraisal report.

ADDITIONAL REQUIREMENTS FOR A SCOPE OF WORK

INTENDED USE:

This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a federally assisted project.

GUIDE FOR PREPARING AN APPRAISAL SCOPE OF WORK

The Scope of Work is a written set of expectations that form an agreement or understanding between the appraiser and the agency as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. It includes identification of the intended use and intended user; definition of fair market value; statement of assumptions and limiting conditions; and certifications. It should specify performance requirements, or it should reference them from another source, such as the agency's approved Right-of-Way or Appraisal Manual. The Scope of Work must address the unique, unusual, and variable appraisal performance requirements of the appraisal. Either the appraiser or the agency may recommend modifications to the initial Scope of Work, but both parties must approve changes.

SCOPE OF WORK:

The appraiser must, at a minimum:

1. Provide an appraisal meeting the agency's definition of an appraisal. *The definition of appraisal should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual. For Federal-aid projects the definition must be compatible with the definition found at 49 CFR 24.2(a)(3).*

2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property. *How this is to be handled should be in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.*

3. Perform an inspection of the subject property. *This should be specified in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.* The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:

    - The extent of the inspection and description of the neighborhood and proposed project area,

    - The extent of the subject property inspection, including interior and exterior areas,

    - The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property),

4. In the appraisal report, include a sketch of the property and provide the location and dimensions of any improvements. *Also, it should include adequate photographs of the subject property and comparable sales and provide location maps of the property and comparable sales as called for in the State DOT's FHWA-approved Right-of-Way or Appraisal Manual.*

Appraisal Report Checklist

A. Administrative

1. Who is the current owner of the property (phone and address)?
2. Who is our client (phone and address)?
3. What is the date of the appraisal?
4. When did we first get the assignment?
5. When did we first inspect the property?
6. Did we send a certified letter to the owner?
7. Did the property owner accompany us?
8. Do we have a title report?
9. What is the assessed value?
10. List the taxing authorities.
11. Is there an agricultural exemption?
12. What are the file numbers associated with the subject?
13. Has there been a sale of the subject in the last five years?
14. What was the sales price?
15. Who confirmed the sales price?
16. Has the subject been foreclosed upon in the past five years?
17. Is there an environmental report?
18. Is there a relocation concern?
19. ls there a tenant?

B. Neighborhood Data

1. What is the neighborhood delineation?
2. Do we have a map of the neighborhood?
3. Are all of the comparables within our neighborhood?

C. Site Data

1. What is the location of the subject?
2. What is the address of the subject?
3. What is the legal description of the subject?
4. Where did you get the legal description?
5. Do you have a plat or survey?
6. Where did you get that plat or survey?
7. Do we have photos of the subject that are dated and labeled?
8. Are there any trees on the subject? How many? What kind?
9. Are there any bodies of water on the subject?

10. How much frontage does the subject have?
11. On what roads? Rivers? Channels?
12. What is the traffic count in front of the subject?
13. What are the adjacent land uses?
14. Is the subject in a flood plain?
15. Provide a copy of the flood plain map.
16. Does the subject have public water?
17. Does the subject have irrigation water rights?
18. What capacity? List location of line.
19. What source (city or utility district)?
20. Does the subject have public sewer?
21. What capacity? Location of line.
22. What source (city or utility district)?
23. Does the subject have a water well?
24. Where is it located (indicate on plat)?
25. How deep is the well, and does it have a pump?
26. Is there a septic system on the site?
27. Is property of sufficient size for septic system?
28. What is the capacity?
29. Where is the septic system located (indicate on plat)?
30. Are there any environmental problems on the property?
31. Do you have an aerial of the subject?
32. What is the highest and best use of the site?
33. Is there zoning?
34. Provide a copy of the zoning ordinance.
35. Provide a copy of zoning map.
36. List the easements on the subject.
37. What are the building setback lines?
38. Soil type if agricultural?
39. Soil survey map?
40. Fault lines?
41. Topographic map?
42. Crops? Timber?

D. Improvement Data

1. What is the current use of the site?
2. Do you have building plans or sketches?
3. Where did you obtain those plans?
4. Who is the occupant (phone and address)?
5. What is the size of each building?

6. What is the date of construction and condition of each building?
7. What is the construction type of the building?
8. Have any of the buildings been remodeled? When?
9. How many parking spaces?
10. What is the parking surface, age and condition, parking regulations?
11. List and describe all signs.
12. Obtain two years of operating statements.
13. Describe fencing and gates.
14. Are improvements conforming to code?
    a) Parking
    b) Setback

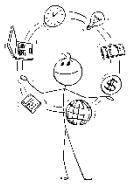
E. Data

1. Prepare a summary of all land sales.
2. Obtain deeds of each sale.
    a) Open recording
    b) Closed recording
3. Prepare a summary of all improved sales.
4. Obtain deeds for each improved sale.
5. Prepare a summary of all comparable rentals.
6. Prepare a plat of each comparable.
7. Prepare a map of each set of comparables.
8. Provide a photo of all comparables.

F. Partial Taking

1. Obtain a copy of petition of condemnation.
2. What is the nature of the project? Source?
3. How long will construction take? Source?
4. What is the size of the parent tract? Source?
5. What is the size of the remainder? Source?
6. What is the size of the taking? Source?
7. Is the partial taking an economic unit?
8. Is the taking out of an economic unit?
9. What is the highest and best use of the remainder?
10. What is the highest and best use of the taking?
11. Picture of taking with markers if possible.
12. Are there improvements on the take?
    a) Signs
    b) Fencing
    c) Driveways

13. Is there parking in the taking (how many spaces)?
14. Document the price of each item in the take.
15. What is the value of the whole (land and building)?
16. What is the value of the taking (land and buildings)?
17. What is the value of the remainder (land and building)?
18. Are there any damages (benefits)?
19. What rights are being acquired?
20. What will be put on the taking area?



Local Public Agency • Appraisal Responsibilities

- Identify and select qualified appraisers - appraiser and review appraiser
- Establish process for reviewing appraisals
- Ensure appraisals are completed and reviewed appropriately - use your review appraiser as a consultant to assist you (also use *Your Review Appraiser's Checklist In your Appendix)*
- Review and approve the final appraisal report
- Establish an amount believed to be just compensation

  Note: For your first project or a complex project, schedule a pre-appraisal meeting with your State DOT LPA coordinator and your appraisal and acquisition consultants to discuss the issues

Local Public Agency • Valuation Activities

1. Obtain survey and plans
2. Determine appraisal formats for the following types of acquisitions (and number of appraisals per acquisition)
   - Simple partial acquisitions (strip
   - takings)
   - Simple total acquisitions
   - Complex acquisitions and before/after appraisals
3. Determine appraiser availability
   - Staff or fee area
   - Residential or general qualifications
4. Identify the appraisal problem and write scope of work, taking into account;
   - Property ownership rights being
   - acquired
   - Property encumbrances and pre-existing easements
   - Need for specialty appraisals (machinery, arborist, etc)
   - Cost-to-cure situation
   - If partial acquisition, determine if items such as well or septic system is within take area

Appraisal Scope of Work Criteria

Does the Scope of Work require compliance?
Federal and State requirements
State DOT FHWA approved right-of-way or appraisal manual
The definition of an appraisal in 49 CFR 24.2(a)(3)

Does the Scope of Work specify property inspection requirements?

- Give owner opportunity to accompany appraiser on inspection
- Inspect neighborhood and project area
- Inspect interior and exterior of subject improvements
- Provide level of detail of physical characteristics

Does the Scope of Work address the following appraisal content requirements?
Property description, including floor plan, dimensions, photographs, location maps
Property rights to be acquired
Definition of value
Date of valuation and date of the report
Realty/personalty report
Observed or known encumbrances
Five-year sales history of the property
Highest and best use analysis of present use and zonings
Present and analyze relevant market information
Consider project influence in the appraisal report
Report opinions and conclusions
Intended user
Intended user

- Required certification
- Assumptions and limiting conditions

LPA Appraisal Function
Duties and Responsibilities - Job Aid

Selecting an Appraiser and a Review Appraiser



Before hiring an Appraiser or a Review Appraiser:

- Consult with your State DOT to ensure both the appraiser and review appraiser meet State DOT qualifications and are State certified or licensed
- Define the appraisal problem and select an appraiser and a review appraiser based on the individual project, or the complexity of parcels identified for the acquisition
- Consider the appraiser and review appraiser's past eminent domain experience and quality of services provided to other clients

When selecting an Appraiser or Review Appraiser, check their:

Education and credentials

General & Geographic experience

Property type experience

Reputation and work ethic

Court testimony experience

Prior Agency experience

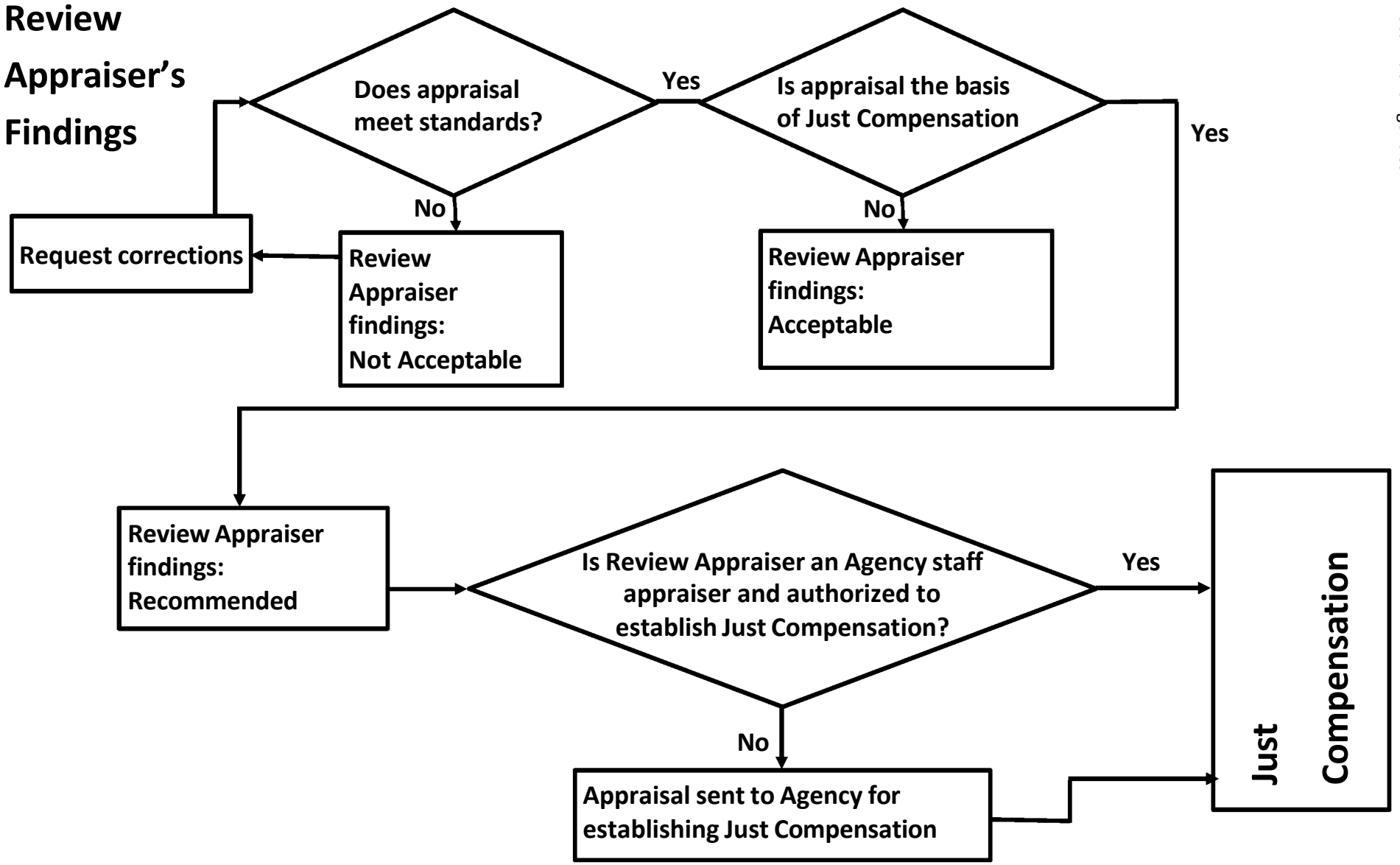
Appraiser's Responsibilities

- ➢ Attend pre-appraisal meetings with LPA and State DOT, if necessary
- ➢ Develop scope of work in coordination with LPA
- ➢ Write the problem definition
- ➢ Prepare a preliminary survey and plan
- ➢ Invite owner to property inspection
- ➢ Conduct physical inspection of property
- ➢ Conduct data collection and analysis
- ➢ Determine highest and best use
- ➢ Prepare land/site valuation
- ➢ Consider three approaches to value
- ➢ Conduct reconciliation
- ➢ Respond to questions/comments from review appraiser
- ➢ Submit correction to appraisal report
- ➢ Disclose any prior involvement with the subject property in the last 3 years

Review Appraiser's Responsibilities

- ➢ Ensure appraisal compliance with the contract/assignment
- ➢ Communicate effectively with appraiser
- ➢ Review appraiser's findings
- ➢ Prepare review appraiser's report
- ➢ Review owner's appraisals, if applicable
- ➢ Recommend just compensation
- ➢ Establish just compensation, if Agency employee and authorized by Agency

Note: An extended version of this job-aid is available in the Appendix of your Participant Workbook.


Review Appraiser's Findings
Does appraisal meet standards?
Yes
Is appraisal the basis of Just Compensation
Yes
No
No
Request corrections
Review Appraiser findings: Not Acceptable
Review Appraiser findings: Acceptable
Review Appraiser findings: Recommended
Is Review Appraiser an Agency staff appraiser and authorized to establish Just Compensation?
Yes
No
Appraisal sent to Agency for establishing Just Compensation
Just Compensation

Review Appraiser's Responsibilities

Review Appraiser's *Pre-Appraisal* Responsibilities:

- Participate as a member of the project development team to contribute expertise and improve the process through coordination
- Develop an appraisal complexity analysis
- Select an appraiser for the project
- Participate in pre-appraisal meetings
- Assist the Agency in the development of a scope of work

Review Appraiser *Appraisal* Responsibilities:

- Ensure appraisal compliance with the contract/assignment
- Communicate effectively with appraiser
- Review appraiser's findings
- Prepare review appraiser's report
- Review owner's appraisals, if applicable
- Recommend just compensation
- Establish just compensation, if Agency employee and authorized by Agency

Review Appraiser's *Post-Appraisal* Responsibilities:

- Negotiation
  - Assist acquisition agent with complex appraisal issues
- Relocation
  - Prevent double-payments during relocation
  - Provide carve-out calculations
- Property management
  - Establish economic rent
  - Provide data and market trends
- Settlement
  - Provide professional advice
- Litigation
  - Participate as a member of the litigation team (pre-trial conferences, selecting experts, consulting on strengths/weaknesses of evidence)
  - Assist in preparing for discovery (requests for admissions, written interrogatories, motions for producing documents, depositions)
  - Provide evidence consultation (discovering flaws in opponent's appraisal)
- Post-project review
  - Participate in project evaluation
  - Provide input for process improvements
- Provide appraiser evaluation, to be included in Agency appraiser database

Fee Review Appraiser's Responsibilities

Fee Review Appraiser's should

- ❑ Comply with the contract
- ❑ Represent the Agency
- ❑ Review the requirements in the same manner as for staff
- ❑ Prepare estimate of market value for Agency approval

Ensure The Appraisal Complies With The Contract

- ❑ Does the appraisal comply with the contract?
- ❑ Was the contract developed based on the scope of work? (See page 2 of checklist)
- ❑ Does the appraisal comply with both Federal and State appraisal requirements?
- ❑ Was the appraisal completed on schedule and all milestones completion dates met?

Communicate with the Appraiser

To communicate effectively with the appraiser, always remember these three points:

- Critique the report and not the person
- Solve the problem
- Obtain necessary corrections

Determine If Appraiser Used Proper Appraisal Methodology

- ❑ Does the whole property meet the test of unity of use, contiguity, and ownership, and if not, has the appraiser explained the rationale for determining the whole property?
- ❑ Is the appraiser's opinion of highest and best use supported by market data?
- ❑ Is the market data comparable to the subject, contain sufficient information, and appear to be properly verified?
- ❑ Did the appraiser use and apply the three approaches to value correctly or explain the exclusion of one or more of the approaches.
- ❑ Are the adjustments supported by market data or based on subjective reasoning?
- ❑ Did the appraiser properly address the value of the partial acquisition and remainder?
- ❑ Was project influence, if any, applied correctly?
- ❑ Does the report use the proper compensation framework (Federal and State rules) for this jurisdiction?
- ❑ Were the assumptions and limiting conditions made in the report reasonable?

Ensure The Appraisal Addresses The Main Requirements Of 49 CFR Part 24

- ❑ Did the appraiser invite the owner or designated representative to accompany the appraiser on the property inspection? Is this documented?
- ❑ What concerns did the property owner or representative express? Are they documented?
- ❑ Does the appraisal separately address the tenant-owned improvements?
- ❑ Was the tenant-owner given an opportunity to accompany the appraiser on the property inspection? Is this documented?
- ❑ Does the appraisal clarify what is compensable and what is non-compensable?
  - ○ Have damages occurred?
  - ○ What was the impact of the taking on the remainder?
  - ○ Did you measure the damage?
  - ○ Does the report separate the identification of the damages?
  - ○ Did you find any non-compensable damages included in the appraisal?
  - ○ Did you request appropriate corrections?
- ❑ Does the appraisal address all real property affected by the acquisition?
  - ○ Does the appraisal consider all improvements?
  - ○ Does the report appraise these improvements if they are impacted?
  - ○ Does the report contain support and/or justification for not appraising the improvements?
- ❑ Does the appraisal identify both real and personal property?
  - ○ Is there a separate personal property report or list within the appraisal report?
  - ○ Does the personalty report clearly delineate what the value estimate includes?
  - ○ Is there a clear distinction between the personal and the real property?
- ❑ If there is a potential uneconomic remnant situation, did the remainder suffer a loss of value?
  - ○ Did you find all of the necessary data and analysis information in the report?
  - ○ Do you need to gather more information before making your determination?

Your Review Appraiser's Checklist

Ensure The Quality And Accuracy Of The Appraisal

- ❑ Does the appraisal adhere to quality assurance principles?
  - ○ Logical?
  - ○ Consistent?
  - ○ Mathematically correct?
  - ○ Grammatically correct?
  - ○ Clearly written?
  - ○ Legally sufficient?
- ❑ Does the appraisal contain any common mistakes?
  - ○ Improper methodology?
  - ○ Unsupported adjustments?
  - ○ Data inconsistent with opinion of highest and best use?
  - ○ Erroneous zoning assumptions?
  - ○ Compensability issues?
  - ○ Unsupported damage estimates?
  - ○ Math errors?

Prepare a Review Appraiser's Report

- ❑ Is the Review Appraiser's Report based on 49CFR Part 24?
  - ○ Is it a written report?
  - ○ Does it identify the appraisal report?
  - ○ Does it document the findings and conclusions?
  - ○ Does it identify damages?
  - ○ Does it include a signed certification stating approved value?
- ❑ Did you maintain and develop a comprehensive Review Appraiser's Report?
  - ○ Does it discuss the strengths and weaknesses of the appraisal report?
  - ○ Does it maintain a positive approach and avoid negativity?
  - ○ Does it refer to the report and not the person?
  - ○ Does it avoid imposing your opinion instead of the appraiser's?

Review Property Owner Appraisals

If you received a property owner's appraisal did you ...

- ❑ Consider the findings?
- ❑ Subject it to the same review process?

Verify All Conclusions Are Fully Supported

- ❑ Did you verify that the appraisal fully supports all conclusions?
  - ○ Are the opinions expressed supported by relevant market data?
  - ○ Have you fully evaluated the analysis, data, and conclusions?

Establish Just Compensation

- ❑ As a Staff Review Appraiser, did you develop and report the amount believed to be just compensation?
- ❑ As a Fee Review Appraiser, did you establish an estimate of market value for Agency approval?

Review Appraiser's Findings

- ❑ Not acceptable
- ❑ Acceptable – meets all requirements but not selected as recommended or approved
- ❑ Recommended – as the basis for the establishment of the amount believed to be just compensation

Appraisal Review Management Activities

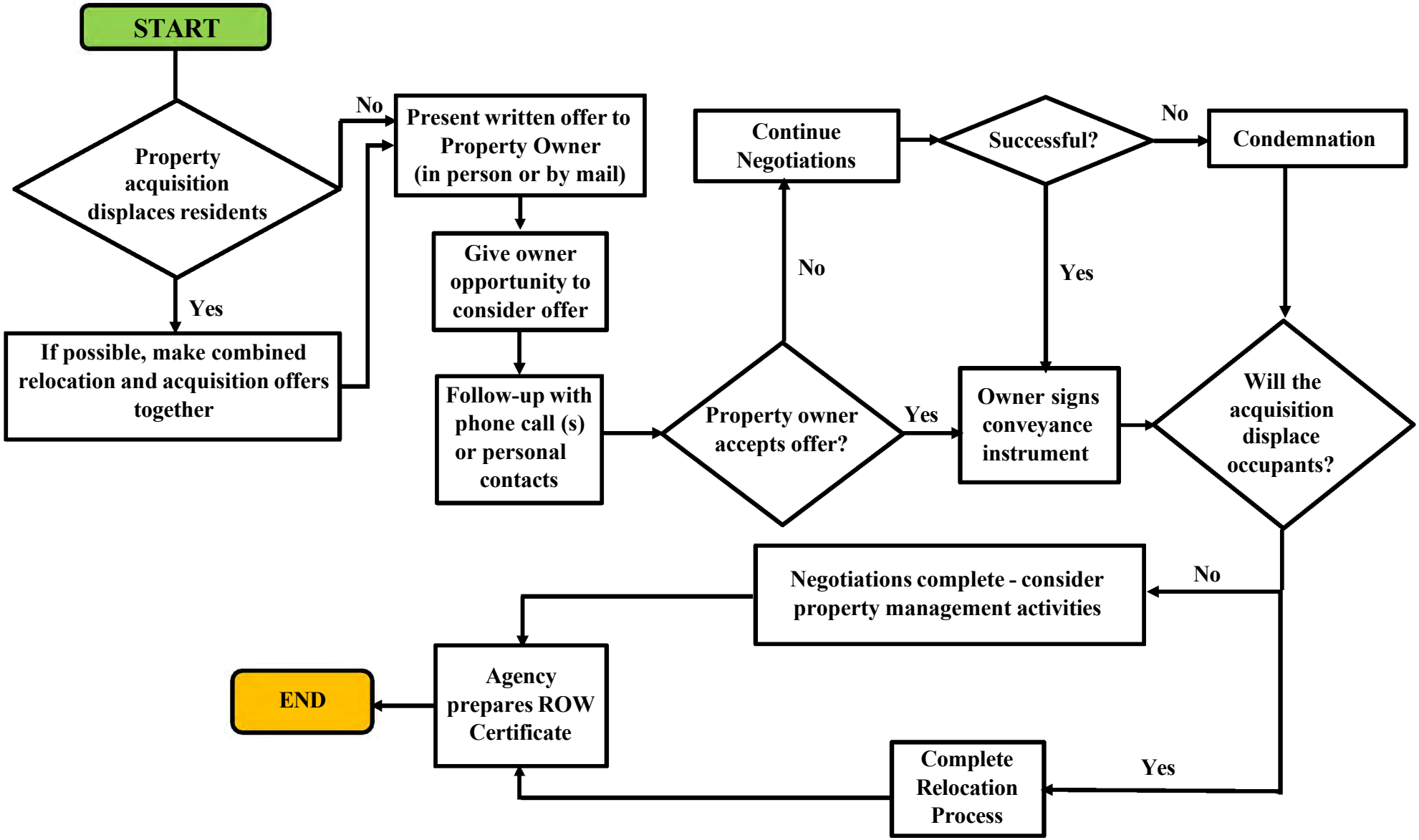
- Reconcile consistency issues
- Reconcile divergent values reconciliation
- Provide assistance with project management review

Sequence for the review of an appraisal report –

If you completed your compliance review in a favorable manner, then you accomplished the following:

- ❑ *Reviewed preliminary scope of work*
- ❑ *Read the appraisal*
- ❑ *Checked for compliance with regulations*
- ❑ *Assessed comparability and accuracy of data*
- ❑ *Assessed methodology, judgment, and conclusions*
- ❑ *Assessed quality and accuracy of the report*

Land Acquisition Process Flowchart



Basic Acquisition Policies **Job Aid**
Expeditious Acquisition 49 CFR 24.102(a) • LPA makes every reasonable effort to acquire the property expeditiously by negotiations
Notice to Owner 49 CFR 24.102(b) • Notify owner in writing of LPA's interest in acquiring the property • Notify owner of basic protections provided by law and 49 CFR Part 24.102 • LPA makes personal contact with owner - provides information about the project and impact on the owner • Brochures about the Uniform Act and the property acquisition process are available from State DOTs or FHWA at www.fhwa.dot.gov/realestate
Just Compensation Offer Established 49 CFR 24.102(d) • LPA must establish amount it believes to be just compensation – before initiation of negotiations • LPA cannot establish an amount less than approved appraisal of the fair market value • LPA official must establish amount believed to be just compensation
Prompt Written Offer to Purchase 49 CFR 24.102(d) • LPA makes a written offer promptly after establishing amount believed to be just compensation • LPA should deliver written offer in person to property owner • LPA may deliver written offer by mail See *Accelerated Negotiations by Mail section below for complete information on this option*
Summary Statement 49 CFR 24.102(e) • LPA must provide owner a summary statement of the amount established as just compensation along with the written offer to purchase – if partial acquisition, state compensation for real property acquired and damages to remainder, if any, separately • LPA must provide description and location of the real property and the interest in real property to be acquired • LPA must identify buildings, structures and other improvements which are included as part of offer of just compensation • LPA must also provide a summary statement to the tenant owner of any buildings, structures or other improvements affected by acquisition
Basic Negotiation Procedures 49 CFR 24.102(f) • LPA makes all reasonable efforts to contact owner or owner's representative to discuss offer • LPA explains basis for the offer of just compensation • LPA explains acquisition policies and procedures • LPA gives owner reasonable opportunity to consider the offer and present material which owner believes is relevant to determining value of property – may include owner obtaining his own appraisal • Federal Regulations describe reasonable opportunity to afford the owner a minimum 30-day period to consider LPA's offer, depending on circumstances – regardless of project time pressures, LPA must afford property owners this opportunity • LPA gives owner opportunity to suggest modifications in proposed terms and conditions of purchase • LPA must consider any information brought forward by owner not considered during appraisal

Negotiations by Mail
(Certified Mail, Return Receipt Requested)

- Alternative method when property owner is not available for personal contact
- Optional approach may involve complete negotiations by mail with no personal contact, or a limited use, such as the first offer by mail and follow-up personal contact
- LPA should honor reasonable requests for personal contact from property owner

This process may not be used on parcels that require relocation.

No Coercive Action
49 CFR 24.102(h)

- LPA conducts negotiations without any attempt to coerce the owner into reaching a settlement
- Avoid using condemnation as a threat

90-Day Notice
49 CFR 24.203(c)

- All occupants receive minimum of 90 days written notice before Agency can require they vacate
- If residential occupant, 90-Day Notice is not valid without prior or accompanying notice/offer of comparable replacement housing

Payment Before Possession
49 CFR 24.102(j)

- Before owner can be required to surrender possession of property, LPA must pay for property, either through a negotiated settlement/closing or condemnation proceedings

Conflict of Interest
49 CFR 24.102(n)

- Appraisers, review appraisers or preparers of waiver valuations can only negotiate for real property for which they made an appraisal, appraisal review or waiver valuation if the offer is $10,000 or less

Documentation of Negotiations
49 CFR 24.9; 23 CFR 710.201(f)

- LPA Agent (staff or contract Agent) must conduct negotiations in an appropriate manner and document the negotiations in log or diary
- Negotiator should maintain adequate records of negotiations or other contacts for every parcel
- Records should be written in permanent form and completed within a reasonable time after each contact (date, place, parties of interest contacted, offers made, counteroffers, list of reasons settlement could not be reached, any other pertinent data), dated and signed by negotiator
- Record contained in the log may assist in determining prospects for administrative settlement – if negotiations are unsuccessful, the record should contain documentation of negotiator's recommendation for appropriate future action

Administrative Settlements
49 CFR 24.102(i)

- Agency official approves settlement as reasonable, prudent and in the public interest
- Federal-aid participation requires written justification supporting the settlement
- Examples of issues appropriate to consider in administrative settlements:
- Information contained in all available appraisal reports, including the owner's
- Substantial differences of opinion regarding valuation issues, such as the determination of highest and best use
- Complexity of severance or other issues leading to uncertainty in value
- Handling of legal issues in approved appraisals
- Consideration of time to anticipated title transfer date
- Likelihood of jury sympathy for the owner
- Possibility of obtaining an unbiased jury
- Recent court awards for eminent domain takings in the geographic area of the acquisition
- Credibility of expert witnesses
- Potential costs of litigation

RESIDENTIAL INTERVIEW GUIDE

General Information

What is your name?

What is your address?

How long have you lived here?

ls this your primary residence/domicile?

If not, what is your permanent address?

What are your telephone numbers? (home, work, cell)

Do you have an email address?

What is your preferred method of contact (phone/email, etc.)

Do you own or lease this residence? (if owner, when did they purchase)

Who is the head of household? (age, gender)

Who else lives in the household or residence?

- Name
- Age
- Gender
- Relationship
- Social Security Number
- Work or school location
- Distance to work or school
- Method of travel to work or school

Do they live here full-time?

Do you have any pets?

Do you identify with one of the following ethnic categories? (required by Title VI)

- Hispanic or Latino
- Not Hispanic or Latino

Do you identify with one or more of the following race categories')

- American Indian/Alaskan Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

Subject Property Information

What is the building type?

- Single family (single story, two story, split level, basement, other)
- Duplex
- Multi-family (triplex, four-plex, apartment)
- Mobile home (make, size, serial number)
- Condominium
- Recreational vehicle
- Condition of property (excellent, good, fair, poor)

What is the total square footage?

How many total rooms does the dwelling have?

- Living room
- Dining room
- Combo living/dining
- Kitchen
- Family room
- Recreation room
- Number of bedrooms
- Number of baths
- Utility room
- Garage/carport
- Number of utility buildings

Are there any major site improvements or major exterior attributes?

What is the neighborhood type?

What is the distance to public transportation?

Does the household use public transportation?

What is the distance to shopping?

What is the distance to church?

How many cars and other transportation vehicles are in the household?

Is there any personal property on the premises owned by anyone other than the occupants?

Is the dwelling DS&S? If not, why not? (This question will be addressed by the agent, not the displaced person.)

Financial Information

Owner

What type of loan do you have on the property?

What is your remaining mortgage balance, interest rate, remaining term, monthly principal and interest payment for your mortgage?

How much are your taxes and insurance?

What is your loan number and your lender's name and contact information?

Tenant

What is your current monthly rent payment?

Are you currently receiving government housing assistance?

(Section 8, Housing Choice Voucher, Disaster Housing Assistance, other)
If so, what organization provides this assistance to you?

To whom do you make your monthly rental payment?

How much are your monthly utilities?

- Heat
- Electricity
- Water
- Sewer

Are utilities included in the rental payment?

Did you pay a security deposit? If so, what was the amount?

What is the gross income for the household?

What is the source of income for the household?

- Wages
- Social security
- Retirement
- Other

Replacement Property Preferences

- Do you prefer to rent or purchase your replacement dwelling?
- What type of property would you like to occupy?
- Single family
- Duplex
- Multi-family (triplex, four-plex, apartment)
- Mobile home (acreage, number of acres)
- Condominium
- Build replacement
- Retain/move subject dwelling

ls there a particular area where you would like to live?

Are you interested in receiving government housing assistance?

Special Family Needs

Does anyone in the household have certain needs or concerns that should be considered?

These needs can include:

- Disability issues/service animals
- Medical issues/needs
- Special education needs
- Care of another family member nearby
- Financial issues
- Criminal background
- Limited English proficiency (what language is comfortable for you?)
- Persons not lawfully present in the US.

BUSINESS DISPLACEMENT INTERVIEW GUIDE

General

What is the name of the business?

How long has the business been in operation?

How many years at this location?

Do you own or lease this site?

If leased, may I have a copy of the lease?

What is the ownership or structure of the business? (check one)

- Sole proprietorship
- Family business
- Partnership
- Corporation
- Limited Liability Company
- Institution

What type of business is conducted at the location and what are the general characteristics of the business?

- Manufacturing: What type of product'[1] What is the source of materials? Describe manufacturing process.
- Wholesale: What is the product mix? What are the transportations requirements?
- Retail: What is the type of business? Does it have a specialty clientele?
- Service business: What is the service? Who are the clientele? What is the competition?

How many employees are employed at this location?

What is your payroll?

What are your gross revenues?

Replacement Site Requirements

Do you have special requirements related to a replacement site?

Do you require a septic building type or have special building requirements?

What are the zoning and permit requirements for a replacement site?

Do you have preferences regarding location, price, terms, and future expansion capabilities of the replacement site?

What are the parking requirements for the new facility?

Do you anticipate costs to adapt a new location to your current requirements?

Other issues to be asked about may include:

Street accessibility for walk-ln trade or delivery

Rail access

Access to specialized utilities; high consumption, large disposal requirements

Landscaping

Structural capacity

Traffic requirements

Personal Property issues

Do you anticipate the need for assistance in planning the move of your personal property?

Do you think you would use a commercial mover to move the personal property or conduct the move yourself?

Are there items of personal property (machinery and equipment) that would require; a specialist to reinstall at the new site?

Do you lease any of your personal property from another party? If so, what are the terms of that lease? Does it require the lessor to move the personal property or oversee the move of the property?

Would you walk through the property with me and identify those items of personal properly that belong to your business?

ls there any personal property on the site owned by anyone other than you?

Have you made any improvements to the property that you intend to take with you to the replacement property (shelving, lighting, display cases, etc.)? Is the owner in agreement with the move of the property or are these conditions specified in the lease?

Do you plan on upgrading or modernizing your equipment?

Is there equipment that you own that you do not need to move to the replacement site?

Other issues

How long do you think it will take you to vacate this site?

Is there any seasonal component to your business that would impact the time it takes you to move?

Have you begun looking for a replacement site? What general area do you plan to relocate to?

Do you anticipate difficulty in finding a replacement site? If so, what do you think are the reasons for this?

The Agency will reimburse your move costs after they are actually incurred. Will you be able to pay for your move costs and then wait for reimbursement? If not, can we identify what payments you might be able to pay in advance?

Do you anticipate losses created by interruption of your business? If so, can we mitigate?

What other increased costs are anticipated, such as taxes, insurance, utilities, transportation, etc.?

How can loss of clientele be minimized?

Do you use or store chemicals at the site? If so, describe contents and nature.

Discuss advisory services and assistance available to search for a replacement site.

BUSINESS INTERVIEW GUIDE ADDENDUM

The following information should be included at a minimum when interviews are conducted with a business owner/operator [Subpart C, 24.205(c)(2)(i)]:

A. The business's replacement site requirements, the current lease terms, other contractual obligations and the financial capacity of the business to accomplish the move.

Issues related to the replacement site might include parking, zoning, building type, special building requirements, taxes, and utilities of the new facility. The owner's preferences should also be explored regarding location, price, terms, and future expansion capability of the replacement site. Some other issues regarding the replacement site might be:

- Street accessibility for walk-in trade or delivery
- Rail access
- Access to specialized utilities; high consumption, large disposal requirements
- Landscaping
- Structural capacity
- Traffic requirement
- Other considerations

Other contractual obligations might relate to the leasing of personal property used to conduct the business and how that will affect the moving of the personal property. The lease may contain a clause stating that the lessor must move the personal property or any warranties will be voided. Since a business is expected to pay for move costs as they are incurred and then be reimbursed by the Agency it is important to determine if the business has the financial capacity to absorb this expense upfront.

B. Determination of the need for outside specialists in accordance with 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

This would involve discussions with the owner about the need for a move planner, whether commercial movers will be required to move the personal property and what type of specialists may be necessary to reinstall the machinery and equipment at the replacement site. A walk-through inspection of the displacement site with the owner would be helpful during the interview to ask the appropriate questions and assist in obtaining the information.

C. An identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

The relocation agent should inquire about items used by the business that may, depending upon the particular facts, be construed as either personal property or real property. (For example, do the tenant installed improvements still belong to the tenant as personal property or have they become part of the real property?) Information may also be contained in the current lease terms to aid in this determination (see Paragraph A). This conforms to the requirement that the appraisal now identify items of personal property. Some agencies are combining the efforts of the appraiser, the relocation agent and negotiator in an initial meeting with the business owner to obtain information about the property and the move.

D. An estimate of the time required for the business to vacate the site.

The agent should ask the business owner approximately how long it will take to vacate the displacement site. This may take into consideration the kind of personal property to be moved, the type of permits needed to begin operating at a new site or the nature of the business itself. If it is a seasonal business, the Agency may not want to require a move at the height of its busiest season.

E. An estimate of the anticipated difficulty in locating a replacement location.

This would involve discussions with the business owner about problems associated with finding a replacement location. The agent may also be aware of some problems already based on data collected in the planning stages. Anticipated problems with permits and zoning may be key issues associated with a replacement location. Businesses like auto repair, auto painting, hazardous waste generators, may have a difficult time finding a location to reestablish.

F. An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

The agent should discuss with the business owner the reimbursement nature of the relocation program. The owner will be required to pay for the move of the personal property and be reimbursed by the Agency. The agent should work with the owner to identify any payments the business may not be able to pay upfront so the Agency can work with the owner to consider alternatives such as direct payments to the mover through an assignment of funds or the need for advance payments as provided under 24 CFR 24.207(c). This identification also ties into the businesses' s financial capacity to accomplish the move under Paragraph A.



Job Aid

Residential Occupants
Owners/Tenants

Actual Cost
Commercial and Self - move
§24.301(b)

§24.301(g)

- Transportation (50 miles)
- Packing/unpacking
- Disconnect/reconnect
- Storage
- Insurance
- Damages
- Other items

Fixed Payments
§24.302

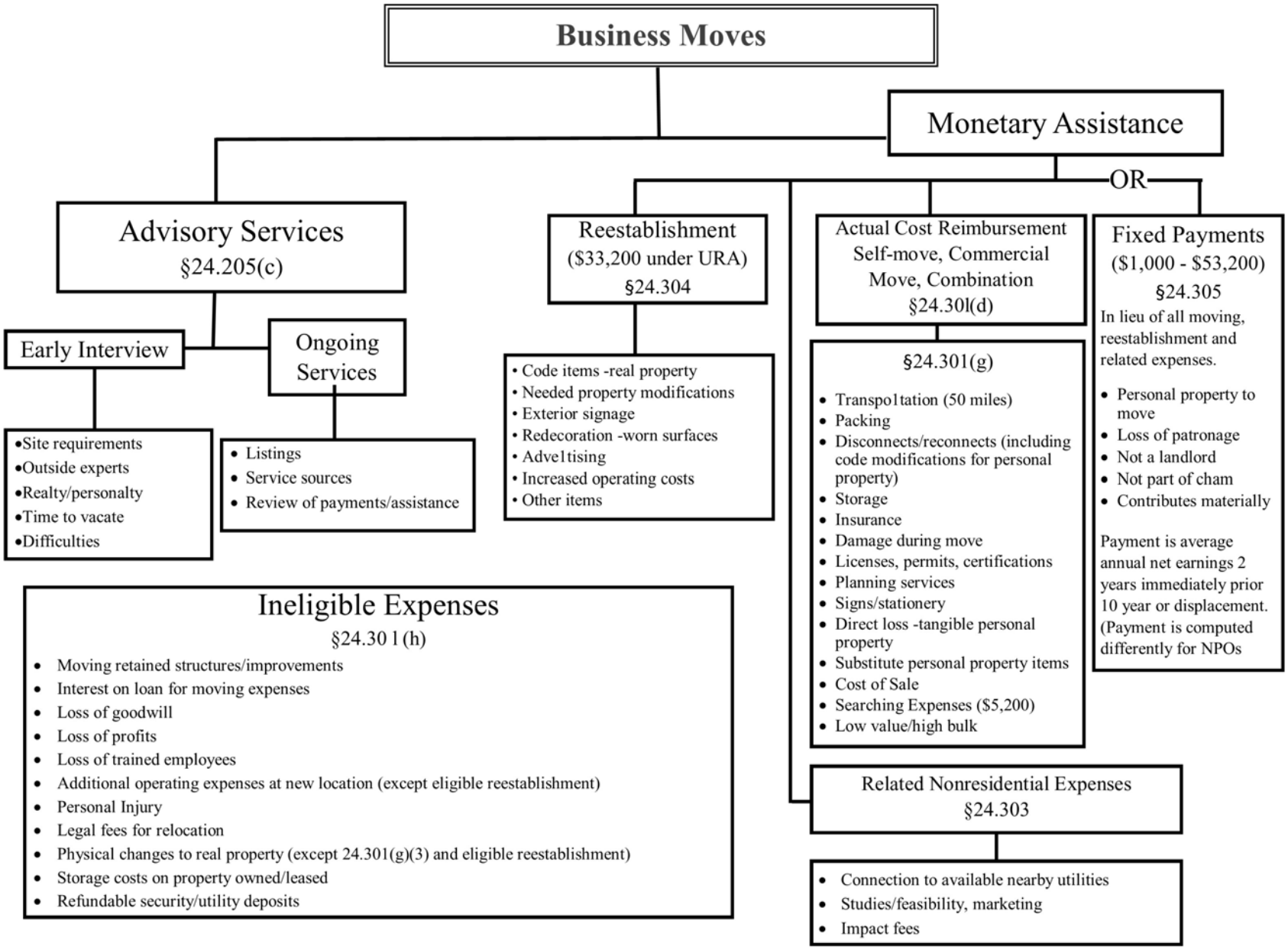
- Room count based on schedule
- Additional "rooms" for extras

Combination without duplication permitted

Ineligible Expenses

§24.301(h)

- Moving retained structures/improvements
- Interest on loans for moving expenses
- Personal injury
- Legal fees for relocation
- Search expenses for replacement dwelling
- Storage costs on property owned/leased
- Refundable security/utility deposits


Business Moves
Monetary Assistance
OR
Advisory Services
§24.205(c)
Early Interview
Ongoing Services
•Site requirements
•Outside experts
•Realty/personalty
•Time to vacate
•Difficulties
• Listings
• Service sources
• Review of payments/assistance
Reestablishment
($33,200 under URA)
§24.304
• Code items -real property
• Needed property modifications
• Exterior signage
• Redecoration -worn surfaces
• Adve1tising
• Increased operating costs
• Other items
Actual Cost Reimbursement
Self-move, Commercial
Move, Combination
§24.30l(d)
§24.301(g)
• Transpo1tation (50 miles)
• Packing
• Disconnects/reconnects (including code modifications for personal property)
• Storage
• Insurance
• Damage during move
• Licenses, permits, certifications
• Planning services
• Signs/stationery
• Direct loss -tangible personal property
• Substitute personal property items
• Cost of Sale
• Searching Expenses ($5,200)
• Low value/high bulk
Fixed Payments
($1,000 - $53,200)
§24.305
In lieu of all moving, reestablishment and related expenses.
• Personal property to move
• Loss of patronage
• Not a landlord
• Not part of cham
• Contributes materially
Payment is average annual net earnings 2 years immediately prior 10 year or displacement. (Payment is computed differently for NPOs
Ineligible Expenses
§24.30 l (h)
• Moving retained structures/improvements
• Interest on loan for moving expenses
• Loss of goodwill
• Loss of profits
• Loss of trained employees
• Additional operating expenses at new location (except eligible reestablishment)
• Personal Injury
• Legal fees for relocation
• Physical changes to real property (except 24.301(g)(3) and eligible reestablishment)
• Storage costs on property owned/leased
• Refundable security/utility deposits
Related Nonresidential Expenses
§24.303
• Connection to available nearby utilities
• Studies/feasibility, marketing
• Impact fees

TIPS ON PERFORMING AN INVENTORY

1. Draw a floor layout. It can be a simple free-hand sketch showing location of major items, access routes, approximate measurements, etc.
2. Take photos of all major items or groups of items.
3. Perform the inventory in cooperation with the business operator.
4. Ask questions about unfamiliar items or intentions of the business: How is this fastened? Can it be dismounted? Do you plan to sell it rather than move it? Etc.
5. Take a physical count of everything. Never rely on a "paper" inventory that many businesses maintain on a continuous basis.
6. Use specific units of measure to describe items or express quantities, such as: 6-8' metal shelves; not six shelves. Use cubic feet (CF), linear feet (LF), pounds lbs), etc.
7. Note the condition of items or special circumstances that are relevant to move method or cost. For example: machine anchoring, delicate glass display racks, machines requiring special leveling and balancing.
8. Don't feel compelled to define special move methods or solve move problems while taking the inventory. This is the task when writing specifications.
9. Note items that are questionable in terms of personal versus real property. Resolve these questions before estimates or bids are secured.
10. Describe items sufficiently so that the mover can identify them. Use headings that will group associated items or major areas of the premises.
11. Remember that anything tangible can be described and quantified so **never accept a business operator's comments that items or materials are too scattered, diverse, disorganized, intermixed, etc. to take an accurate count.**
12. Remember that inventory of any ongoing business will change, sometimes significantly, before the move occurs. Anticipate this by flagging items that you or the business operator think will change.
13. Have the inventory typed. Not everyone can read your handwriting, particularly when a clipboard is used.
14. Ask the business to certify with a signature to the correctness of the inventory as of the date it is performed.
15. Flag items which are potential candidates for direct loss of tangible personal property claim and substitute personal property. Discuss this possibility with the business operator.
16. Perform a final inventory just before the move takes place. **This is a critical task. There should be prior agreement to adjust the move reimbursement (up or down) to reflect significant additions or reductions.**

Tips on Monitoring

1. A pre-move meeting with the mover.
2. Familiarity with the specifications of proposed move plan schedule determined by the mover.
3. On the day of the move, arrive at the scene prior to the movers; is everything ready?
4. Prepare a written report including arrival time of movers, type of equipment, level of manpower, note the name of supervisor, breaks, lunch, and departure time.
5. Monitoring at origin and destination simultaneously using two agents.
6. Note departure and arrival of each load.
7. Note unusual occurrences.
8. How effectively is manpower and equipment being used?
9. Is the business owner providing supervision, manpower or equipment?
10. Note any item that might cause a significant change in the cost.
11. Situations where it is important to have monitoring in place:
    a. There is a wide variance in bids or the displacee performing a self-move feels the bid was incorrect
    b. There is a potential for inventory changes
    c. The "Time and Materials" basis or Estimate basis is used
    d. Possible litigation or appeals are anticipated

Uniform Act Frequently Asked Questions (As of April 22, 2025)

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)

Frequently Asked Questions (FAQs) on 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

There have been changes to this subpart. A side-by-side comparison of these changes is available.

1. What is the Uniform Act?

It is the short name for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. This law was enacted as Public Law 91-646, and brought a minimum standard of performance to all Federally funded projects with regard to the acquisition of real property and the relocation of persons displaced by the acquisition of such property.

2. Has it been amended since passage?

Yes, there have been several amendments over the years, with the most significant taking place as a part of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

3. Where can I find the law and the rules created to carry out the law?

The law is codified in 42 U.S.C. 4601 et seq. The regulation governing the law is found in 49 CFR, Part 24. There may be other laws, regulations, policies and procedures established by agencies that elaborate or expand upon these minimum standards. Links to the basic law and regulation can be found at https://www.fhwa.dot.gov/hep/guidance/.

4. Which Federal agencies must abide by the provisions of the Uniform Act?

All acquiring agencies meeting the definition set out in Section (§) 24.2(a)(1)(iii) are required to comply with the Uniform Act and the implementing regulation, 49 CFR Part 24.

5. Does the Uniform Act apply to local agencies or third parties who acquire properties in advance of federal authorization or a federal project designation?

The funding agency will review such acquisitions to determine if the intent of the acquisition was for a federally funded program or project, in which case the provisions of the Uniform Act and the implementing regulation apply.

Subpart A - General (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

6. Appendix A. The word "should" is used. Does this mean that the appendix provisions are suggestions rather than requirements?

Appendix A is an integral part of the regulation. While it does not impose additional mandatory requirements, it provides important guidance and information concerning the purpose, intent and implementation of many of the provisions in the regulation. "Should," when used in the appendix to describe a mandatory requirement of the regulation, cannot alter or reduce that requirement. When used to provide guidance, it explains how a regulatory provision is to be implemented under most circumstances.

7. §24.2(a)(6). In localities where houses sell for a premium over the list price, can the relocation agent adjust the relocation housing payment to account for this premium?

The regulation does not call for adjusting the asking price, either upward or downward. The regulation does say the comparable must be available. If a comparable is not available for the amount calculated, a new calculation may be in order.

8. §24.2(a)(6)(ix) and appendix A, Subpart A, §24.2(a)(6)(ix). Can the displaced occupant of a public housing unit be offered other public housing units as comparable replacement housing?

Yes. A person displaced from a public housing project may be offered a comparable public housing unit as a replacement dwelling or they may be offered a unit subsidized under another housing program, e.g., Section 8 Housing Choice Voucher. Only if no subsidized housing is available should a subsidized tenant be offered a non-subsidized unit as a comparable. A person who is displaced from subsidized housing and placed in private-market housing will potentially lose the security of affordable housing after the 42-month Uniform Act payment is exhausted. While the Uniform Act replacement housing payment softens the blow of a move, after the payment is exhausted a formerly-subsidized tenant may not be able or eligible to return to subsidized housing, either because no subsidized units are available or because their income exceeds the admission income limits. For this reason, every effort should be made to find another subsidized unit as replacement housing so that the tenant will continue receiving the housing subsidy as long as it is needed.

9. §24.2(a)(8). Can an eligible displaced person ever occupy a non-decent, safe and sanitary (DSS) replacement dwelling and still receive a replacement housing payment?

No, unless one or a very few of the DSS conditions listed in §24.2(a)(8) were waived under §24.7 or §24.2(a)(8), so that the dwelling could then be considered to be DSS. However, all the DSS conditions could not be waived.

10. §24.2(a)(9)(A). Can an eligible displaced person be paid relocation benefits prior to completion of negotiations or acquisition of the property that they occupy?

Yes. Persons who move as a result of the initiation of negotiations are eligible displaced persons entitled to benefits and should be paid promptly. Payments to such persons are eligible for Federal funding or reimbursement at the time that residential occupants move to DSS dwellings adequate to accommodate them or non-residential occupants vacate the property

11. §24.2(a)(15)(iv). What do I look for in determining whether there is a written agreement that meets the definition of initiation of negotiations in order to establish tenant eligibility for relocation payments?

The written agreement must bind the agency to purchase the property from which a tenant would be displaced. That is, both the agency and the property owner are subject to legally enforceable commitments to proceed with the purchase.

Subpart B - Real Property Acquisition (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

12. Subpart B. The preamble to the revised regulation published January 4, 2005, states that the FHWA decided to retain the term "fair market value" throughout Subpart B except for §24.101(b)(1) and (5). Yet the term "market value" appeared in the final regulation in a number of other places, including§24.102(d) and (j), §24.103(b), and §24.105(c). Which is correct?

The preamble is correct. The FHWA published a technical correction on Monday, May 2, 2005, in the Federal Register (70 FR 22610) that resolved the problem by changing the term to "fair market value" in all parts of the regulation except §24.101(b)(1) through (5).

13. §24.101, §24.108, and Subpart E. If property is acquired through donation, exchange, or some method other than purchase, are the occupants entitled to relocation assistance and payments for vacating the property?

The occupants are eligible as "displaced persons" if they meet the definition of a displaced person [24.2(a)(9)].

14. §24.101(a)(2) and §24.101(b)(1) through (5). If a Federal agency operating in accordance with §24.101(a)(2), or an agency acquiring in accordance with §24.101(b)(1) through (5), will not acquire a property except through amicable negotiation, is the owner entitled to relocation assistance? Are tenants on such properties eligible for relocation assistance?

Owners of such properties are not displaced persons. Tenants of such properties are eligible for relocation assistance and benefits.

15. §24.102(b). Can the required early notice be provided at a public meeting? When is the best time to give this notice?

No. When property is to be acquired, each owner should be notified in such a way that an administrative record exists to attest to the delivery to the owner. There is no assurance when using a public meeting that all affected owners will be present and each owner is due the courtesy of receiving a timely notice of the agency's intent. The notice should be provided as early as possible, when it is known a property interest will be acquired, and no later than when the appraisal or waiver valuation assignments are made.

16. §24.102(c)(2)(ii)(C). Is a §24.7 waiver required to provide a waiver valuation, rather than an appraisal, for properties estimated to be worth over $10,000 and up to $25,000?

No. §24.102(c)(2)(ii)(C) contains its own waiver provision that specifically permits the use of the waiver valuation for these properties provided the Federal funding agency approves the higher threshold beyond $10,000 and the agency agrees to offer the owner the right to have an appraisal prepared.

17. §24.102(c)(2)(ii)(C). If an agency routinely uses waiver valuations on properties with an estimated value of up to $25,000, does it have to offer an owner the option of receiving an appraisal if the property being acquired was estimated to be worth $3,000? How should agencies document that they have offered a property owner the option of having the property appraised and the owner has elected not to have an appraisal prepared?

No, the agency does not need to offer the owner an appraisal if the estimated value is under $10,000. The owner must be offered the option of receiving an appraisal, prior to using the waiver valuation, if the property is estimated to be worth more than $10,000, up to a maximum of $25,000. No set form of documentation is prescribed. However, to be consistent with other property contact requirements in the regulation, the agency should offer the option to have the property appraised to the property owner in writing (when over $10,000), and obtain a written response from the owner. An agency must maintain adequate records, as set out in §24.9(a), in sufficient detail to demonstrate that it offered the owner the option of receiving an appraisal for the property.

18. §24.102(c)(2). What constitutes a knowledgeable person who is qualified to prepare waiver valuations?

The regulation calls for a waiver valuation preparer to have sufficient understanding of the local market. The funding agency may issue further guidance, however, it is expected that the person will be knowledgeable of local real estate sales.

19. §24.102(f). If the waiver valuation preparer makes an $8,000 offer and the owner makes a counter offer for $10,000, can the waiver valuation preparer/negotiator adjust the amount of the waiver valuation?

Yes, if market data supports such a change.

20. §24.102(i). If there is no market data to support an adjustment to the waiver valuation amount, can an administrative settlement be considered, even if the administrative settlement amount is over $10,000?

Yes, if justified and in accordance with the funding agency's approved procedure. Safeguards should be considered when the waiver valuation preparer is the negotiator and recommends an administrative settlement. It is appropriate to have a different agency official approve the administrative settlement. This can be accomplished in a cost effective manner, such as by phone, fax, or email. Administrative settlements may also be used if the funding agency is operating at the $25,000 waiver valuation level. It is not necessary to complete an appraisal in these situations.

21. §24.102(d). Who determines the offer of just compensation for the property to be acquired?

The agency determines the just compensation amount to be offered the property owner in a two-step process. An appraiser researches the real estate market and presents an appraisal of the fair market value. A review appraiser evaluates that appraisal and recommends an amount for an agency official to approve as the agency's estimate of just compensation. For some uncomplicated, low value acquisitions, the agency may determine an appraisal is not required and prepare a waiver valuation that will be the basis upon which an agency official will approve the offer of just compensation.

22. §24.102(d) and §24.102(g). Must all offers by an agency to acquire property be made in writing?

The first time an agency makes an offer to purchase; it must be in writing and be in the full amount approved by the agency as its estimate of just compensation. Subsequent formal offers and notices are also required to be in writing. This does not preclude the use of verbal value discussions during negotiations to arrive at an agreed purchase price for the property, depending upon agency policy and applicable law.

23. §24.102(i) and §24.102(j). What if the owner doesn't agree with the amount offered? Is condemnation the only solution when an agency can't reach agreement on the purchase of property for the project?

The possibility of an administrative settlement should be explored, reference §24.102(i). Agency officials may approve the use of an administrative settlement if it is reasonable, prudent and in the public interest. Agencies may also use other alternative dispute resolution options, such as mediation or arbitration. If all efforts to negotiate/settle fail then the laws of the agency set forth the legal steps the agency must take when they wish to purchase property that an owner does not want to sell.

24. §24.102(f). Can property owners provide their own appraisal to the acquiring agency?

Yes. The agency should consider all relevant information in its negotiations with property owners.

25. §24.102(f). Which agency official is authorized to make the final settlement offer?

This is a matter of agency policy, as well as laws governing the agency. The regulation does not address or require a final settlement offer. The agency is required to consider valuation information and suggested modifications provided by the owner.

26. §24.102(j). When should property owners be paid for their property?

Property owners should be paid as quickly as possible under the applicable laws, on or before the time the owner is required to give up physical possession. This must occur when the property owner transfers title. The agency should work with the property owner to resolve any liens against the property.

27. §24.102(j). When can a property owner be required to turn possession of the property over to an agency?

A property owner may voluntarily turn control of his or her property over to an agency at any mutually agreeable time. An agency may not require a property owner to give them possession until the sale of the property is complete, payment is made and title transferred. In the case of property used for business, residence, or farm, the owner must be given the 90-day notice in writing. In situations where condemnation is necessary, the laws governing the agency set forth the steps the agency must take to gain legal and physical possession. As in negotiated settlements, the 90-day notice on occupied property further governs the physical possession date.

28. §24.102(n). Do the conflict of interest provisions in 49 CFR §24.102 apply to consultants?

Yes. §24.102(n) applies to all acquisitions that are subject to the Uniform Act acquisition requirements, including those undertaken by consultants. The intent of §24.102(n)(2) is to insure appraiser independence and to shield appraisers from inappropriate influence. In the case of an appraiser who is hired by an agency or a consultant, the agency or consultant may not attempt to influence or coerce the appraiser regarding valuation, or any other aspect of an appraisal, review or waiver valuation.

29. §24.102(n)(2). What does conflict of interest mean?

The purpose of this section is to assure the agency has a valid approved appraisal, or, if appropriate, waiver valuation, that represents the fair market value for the needed real property. It is intended to prohibit

attempts to coerce the appraiser or review appraiser to meet a certain target or "pre-agreed-on" value to be reported as the approved appraised value to support a contrived determination of just compensation to be offered a property owner. To prevent this, each situation needs to be evaluated on a case-by-case basis. It is critical to prevent inappropriate influence on the valuation process that leads to, and results in, the initial offer of just compensation. To accomplish this, it is necessary for the appraiser and review appraiser's first-line supervisor to be independent of the negotiation process and not function as a negotiator. Conversely, any person functioning as a negotiator is prohibited from being the appraiser or review appraiser's first-line supervisor.

For the FHWA, "functioning as a negotiator" means initiating price negotiations with the property owner. It does not include occasional involvement in subsequent negotiations by senior level personnel. For the FHWA, "supervise or formally evaluate the performance," refers to the first-line supervisor.

When an agency has contracted, or a consultant has subcontracted, with an appraiser, review appraiser, or waiver valuer, there may not be a typical supervisory relationship. Nevertheless,the conflict of interest provision applies. The person who the contract appraiser, review appraiser, or waiver valuer is responsible to on an operational basis may not be the negotiator, or attempt to influence or coerce the appraiser, review appraiser or waiver valuer regarding valuation, or any other aspect of an appraisal, review, or waiver valuation process.

30. §24.102(n)(2). Does the conflict of interest provision preclude an upper level agency manager, director, or other agency administrative settlement official, who technically is the "supervisor" over the appraisal/appraisal review section, from negotiating a claim for an administrative settlement or appeal?

No, as long as the person is not the individual appraiser, review appraiser or waiver valuer's first-line supervisor, or the supervisor is not the person initiating price negotiations with the property owner. There is no restriction against higher-level supervisors being involved in the later stages of negotiation.

31. §24.102(n)(2). Is this waiver, and the exception in §24.102(n)(3), related to the general waiver provision in §24.7?

No. §24.102(n)(2) provides that a person functioning as a negotiator may not supervise or formally evaluate the performance of an appraiser or review appraiser except that, on a federally assisted project, the Federal funding agency may waive the application of this requirement to an acquiring agency if the Federal agency determines it would create a hardship for the agency. This is intended to accommodate a Federal aid recipient with a small staff, where this provision would be unworkable. §24.102(n)(3) provides that an appraiser may be permitted to act as a negotiator if the offer to acquire the property is $10,000 or less. Because of the specific language in §24.102(n), an agency can exercise the waiver described in §24.102(n)(2), or the $10,000 or under exception in §24.102(n)(3), without recourse to the general waiver provision provided for by §24.7.

32. §24.103. What does "consistent" mean with respect to the appraisal criteria and the provisions of Uniform Standards of Professional Appraisal Practice (USPAP)?

The appraisal criteria in §24.103 are considered to be consistent with USPAP. Both are designed and intended to produce accurate valuation information. §24.103 and the rest of the regulation implement the Federal statutory requirements in the Uniform Act that specifically apply to the acquisition of real property for Federal and federally assisted projects. Those statutory requirements, and their implementing regulations, are not exactly the same as the USPAP provisions, but are generally similar and compatible. This subject was carefully considered during the development of the regulation, and is discussed in some detail in appendix A, §24.103(a).

33. §24.103(a). How does the scope of work requirement relate to abbreviated appraisal formats?

The scope of work requirement applies to all appraisal formats. The extent of the scope of work statement depends on the circumstances of each acquisition. Additional scope of work guidance is provided in appendix A §24.103(a). The scope of work statement should consider the five specific requirements in §24.103(a)(2)(i) through (v), and address them as appropriate. A scope of work is not required for a waiver valuation because a waiver valuation is not an appraisal.

34. §24.103(d). Who are qualified appraisers?

Qualified appraisers are those determined by the agency to be capable to perform the appraisal work needed. The regulation requires agencies to establish criteria for determining qualifications and competency. Only

those appraisers and review appraisers who meet those requirements should be hired. The regulation lists several standards the agency shall review when determining an appraiser or review appraiser's qualifications.

35. §24.103. Are contract (fee) review appraisers required to have a state certification or license in the same manner as is required of contract (fee) appraisers?

No. However, the FHWA encourages partner agencies to include State certification or licensing as a factor to judge the qualification of the review appraiser. If contract (fee) review appraisers are used, the regulation only requires the agency to match the review appraiser's qualifications with the scope of work of the appraisals he/she reviews. Selection of the appraiser is an agency decision.

36. §24.103(a)(2)(i) and appendix §24.103(a)(1). Does the requirement to include items identified as personal property and real property, as part of an adequate description of the property being appraised, require the appraiser and relocation agent to prepare lists of both real and personal property for residential and commercial property?

The intent of this provision is to avoid situations where an item is included in the appraised value and subsequently also relocated at agency expense. To avoid this, the appraiser and the relocation agent should agree on which questionable items are to be appraised and which are to be relocated. The personal property items included in the appraisal should be listed in the appraisal report. This should be done in all situations, whether the property is residential, commercial, or other use, where there is a question how a particular item is to be handled.

Items of real property being appraised should identify ownership, i.e., tenant-owned or lessor-owned, if applicable. The relocation advisory services interview with business owners should address and resolve these issues.

37. §24.104.Is the review appraiser acting as an appraiser under USPAP? How do USPAP standards apply?

For appraisal review activities related to acquisition performed under the Uniform Act, all of the review appraiser's actions are specified by, and are considered to be part of the appraisal review process required by 49 CFR Part 24. Note that, even though §24.104 does require the review appraiser to comply with §24.103 appraisal requirements when developing an independent approved or recommended value, it also specifically cites this work as being part of the review itself. USPAP is not an appropriate measure of the review appraiser's activities.

Compliance with USPAP standards is not required by this regulation. Appraisal and appraisal review reports are to be prepared in accordance with the Uniform Act regulation, which the FHWA believes is consistent with, but not necessarily identical to, USPAP. The FHWA believes that appraisal reviews performed in compliance §24.104 requirements do comply with USPAP Standard 3.

38. §24.104(a).Can a fee review appraiser approve the appraisal or just recommend it?

A fee review appraiser, or any review appraiser, may recommend an appraisal, as the basis for establishing the amount believed to be just compensation by the agency. However, based upon the language in the Uniform Act, Section 301(3), the approval of the appraisal must be by the agency, that is to say, an in-house approval.

Any review appraiser may also accept the appraisal as meeting all requirements but not select it as recommended. This may be appropriate when there are multiple appraisals, or determine the appraisal to be not acceptable. Only an agency staff employee, including a staff review appraiser, may be authorized by the agency to approve the appraisal as the basis for establishment of the amount believed to be just compensation. Such employee may, if authorized, develop and report the amount believed to be just compensation.

39. §24.104(a).What constitutes a review appraiser's written report? What if there are multiple appraisals? Is a stamp and signature procedure sufficient, and if so, would it raise USPAP issues?

The review appraiser's written report must identify the appraisal reports reviewed, identify any damages or benefits to any remaining property, document the findings and conclusions arrived at during the review of the appraisals, and provide a signed certification that states the parameters of the review and the approved value. If authorized to do so, the review appraiser's certification shall establish the amount believed to be just compensation.

The review appraiser shall identify each appraisal as recommended, accepted, or not accepted. Each appraisal reviewed should be identified in the review appraiser's report. A stamp (recommended, accepted, or not accepted) and a review appraiser's signature would not be sufficient to satisfy §24.104(c) requirements. However, as described in the appendix, for a low value property requiring only a simple appraisal process, the review appraiser's recommendation and/or approval, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

40. §24.103(a)(2)(iii). Is the requirement to verify property sales information by a party involved in the transaction limited to the grantor or grantee?

Sales verification is an essential part of the research underlying the data used to support an appraisal and the degree of inquiry should be commensurate with the scope of work of the appraisal assignment. Verification can be with any party involved in the transaction that has sufficient knowledge of the specific components of the sale to provide insight into the considerations and motivations that lead to the agreed upon sale price at the date of sale.

41. §24.102(f) Can an agency use the Global Settlement method when negotiating the acquisition of property for federal and federal-aid projects? This method as currently defined is the combining of just compensation for acquired real property including incidental acquisition expenses and all relocation benefits in the offer of settlement by the acquiring agency. In most acquiring agencies this settlement offer is made prior to the expenditure of relocation expenses by the property owner or tenant?

The Uniform Act and implementing regulations in 49 CFR Part 24 require that certain incidental expenses and relocation benefits including relocation housing payments be based on actual costs. These costs are not generally available at the time negotiations for the real property are completed by acquiring agencies. In addition, most residential moving costs and many business moving expenses must also be based on actual expenditures. FHWA is requesting proponents of the Global Settlement method to provide an explanation of their proposed use and the perceived advantage/s of using this settlement concept. When we receive supporting information on their proposed methodology we will determine if their proposals can meet current Uniform Act and regulatory provisions.

Until such a determination is completed, the use of Global Settlements on federal and federal-aid projects is not permitted.

Subpart C - General Relocation Requirements (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

42. §24.203. How early can the agency give a 90-day notice. Does it have to be written?

The notice must be in writing and can be given at the initiation of negotiations or later, providing at least 90 days advance notice of the specific date possession will be required. When given at the initiation of negotiations it will include an assurance that another notice will be given at least 30 days before the property needs to be vacated. This latter date shall not be any earlier than the date provided in the initial 90-day notice.

43. §24.203. Is there a requirement to give illegal aliens a 90-day notice?

The regulation prohibits Federal participation in relocation payments or relocation advisory services to illegal aliens but does not prohibit notices. Often illegal aliens and legal residents reside together. Giving every resident, legal and illegal, the 90-day notice will assure compliance with the Uniform Act.

44. §24.203 and §24.5. Is an agency required to prepare a relocation brochure?

A relocation brochure is not required; however, each displaced person must be provided a general written description of the agency's relocation program. Brochures are very effective for providing accurate general relocation information in a uniform manner. It is strongly recommended that each agency have brochures available to furnish displaced persons at the initial contact and to the public, as appropriate.

The FHWA relocation brochure https://www.fhwa.dot.gov/real_estate/publications/your_rights/ is available for this purpose. Translation of relocation notices and brochures to another language may be appropriate to assist displacees in understanding their rights and benefits. Several Spanish brochures and notices can be found on HUD's website at https://www.hud.gov/program_offices/comm_planning/library/relocation. Where translation

45. §24.203(d) and §24.2(a)(9)(i)(A). Can an agency issue a notice of intent to acquire a parcel in order to establish a date of eligibility for relocation benefits prior to the initiation of negotiations?

Yes. Eligibility for benefits can be established prior to the initiation of negotiations by issuing a notice of intent to acquire to a person who will be displaced by a program or project.

46. §24.203(b). Can an owner of a property to be acquired prevent the agency from contacting the tenants of the property?

An owner may not prevent authorized agency employees from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The agency should advise the owner that it is better to explain to the tenants the requirements and obligations for the eligibility for benefits and to advise them there is no rush to relocate. In situations where the owner is concerned the tenants will move and there will be loss of rental income, the agency may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

47. §24.203(c). Must the agency restart the 90-day clock if the original comparable replacement dwelling has been sold?

No. The 90-day time period continues to run without interruption. However, if the original comparable dwelling is no longer available, the agency must assure itself that equally comparable dwellings are still available in the same price range. If the agency finds it necessary to initiate eviction actions, its records must contain sufficient documentation to confirm that a comparable replacement dwelling is available for occupancy.

48. §24.204. Can the agency reduce the relocation payment offer if, after 90 days have passed, the displaced person has not acquired replacement housing and the agency locates another comparable dwelling that is available for less than the comparable used for the offer?

Yes. If the displaced person has made little or no effort to acquire a replacement dwelling, it would be permissible, after a reasonable period of time, to reduce the offer if a less-expensive, comparable dwelling becomes available. If an agency elects to lower a payment offer, it should document the files with the rationale and make every effort to avoid acting in a coercive manner.

49. §24.205. How does a Federal funding agency insure that an agency is engaged in relocation planning and providing the advisory services described in this section? How does an agency demonstrate compliance?

The regulations do not prescribe any particular form of monitoring or recordkeeping. §24.4(b) requires that Federal agencies shall monitor compliance with the regulation, and, if necessary, apply sanctions in accordance with applicable program regulations. Compliance with all aspects of the Uniform Act should be part of a Federal agency's overall program management and oversight functions. §24.9 requires that agencies maintain adequate records in sufficient detail to demonstrate compliance.

50. §24.205. Does lack of cooperation on the part of the displacee relieve the agency of its obligation to provide required relocation advisory assistance?

The agency must provide notices and advisory services to all displacees. All contacts and efforts to contact a displacee must be documented in the agency files. The agency is not relieved of its responsibility regardless of displacee cooperation. In some cases, the relocation agent should seek advice early in process from legal counsel.

51. §24.205(c)(2)(i). When should an agency conduct the interview with owners of businesses and provide the other advisory services? How can agency compliance be documented?

General information can be included in a relocation plan, survey or study, §24.205(a), or in an environmental document. Interviews with business owners and early advisory services are an important part of relocation planning, and are intended to facilitate the successful reestablishment of the business. Interviews should be conducted with enough lead-time to maximize the likelihood that information obtained from the interviews can assist in the successful relocation of the business. An agency can conduct more than one interview with a business. The timing of the business interview(s) and planning may depend on the nature of the business and kind of issues involved in its relocation. While no particular documentation is prescribed, an agency must maintain adequate records in sufficient detail to demonstrate compliance.

52. §24.205(c)(2)(ii)(E). Since agencies are required to provide transportation for displaced

agents are prohibited by agency policy from using a company car for anyone who is not an agency employee? [Private insurance doesn't cover the passenger if there were an accident in their privately owned vehicle.]

The agency needs to assess the needs of the displaced person and develop viable alternatives to meet the needs identified. The agency may need to rent a car for the displaced person, hire someone to take them around (possibly a local realtor), etc. In a rural setting, it may be even more critical to assist a displaced person who has no means of transportation. If the person has their own transportation, the agency may pay for their mileage costs.

53. §24.206. What changes were made in the eviction for cause provision?

A person who is a lawful occupant on the date of initiation of negotiation is presumed to be entitled to relocation benefits, and can only be denied benefits if the person has been evicted under applicable local law prior to the initiation of negotiations, or is evicted "for serious or repeated violation of material terms" of a lease or occupancy agreement, and in either case the eviction is not undertaken to evade Uniform Act obligations. The appendix A clarifies that a failure or refusal to move for a project cannot be considered to be a "serious or repeated violation of material terms" of a lease or agreement for purposes of this section.

54. §24.208. Is there any background or clarification on how I can best stay within the law when my project displaces someone who may not be in the United States legally?

The background and tips for success in this are found in the comprehensive discussion at https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/illegaqa.cfm.

55. §24.208. How should payments be computed if some members of a displaced family are present lawfully but others are present unlawfully?

There are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the RHP would be computed accordingly.

A "pro rata" approach to an RHP calculation disregarding alien status for comparability determination and applying a percentage to the RHP amount based upon the number of legal household members divided by the total number of household members is not permitted (consistent with Public Law 105-117).

- The "pro rata" approach may result in a higher RHP eligibility than the displaced persons would otherwise be eligible to receive.
- The "pro rata" approach of providing a percentage of the calculated eligibility is contrary to the requirements of the Uniform Act and 49 CFR Part 24.

Example:

Household of seven (including one illegal alien individually occupying one bedroom.)
Displacement dwelling - 4 BR unit, with rent/utilities of $1200/month
Housing requirements for all lawful occupants (six) is a 3 BR unit
Comparable dwelling
3 BR unit with rent/utilities of $1300/month
Calculation of RHP under regulations (illegal alien excluded)
$1300 (comparable) - $1200 (displacement unit) = $100 RHP x 42 months = $4,200 RHP

56. §24.208. If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is in not lawfully in the United States, is that person's income excluded from the computation of family income?

No. The person's income is still counted unless the agency is certain that the ineligible person will not continue

higher relocation payment. This is an example of a payment that the illegal alien provision is trying to avoid.

Subpart D - Payment For Moving And Related Expenses (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

57. §24.301. When a business is relocating, for which expenses related to the purchase or lease of a replacement site, can the owner be reimbursed?

A business owner is entitled to compensation for actual reasonable expenses incurred in searching for a replacement site, up to $2,500, including, but not limited to, the expenses described in §24.301(g)(17). These expenses could include costs for the time spent negotiating the purchase or the lease of a replacement site.

In addition, an owner can also be compensated for professional services performed prior to the purchase or lease, to determine the suitability of the replacement site for the business, if the agency determines that they are actual, reasonable and necessary. These services include such things as soil tests or marketing studies, but do not include fees or commissions directly related to the purchase or lease, as covered in §24.303(b).

In other words, reimbursement can be provided for time spent negotiating the purchase or lease as part of the $2,500 searching expenses, and for professional fees to determine the suitability of the site, but cannot be provided for fees or commissions directly related to the purchase or lease.

58. §24.301(d). If a project is not impacting the entire business but only a portion of the business's personal property, is the business eligible for a move payment based on direct loss of tangible personal property or substitute personal property? These options are not listed under §24.301(e), personal property moves.

Yes. While the regulation does not list the tangible personal property or substitute personal property options, they are always available at the agency's option when it makes sense to use them.

59. §24.301(e). What is covered by the "personal property only" moving provision in this section?

This section covers personal property that must be moved for a Federal or federally assisted project, and is owned by a person who is not displaced from a dwelling, business, farm or nonprofit organization. This includes personal property in a mini-storage facility that is being acquired, or personal property located on vacant land that is being acquired.

60. §24.301(g)(3) and §24.304(a)(1). Are costs incurred in complying with OSHA and other code requirements at the replacement location considered eligible costs in situations where the business was not subject to the requirement at the displacement property because of a grandfathered provision?

Modifications to personal property mandated by Federal, State or local law, code, or ordinance that are necessary to reassemble or reinstall the personal property or adapt it to the replacement structure, the replacement site, or the utilities at the replacement site are eligible for reimbursement under §24.301(g)(3). The modifications authorized by this subsection must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment or facility. Finally, expenditures for authorized modifications must be reasonable and necessary.

Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid under §24.304(a)(1) and are limited to the $10,000 maximum payment under this subsection. Any costs in excess of $10,000 are ineligible.

61. §24.301(g)(3). Can the costs of pits, pads, and foundations necessary for the installation of machinery or equipment in the replacement business site be reimbursed as a moving cost?

The costs of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation. Normally, pits, pads, and foundations only add value to a property for a particular business operation and would not generally enhance real property. In the case where the pits, pads and foundations are ascribed a contributory value, then that value may be deducted from the cost of the newly constructed pit, pads and foundations.

62. §24.301(g)(3). Are the costs incurred for site preparation for installing underground tanks eligible moving expenses?

Underground tanks are generally considered realty and purchased as part of the real estate. If under state law, the underground tanks are personal property and will be moved and used at the replacement site, then they can be considered an eligible moving expense.

63. §24.301(g)(11). Are there any limitations on the costs *that* can be reimbursed for licenses, permits, or certifications required of the displaced person at the replacement location?

The costs must be actual, reasonable, and necessary. The licenses, permits, or certification requirementsnecessary to operate the particular business being relocated are eligible for payment as moving expenses. Occupancy permits, licenses and such fees paid for the replacement real property, which were formerly eligible as reestablishment expenses, can now be reimbursed as moving expenses. Reimbursement of actual, reasonable, and necessary costs may be limited to those amounts that are for the remaining useful life of the licenses, etc., at the site acquired.

64. §24.301(g)(14). What changes were made to the provision that covers actual direct loss of tangible personal property?

The wording was revised to clarify that current estimated cost to move and reconnecting an item "as is" at the replacement site will not include upgrades for code requirements. If the equipment is in storage or not being used at the acquired site the estimated cost to move it cannot include storage or cost to reconnect. The intent of the revision of the actual direct loss of tangible personal property provision is to insure the payment is based on the lesser of the fair market value "in place, as is" or the estimated cost to "move and reconnect, as is." The fair market value in place, as is, is based on the current fair market value of the item at the displacement site. The payment shall consist of the lesser of A. or B., as shown in this example:

A. Calculate the amount for the continued use of an item, in place, as is, at the displacement site, and subtract the (net) proceeds from the sale:

Current fair market value of the equipment in place, as is, installed and fully operational	$10,000
Subtract the proceeds from the sale	- 7,000
	$ 3,000

B. The wording in §24.301(g)(14)(ii) was revised to clarify that current estimated cost to move and reconnecting an item "as is" at the replacement site will not include upgrades for code requirements. If the equipment is in storage or not being used at the acquired site the estimated cost to move cannot include storage. Calculate the estimated cost to move and reconnect the item, as is, with no upgrades:

Current estimated cost to move and reconnect, as is with no upgrades for code requirements $ 2,500
Payment is the lesser of A. or B., in this case $2,500.

65. §24.301(g)(14). What is the difference between actual direct loss and substitute personal property?

Actual direct loss is intended to be used by businesses, farms and non-profits that are either going out of business or elect not to move a particular piece of equipment. The payment for substitute personal property is intended to pay for an item that will not be moved, but will be promptly replaced at the replacement site. The payment is the lesser of lesser of A. or B., as shown in this example:

A. Cost of a substitute item	$10,000
Add the cost of installation	+ 1,000
	$11,000
Subtract the proceeds of sale or trade-in	- 2,500
	$ 8,500

B. Cost to move and reinstall the replaced item with no allowance for storage $12,500.
Payment is the lesser of A. or B. above, in this case $8,500.

66. §24.301(g)(17). How early can search costs be incurred by a displaced business and still be reimbursable? Could they be incurred prior to authorization or award of a grant for the project or program? Can search expenses ever exceed $2,500?

While searching costs may be incurred by the displaced business at any time after there is a reasonable expectation that the business will be displaced, the agency cannot reimburse the displaced business for any searching costs incurred until the displaced business qualifies as a displaced business as defined in §24.2(a)(9).

In unusual circumstances search expenses over $2,500 may be reimbursed when the agency verifies that the expenses are justified and obtains a waiver from the funding agency, per §24.7.

67. §24.301(g)(17)(vi). Is a business or farm displacee entitled to payment for time spent negotiating the lease of a replacement site under actual, reasonable moving and related costs? Or does that provision apply only to displacees who purchase a replacement property?

The benefit applies to leases as well as purchases. The list in §24.301(g)(17) provides examples of qualifying costs; it is not an all-inclusive list.

68. §24.301(g)(18). What is low value/high bulk and when should I use it?

Low value/high bulk is an eligible moving expense for certain types of personal property encountered with nonresidential properties. Low value/high bulk materials are items of personal property owned by a displaced business, farm or non-profit organization that the agency determines would cost more to move than replace. Some examples of low value/high bulk materials include but are not limited to stockpiled sand, gravel, metals, etc.

Low value/high bulk may also be applied to personal property only moves in §24.301(e).

The application of the low value/high bulk provision is at the agency's discretion. The agency should only use this provision if it is willing to accept ownership and the ultimate cleanup costs of the material. If the agency opts to offer this provision to the displaced business, the agency makes the decision on whether the material is to be moved to the new location. If the agency determines that the cost to move is disproportionate to the property's value, the moving cost payment shall not exceed the lesser of the value of the property or the cost to move it. It may be in the agency's best interest to have the owner remove it, since the material will have to be removed as a project expense otherwise. Generally, if the agency requires the material to be moved by the owner, then this provision should not be used.

69. §24.301(i). Can the agency withhold payment for a move solely because the displaced person does not provide advance written notice to the agency of the date of the proposed move?

Yes. However, the records of the agency should provide documentation of the advice provided to the displaced person concerning the responsibility to provide notice and the necessity for the notice. Advance notice allows the agency to monitor the move and make reasonable and timely inspection of the personal property at both the displacement and replacement sites. If the displaced business provides verifiable records, bills, and receipts documenting actual expenses incurred and identifies the personal property moved, withholding payment is inappropriate. A displaced person has the right to appeal a decision to withhold payment under §24.10

70. §24.301(d)(2). Should a moving cost estimate prepared by an agency employee be based on the costs charged by a professional moving firm or on the actual costs a displaced person may incur? Is it permissible to negotiate with the owner of a business the amount to be paid to him/her for a self-move?

The moving cost estimate for a non-residential self-move prepared by a qualified agency employee should be based on the cost that would be charged by a professional moving firm. If the estimate includes profit, overhead, or other additional costs that the business will not actually incur, it is permissible for the agency to negotiate a payment for an amount that would reflect the actual costs the business would incur in the move. This procedure does not preclude the owner from electing to make an actual cost, documented self-move.

71. §24.301(g)(4). Is storage of personal property an entitlement of every displaced person? Who determines if an agency should pay for the storage of personal property, the terms of such storage, and the length of time for storage payment?

The agency determines if the storage of personal property is a reasonable and necessary moving expense for a displaced person. The determination should be based on the needs of the displaced person, the nature of the business, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage will facilitate relocation. It is the agency's responsibility to set the terms for storage.

72. §24.302. When a new fixed residential moving cost schedule is published how does the effective date affect moves being processed?

Unless the agency selects an earlier date to begin operating under the new schedule than the effective date published in the Federal Register, the date of the move is the operative date. The newly published moving cost schedule applies even if the initiation of negotiation occurred prior to the effective date of the new schedule. The key is the date of the actual move.

73. §24.302. Is the fixed moving payment the only coverage for a seasonal residence?

No. The occupant of a seasonal residence could receive actual moving expenses in accordance with §24.301. Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than for moving expenses.

74. §24.303. Can a displaced business obtain reimbursement for professional services to determine the suitability of more than one site?

Yes. If, as a result of the professional services performed, one or more sites are found to be unsuitable for the business. An agency may also agree to provide reimbursement for multiple site assessments. In all cases the agency must determine that the cost of such additional professional services are actual reasonable and necessary. If professional services indicate that a particular replacement site would be suitable, but an owner simply changes his/her mind and decides not to move to that site, additional professional services to assess other sites should normally not be considered reasonable and necessary.

75. §24.303(c). What are some examples of impact fees or one-time assessments?

Actual and reasonable impact fees for anticipated heavy utility usageare eligible for payment as a related moving expense. In the past these fees were eligible as a reestablishment expense and limited to $10,000. Examples include (a) water and sewer tap fees for a laundromat business which requires a larger service tap than a typical business, (b) a fee to provide 3-phase electrical service required by the displaced business when replacement sites available were served by single phase transformers, or (c) other one-time charges or fees a utility requires to finance infrastructure necessary to provide increased usage.

The intent is to reimburse a business for impact fees for anticipated heavy utility usage when the move requires the business to move to a new location where impact fees for anticipated heavy utility usageare being charged. If suitable replacement sites or properties are available where impact fees for anticipated heavy utility usageare not being charged, reimbursement is at the agency's discretion, based on what is reasonable and necessary. Potential eligibility of impact feesfor anticipated heavy utility usageis an important advisory service. The regulation limits impact fees or one-time assessments for anticipated heavy utility usage to utilities, i.e., water, sewer, gas, and electric. Impact fees for other major infrastructure such as roads, fire stations, regional drainage improvements and parks, for example, are not eligible.

76. §24.304. Is new construction at the replacement site eligible for reimbursement as a reestablishment expense?

The cost of constructing a new business building on the vacant replacement property is a capital expenditure and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, an agency may request a waiver of §304(b)(1) under the provisions of §24.7. An example of such an instance would be in a rural area where there are no suitable buildings available and the construction of a replacement structure will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of constructing the new building will be considered an eligible reestablishment expense subject to the $10,000 statutory limit on such payment.

77. §24.304. What reestablishment expense costs are eligible for reimbursement if a displaced business occupies a shell structure?

Basically all of the costs listed under §24.304(a) are eligible if considered actual, reasonable and necessary for the operation of the business. In markets where existing and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the

basic amenities such as heat, light, and water, and sewer available. These buildings or units are shells. The cost of the building (shell) is not an eligible expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an agency of certain modifications to an existing replacement business building. Eligible improvements or modifications up to the amount of $10,000 may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases and similar items, if required by Federal, State or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business.

78. §24.304. If the nature, character, or type of business established after displacement is different from the business displaced by acquisition, would it be eligible for a reestablishment payment?

Yes. A change in a displaced business does not affect eligibility for actual, reasonable, and necessary reestablishment expenses incurred in reestablishing a business. In some instances, it is not economically feasible to relocate a particular business operation and a change in the nature, character, or type of business may be the most practical solution for the business operator. Expenditures of funds for reestablishing the business must be reviewed for acceptability. Costs of new or used equipment purchased to serve the changed business operation are not eligible for reimbursement as reestablishment expenses. Similarly, general repairs or improvements to the replacement property made to the structure because of the personal choice of the business operator are ineligible. The costs of utility upgrades and necessary and reasonable modifications to the real property to accommodate the changed business may be eligible when properly supported. All reestablishment payments are limited by the $10,000 statutory maximum.

79. §24.304. Is a business operation that consists solely of leasing real estate to others at the displacement site eligible for the reestablishment payment?

Yes. The business of leasing real estate to others is considered to be a small business for the purposes of the regulations for the Uniform Act. The owner of the business is eligible for reimbursement of the actual, reasonable, and necessary expenses for the reestablishment of a rental property. The agency should provide the same advisory services to real estate leasing operations as performed for other businesses including providing information on suitable replacement properties. It is the agency's responsibility to determine if the expenses to be reimbursed under reestablishment are reasonable and necessary.

80. §24.305(e). If the net income of a displaced business is very low in one or both years prior to displacement, can the payment be based upon a different period?

Yes. Average annual net earnings may be based upon a different time period when the agency determines it to be more equitable.

81. §24.305(e). If a business experienced a loss in one of the two years, should the amount of the loss be offset against the net income from the other year, or should the income be considered as zero for the year in which the loss was incurred?

If a loss of net income occurs in one year and a gain in the other year, the income of the year in which the loss was incurred should be computed as zero when determining the average net income for the 2-year period.

82. §24.305(e). If a business has been in operation for only a short period of time (e.g., six months) prior to displacement, what method is used for determining the amount of the fixed payment?

The fixed payment would be based on the net earnings of the business at the displacement site for the actual period of operation projected to an annual rate. The existing net earnings income data should be extrapolated and used to project what the net earnings could be if the business was in business for a full two years. If the business is seasonal, this fact should be taken into account in the computations. Paragraph (a)(6) of this section requires that the business contribute materially to the income of the displaced person during the 2 taxable years prior to displacement. This does not meanthat the business needed to be in existence for a minimum of 2 years prior to displacement, only that the business contributes materially to the income of the displaced person during that 2-year period.

83. §24.305. Is it permissible to combine different types of moves on the same parcel?

It is permissible except for §24.305, fixed payment of moving expense - nonresidential. If a fixed payment for moving expense - nonresidential payment is selected, then all other types of moves are ineligible. Otherwise, there is no restriction on combining the various types of moves. For example, when moving from a dwelling,

the displacee may elect to use a commercial mover to move the heavy items (such as pianos, appliances and dressers) and request a self-move based on receipted bills or use the fixed residential moving costs schedule found at §24.302, to move the remaining items. If the displacee elects to use a combination of the fixed residential moving costs schedule and a commercial mover for personal property within the dwelling, an agency adjustment to the actual room count used for the fixed schedule may be required to offset the items moved by the commercial mover. When these two moving cost methods are combined, the fixed residential moving cost schedule typically includes the cost for utility service transfer fees.

The same is true for a nonresidential move (business, farm or nonprofit organization). For example, a business owner may want to use company employees to move items of personal property in the office area and a commercial mover to move the heavy equipment requiring special disconnection and reconnection expertise. For the office area, the company could submit for payment the lower of two bids or estimates from a commercial mover or actual cost based on receipted bills.

Subpart E - Replacement Housing Payments - General (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

84. §24.2(a)(6). Can a replacement housing payment computation be based upon a comparable property that may have a minor decent, safe, and sanitary (DSS) deficiency?

If the availability of comparable replacement properties is limited, the agency may base a replacement housing payment on an available property having minor DSS deficiencies, provided the deficiencies can be easily corrected for a nominal amount.

Use of non-DSS properties with minor deficiencies should be limited to unusual situations. The payment computation must reflect the cost to correct the deficiencies supported by contractor bids or estimates. If such housing is used to meet the "make available" requirement, the housing must be available and DSS at the time of the move.

In cases where a displacee moves to a non-DSS replacement dwelling when comparable DSS housing is available, the displacee must bring the replacement up to DSS standards within 12 months in order to receive a replacement housing payment.

85. 49 CFR 24.2(a)(8)(iv). If it is "culturally" a part of the lifestyle for six children to share a bedroom, would it be acceptable to base the computation of the replacement housing payment on a dwelling that would require the six children to share a bedroom?

No. The comparable must reflect appropriate local housing codes or, in the absence of local codes, the policy of the displacing agency.

86. §24.2(a)(6)(viii)(C). How does the change in part of the definition of comparable replacement dwelling change the treatment of "less than 90-day occupants" or "subsequent occupants"?

Displaced persons failing to meet the length of occupancy requirements continue to be eligible for relocation benefits under last resort housing. What has changed is how the benefit is calculated. Benefits for low-income tenants will still be calculated using the 30% of income rule contained in §24.402(b)(2). For others who are not low income, the calculation will be rent-to-rent. The reason for the change is to ensure consistent treatment of displacees. Across an agency's programs, the net effect of the change in the 30% rule is expected to be a reduction in financial liability. However, with respect to some individual displacees who do not meet the length of occupancy requirements, the calculation of benefits may result in a higher payment than in the past. Agencies may wish to consider using loss-of-rent agreements to limit and manage financial liability when they believe that there is substantial risk that a subsequent occupant situation will occur.

Under the last resort housing provision §24.404(c) and the downpayment assistance provision §24.402(c)(1), the less than 90-day occupant or subsequent occupant rental assistance can be converted to a downpayment to purchase at the discretion of the agency on a case-by-case basis. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under §24.401(b) if he or she met the 90-day occupancy requirement. The agency shall apply this discretion in a uniform and consistent manner. If you require further clarification on the less than 90-day occupants or subsequent occupants, please contact your funding agency.

87. §24.2(a)(8)(vii). How should the replacement housing payment be computed and paid when accommodations need to be provided for a displaced person with disabilities?

The regulation permits sufficient flexibility for each agency to develop procedures for accommodating the needs of a displaced person with disabilities. The replacement housing payment computation may: (1) be based on a dwelling designed for physically disabled persons, (2) include the estimated costs of any needed modifications, or (3) contain provisions for the adjustment to reflect the actual cost of modifications to the replacement housing payment computation.

Arrangements for modifications to the replacement dwelling purchased by the displaced person may be made by either the individual or by the agency, and the agency shall provide reimbursement for the actual reasonable costs paid for such modifications. The agency could also elect to obtain bids or to contract directly for needed modifications.

Rental replacement housing should be provided in the same manner, with the consent of the landlord, or the rental assistance payment could be increased to appropriately compensate the landlord for any necessary modifications or accommodations necessary for the replacement property to be considered DSS. If a financial hardship would be created for the displaced person, the agency could provide an advance replacement housing payment for the needed modifications.

88. §24.401(c). If the replacement property purchased by the displaced person is a part of a property that contains another dwelling unit and/or space used for non-residential purposes or is located on a tract which is significantly larger than typical for residential purposes, must there be an adjustment to the purchase price of the replacement property to reflect the cost of the replacement dwelling for the replacement housing payment computation?

When the residential replacement property contains another dwelling unit and/or space used for non-residential (commercial/industrial) purposes, an adjustment to the price of the property shall be made to reflect the cost of the replacement dwelling and a typical dwelling site.

When the replacement residential property does not contain another dwelling unit or space used for non-residential purposes, but is significantly larger than a typical residential site, an adjustment to the price of the property may be appropriate.

In determining the need for an adjustment, the agency shall apply its policy uniformly to persons in like circumstances. The agency should be aware that the land in excess of a typical site might have a different unit value than land valued for residential use on a typical site.

89. §24.2(a)(20). Is a displaced person who holds a life estate in the displacement property an owner or a tenant?

A displaced person who holds a life estate is considered to be an owner. A person who holds a life estate has the right to occupy the property for life. A life estate may have been created and retained by a person who conveyed the remainder interest to another person; or the life estate may have been granted by another person. It makes no difference how the life estate was created. However, the replacement housing payment may depend upon the distribution of the acquisition payment in accordance with state law. Each agency should develop procedures in accordance with applicable law. The replacement housing payment computation should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property by the agency. The payment computation will be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling. As an alternative, the agency may acquire a dwelling and provide a life estate to the displaced person. All such agreements should clearly establish the responsibilities and rights of each party.

90. §24.401(c). How much money must an owner-occupant with a partial interest in the acquired property spend in order to receive the maximum computed supplemental payment?

The owner-occupant with a partial interest must spend his/her share of the acquisition payment plus the computed supplemental payment in order to receive the maximum payment.

91. §24.401(c)(2). When an owner-occupant retains the displacement dwelling and moves it to the remainder or to a previously owned tract of land is the historical cost or the current fair market value of the replacement site used as the "acquisition cost" for the RHP computation?

The acquisition cost will be based on the current fair market value of the replacement site for residential use as determined by the agency. If an agency uses the buildable lot procedure in accordance with §24.403(a)(3), the value of the buildable remainder will have been added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

92. §24.401(d)(3). If the interest rate charged for a new mortgage exceeds the prevailing interest rate because the displaced person is a poor credit risk or for other similar reasons, may the actual rate be utilized when determining the amount of the mortgage interest differential payment?

The interest rate for a new mortgage should generally not exceed the current range of prevailing mortgage interest rates of lending institutions in the area of the replacement dwelling. If the displaced person's unique circumstances require payment of a higher interest rate and the agency determines that the additional cost could prevent the displaced person from obtaining comparable housing, the higher rate may be used as the basis for determination of the mortgage interest differential. The file should contain justification for the rate used. The agency must exercise reasonable, consistent latitude in these decisions and the computation of the payments.

93. §24.401. Are reverse mortgages eligible for increased interest payments, and is the cost to create such a loan on a replacement property eligible for payment of incidental costs?

A reverse mortgage, such as a Federal Housing Administration (FHA) home equity conversion mortgage (HECM) is a first mortgage lien. A property owner who has an HECM is entitled to be placed in similar circumstances. Therefore, payments to enable an in-kind replacement, including costs to create another HECM, are eligible expenses.

The agency may be required to supplement the equity position on the replacement home to the degree necessary for a comparable reverse mortgage to be written to provide the same monthly payment that the displacee was receiving at the displacement dwelling. Or the agency may be required to supplement the equity position to provide a similar "net available cash" position. Agency procedures should be developed to address how a reverse mortgage will be handled should one be encountered. To date very few reverse mortgages have been written

94. §24.401(d) and in appendix A. How is the mortgage interest differential payment (MIDP) computed in instances where the displaced homeowner has a combination of several types mortgages on their acquired residence?

The current method for payment of increased costs for replacement home mortgages is to provide a lump-sum payment at the origination of the new mortgage that will enable displaced home owners to borrow a reduced amount so their monthly mortgage payment on the replacement home will remain the same as that at the acquired residence.

New loans with differing characteristics are currently available from mortgage companies. The relocation agent should work with the displacee to determine what is the best mortgage replacement available at the replacement dwelling. This may mean advising the displacee to consider a fixed rate mortgage at the replacement dwelling, especially in times of rising interest rates.

The FHWA is developing guidance on MIDP for variable rate mortgages. An important component of the calculation will depend on the mortgagee's selection of the replacement mortgage.

94.1. §24.401(d) and in appendix A. How is an increased mortgage interest cost payment or mortgage interest differential payment (MIDP) eligibility computed on adjustable rate mortgages (ARM)?

To calculate the MIDP on an ARM in accordance with **§24.401(d)**, the agency must know:

1. The terms of the displaced persons ARM including:
    i. The ARM's current interest rate
    ii. The ARM's index
    iii. The ARM's cap rate (initial interest rate + lifetime or overall rate cap)
    iv. The remaining term of the ARM
2. The current prevailing interest rate for a fixed rate mortgage

When the ARM's current interest rate is less than the prevailing interest rate for a fixed rate mortgage, the agency may consider using a replacement ARM for the MIDP determination.

If an ARM is available with the same index and adjustment terms, the agency must determine whether to use the available ARM or a fixed rate loan for the MIDP eligibility calculation. The agency should:

1. Determine the lesser of:
    a. The difference between the current ARM cap rate and the available ARM cap rate.
    b. The difference between the current adjustable interest rate and the prevailing fixed interest rate.

2. Select the lesser of a or b.
    If a:
    Use the rates current ARM cap rate and the available ARM cap rate as described in 1(a) above as the "interest rates (percent)" components to calculate the MIDP in accordance with the sample calculation provided in Appendix A, §24.401(d).
    If b:
    Use the rates current adjustable interest rate and the prevailing fixed interest rate as described in 1(b) above as the "interest rates (percent)" components to calculate the MIDP in accordance with the sample calculation provided in Appendix A, §24.401(d).

If an ARM is not available with the same index and adjustment terms, the agency must use a fixed rate loan for eligibility determination. The agency should:

Use the rates current adjustable interest rate and the prevailing fixed interest rate as described in 1(b) above as the "interest rates (percent)" components to calculate the MIDP in accordance with the sample calculation provided in Appendix A, §24.401(d).

The use of this method is consistent with the requirement to provide the displaced person with an MIDP as described in the regulation at 49 CFR **24.401** (d) and will not alter an existing requirement.

94.2. §24.401(d) and in appendix A. How is an increased mortgage interest cost payment or mortgage interest differential payment (MIDP) eligibility computed on an interest only mortgage?

The interest only mortgage MIDP maximum payment eligibility and actual payment calculation uses the same basic considerations as the adjustable rate mortgage MIDP, except that the MIDP is only calculated based upon the **remaining interest only period of the loan.**

95. §24.401(d). Is 49 CFR 24.401(d) and Appendix A, Section 24.401(d) consistent as it relates to the amount and term of the replacement mortgage required to receive the full amount of the increased mortgage interest payment?

Yes. The increased mortgage interest payment (also known as the mortgage interest differential, MIDP or MID) is based upon the unpaid mortgage balance on the displacement dwelling. The intent of Appendix A is to recognize the increased mortgage interest cost and provide a payment that will reduce the replacement mortgage balance in accordance with 49 CFR 24.401(d).

49 CFR 24.401(d)(5) provides that the agency shall inform the displaced person of the approximate amount of the MIDP payment and the conditions that must be met in order to receive the full amount of the payment. Each agency must develop appropriate measures to ensure proper documentation of increased mortgage interest expense.

If the replacement mortgage is less than the calculated buydown amount, the payment is pro-rated and reduced accordingly. The formula to determine the reduced buydown payment is: The (actual mortgage divided by the calculated mortgage amount) multiplied by the calculated buydown amount. An example of this calculation may be found in 49 CFR 24 Appendix A, Section 24.401(d).

96. §24.401(d)(1). Is the increased mortgage interest payment pro-rated or otherwise reduced if the replacement mortgage amount is between the computed buydown amount and the displacement mortgage amount?

No. In accordance with 49 CFR 24.401(d)(1) and Appendix A, Section 24.401(d), an increased mortgage interest payment may only be reduced by pro-ration if the new mortgage amount is less than the calculated buydown amount. However 49 CFR 24.401(d)(5) provides that the agency shall inform the displaced person of the approximate amount of the MIDP payment and the conditions that must be met in order to receive the

full amount of the payment. Each agency must develop appropriate measures to ensure proper documentation of increased mortgage interest expense.

97. §24.401(e). Can the agency limit the reimbursement for all incidental expenses to those that would have been incurred incident to the purchase of a comparable replacement dwelling?

No. However, the incidental expenses of owner-occupants are limited to the expenses that would have been necessary for purchase of a comparable replacement dwelling for owner's or mortgagee's evidence of title, state revenue or documentary stamps, and sales or transfer taxes. Participation in incidental expenses should be limited to those that are actual, reasonable, and necessary and required by the mortgagee or necessary for the protection of the owner.

In accordance with §24.402(c)(2), tenants are eligible to receive reimbursement for incidental expenses related to the purcha~~se of a~~ replacement dwelling to the extent that the total payment, downpayment plus closing costs, does not exceed the amount of the computed rental assistance payment.

98. §24.401(e). Which of the incidental expenses for purchase of a replacement dwelling can be limit~~ed to wh~~at would be required to obtain a new mortgage in the same amount as the remaining balance of the mortgage on the acquired dwelling?

Incidental costs that can be limited are those additional costs incurred for a new mortgage that is greater than the remaining balance on the acquired dwelling. Examples include mortgage guarantee insurance premiums, loan origination or loan assumption fees, and purchaser's points. When there was no mortgage on the acquired dwelling, there is no requirement to reimburse mortgage costs on the replacement dwelling.

99. §24.401(e). Can a lump-sum payment for mortgage guarantee insurance be included as an incidental expense?

Yes. Required lump-sum payments for mortgage guarantee insurance may be included as part of the mortgage interest differential payment (MIDP), if they are necessary for the displacee to obtain financing. For those paid to an owner-occupant, any payment made should be based upon the computed replacement mortgage for MIDP purposes or the new mortgage, whichever amount is less. Payments to tenants may be made if the computed rental assistance payment is sufficient to cover this expense.

100. §24.401(f). If an owner occupant of at least 90 days elects to rent a replacement dwelling, do you consider the owner's income in the calculation of the replacement housing payment?

No. The income of an owner who elects to rent a replacement dwelling is not considered in the calculation of a rent supplement for a 90-day owner. The income test is not appropriate to use for an owner who goes from an owner to a tenant status. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. There is no income test for owners, and it was not the intent of this subpart to impose such as test.

101. §24.402(c). What are the limitations on the payment of incidental expenses for a tenant who elects to purchase a replacement dwelling?

All incidental expenses actually incurred by a tenant for the purchase of a replacement dwelling and which are customarily paid by the buyer, can be included in the computation of down payment assistance to the extent the total payment does not exceed the amount of the computed rental assistance.

102. §24.402(c)(2). Are loan origination fees incurred by a tenant in the purchase of a replacement dwelling eligible for reimbursement as incidental expenses?

Yes. §24.401(e)(3) and §24.401(e)(9) provide for payment of loan origination fees and other similar costs the agency determines to be incidental to the purchase. The total payment for a tenant may not exceed the amount computed under §24.402(c).

103. §24.2(a)(6) and appendix A, §24.2(a)(6)(ix). Can a person receiving government housing assistance before displacement, be ~~offer~~ed a replacement dwelling that reflects similar government housing assistance and conditions?

Yes. In the case of a person receiving government housing assistance a comparable replacement dwelling may include a dwelling that reflects similar government housing assistance. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned

dwelling unit with a housing subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing. In such cases any requirements of the government housing assistance program, related to the size of the replacement dwelling would apply. Further, nothing prevents any fully informed displaced person not previously receiving government housing assistance from accepting such assistance. Additional details are provided in appendix A, §24.2(a)(6)(ix). If a person is no longer eligible for government housing assistance, a comparable replacement dwelling from the private market should be made available.

104. §24.402(c). Is a displaced person whose rental assistance payment is determined to be zero, eligible for a downpayment assistance payment for the purchase of a replacement home?

Yes. Any eligible displaced person whose rental assistance payment is determined to be zero may qualify for downpayment assistance of up to $5,250 at the agency's discretion. One of the objectives of the Uniform Act is to provide assistance to displaced tenants in order to become homeowners. The regulation provides that any rental assistance payment that is calculated to be less than $5,250, and is to be used for downpayment assistance, may be increased to any amount not to exceed $5,250 as a downpayment, at the agency's discretion. If the agency elects to provide the maximum payment of $5,250 as a downpayment, the agency must apply this policy in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. The full amount of the downpayment assistance must be applied towards the purchase price of the replacement dwelling and related incidental expenses. The agency must also provide relocation advisory services in compliance with §24.205(c)(iv) to minimize hardships to such persons in adjusting to relocation.

104.1. §24.402(c). When a 90 to 179-day homeowner elects to use his/her rental RHP for a downpayment, does the agency have to do a separate calculation to determine what their homeowner RHP would have been and limit their rental RHP/downpayment assistance accordingly?

No. This requirement only applies when the agency exercises its discretion to increase a rental assistance payment of less than $5,250, calculated in accordance with §24.402(b), to the maximum of $5,250 for use as a downpayment assistance payment.

105. §24.402(b)(2)(ii). What is excluded from household income when calculating the replacement housing payment for low-income tenants?

Household income does not include income received or earned by dependent children or full-time students under 18 years old, §24.2(a)(14). However, full-time students over 18 may be assumed to be a dependent, unless the person demonstrates otherwise.It also does not include benefits that are not considered income by Federal law, such as food stamps, or the Women Infants and Children (WIC) program. For a more detailed list of income exclusions, see Federally Mandated Exclusions from Income under Real Estate Topics of Special Interest on https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/exclusions.cfm.

106. §24.402(c). Can an occupant using HUD Section 8 housing, whose Uniform Act rental supplement is computed to be zero (based on returning to HUD Section 8 housing) elect to purchase in the private sector and qualify for a down payment up to $5,250?

Yes, provided the agency decided to use the option provided in this section to increase any downpayment assistance up to $5,250 to support a tenant purchasing a replacement property. Appendix A contains the conditions the agency should consider to assure its policy regarding providing this additional benefit is applied uniformly.

107. §24.403(a)(6). In addition to advanced relocation payments, can the agency deduct rent due from the displacee if it does not create a situation that would prevent the displacee from relocating?

No. Relocation payments are separate from other obligations, and, even if the displacee had been a tenant of the agency, the use of relocation funds to satisfy those obligations is not permitted.

108. §24.403(a)(2). Can an alternative procedure which would enable the displaced person to replace a major exterior attribute be utilized for determining the replacement housing payment in cases where the comparable replacement dwelling site lacks a major exterior attribute of the displacement dwelling?

No. §24.403(a)(2) requires that the value of major attributes be subtracted from the acquisition price of the displacement dwelling for purposes of computing the replacement housing payment if the comparable

replacement dwelling site lacks such major exterior attribute. The agency should always attempt to locate a comparable dwelling with the attribute before selecting a dwelling without the attribute.

108.1. §24.403(a)(3). What is a "buildable residential lot" as referenced in this paragraph? Is it literally a remainder that one can build on or is it any remainder lot that has economic value?

The "buildable residential lot", more widely known as a "buildable lot," in §24.403(a)(3) is intended to describe remainders with an economic value to the owner. The economic value to the owner may be as an actual buildable lot for sale to an adjoining property owner or for some other purpose for which the agencyattributes an economic value to the owner. While the regulatory language currently uses the term "buildable residential lot", the intent is to consider the remainder property as either an uneconomic remnant or as a property that has some economic value.

109. §24.403(a)(5). What is the intent of the paragraph regarding multiple occupants of one displacement dwelling?

In general, all of the occupants of a single dwelling unit should be considered one family for purposes of payment calculations. However, two or more occupants of a dwelling may maintain separate households within that dwelling. If they do, they have separate entitlement to relocation payments. The agency is responsible for determining the number of households in a dwelling based on the use of the dwelling, the relationship of the occupants, and any other information that may be obtained. The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared with others. An attempt should be made to locate similar comparable DSS living facilities. The record should be sufficiently documented to support the decision reached.

110. §24.403(c). Will the purchase and occupancy of a motor home or a boat meet the requirement for purchase of a replacement dwelling?

A motor home or a boat capable of providing living accommodations may be considered a replacement dwelling if (a) the motor home or boat is purchased and occupied as the primary place of residence; (b) the motor home or boat is located on a purchased or leased site and connected to all necessary utilities for functioning as a housing unit on the date of the agency's inspection, and (c) the dwelling, as sited, meets all local, State, and Federal requirements for a DSS dwelling. It should be noted that the regulations of some local jurisdictions would not permit the consideration of these vehicles as DSS dwellings.

A motor home or a boat designed to provide living accommodations may also meet the requirement of a rental replacement dwelling if it is occupied as the primary place of residence and qualifies under (b) and (c) above.

111. Appendix A, §24.404(b). How do you relocate a partial owner-occupant who cannot afford to finance a replacement dwelling? Can a direct loan under the provision of §24.404(c) be provided?

If an agency determines that the relocation of a partial owner-occupant should be as an owner, the agency may provide a direct loan, lien or other financial assistance under §24.404(c) if other financing is not available to the person, in addition to the computed replacement housing payment. A partial owner-occupant who cannot afford to purchase comparable replacement housing may be relocated as a tenant and provided a rental assistance payment in accordance with §24.402.

112. §24.404(c)(iv). Can a direct loan as provided for in this section be used as a substitute for a replacement housing payment?

No. A direct loan would be provided in addition to any replacement housing payment computed for the displaced person. A direct loan may be provided under housing of last resort if financing is not otherwise available to the displaced person. It cannot be used as a substitute for a replacement housing payment.

113. §24.404(c). Are there other ways to assist displaced persons to purchase and occupy replacement housing other than the ones listed in §24.404(c)?

Yes. The agency has many options for assisting people to become owners of replacement dwellings. A first mortgage or a lien can be placed on a property that would become due and payable if the displaced person ceased to occupy the property or conveyed or sold the property to someone else. A life estate, based on the displaced person's life, could be offered in a property owned or purchased by an agency. The displaced person would have the right to occupy the property until death when the full ownership of the property would revert to the agency for other uses or sale. The agency could also "buy down" the interest or the mortgage of a property with a financing agency to make the payments affordable for the displaced person. Or the agency

could initiate mortgage financing for a displaced person and then sell the mortgage to a person or institution who would become the new mortgagee. Several agencies have also assisted displaced persons in establishing credit at credit unions that then financed the mortgages for them.

It is recommended that agencies use the provFsions of housing of last resort to maximize housing opportunities in a cost efficient manner.

Subpart F - Mobile Homes (eCFR)

There have been changes to this subpart. A side-by-side comparison of these changes is available.

114. §24.502. If a displaced owner-occupant of a mobile home is a partial owner of the mobile home site, what payments would he or she be entitled to receive?

The displaced person would be treated as an owner in accordance with the guidance in appendix A, §24.404(b). If the mobile home is acquired or cannot be relocated, the owner would be eligible for a replacement housing payment to purchase a mobile home. He/she would also receive a replacement housing payment based upon the difference between the asking price of a comparable mobile home site and the acquisition price of the site (as improved for a mobile home) from which he/she is displaced. If there is no mobile home site available for purchase within his/her financial means as a partial owner, then he/she could receive a rental assistance payment sufficient to rent a comparable mobile home site.

115. §24.502. Is a mobile home owner-occupant who leases or rents his/her site at the displacement location eligible for a down payment for a replacement site?

The owner of a mobile home, who rents the site from which he/she is displaced, may either rent a replacement site and receive a rental assistance payment in accordance with §24.402(b) or purchase a replacement site and receive down payment assistance in accordance with §24.402(c).

115.1. §24.502. When are utilities to be included in the calculation of replacement housing payment eligibility for a displaced mobile home occupant?

Replacement housing payments are typically provided to assist in replacing a dwelling as defined in §24.2(a)(10). The displaced person's occupancy status, as an owner of, or tenant in, the mobile home rather than the site, determines the appropriate calculation of the maximum replacement housing payment.

90 day owner-occupant of Mobile home
If the displaced person owns the mobile home, utilities are not included in the replacement housing payment. In this case, the replacement housing payment is calculated according to §24.401, which does not include utilities.

When the owner of a mobile home is displaced from a leased or rented mobile home site, utilities are included in calculating the rental assistance payment because of the reference in 24.502 (c) to 24.402 (b).

Mobile home tenant
If the displaced person rents a mobile home but owns the lot, utilities will be included in their rental replacement housing payment eligibility determination for the dwelling in accordance with §24.402.

115.2. §24.502(c). What must a 90-day mobile home owner-occupant, who rents the lot, spend to receive the full combined replacement housing payment?

Displaced mobile home occupants in many cases have RHP eligibilities for both their dwelling and the site the dwelling is on. A displaced mobile home occupant may own the mobile home and rent the site or may rent the mobile home and own the site. Also, a displaced mobile home occupant may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E.

A displaced person may claim the rental assistance payment computed in accordance with §24.402 (b) on the land (site) if it is applied towards the purchase of a replacement site or added to the eligible purchase price of a decent, safe and sanitary conventional dwelling or mobile home. However, the amount of the rental assistance payment shall not exceed the cost of the dwelling.

For example:

Displacement mobile home:

Cost of comparable housing	$16,000	
Acquisition of Displacement mobile home	$10,000	
RHP eligibility for replacement dwelling	**$6,000**	($16,000-10,000)

Site rental:

Comparable site	$325	per month
Displacement site	$200	per month
Difference	$125	($325-$200)
Site rental assistance eligibility	**$5,250**	($125 X 42 months)

Actual Replacement Dwelling:

Replacement Dwelling (Mobile Home)	$19,500	
Replacement Site Rental	**$200**	per month

Actual Reimbursement:

Replacement Dwelling (Mobile Home)	$19,500	
- Acquisition of Displacement mobile home	$10,000	
Balance owed for purchase	$9,500	
- RHP eligibility for replacement dwelling	$6,000	
- Lot Rental Assistance Payment	**$3,500**	(from $5,250 site rental assistance)
Balance owed for purchase of replacement	$0	

The amount of the rental assistance payment computed in accordance with §24.502(c) cannot exceed the cost of the dwelling so the lot rent payment is limited to the actual $3,500 needed to acquire the decent, safe and sanitary mobile home. The total reimbursement in this example would be the $9,500 actually spent for the purchase of the decent, safe and sanitary replacement dwelling ($6,000 price differential + $3,500 of the $5,250 rental assistance payment eligibility). See §24.502(c), §24.402(c) and Appendix A, §24.402(c).

115.3. §24.502(c) and §24.503. For mobile home occupants combining the separate replacement housing payment eligibilities for the dwelling and the land (site), is there a limit to the lot rental assistance payment when it is added to the eligible purchase price of a conventional dwelling or mobile home?

Yes. The amount of the rental supplement shall not exceed the cost of the dwelling. The rental supplement on the land (site), to be added to the housing supplement, is limited to the appropriate statutory limits of Subpart E (unless the housing supplement is in Housing of Last Resort). The total payment must be used toward the purchase of replacement decent, safe and sanitary housing.

115.4. §24.502(c) and §24.503. Is income considered when determining the lot rental assistance payment eligibility for mobile home occupants?

Yes, the rental assistance payment is calculated in accordance with §24.402(b).

116. §24.502(d). Does the revised regulation change the treatment of mobile home owner-occupants who elect not to move their mobile homes when they are determined to be personal property?

The revised regulation reorganized and rewrote the provisions that apply to owner-occupants who elect not to move their mobile homes when determined to be personal property. The regulation establishes that an owner-

occupant who elects not to relocate his/her mobile home is not entitled to a replacement housing payment for the purchase of a replacement dwelling. However, the owner-occupant, as a displaced person, is entitled to moving costs to relocate the mobile home and their personal property to a replacement site. The regulation allows such an owner to claim moving expenses under §24.301. If the mobile home is not moved by the owner, it may be sold on site, traded in on a replacement mobile home, or an agency could choose to purchase and dispose of it at its salvage value. The net benefit to the displaced person is expected to be similar to those available in the past.

Version 2010.1

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, however all the cited regulations must be complied with. The document is only intended to provide clarity regarding existing requirements under the law or agency policy.

Frequently Asked Questions (FAQs)

Right-of-Way (ROW)

23 CFR Parts 635, 710 and 810

(as amended August 23, 2016 (81 FR 57716))

This document contains frequently asked questions (FAQ) that users may have about the 23 CFR 710 final rule regarding right-of-way and real estate issues which was published in the Federal Register on August 23, 2016:

FHWA Final Rule, 23 CFR Parts 635, 710 and 810.

The FAQ's have been developed as a resource and guidance which is organized to provide users a convenient method of finding answers to questions that we have received about the requirements of this final rule.

635

Subpart C – Authorization

1. Q: § 635.309. Can FHWA approve advertisement for bids if all the ROW is not acquired?
2. Q: § 635.309(c)(3)(ii). Can FHWA approve a request to proceed with construction if all necessary ROW has not been secured?
3. Q: § 635.309(c)(3)(iv). Is there a specific form the SDOT must use to provide FHWA an updated notification of locations if right of occupancy and use has not been obtained?

710

Subpart A – General

4. Q. § 710.105(b). Are agreements that result from mediation or stipulated settlements permitted?
5. Q. § 710.105(b). Do legal settlements that result from mediation or stipulated settlements require an attorney?

Subpart B – Program Administration

6. Q: § 710.201. Are there specific qualifications or standards that State employees or consultants must have to perform ROW work?
7. Q: § 710.201(d)(3). Who may use a Real Estate Acquisition Management Plan (RAMP) in lieu of a ROW manual, and when is it appropriate?
8. Q: § 710.201(d)(3). Is there a list of items a RAMP must include, and has FHWA provided samples of an acceptable RAMP?
9. Q: § 710.201(h). May the SDOT assume responsibilities under part 710 not specifically delegated in the Stewardship & Oversight agreement?
10. Q: § 710.203(a)(3). Is Federal-aid participation permitted for the costs to perform preliminary relocation-planning activities prior to the completion of NEPA?
11. Q: § 710.203(a)(3). Is Federal-aid participation permitted for appraisal preparation costs incurred prior to the project's NEPA decision?
12. Q: § 710.203(b) and (d). What is a direct cost vs. an indirect cost?
13. Q: § 710.203(b)(1)(vi). Is Federal-aid participation permitted for closing costs?
14. Q: § 710.203(b)(4). Is Federal-aid participation permitted for property management costs?
15. Q: § 710.203(b)(5). Is Federal-aid participation permitted for employee salary and related costs for work performed on a highway project?
16. Q. § 710.203(d). Is Federal-aid participation permitted for the SDOT cost for a consultant to provide ROW program-level services including oversight, guidance, or consultation?
17. Q: § 710.203(d). Is Federal-aid participation permitted for the cost of a consultant to prepare the ROW manual and training in its use?

Subpart D – Real Property Management

18. Q: § 710.403(b). Is a ROW use agreement under part 710, subpart D required for a park-and-ride lot?
19. Q: § 710.403(b). May the SDOT convey temporary real property interests within the ROW limits for fair market value for a non-highway use without a public interest determination?
20. Q: § 710.403(c). Are there specific State organizational units that must be coordinated with when deciding that the property rights are excess to the State's needs?
21. Q: § 710.403(e). Does a State law requiring the State DOT to sell or lease property at less than the current fair market value take precedence over the Federal law requiring fair market value for real property interests previously obtained with title 23 funds?
22. Q: § 710.403(e)(1). Are there specific Federal criteria for evaluating disposals for less than fair market value to justify that it is in the public interest, based on social, environmental, or economic benefits?
23. Q: § 710.403(e). Does the FHWA Division Office have the authority to approve the sale of excess ROW at less than the fair market value?

24. Q: § 710.403(f). Is the State required to apply the Federal share of net income received from the sale or lease of real property acquired with Federal funds to a project of like nature, or may the funds be used on any title 23 eligible project?

25. Q: § 710.403(f). Is there a certain type of State account that must be used to deposit the Federal share of the net income?

26. Q: § 710.403(f). May the State deduct the expenses associated with the sale or lease of Federal-aid property from the gross proceeds to arrive at net income?

27. Q: § 710.403(f). What will FHWA consider as an acceptable method of State certification regarding the Federal share of net income that has been deposited in a transportation fund and the amount that was expended on title 23 eligible projects during the fiscal year?

28. Q: § 710.403(f). May States retain the net income from dispositions of withdrawn Interstate segments, or would a credit to Federal funds be required?

29. Q: § 710.405. Do ROW Use agreement provisions apply to mineral sales and royalties from Federal-aid purchased property?

30. Q: § 710.405(a). Are air rights or air space considered real property interests?

31. Q: § 710.405(a)(2). Should a ROW use agreement be used instead of a utility highway occupancy permit to accommodate Utilities in the ROW?

32. Q: § 710.405. Are there fundamental restrictions on ROW use agreements?

33. Q: § 710.405. May highway real property interests be leased for public purposes without creating a use protected by Section 4(f) (23 U.S.C. 138)?

34. Q: § 710.405. What are the primary terms and conditions for a ROW use agreement with structural improvements?

35. Q: § 710.405. How specific must the maps or plans be?

36. Q: § 710.405(b)(5). What are the insurance requirements?

37. Q: § 710.405(b)(7). What if revisions need to be made to the original ROW use agreement?

38. Q: § 710.405(b)(8). Does a ROW use agreement need to have clauses or conditions addressing FHWA and SDOT access to the ROW and transportation facility?

39. Q: § 710.405(c). Can a lease of real property interests require or cause the re-alignment or other changes to a highway?

40. Q: § 710.405(d). Are there design requirements for leasing of ROW for non-highway use?

41. Q: § 710.405(d). What are the safety requirements for a lease of real property interests?

42. Q: § 710.405(d). Is it necessary to provide light and ventilation?

43. Q: § 710.405. May a ROW use agreement be used to allow parking for motor vehicles?

44. Q: § 710.405. What other laws, regulations, and polices should be considered when developing a ROW use agreement?

45. Q: 710.405. What are the SDOT obligations for management of the non-highway use of the ROW?

Subpart E – Property Acquisition Alternatives

State Funded Early Acquisition

46. Q: § 710.501(a). Do State-funded, early acquisitions for federally funded projects need to conform to the Uniform Act requirements?

47. Q: § 710.501. Do properties that are acquired early by means of exaction, at tax sale, or other similar types of sales and are later used for federally funded projects, need to conform to Uniform Act requirements?

48. Q: § 710.501(c) Can the credit for early acquired real property interests include all costs associated with the early acquisition such as relocation expenses, property management costs, and costs incidental to the purchase, e.g., appraisal fees, recording costs, etc.?

49. Q: § 710.501(c). Is there a significant milestone/requirement that must be completed before requesting a State funded early acquisition credit?

50. Q: § 710.501(d)(3). Is it possible to waive the State-funded early acquisition reimbursement requirement for a mandatory comprehensive and coordinated land use, environment, and transportation planning process and consistency certification by the Governor?

Federally Funded Early Acquisition

51. Q: 710.501(e)(3). Does each Federally Funded Early Acquisition project need to be listed separately in the STIP/TIP?

52. Q: § 710.501(e). How does the State certify that the Federally Funded Early Acquisition project conditions have been met?

53. Q: § 710.501(e). Is there a minimum and maximum negotiation period for Federally Funded Early Acquisition projects?

54. Q: § 710.501(e). Can a property owner request that negotiations be terminated prior to the end of the minimum negotiation period?

55. Q: § 710.501(e)(2)(vi). If all acquisitions must be voluntary negotiations with no threat of or use of condemnation, which Uniform Act requirements apply to a Federally Funded Early Acquisition project?

56. Q: § 710.501(e). Can an Administrative Settlement be used on a Federally Funded Early Acquisition project?

57. Q: § 710.501. What are the advantages of using an Option for a Federally Funded Early Acquisition Project?

58. Q: § 710.501. Can an Option be used to acquire the right to purchase a Section 4(f) property?

59. Q: § 710.501(e). When can an Acquiring Agency exercise a Federally Funded Early Acquisition Option?

60. Q: § 710.501(e). Once there is a NEPA decision for the Transportation project, must active negotiations on an Early Acquisition project be immediately terminated?

61. Q: § 710.501(e). What items should be addressed in a Federally Funded Early Acquisition Intent to Acquire letter?

62. Q: § 710.501(e). If an Early Acquisition negotiation is unsuccessful and the property rights are needed for the Transportation project, is a new offer letter and a new appraisal required?

63. Q: § 710.501(e). Can documents such as titles, appraisals, and relocation studies that were prepared for the Early Acquisition project be reused for the Transportation project?

64. Q: § 710.501(e) and (f). Are development activities allowed on properties purchased on Federally Funded Early Acquisition projects?

Protective Buying and Hardship Acquisition

65. Q: § 710.503. Are NEPA and 4(f) approvals required for Advance Acquisition (AA)—Protective Buying and Hardship Acquisition parcels?

66. Q: § 710.503. Can Federal reimbursement for Hardship Acquisition and/or Protective Buy be made before a NEPA decision for the Transportation Project?

67. Q: § 710.503. Is public involvement recommended for Protective Buying and Hardship Acquisition?

Real Property Donations

68. Q: § 710.505. Is there any difference between a donation and a credit?

69. Q: § 710.505. Are there any conditions as to when, in the project development process, a property can be donated for a project?

70. Q: § 710.505(b). May the cost of determining the fair market value of real property be applied as a donation credit by a unit of local government? (23 U.S.C. 323(b))

71. Q: § 710.505(b). How are donations considered when calculating Federal and State shares of total project costs?

72. Q: § 710.505(b). If there is donation credit in excess, is it permissible to change the project limits in the project agreement so that no credit is lost?

73. Q: § 710.505(b). Is there a difference between local match funds and offset funds?

74. Q: § 710.505(b). What is the timeframe for determining fair market value of a real property donation?

State and Local Contributions

75. Q: § 710.507. When the project advances to the construction authorization stage, the final cost of the acquired right-of-way is frequently unknown due to outstanding condemnation cases. Assuming the Agency has acquired the required real property with its own funds and desires a credit toward the cost of construction, will the allowed credit be limited to the acquisition costs incurred as of the date of the credit application?

76. Q: § 710.507(a). What documentation is typically necessary for early acquisition credit requests?

77. Q: § 710.507(b). May public parkland incorporated into a project, which furthers the park's use, qualify for credit?

78. Q: § 710.507. May a local government contribute real property to a Federal-aid project and retain ownership? May the value of this real property be applied as a credit?

---

§ 635

Subpart C – Authorization

1. **Q: § 635.309. Can FHWA approve advertisement for bids if all the ROW is not acquired?**

   A: Yes. The FHWA can approve a conditional ROW certification in accordance with 23 CFR 635.309(c)(3). The grantee must have acquired all but a few of the necessary properties, and must have made adequate housing available to all occupants of the residences on the parcels not yet acquired, in accordance with 49 CFR 24.204. If all applicable requirements of section 635.309(c)(3) are satisfied, FHWA will approve requests to advertise for bids unless FHWA determines that it is not in the public interest.

   Top of Section

2. **Q: § 635.309(c)(3)(ii). Can FHWA approve a request to proceed with construction if all necessary ROW has not been secured?**

   A: It depends. The FHWA will approve the request only in exceptional circumstances showing that proceeding with construction is in the public interest. In most cases, approval to proceed with construction should occur only when all necessary ROW has been secured.

   Top of Section

3. **Q: § 635.309(c)(3)(iv). Is there a specific form the SDOT must use to provide FHWA an updated notification of locations if right of occupancy and use has not been obtained?**

   A: No. There is not a specific form required by the Federal regulations. Updating the Conditional ROW Certificate may be sufficient if such an update meets the requirements of 23 CFR 635.309(c)(iv). Each SDOT should work with their FHWA Division office to determine the type of form to be used to document the updated notification. The procedure must be documented in the State ROW manual (23 CFR 710.201(c)).

   Top of Section

§ 710

Subpart A – General:

4. Q. § 710.105(b). Are agreements that result from mediation or stipulated settlements permitted?

A: Yes. Mediation and stipulated settlements are permitted on Federal-aid projects and are included under the definition of legal settlements.

Top of Section

5. Q. § 710.105(b). Do legal settlements that result from mediation or stipulated settlements require an attorney?

A: No. These legal settlements do not require an attorney; only that a responsible official of the acquiring agency must have the legal power vested in him/her by State law to settle such claims after a condemnation action has been filed.

Top of Section

Subpart B – Program Administration

6. Q: § 710.201. Are there specific qualifications or standards that State employees or consultants must have to perform ROW work?

A: It depends. There are no specific Federal requirements; however, each State should develop qualifications for their employees and consultants to ensure they are competent, adequately trained, and organized to discharge its real property related responsibilities (23 CFR 710.201(b)). Each State should detail these qualifications in the federally-approved State ROW manual. (23 CFR 710.201(c))

Top of Section

7. Q: § 710.201(d)(3). Who may use a Real Estate Acquisition Management Plan (RAMP) in lieu of a ROW manual, and when is it appropriate?

A: The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects. The use of a RAMP is appropriate if the program or project is non-controversial, and the project is not complex. The authority to allow the use of a RAMP and the responsibility for review, approval, and monitoring of a RAMP's use lies with the Agency (e.g., SDOT or FHWA) who directly provided funds to the subgrantee (see 23 CFR 710.201(c)(1)).

Top of Section

8. Q: § 710.201(d)(3). Is there a list of items a RAMP must include, and has FHWA provided samples of an acceptable RAMP?

A: No. There is not a list of required items for a RAMP, and FHWA has not made sample RAMPs available. An approved RAMP must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. The FHWA may develop a research project to determine what should be included in a RAMP, and may later publish samples of acceptable RAMPs.

Top of Section

9. Q: § 710.201(h). May the SDOT assume responsibilities under part 710 not specifically delegated in the Stewardship & Oversight agreement?

A: No. The FHWA must authorize any assignment of FHWA approvals, including those in 23 CFR part 710, to the SDOT in the Stewardship and Oversight agreement. If a part 710 responsibility is not addressed in the Stewardship & Oversight agreement, the responsibility remains with FHWA.

Top of Section

10. Q: § 710.203(a)(3). Is Federal-aid participation permitted for the costs to perform preliminary relocation-planning activities prior to the completion of NEPA?

A: Yes. Preliminary relocation activities, which are limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, may be acceptable preliminary engineering expenses. However, any personal contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval except as provided in 23 CFR 710.501, for early acquisition; and in 23 CFR 710.503 for protective buying and hardship acquisition (23 CFR 710.203(a)(3)); and in 49 CFR 24.102(c)(1) for contact necessary for owner or owner's designated representative to accompany the appraiser during the appraiser's inspection of the property.

Top of Section

11. Q: § 710.203(a)(3). Is Federal-aid participation permitted for appraisal preparation costs incurred prior to the project's NEPA decision?

A: Yes. The preparation of appraisals and appraisal waiver valuations performed prior to the NEPA decision on the project are eligible preliminary engineering expenses. However, any personal contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval except as provided in 23 CFR 710.501, early acquisition; and in 23 CFR 710.503 for protective buying and hardship acquisition (23 CFR 710.203(a)(3)).

Top of Section

12. Q: § 710.203(b) and (d). What is a direct cost vs. an indirect cost?

A: For a cost to be eligible for Federal-aid participation, it must fit within one of two categories—direct cost or indirect cost.

Direct costs are those costs that can be identified specifically with a particular final cost objective such as a Federal award or that can be directly assigned to such activities relatively easily with a high degree of accuracy. 2 CFR 200.413 Authorized project-level acquisition activities may include the costs of acquiring the real property incorporated into the final project and the associated costs of acquisition. See 23 CFR 710.203(b) for a list of authorized costs.

Indirect costs are those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. 2 CFR 200.56. Indirect costs are program-level activities, and an indirect cost allocation plan must be prepared in accordance with 2 CFR 200.416 and approved by FHWA (and in some cases a SDOT). Indirect cost may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23 funded projects are performed by non-SDOT personnel. 23 CFR 710.203(d)

Top of Section

13. Q: § 710.203(b)(1)(vi). Is Federal-aid participation permitted for closing costs?

A: Yes. Closing costs and costs of finalizing the acquisition are eligible for participation if the costs are ordinary and reasonable costs associated with those activities. 49 CFR 24.401(e) provides a list of incidental expenses incurred by a displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer.

Top of Section

14. Q: § 710.203(b)(4). Is Federal-aid participation permitted for property management costs?

A: Yes. Under 23 CFR 710.203(b)(4), property management costs are eligible for reimbursement as a direct cost if they are incurred prior to and during construction until final project acceptance, and are adequately documented as required under 2 CFR 200.403(g).

Top of Section

15. Q: § 710.203(b)(5). Is Federal-aid participation permitted for employee salary and related costs for work performed on a highway project?

A: Yes. Salary costs and related expenses for employee work directly attributable to the Federal-aid project are eligible costs provided such costs are not otherwise included in an indirect cost rate and must be consistent with and adequately documented in accordance with 2 CFR 200.430 and 23 CFR 710 subpart B.

Top of Section

16. Q. § 710.203(d). Is Federal-aid participation permitted for the SDOT cost for a consultant to provide ROW program-level services including oversight, guidance, or consultation?

A: Yes. The SDOT cost for a consultant to provide ROW program-level guidance, consultation, and oversight to other acquiring agencies and contractors is an eligible indirect cost and may be included as part of the State's indirect cost rate in accordance with 2 CFR 200 Subpart E and is subject to 23 CFR 172.7(b)(5). When consultants provide program or project level oversight, the SDOT must maintain overall responsibility for the acquisition, management and disposal of real property interests on its Federal-aid programs and projects (23 CFR 710.201(a)).

Top of Section

17. Q: § 710.203(d). Is Federal-aid participation permitted for the cost of a consultant to prepare the ROW manual and training in its use?

A: Yes. The cost of a consultant to prepare the ROW manual and training in its use is an eligible *indirect cost* that may be included as part of the State's indirect cost rate in accordance with 2 CFR 200 Subpart E.

Top of Section

Subpart D – Real Property Management

18. Q: § 710.403(b). Is a ROW use agreement under part 710, subpart D required for a park-and-ride lot?

A: No. A ROW use agreement is not required for a park-and-ride lot because fringe and corridor parking facilities, including park-and-ride lots, are governed by 23 U.S.C. 137 and 23 CFR 810.106 and are exempt from 23 CFR part 710, subpart D (23 CFR 710.403(b)). Note: 23 CFR 810.106 includes requirements for FHWA approvals and for an agreement covering the financing, maintenance, and operations of the parking facility. In addition, 2 CFR 200.311 may apply.

Top of Section

19. Q: § 710.403(b). May the SDOT convey temporary real property interests within the ROW limits for fair market value for a non-highway use without a public interest determination?

A: No. A public interest determination, pursuant to 23 CFR 710.405, is necessary since the real property interests lie within the ROW limits.

Top of Section

20. Q: § 710.403(c). Are there specific State organizational units that must be coordinated with when deciding that the property rights are excess to the State's needs?

A: No. Each State differs in its own internal structure and processes, and the SDOTs are best qualified to determine the appropriate internal coordination required to decide if the property is excess to the State's needs. The process and organizational units used for internal coordination are to be documented in the State ROW manual that FHWA approves.

Top of Section

21. Q: § 710.403(e). Does a State law requiring the State DOT to sell or lease property at less than the current fair market value take precedence over the Federal law requiring fair market value for real property interests previously obtained with title 23 funds?

A: No. The State law does not take precedence. Federal law governs the sale or lease of real property that was obtained as a part of a Federal-aid project. If Federal funds are used to purchase any real property interests, or if Federal credit is received for real property used in a federally-funded project, the sale, use or lease of such property rights are subject to the fair-market-value requirements in Federal law.

Top of Section

22. Q: § 710.403(e)(1). Are there specific Federal criteria for evaluating disposals for less than fair market value to justify that it is in the public interest, based on social, environmental, or economic benefits?

A: No. Each SDOT or other grantee must have a section of its ROW manual which describes the criteria for evaluating requests for less-than-fair-market-value disposals on social, environmental, or economic grounds under 23 CFR 710.403(e)(1), and a method for ensuring the public will receive the benefit(s) used to justify the proposed disposal. A written justification must clearly document the specific positive benefits that the public will be receiving because of the proposed disposal.

Top of Section

23. Q: § 710.403(e). Does the FHWA Division Office have the authority to approve the sale of excess ROW at less than the fair market value?

A: Yes. FHWA has delegated authority to the Division office to approve less than fair market value transactions. (FHWA Order M1100.1A, FHWA Delegations and Organizational Manual (as of date of this guidance.))

Top of Section

24. Q: § 710.403(f). Is the State required to apply the Federal share of net income received from the sale or lease of real property acquired with Federal funds to a project of like nature, or may the funds be used on any title 23 eligible project?

A: No. The State is not required to use the Federal share of net income on projects of like nature. Those funds can be used on any project eligible under title 23 and must be in accordance with 23 CFR 710.403(f).

Top of Section

25. Q: § 710.403(f). Is there a certain type of State account that must be used to deposit the Federal share of the net income?

A: No. There is not a certain type of State account that must be used to deposit the Federal net income. However, consistent with 2 CFR 200.302, the funds need to be held in an identified account which ensures the Agency can document and track the source of the funds, the amount of funds deposited, and the ultimate use of the funds for title 23 eligible activities.

Top of Section

26. Q: § 710.403(f). May the State deduct the expenses associated with the sale or lease of Federal-aid property from the gross proceeds to arrive at net income?

A: Yes. The State may deduct the costs directly attributable to the property for actual and reasonable selling and fixing-up expenses that are incurred *after* acceptance of a project, from the gross proceeds to arrive at net income (2 CFR 200.311(c)(2)).

Costs incurred *before* acceptance of a project (e.g. maintenance, protection, clearance, and improvement disposition) are eligible for Federal participation until final project acceptance. See previous question # 17 on § 710.203(b)(4).

Top of Section

27. Q: § 710.403(f). What will FHWA consider as an acceptable method of State certification regarding the Federal share of net income that has been deposited in a transportation fund and the amount that was expended on title 23 eligible projects during the fiscal year?

A: 23 U.S.C. 156 does not require State certification regarding the amount of the Federal share of net income deposited in a transportation fund and subsequently expended on title 23 eligible projects. However, the FHWA Division office will perform oversight compliance reviews to obtain reasonable assurance that the State is meeting the requirements imposed under 23 CFR 710.403(f). States should have procedures in place to document: (1) the amount of the Federal share of net income from the use or disposal of real property deposited in a State transportation fund during the fiscal year; (2) the amount of the Federal share of net income expended on title 23 eligible projects during the fiscal year, and (3) the list and description of title 23 eligible projects the funds were expended on during the fiscal year.

Top of Section

28. Q: § 710.403(f). May States retain the net income from dispositions of withdrawn Interstate segments, or would a credit to Federal funds be required?

A: States may retain the net income from dispositions of withdrawn Interstate segments if the Federal share of net income is used on title 23 eligible projects.

Top of Section

29. Q: § 710.405. Do ROW Use agreement provisions apply to mineral sales and royalties from Federal-aid purchased property?

A: Yes. Oil, gas, and other mineral interests are real property interests within the definition in 23 CFR 710.105.

Top of Section

30. Q: § 710.405(a). Are air rights or air space considered real property interests?

A: Yes. Air rights are less-than-fee interests within the definition in 23 CFR 710.105. Time-limited use of space above the right-of-way may be permitted by a ROW use agreement subject to the conditions in the regulation.

Top of Section

31. Q: § 710.405(a)(2). Should a ROW use agreement be used instead of a utility highway occupancy permit to accommodate Utilities in the ROW?

A: No. As per § 710.405(a)(2), utilities are listed as an exception to the ROW use agreement provisions. Utilities use and occupancy agreements (permits) must meet the requirements of 23 CFR 645.213.

Top of Section

32. Q: § 710.405. Are there fundamental restrictions on ROW use agreements?

A: The real property cannot be used for non-highway purposes if the real property is necessary, either currently or in the foreseeable future, for safe and secure operation and maintenance of the highway facility. If such conflicts exist, the real property would be considered unavailable. The only exception may be for interim uses, which are terminated when the real property is needed for highway purposes.

The proposed non-highway use must meet the conditions in 23 CFR 710.405(a), including preservation of safety of the facility and its users. The FHWA views the manufacture or storage of flammable, explosive, or hazardous material on the ROW as presumptively a safety hazard. This presumption does not preclude the transverse or longitudinal installation of such items as petroleum pipelines that have been approved in accordance with the regulations.

Similarly, within the scope of the proposed non-highway use of the facility, there is a presumption that any structures, buildings, or facilities which utilize combustible materials (such as wood, wood fiber, plastic etc.) that may be fire hazards do not satisfy 23 CFR 710.405(a). Such non-highway uses cannot be allowed under or adjacent to overpasses and bridges, absent a showing that such uses would provide for the safe and secure operation and maintenance of the highway facility.

Top of Section

33. Q: § 710.405. May highway real property interests be leased for public purposes without creating a use protected by Section 4(f) (23 U.S.C. 138)?

A: Yes. Available real property interests may be leased to a public agency for interim uses such as green space for small parks, play areas, parking, or public or quasi-public use which would integrate the highway into the local environment and enhance other publicly supported programs (without creating a Section 4(f) use, per 23 CFR 774.11(h)). Normally, the SDOT should retain supervision and jurisdiction over these interim land uses, but could enter into ROW use agreements with local political subdivisions. For authorized *temporary occupancy* of transportation right-of-way for park or recreation purposes, it must be clear in a limited occupancy ROW use agreement, with a reversionary clause, that no long-term right is created and the park or recreational activity is a temporary one that will cease either once completion of the highway or transportation project resumes or if the property is needed for future transportation use.

Top of Section

34. Q: § 710.405. What are the primary terms and conditions for a ROW use agreement with structural improvements?

A: The ROW use agreement must contain provisions that address the items at 23 CFR 710.405(b).

- Ensure the safety and integrity of the federally assisted facility;
- Define the term of the agreement;
- Identify the design and location of the non-highway use;
- Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;
- Provide for adequate insurance to hold the grantee and FHWA harmless;
- Require compliance with nondiscrimination requirements;
- Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and
- Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

In addition, the following terms, conditions and provisions may be included as appropriate.

- Identification of the party responsible for developing and operating the proposed use.
- A general statement of the proposed use.
- The proposed design for the use of the space, including any facilities to be constructed.
- Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.
- Provision for vertical and horizontal access for maintenance purposes.
- Other general requirements as term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this guidance.
- Provision to prohibit the transfer, assignment, or conveyance of the proposed non-highway use to another party without prior SDOT approval with FHWA concurrence on Interstates.
- Provision to revoke the agreement if the proposed non-highway use ceases to be used or is abandoned, or becomes necessary for highway purposes.
- Provision to revoke the agreement if the terms of the lease are breached and such breach is not corrected within a reasonable length of time after written notice of noncompliance has been given. In the event the agreement is revoked, the SDOT may request the removal of the facility occupying the airspace. The removal should be accomplished by the responsible party in a manner prescribed by the SDOT at no cost to the FHWA. An exception to facility removal is permitted when the improvements revert to the State upon termination of the agreement and the SDOT chooses to accept them.
- Provision to allow SDOT and authorized FHWA representatives to enter the non-highway use facility for inspection, maintenance, or reconstruction of the non-highway facility when necessary. The manner of when and how these inspections are to be made should be specified in the ROW use agreement.
- Provision that the non-highway use facility to occupy the airspace will be maintained to assure that the structures and the area within the highway right-of-way boundaries will protect the highway's safety and appearance, and that such maintenance will cause no unreasonable interference with highway use.
- Provisions assuring that the airspace user will be responsible for any resulting hazardous waste contamination without liability to the SDOT and FHWA.
- Provisions to assure full understanding that the airspace user will not qualify for relocation benefits under the Uniform Act.

Top of Section

35. Q: § 710.405. How specific must the maps or plans be?

A: The party wishing to use the real property interest must submit maps, plans, or sketches adequately showing the relationship between the proposed project and the highway facility (23 CFR 710.405(e)(6)). An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed must be submitted if required by FHWA or the SDOT. However, maps and plans may not be required if the available real property is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description, at the discretion of the party requesting the use agreement (23 CFR 710.405(e)(9)).

Top of Section

36. Q: § 710.405(b)(5). What are the insurance requirements?

A: The use agreement must require adequate insurance that holds the grantee, as defined in 23 CFR 710.105, and FHWA harmless (23 CFR 710.405(b)(5)). The insurance policy will name the grantee and FHWA as insured parties, and provide coverage for all loss and damage arising out of or relating to the third party's possession or use of the property (and should include attorney's fees). The coverage should start as of the execution of the use agreement and terminate when the use agreement terminates, but should include coverage for any claims made after termination based on events that occurred prior to termination. Typically, the agreements require the party receiving approval for the non-highway use to pay for the insurance.

Top of Section

37. Q: § 710.405(b)(7). What if revisions need to be made to the original ROW use agreement?

A: Any significant revision in the design, construction, or operation of the non-highway use requires prior approval by the grantee and FHWA (if the approval has not been assigned to the SDOT) and the SDOT (if not the grantee and the use is on a Federal-aid highway). When the revision impacts an Interstate highway facility, the FHWA approval cannot be assigned to the SDOT (*see* 23 CFR 710.405(a)).

Top of Section

38. Q: § 710.405(b)(8). Does a ROW use agreement need to have clauses or conditions addressing FHWA and SDOT access to the ROW and transportation facility?

A: Yes. The ROW use agreement must provide for FHWA and SDOT access to the non-highway use for inspection, maintenance, and for activities connected with reconstruction of the highway facility. In the event the responsible party fails in its maintenance obligations, there should be provisions allowing the SDOT to enter the premises to perform such work.

Top of Section

39. Q: § 710.405(c). Can a lease of real property interests require or cause the re-alignment or other changes to a highway?

A: Yes. The change must be approved by the SDOT and FHWA under 23 CFR 710.405(a) and (c). The FHWA encourages SDOTs to avoid proposed uses that would involve any temporary or permanent change in alignment or profile of an existing highway except where the change would improve existing highway operation and maintenance.

The cost of any approved highway changes cannot be paid from Federal funds unless the SDOT and FHWA agree to the use of such funds (23 CFR 710.405(c)). Such agreements should be made only in exceptional situations where there is a demonstrable benefit to the SDOT and the Federal-aid Highway Program, such as when the lease improvements of a proposed facility or other interim uses are for public or quasi-public purposes and would assist in integrating the highway into the local environment and enhance other publicly supported programs. The cost provision in 23 CFR 710.405(c) does not alter existing limitations upon expenditures of Federal-aid funds.

Top of Section

40. Q: § 710.405(d). Are there design requirements for leasing of ROW for non-highway use?

A: Yes. Proposed uses must conform to applicable design standards and safety criteria for the functional classification of the highway facility in which the property is located (23 CFR 710.405(d)). Design requirements are generally in the SDOT's manuals, and FHWA regulations 23 CFR part 625, et. seq. Additionally, standards can be found from organizations such as American Association of State Highway and Transportation Officials (AASHTO). For guidance and interpretation on specific proposals, contact your SDOT and FHWA Division Office.
See FHWA Bridge and Structure Security.

The following are major design criteria that should be covered in a proposed ROW use agreement:

- The use of real property located beneath the established highway grade-line should provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation and safety of the highway facility.
- The use of real property located above the established highway grade-line, should not at any location between two points established 2 feet beyond the two outer edges of the shoulder, extend below a horizontal plane which is at least 16 feet 6 inches above the highway grade-line, or the minimum vertical clearance plus 6 inches as approved by the State, except as necessary for columns, foundations or other support structures.
- Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance should be at least 20 feet from the highway grade-line to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SDOT, may be considered on an individual basis by FHWA as appropriate.

- Piers, columns, or any other portion of a non-highway structure should not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.
- The structural supports for the non-highway facility should be located to clear all horizontal and vertical dimensions established by the SDOT. Supports should be clear of the shoulder or safety walks of the outer roadway. However, supports may be in the median or outer separation when the SDOT determines and the FHWA concurs that such medians and outer separations are of sufficient width.
- All supports are to be behind or flush with the face of any wall at the same location. Supports should be adequately protected by means acceptable to the SDOT and the FHWA. No supports should be in the ramp gores, or in a position that interferes with the signing necessary for the proper use of the ramp.
- To the extent possible and within the scope of the proposed use of the non-highway facility, vehicular access should be designed and managed to restrict vehicles capable of carrying explosives or of a type that might be used for terrorist activities. For example, barriers may be installed to limit the width of vehicles accessing the site. In situations where the use of the facility is for purposes other than vehicular access (such as a bike path or dog-walk for adjacent property owners), the design should use fencing, barriers, and/or other appropriate methods to restrict vehicular access.
- Proposals may involve coordination with multiple offices within the SDOT such as Planning, Environment, Traffic, Operations, and Maintenance. Details of required approvals should be incorporated into the ROW use agreement as appropriate.

Top of Section

41. Q: § 710.405(d). What are the safety requirements for a lease of real property interests?

A: Safety is a key concern in evaluating any proposed use of the ROW. Full safety requirements are generally found in the SDOT's manuals, FHWA regulations, and in national professional organization standards. For specific guidance and interpretation, contact your SDOT and FHWA Division Office.

The SDOT should consider the following safety precautions.

- The design, occupancy, and use of any structure over or under a highway facility should not interfere with the use, safety, appearance, or the enjoyment of the facility nor produce fumes, vapors, odors, drippings, droppings, or discharges of any kind.
- The ROW use agreement should not result in either highway or non-highway users being unduly exposed to hazardous or unsafe conditions because of highway location, design, maintenance, and operation features.
- Appropriate safety precautions and features should be incorporated in the design to minimize the possibility of injury to users of either the highway facility or real property/ROW use area due to highway or non-highway incidents.

- Highway ROW use facilities should not be approved unless the plans contain adequate provisions, acceptable to the SDOT and the FHWA, for evacuation of the structures or facilities in case of a major incident endangering the occupants of such structures or facilities.
- Any ROW use facility should provide adequate fire and life safety provisions in accordance with applicable local codes or national standards found acceptable by the SDOT and the FHWA, such as NFPA 502.
- Adequate security measures should be in place to ensure that the facility is safe from both natural disasters and human actions (whether accidental or intentional). Examples of such measures include the use of barriers to restrict vehicular traffic to the site and pier protection devices.

Top of Section

42. Q: § 710.405(d). Is it necessary to provide light and ventilation?

A: For detailed design standards for specific proposals, refer to SDOT manuals or FHWA regulations in 23 CFR part 625, and then direct specific inquiries to the SDOT's specialists. Guidance on tunnel lighting is provided by Illuminating Engineering Society (IES) RP22. The National Fire Protection Association (NFPA) 502 provides fire protection and fire life safety standards for limited access highways, road tunnels, bridges, elevated highways, depressed highways, and roadways that are located beneath air-right structures. Generally, however,

- unless mechanical tunnel ventilation is provided, non-highway structures over highways should be designed and constructed to establish natural ventilation of the highway, and
- the underside and any supports for such structures should have smooth and easily cleanable surfaces. Supports for such structures should leave as much open space on the sides of the highway as feasible. Such space should be appropriately graded.

Top of Section

43. Q: § 710.405. May a ROW use agreement be used to allow parking for motor vehicles?

A: Yes. Assuming the proposal is not subject to 23 U.S.C. 137 or 23 CFR part 810, the parking of motor vehicles may be allowed in limited instances and with proper precaution. To the extent possible and within the scope of the proposed non-highway use of the facility, vehicular access should be designed and managed to restrict vehicles capable of carrying explosives or of a type that might be used for terrorist activities. For example, barriers may be installed to limit the width of vehicles accessing the site. Tanker trucks or vehicles carrying flammable, explosive, or hazardous material are presumed by FHWA to be unsafe and should be prohibited from parking in the ROW use areas to ensure the full use and safety of the highway is not impaired. (23 U.S.C. 111, 23 CFR 710.405(a))

In addition to the security considerations noted above, approval for the use and occupancy of highway ROW for the parking of motor vehicles should not be granted unless proper consideration has been given to the need for the following:

- Parking design or arrangement to assure orderly and functional parking.
- Plantings or screening measures to improve the aesthetics and appearance of the area.
- Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.
- Access for fire protection and fire-fighting equipment.

Top of Section

44. Q: § 710.405. What other laws, regulations, and polices should be considered when developing a ROW use agreement?

A: There are other legal requirements that must be considered when developing a proposed ROW use agreement. The SDOT is the best source for requirements under State law, and other applicable requirements. Some examples of Federal requirements include:

- Appropriate provisions with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21.
- Conformity with the Americans with Disabilities Act (ADA).
- Conformity with the governing provisions of the Federal Aviation Administration, Federal Rail Administration, Federal Transit Administration, and other Federal agencies whose approvals may be required.
- Applicable environmental review and approval requirements, including the National Environmental Policy Act (NEPA).
- To the extent appropriate, as determined by the SDOT and/or FHWA, coordination with the U.S. Department of Homeland Security (DHS) to ensure adequate security of the facility may be necessary. Prior to any contact with DHS, the FHWA Division Office will coordinate with the Program Manager for Transportation Security, Office of the Administrator, FHWA Headquarters.

Top of Section

45. Q: 710.405. What are the SDOT obligations for management of the non-highway use of the ROW?

A: SDOTs are responsible to control the use of the real property acquired for a project in which Federal funds participated in any phase of the project. (23 CFR 710.401, 710.403(b)) To assist the SDOT with the management of property leased for non-highway use, an inventory should be maintained of all authorized uses of highway real property. This inventory should include at least the following items for each authorized use of real property:

- Location by project, survey station, or other appropriate method.
- Identification of the authorized user of the real property.
- A three-dimensional description or a metes and bounds description.
- As-built construction plans of the highway facility at the location where the use of real property was authorized.

- Pertinent construction plans of the facility authorized to occupy the real property.
- A copy of the executed ROW use agreement.
- Documentation of the periodic inspections of the non-highway facilities to ensure that the safety and security requirements specified in the ROW use agreement are being properly maintained, and
- Documentation of the compliance monitoring to ensure other terms and conditions in the ROW use agreement are being met.

Top of Section

Subpart E – Property Acquisition Alternatives

State-funded Early Acquisition

46. Q: § 710.501(a). Do State-funded, early acquisitions for federally funded projects need to conform to the Uniform Act requirements?

A: Yes. Even if the State does not intend to seek reimbursement or credit for the early acquisitions, the State-funded early acquisitions shall comply with all real property acquisition requirements for federally assisted transportation projects (23 CFR 710.501(a)-(b)). Real property acquisition provisions under the Uniform Act apply to any real property acquisitions for programs and projects where there is Federal financial assistance in any part of project costs. (49 CFR 24.101(b)).

Top of Section

47. Q: § 710.501. Do properties that are acquired early by means of exaction, at tax sale, or other similar types of sales and are later used for federally funded projects, need to conform to Uniform Act requirements?

A: No. There can be no connection between the acquisition and a transportation project. If the property was acquired by other means (e.g., local government acquisition via tax delinquency or exaction) it must have been acquired in accordance with the laws of the jurisdiction in which the property is located to be eligible for future credit (23 CFR 710.501(c)(1)). However, if at the time of acquisition, there is a nexus between the property and a transportation project and the intent was to acquire the property for a federally funded project, the Uniform Act requirements must be followed to maintain Federal eligibility. (49 CFR 24.101(b))

Top of Section

48. Q: § 710.501(c) Can the credit for early acquired real property interests include all costs associated with the early acquisition such as relocation expenses, property management costs, and costs incidental to the purchase, e.g., appraisal fees, recording costs, etc.?

A: No. The allowable credit for an early acquired real property interest under 23 CFR 710.501(c) is based on the fair market value of such real property interests

established at acquisition (23 U.S.C. 323; 23 CFR 710.507). Federal reimbursement of other acquisition costs associated with the early acquisition is permitted under the early acquisition eligible for future reimbursement option as per 23 U.S.C. 108(c)(2)(A) and 23 CFR 710.501(d), and under Federally Funded Early Acquisition pursuant to 23 U.S.C. 108(d) and 23 CFR 710.501(e).

Top of Section

49. Q: § 710.501(c). Is there a significant milestone/requirement that must be completed before requesting a State funded early acquisition credit?

A: Yes. There are 6 requirements per 23 CFR 710.501(c) which must be met to qualify for a credit. However, a request for credit cannot be approved until a NEPA determination is made for the transportation project.

Top of Section

50. Q: § 710.501(d)(3). Is it possible to waive the State-funded early acquisition reimbursement requirement for a mandatory comprehensive and coordinated land use, environment, and transportation planning process and consistency certification by the Governor?

A: No. There is no authority for waiver of this statutory requirement. (23 U.S.C. 108(c)(3)(C)) However, the Governor may delegate authority to handle the required certification to another State official, such as the chief executive officer of the State DOT. The FHWA has completed a research report on these requirements. This report analyzes how States have interpreted and implemented 23 U.S.C. 108(c)(3)(C), and documents the challenges the State DOTs have faced, and opportunities to further clarify the requirements.

Top of Section

Federally-funded Early Acquisition

51. Q: 710.501(e)(3). Does each Federally Funded Early Acquisition project need to be listed separately in the STIP/TIP?

A: Yes. Each Early Acquisition project must be listed individually in the STIP/TIP to ensure transparency and proper management of the project. As defined in regulation (23 CFR 710.105(b)), an Early Acquisition Project may consist of acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor. Accordingly, a single STIP/TIP entry may be used to list all acquisitions for a single transportation project or corridor. However, the regulation does not permit the use of a single STIP/TIP listing to cover acquisition activities on a statewide or "generic" basis.[1]

Top of Section

[1] The FHWA addressed this issue in the final rule preamble discussion of section 710.501(e)(3). See 81 FR 57716, 57724 (August 23, 2016).

52. Q: § 710.501(e). How does the State certify that the Federally Funded Early Acquisition project conditions have been met?

A: The State ROW manual required under 23 CFR 710.201(c) must thoroughly document the processes and procedures that the State will undertake to comply with all relevant requirements. Prior to FHWA authorizing title 23 funds for an Early Acquisition project, the Acquiring Agency must provide to FHWA a certification form affirming that the State has met all requirements in 23 U.S.C. 108(d) and 23 CFR 710.501(e). If FHWA concurs with the certification, FHWA will note this concurrence in the project agreement comment section so that Federal funds can be obligated. The FHWA Division Office will periodically conduct process reviews to ensure the State certification procedures and processes comply with 23 U.S.C. 108(d) and 23 CFR 710.501(e).

Top of Section

53. Q: § 710.501(e). Is there a minimum and maximum negotiation period for Federally Funded Early Acquisition projects?

A: Yes. Early Acquisition projects are subject to Uniform Act requirements in 49 CFR part 24. Each Acquiring Agency must have a reasonable minimum negotiation period for the property owner to consider the offer and to present relevant material for modifying the terms and conditions of the purchase if necessary (49 CFR 24.102(f)). This minimum negotiation period should be documented in the State Right-of-Way Manual (See 49 CFR part 24, appendix A under § 24.102(f) for a discussion of a minimum negotiation period of 30 days as reasonable).

To avoid allowing the Early Acquisition negotiation to continue indefinitely, the completion of NEPA on the Transportation project should trigger a winding down process for Early Acquisition to avoid negotiations running in parallel on both projects. The Acquiring Agency should provide to the property owner a written notice of the date negotiations will end. The negotiation end date cannot be less than the minimum negotiation period. The State Right-of-Way Manual should identify the time period for terminating the Early Acquisition negotiations, and should explain how it arrived at that negotiation period for early acquisitions.

Top of Section

54. Q: § 710.501(e). Can a property owner request that negotiations be terminated prior to the end of the minimum negotiation period?

A: Yes. The property owner may request an early end to negotiations, preferably in writing. The Acquiring Agency should follow-up with a negotiation termination letter documenting in the letter that negotiations were terminated at the request of the property owner. This letter should be placed in the file to officially close the Early Acquisition file. (23 CFR 710.201(e)(1))

Top of Section

55. Q: § 710.501(e)(2)(vi). If all acquisitions must be voluntary negotiations with no threat of or use of condemnation, which Uniform Act requirements apply to a Federally Funded Early Acquisition project?

A: 1) These acquisitions are subject to all the requirements of 49 CFR part 24, subpart B of the Uniform Act regulations including notification, appraisal, and offer requirements.

2) All persons displaced by a Federally Funded Early Acquisition project are entitled to relocation assistance. However, relocation eligibility for these projects is not established at the initiation of negotiations; rather, eligibility is established when a person is required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the Acquiring Agency and the property owner (23 CFR 710.501(h)).

Top of Section

56. Q: § 710.501(e). Can an Administrative Settlement be used on a Federally Funded Early Acquisition project?

A: Yes. The Administrative Settlement must be justified in writing and the settlement must be approved by an authorized Acquiring Agency official, who determines that the administrative settlement is reasonable, prudent, and in the public interest (49 CFR 24.102(i)).

Top of Section

57. Q: § 710.501. What are the advantages of using an Option for a Federally Funded Early Acquisition Project?

A: An Option allows the Acquiring Agency to purchase a right to acquire real property within an agreed-to period of time for an agreed to amount thus allowing the Acquiring Agency to carry out limited acquisition activities to secure rights to a property should it be needed for a Transportation project, without acquiring full title to the property at that time. Options save time and money during the Transportation project's right-of-way acquisition phase.

Top of Section

58. Q: § 710.501. Can an Option be used to acquire the right to purchase a Section 4(f) property?

A: No. 23 CFR 710.501(e)(2)(i) does not allow the acquisition of any real property interests including an Option on a 4(f) property (23 CFR 774.3).

Top of Section

59. Q: § 710.501(e). When can an Acquiring Agency exercise a Federally Funded Early Acquisition Option?

A: The Acquiring Agency has flexibility to decide which project (Early Acquisition Project or Transportation project) to fund for exercising the Option. Prior to requesting

Federal funding, the Acquiring Agency will decide whether to acquire an Option and the length of the Option as the time period drives value; thereby, allowing the Acquiring Agency to determine when the Option will be exercised and into what project the funding for exercising the Option will be placed. The Option can only be exercised on the project that has specific funding for that activity (23 CFR 630.108(b)(3) and (4)).

For the Acquiring Agency to maintain adequate Early Acquisition records, if the Option is exercised under the Transportation project, the file should reference the Early Acquisition project under which the Option was negotiated and acquired (23 CFR 710.201(e)).

Top of Section

60. Q: § 710.501(e). Once there is a NEPA decision for the Transportation project, must active negotiations on an Early Acquisition project be immediately terminated?

A: The FHWA encourages Acquiring Agencies to avoid allowing the negotiation process to continue indefinitely. The completion of NEPA on the Transportation project should trigger a winding down process for Early Acquisition negotiations to avoid two processes running in parallel. The Acquiring Agency should provide to the property owner a written notice of the date negotiations will end. This date will not be less than the minimum negotiation period. The Acquiring Agency should document the maximum length of negotiations in the Right-of-Way manual.

Top of Section

61. Q: § 710.501(e). What items should be addressed in a Federally Funded Early Acquisition Intent to Acquire letter?

A: The Intent to Acquire letter required by 49 CFR 24.102(b) should inform the property owner of the following:

- The Acquiring Agency's interest in acquiring the property.
- The purpose of the Early Acquisition project.
- The owner's legal rights:
  - Real property interests must be acquired through negotiations without the threat or use of condemnation (23 U.S.C. 108(d)(3)(B)(vii); 23 CFR 710.501(e)(2)(vii)).
  - Relocation eligibility applies when there is a binding purchase and sales agreement, or an Option has been exercised that requires the Acquiring Agency to purchase the property 23 CFR 710.501(h)).
  - The Acquiring Agency must inform the property owner of the minimum negotiation period that it will allow for the owner to consider the offer and to present relevant material to modify the terms and conditions of the purchase, if necessary (See 49 CFR part 24, appendix A under § 24.102(f) for a discussion of a minimum negotiation period of 30 days as reasonable.)
  - If an agreement cannot be reached, negotiations will be terminated (23 CFR 710.501(e)(2)(vii)).
  - The Acquiring Agency will provide the property owner with a written description in clear, nontechnical language of its Early Acquisition process for

acquiring property and the property owner's rights under Federal and State law (23 CFR 710.305(d)).
    - If a Transportation project has a NEPA decision on the corridor that will incorporate this parcel in the project, the Acquiring Agency should provide to the property owner a written notice of the date that negotiations will close. (not less than the minimum negotiation period).
- An Early Acquisition-specific brochure may be developed or the Acquisition Brochure and Relocation Brochure may be revised to include a section on Early Acquisition that reflects the property owner's legal rights that differ from a traditional acquisition and relocation (as mentioned above).
- The possibility that a termination of negotiations under the federally-funded early acquisition project does not preclude the future possibility of the Acquiring Agency authorizing the Transportation project to acquire the property. That subsequent acquisition process would be carried out under normal acquisition procedures.

Top of Section

62. Q: § 710.501(e). If an Early Acquisition negotiation is unsuccessful and the property rights are needed for the Transportation project, is a new offer letter and a new appraisal required?

A: If the Early Acquisition negotiation is terminated and the Acquiring Agency initiates a new acquisition process to acquire the parcel for the Transportation project, then it must issue a new offer letter. The Transportation project is not a continuation of the Early Acquisition project. It is a separate project; as such, the Acquiring Agency must prepare a new offer letter (49 CFR 24.102(d)).

A new appraisal may be required. The Acquiring Agency shall establish an amount which it believes is just compensation for the real property (49 CFR 24.102(d)). The Acquiring Agency determines if the appraisal secured during the Early Acquisition project remains valid and in compliance with the Uniform Act and State laws. Considerations include market condition changes (if any) since the appraisal was completed, the amount of time that has elapsed since the current appraisal was completed, and if the current appraisal accurately reflects compensation for the rights to be acquired.

Top of Section

63. Q: § 710.501(e). Can documents such as titles, appraisals, and relocation studies that were prepared for the Early Acquisition project be reused for the Transportation project?

A: Yes. However, the Acquiring Agency should verify that the documents are current, valid, and consistent with the Uniform Act and Federal and State laws, processes, and procedures. Also, the correct Federal and State project numbers must be used on all documents in order to maintain adequate acquisition records (23 CFR 710.201(e)).

Top of Section

64. Q: § 710.501(e) and (f). Are development activities allowed on properties purchased on Federally Funded Early Acquisition projects?

A: Only in limited circumstances. These properties are acquired in anticipation of a proposed Transportation project, which has not completed the environmental review process. Real property interests acquired as a part of an Early Acquisition project may not be developed in anticipation of the Transportation project prior to completion of required environmental reviews (23 CFR 710.501(f)). This ensures that the evaluation of alternatives for the proposed Transportation project is not influenced by the early acquisition activities.

Development activities that are prohibited include:

- demolition,
- site preparation, including clearing and grubbing, and
- any construction activity that is not necessary to protect public health or safety.

In very limited instances, FHWA may approve development activities, such as limited clearing and demolition activity necessary to protect public health and safety.

Top of Section

Protective Buying and Hardship Acquisition

65. Q: § 710.503. Are NEPA and 4(f) approvals required for Advance Acquisition (AA)—Protective Buying and Hardship Acquisition parcels?

A: Yes. Protective Buying and Hardship Acquisitions usually occur during the Transportation project's NEPA phase. However, prior to approving this Advance Acquisition (AA) alternative, NEPA review and a section 4(f) determination, if applicable, must be completed for the proposed AA parcels (23 CFR 710.503(a)). The NEPA class of action is typically a CE (categorical exclusion) under 23 CFR 771.117(d)(12). The reviews and decisions are only for the advanced acquisition purpose. The NEPA review and section 4(f) evaluations for the Transportation project must include consideration of the impacts of acquiring and incorporating these properties on an alignment.

Top of Section

66. Q: § 710.503. Can Federal reimbursement for Hardship Acquisition and/or Protective Buy be made before a NEPA decision for the Transportation Project?

A: Yes. Once the CE is completed for the Hardship Acquisition or the Protective Buy and the State provides justification for the Advance Acquisition, then FHWA may approve their request, thus giving the State authority to proceed with the Advance Acquisition and to request reimbursement. However, there is a risk that if the Hardship Acquisition and/or Protective Buy parcels are not incorporated into a surface transportation project within 20 years, they will be subject to the requirement to repay Federal funds. (23 U.S.C. 108(a)(2))

Top of Section

67. Q: § 710.503. Is public involvement recommended for Protective Buying and Hardship Acquisition?

A: Yes. The public involvement process starts early in project development with the goal of providing the general public with reasonable opportunity to be informed of the project and that sufficient outreach activities have been conducted. The public involvement process is discussed in 23 CFR parts 450 and 771.

Top of Section

Real Property Donations

68. Q: § 710.505. Is there any difference between a donation and a credit?

A: Yes. *Donation* is the voluntary transfer of privately owned real property (from a property owner who has been informed, in writing of their Uniform Act eligibilities and benefits) either without compensation or for less than fair market value (FMV) for a public transportation project (23 CFR 710.105(b) Donation definition).

The State may receive a *credit* for the donation, to be applied towards the State's share of the project cost if the requirements imposed at 23 CFR 710.505 are met. If the property interest was donated to the State as an Early Acquisition property, additional conditions apply under 23 U.S.C. 323 and 23 CFR 710.501(c)(1) – (6).

Top of Section

69. Q: § 710.505. Are there any conditions as to when, in the project development process, a property can be donated for a project?

A: No. Grantees may accept a donation at any time subject to applicable State laws.

Top of Section

70. Q: § 710.505(b). May the cost of determining the fair market value of real property be applied as a donation credit by a unit of local government? (23 U.S.C. 323(b))

A: No. A donation credit sought by a unit of local government is restricted to the fair market value of the real property, funds, or materials incorporated into the project.

Top of Section

71. Q: § 710.505(b). How are donations considered when calculating Federal and State shares of total project costs?

A: The donation item must qualify as a participating cost. The value of the credits is added to the total project cost of the project prior to calculating the Federal/State share. These funds should be applied as a match when the State submits billings for progress payments. (See example 1 under Third party donations from the FHWA Center for Innovative Finance Support, Federal-aid Matching Strategies).

For further information see memorandum dated May 15, 2019 for Federal-Aid Guidance Non-Federal Matching Requirements.

72. Q: § 710.505(b). If there is donation credit in excess, is it permissible to change the project limits in the project agreement so that no credit is lost?

A: No. The FHWA should not approve the change in project limits to increase donation credit. Project limits are established based on the project's purpose and need. Design, construction and environmental review decisions are reasons for changing project limits.

Top of Section

73. Q: § 710.505(b). Is there a difference between local match funds and offset funds?

A: Yes. Local matching funds may be used as a credit towards the non-federal share of the cost of a project. An offset in this context means a reduction in the State's apportionment of title 23 funds. For example, an offset may occur when an acquired real property interest is not incorporated into an eligible project within the required time period under 23 U.S.C. 108(d)(7) and 23 CFR part 710.501(g).

Top of Section

74. Q: § 710.505(b). What is the timeframe for determining fair market value of a real property donation?

A: It is the earlier of the following: the date when the real property donation becomes effective, or the date which equitable title to the property vests in the State.

Top of Section

State/Local Contributions and Credits

75. Q: § 710.507. When the project advances to the construction authorization stage, the final cost of the acquired right-of-way is frequently unknown due to outstanding condemnation cases. Assuming the Agency has acquired the required real property with its own funds and desires a *credit* toward the cost of construction, will the allowed credit be limited to the acquisition costs incurred as of the date of the credit application?

A: No. In such cases, while the initial allowable credit would be limited to the amount thought to be the fair market value of the acquired real property interests as of the date of the acquisition (the date that equitable title to the property vested in the State), the allowable credit may be adjusted upon resolution of the outstanding condemnation case(s) if the case results in an increase in the FMV (e.g., from a different finding on the amount that constitutes just compensation).

Top of Section

76. Q: § 710.507(a). What documentation is typically necessary for early acquisition credit requests?

A: The documentation must include a certification by the Agency that the early acquisition satisfied the conditions in 23 CFR 710.501(c)(1) - (6). (*see* 23 CFR 710.507(a)(1)).

In addition, the Agency must provide supporting documentation justifying the value of the credit sought for the early acquisition property. Supporting documents may include project valuation documents verifying FMV such as appraisals and/or waiver valuations. Also, prior incurred acquisition costs to acquire title can be used as justification for the value of the property (23 CFR 710.507(a)(2)).

If the property interest was donated to the Agency, additional conditions apply under 23 U.S.C. 323, 23 CFR 710.505, and 49 CFR 24.108.

For further information see memorandum dated May 15, 2019 for Federal-Aid Guidance Non-Federal Matching Requirements.

Top of Section

77. Q: § 710.507(b). May public parkland incorporated into a project, which furthers the park's use, qualify for credit?

A: No. 23 U.S.C. 323(b)(1)(C) prohibits non-Federal share credits for the incorporation of lands described in 23 U.S.C. 138 into federally funded projects. Non-Federal share credits are also not available for: (1) lands acquired with any form of Federal financial assistance, and (2) lands currently incorporated within the operating right-of-way limits of a transportation facility (23 CFR 710.505(b)).

Top of Section

78. Q: § 710.507. May a local government contribute real property to a Federal-aid project and retain ownership? May the value of this real property be applied as a credit?

A: Yes to both questions. For example, transportation alternatives and recreational trail projects can involve real property owned by units of local government and private entities. To be eligible for a credit, the real property may not be part of a current transportation facility (23 CFR 710.507(b)). The fair market value of the real property at the time of acquisition will be credited against the non-Federal share of the project.

Top of Section

Attachment E



DelDOT/FHWA Stewardship Agreement

STEWARDSHIP AND OVERSIGHT AGREEMENT ON PROJECT ASSUMPTION AND PROGRAM OVERSIGHT BY AND BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION, DELAWARE DIVISION OFFICE, AND THE DELAWARE DEPARTMENT OF TRANSPORTATION (DELDOT)

SECTION I. BACKGROUND AND INTRODUCTION

In enacting section 106(c) of title 23, United States Code (U.S.C.), as amended, Congress established authority for a State department of transportation (State DOT) to carry out certain project responsibilities traditionally handled by the Federal Highway Administration (FHWA) through a delegation from the Secretary of the U.S. Department of Transportation ("Secretary"). The authority in 23 U.S.C. 106(c) applies to projects that are subject to the requirements of title 23, U.S.C. ("title 23") because the State DOT receives Federal funding or because the State DOT needs an FHWA action for the project even though the project may not use Federal funds. Congress also recognized the importance of a risk-based approach to FHWA oversight of the Federal-aid highway program (FAHP), establishing requirements in 23 U.S.C. 106(g). In addition to assumptions of responsibility, FHWA-State DOT Stewardship and Oversight Agreements cover certain oversight activities relating to the oversight requirements of 23 U.S.C. 106(g).

The FHWA may not assign its decision making authority to a State DOT unless authorized by law. The authorities FHWA assigns to a State DOT under 23 U.S.C. 106(c)(1) and (2) are listed in Attachment A of the applicable FHWA-State DOT Stewardship and Oversight Agreement. A decision, determination, or action carried out by a State DOT under the authority of a Stewardship and Oversight Agreement ("Agreement") does not constitute an eligibility, participation, obligation, reimbursement, authorization, or compliance decision by or for FHWA.

For clarity, Attachment A also lists certain other actions FHWA may have allowed a State DOT to undertake based on delegation or assumption provisions in other Federal laws. As noted in those Attachment A listings, a State DOT exercise of those authorities is governed by separate agreements between FHWA and that State DOT.

For project responsibilities that are not assumed by a State DOT under 23 U.S.C. 106(c) and are not otherwise delegated or assigned in accordance with another Federal law, 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.

SECTION II. INTENT AND PURPOSE OF AGREEMENT

This Agreement establishes the roles and responsibilities of the FHWA Delaware Division Office and the Delaware Department of Transportation (DelDOT) with respect to certain title 23 project approvals and related responsibilities, and FAHP oversight activities. Nothing in this

Agreement affects the Secretary's authority, or authority delegated to FHWA, to oversee compliance with Federal requirements. These authorities include but are not limited to 23 U.S.C. 114, under which the Secretary has the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.

This Agreement carries out 23 U.S.C. 106(c)(3), which requires FHWA and the State DOT to enter into an agreement relating to the extent to which the State DOT assumes project responsibilities pursuant to section 106(c). This Agreement also documents certain oversight activities that FHWA and the DelDOT will use to efficiently and effectively deliver the FAHP.

Section IV of this Agreement covers assumption of project approvals on the National Highway System (NHS). Section V covers assumption of project approvals off the NHS.

The Project Action Responsibility Matrix, Attachment A to this Agreement, describes responsibilities that the DelDOT assumes from FHWA pursuant to 23 U.S.C. 106(c) and other legal authorities.

Upon execution of this Agreement, Attachment A controls and, except as specifically noted in Attachment A (including any amendment thereto done in accordance with section VIII) and sections IV and V of this Agreement, no other agreements, attachments, or other documents shall have the effect of delegating or assigning FHWA approvals to the DelDOT under 23 U.S.C 106(c), or have the effect of altering Attachment A.

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

FHWA has determined the activities and actions that are assumable under 23 U.S.C. 106(c). Those activities and actions are listed in a template issued by FHWA to create this Agreement and cover only activities or actions 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, assessing resilience, 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. Plans, specifications and estimates (PS&E), which represents an array of actions and approvals required before authorization of construction and carried out during construction. The PS&E package includes standards, drawings, specifications, project estimates, 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 title 23, Code of Federal Regulations (CFR), section 710.201(h) and any successor regulation.

The DelDOT is to exercise any and all assumptions of the FHWA's responsibilities in accordance with the Federal laws, regulations, policies, Executive Orders, and procedures that would apply if the responsibilities were carried out by FHWA. For all projects and programs carried out under title 23, the DelDOT will comply with title 23 and all applicable non-title 23 Federal-aid program requirements.

SECTION IV. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS ON THE NHS

For projects under title 23 that are on the NHS, including projects on the Interstate System, the DelDOT may assume FHWA's title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) if the FHWA Delaware Division Office determines that assumption of responsibilities is appropriate and the DelDOT agrees.

A. The activities or actions on the NHS assumed by the DelDOT under this Agreement are listed in Attachment A.

B. Activities or actions for which the DelDOT has assumed the FHWA's responsibilities apply program-wide, except when superseded on a project-by-project basis by provisions contained in a stewardship and oversight plan developed by the FHWA Delaware Division Office for a specific project. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.

C. In accordance with 23 U.S.C. 106(c)(4), the Secretary may define high-risk categories for Interstate projects on a national basis, a State-by-State basis, or a national and State-by-State basis. A State DOT may not assume responsibilities for Interstate projects in a designated high-risk category. Currently, FHWA has not designated any high-risk categories applicable to Delaware in accordance with 23 U.S.C. 106(c)(4). If the FHWA makes a future high-risk designation that applies to Delaware, then that designation will immediately supersede the assumptions of responsibilities elsewhere in this Agreement to the extent of that high-risk designation.

SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS OFF THE NHS

For projects under title 23 that are not on the NHS, the DelDOT must assume FHWA's title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) unless the DelDOT determines that assumption of responsibilities is not appropriate (23 U.S.C. 106(c)(2)).

A. The activities or actions off the NHS assumed by the DelDOT under this Agreement are listed in Attachment A.

B. Activities or actions for which the DelDOT has assumed the FHWA's responsibilities apply program-wide, except when superseded on a project-by-project basis by provisions contained in a stewardship and oversight plan for a specific project developed by the FHWA Delaware Division Office. For non-NHS projects, the DelDOT must determine that superseding an assumption listed in Attachment A for a specific project is appropriate. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.

C. Except as provided in 23 U.S.C.109(o), the DelDOT is to exercise FHWA's approvals and related responsibilities on these projects in accordance with Federal laws, regulations, policies, Executive Orders, and procedures that would apply if the responsibilities were carried out by FHWA.

D. In accordance with 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, except that a local jurisdiction may use a roadway design guide recognized by FHWA and adopted by the local jurisdiction that is different from the roadway design guide used by the State in which the local jurisdiction is located for the design of projects on all roadways under the ownership of the local jurisdiction for which the local jurisdiction is the project sponsor, provided that the design complies with all other applicable Federal laws.

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

The Secretary must establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP (23 U.S.C. 106(g)). This includes FHWA oversight of the DelDOT processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the DelDOT under 23 U.S.C. 106(c).

Section 106(g) requires, at a minimum, FHWA's oversight program be responsive to all areas relating to financial integrity and project delivery. To carry out the requirements of 23 U.S.C. 106(g), FHWA uses a risk management framework to evaluate financial integrity, project delivery, and other aspects of the FAHP. The objective is to balance risk while considering staffing, budget resources, and the State's transportation needs.

The FHWA Delaware Division Office and the DelDOT may use a variety of methods to identify, analyze, and manage risks and develop response strategies, such as oversight techniques, manuals and operating agreements, stewardship and oversight indicators, and FHWA project involvement.

A. Oversight Techniques

Techniques the FHWA Delaware Division Office and the DelDOT may use to identify and analyze risks and develop response strategies include, but are not limited to, the following:

- Program assessments;
- FHWA Financial Integrity Review and Evaluations reviews;

- Program reviews;
- Certification reviews;
- Recurring or periodic reviews such as the FHWA Compliance Assessment Program;
- Inspections of project elements or phases.

B. Manuals and Operating Agreements

The DelDOT manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects are listed in Attachment B to this Agreement. At a minimum, this list will include documents required by statute or regulation to be submitted to or approved by FHWA. Additional documents may be included as agreed to by the FHWA Delaware Division Office and the DelDOT.

C. Stewardship and Oversight Indicators

The FHWA Delaware Division Office and the DelDOT have not established indicators as part of this Agreement.

D. FHWA Project Involvement

The FHWA Delaware Division Office may select projects (individually or by type) for risk-based FHWA project involvement and stewardship and oversight activities, based on a risk assessment and the responses to identified threats and opportunities. The FHWA Delaware Division Office will identify the risks and document actions that it will undertake to respond to the risks in a stewardship and oversight plan for the affected project(s).

In some instances, such as in response to elevated risks, the assumption by the DelDOT of project approval actions under Attachment A to this Agreement may be superseded on a project-by-project basis by provisions in the stewardship and oversight plan for those specific projects, per sections IV and V of this Agreement. Stewardship and oversight plans for specific projects will distinguish which project approval actions under Attachment A are superseded by the project specific plan. Project approval actions under Attachment A that are not superseded by the project specific plan remain in effect.

SECTION VII. STATE DOT OVERSIGHT RESPONSIBILITIES

This section addresses how 23 U.S.C. 106(c) assumed authorities are carried out by the DelDOT. The actions include monitoring to assure that the DelDOT is properly carrying out its responsibilities in accordance with this Agreement.

A. The DelDOT is responsible for demonstrating to FHWA how it is carrying out its responsibilities in accordance with this Agreement. The DelDOT will provide information to the FHWA Delaware Division Office upon request.

B. The DelDOT represents that processes, procedures, and practices from manuals, agreements, and other documents listed in Attachment B to this Agreement comply with applicable Federal requirements.

C. The DelDOT is responsible for ensuring that its subrecipients meet applicable Federal requirements. This includes but is not limited to evaluating each subrecipient's risk of ensuring compliance and determining the appropriate oversight and monitoring with respect to both the subaward and any 23 U.S.C. 106(c) assumed responsibilities that a subrecipient has been permitted to carry out on behalf of the DelDOT (2 CFR 200.332). The DelDOT is responsible for determining that subrecipients of Federal funds are suitably staffed and equipped (23 CFR 635.105(c)(3)) and have adequate project delivery systems and sufficient accounting controls to properly manage these funds (23 U.S.C. 106(g)(4)); 2 CFR 200.303).

SECTION VIII. AGREEMENT EXECUTION AND MODIFICATIONS

A. Agreement Execution

This Agreement is effective when fully executed by the FHWA Delaware Division Administrator and authorized representative of the DelDOT. The DelDOT duly-authorized official shall execute this Agreement and then submit it to the FHWA Delaware Division Administrator, who shall sign this Agreement last.

B. Agreement Modifications

The FHWA Delaware Division Office and the DelDOT acknowledge that Agreement modifications (minor revisions or amendments) are needed periodically. Either party may initiate a request to modify this Agreement.

1. Minor Revisions

The FHWA Delaware Division Office and the DelDOT may make minor revisions to this Agreement without an amendment. For purposes of this Agreement, a minor revision makes a technical correction, addresses non-substantive changes such as a change in points-of-contact or document names, or revises aspects of procedures that do not materially change the terms of this Agreement. Changes to Attachments B or C are considered minor revisions. Minor revisions are recorded in a change log by the FHWA Delaware Division Office. Minor revisions may be executed without FHWA legal sufficiency review or coordination with FHWA's Office of Infrastructure.

2. Amendments

Modifications to this Agreement that exceed the definition of a minor revision in paragraph B.1. of this section shall require execution of an amendment to this Agreement. Amendments include any change to Attachment A. The amendment shall follow the execution procedure set forth in paragraph A of this section. Amendments require FHWA legal sufficiency review and coordination with FHWA's Office of Infrastructure.

C. New Agreement

This Agreement will be replaced in its entirety and a new Agreement executed between the FHWA Delaware Division Office and the DelDOT when mutually agreed upon by the parties, or as requested by the FHWA Office of Infrastructure to account for changes to regulations or statute or upon issuance of a revised Stewardship and Oversight Agreement Template. New Agreements require FHWA legal sufficiency review and coordination with FHWA's Office of Infrastructure prior to execution.

The electronic Agreement file shall contain the executed Agreement, any change logs, and amendments.

EXECUTION BY THE FHWA DELAWARE DIVISION OFFICE:

Name: Douglas S. Atkin

Title: Division Administrator

Date Executed: 8/30/2024

EXECUTION BY THE DELAWARE DEPARTMENT OF TRANSPORTATION:

Name: Shante Hastings

Title: Deputy Secretary and Chief Engineer

Date Executed: 8/30/2024

ATTACHMENT A
Project Action Responsibility Matrix

This matrix identifies the Federal-aid highway program (FAHP) project approvals and related responsibilities. The matrix specifies which actions are assumed by the DelDOT pursuant to this Stewardship and Oversight Agreement ("Agreement") and certain other applicable authorities as specified in the tables in this Attachment A.

The DelDOT is responsible for ensuring all applicable elements of the project are eligible for FAHP funding. Where the DelDOT assumes authority to make a decision, approval, determination or action, the DelDOT decision does not constitute an eligibility, obligation, reimbursement, authorization, or compliance decision by or for the Federal Highway Administration (FHWA). Final decisions on those matters must be made by FHWA.

Table 1: Financial Management

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
1	Review and accept initial financial plan for Federal major projects [23 U.S.C. 106(h)]	FHWA	STATE
2	Review and accept financial plan annual updates for Federal major projects [23 U.S.C. 106(h)]	FHWA	STATE
3	Obligate funds/authorize Federal-aid project agreement (including advance construction authorization and conversion), modifications, and project closures (project authorizations) [23 U.S.C. 106(a)(2); 23 CFR 630.106, 630.703, 630.709]	FHWA	FHWA
4	Authorize to advertise for bids when all preconditions are met [23 CFR 635.112(a), 635.309]	STATE	STATE
5	Approve reimbursements including authorizing current bill (23 U.S.C. 121)	FHWA	FHWA
6	Approval of reimbursement for bond-issue projects [23 U.S.C. 122; 23 CFR part 140, subpart F]	FHWA	FHWA

Table 2: Environment

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
7	EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations (Note: The FHWA may assign these NEPA actions and other environmental responsibilities to a State DOT as provided by 23 U.S.C. 327)	FHWA	FHWA

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
8	Categorical exclusion approval actions [Note: The FHWA may assign this action and other FHWA environmental responsibilities to a State DOT as provided by 23 U.S.C. 326 and 327. The FHWA also may administratively delegate responsibility for categorical exclusion determinations to a State DOT through a programmatic agreement pursuant to section 1318(d) of MAP-21 and implementing regulations in 23 CFR 771.117(g)]	Administered in accordance with Programmatic Categorical Exclusion Agreement	Administered in accordance with Programmatic Categorical Exclusion Agreement

Table 3: Preliminary Design

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
9	Approval before utilizing a consultant to act in a management support role for the contracting agency [23 CFR 172.7(b)(5)(i)]	Administered in accordance with procedures approved per 23 CFR 172.5(c)	Administered in accordance with procedures approved per 23 CFR 172.5(c)
10	Approval of noncompetitive procurement method for engineering and design-related services [23 CFR 172.7(a)(3)]	STATE	STATE
11	Approve exceptions to design standards [23 CFR 625.3(f)]	STATE	Not subject to 23 CFR 625.3(f)
12	Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	STATE	STATE
13	Approve project management plan for Federal major projects [23 U.S.C. 106(h)]	FHWA	STATE
14	Approval of Interstate System access change [23 U.S.C. 111]	FHWA	Not subject to 23 U.S.C. 111
15	Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new freeway-freeway interchanges (system), modification of freeway-freeway interchanges, and new partial interchanges or new ramps to/from continuous frontage roads that create a partial interchange [23 U.S.C. 111(e)]	FHWA	Not subject to 23 U.S.C. 111(e)
16	Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new and modified freeway-to-crossroad (service) interchanges, and completion of basic movements at existing partial interchanges. [23 U.S.C. 111(e)]	FHWA	Not subject to 23 U.S.C. 111(e)
17	Approve innovative and public-private partnership projects in accordance with TE-045, SEP-14, SEP-15, or SEP-16. [23 U.S.C. 502(b)]	FHWA	FHWA

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
18	Approve any betterment to be incorporated into the project for which emergency relief funding is requested (23 U.S.C. 125; 23 CFR 668.109)	FHWA	FHWA
19	Prior written approval of the Federal awarding agency for the direct charge of up-front acquisition cost of equipment (2 CFR 200.439)	FHWA	FHWA

Table 4: Final Design

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
20	Approve retaining right-of-way encroachments [23 CFR 1.23(b)-(c)]	STATE	STATE
21	Approve use of publicly owned equipment [23 CFR 635.106]	STATE	STATE
22	Concur in use of publicly furnished materials [23 CFR 635.407(a)]	STATE	STATE
23	Approve use of more costly signing, pavement marking, and signal materials (or equipment) is in the public interest [23 CFR 655.606]	STATE	STATE
24	Exception to designation of Interstate project as significant for work zones [23 CFR 630.1010(d)]	STATE	Not subject to 23 CFR 630.1010(d)
25	Determination that a United States Coast Guard Permit is not required for bridge construction [23 U.S.C. 144(c); 23 CFR 650.805, 650.807]	FHWA	FHWA

Table 5: Realty

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
26	Completion of ROW clearance, utility, and railroad work concurrently with construction: Make feasibility/practicability determination for allowing authorization to advertise for bids or to proceed with force account construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	STATE	STATE
27	Approve non-highway use and occupancy of real property interests [23 CFR 1.23(c), 710.405]	FHWA for Interstate; STATE for Non-Interstate NHS	STATE
28	Approve disposal at fair market value of real property interests acquired with Federal-aid assistance, including disposals of access control [23 CFR 710.403(e), 710.409]	FHWA for Interstate; STATE for Non-Interstate NHS	STATE

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
29	Approve disposal at less than fair market value of real property interests acquired with Federal-aid assistance, including disposals of access control [23 U.S.C. 156; 23 CFR 710.403(e)]	FHWA	FHWA
30	Approve advertisement for bids based on a conditional ROW certification, unless it is not in the public interest to proceed. [23 CFR 635.309(c)(3)(i)]	STATE	STATE
31	Approve physical construction under a contract or through force account work based on a conditional ROW certification, only if there are exceptional circumstances that make it in the public interest to proceed. [23 CFR 635.309(c)(3)(ii)]	FHWA	FHWA
32	Approve hardship and protective buying [23 CFR 710.503]	FHWA	FHWA
33	Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project [23 U.S.C. 323; 23 CFR 710.507]	FHWA	FHWA
34	Federal land transfers [23 CFR part 710, subpart F]	FHWA	FHWA
35	Functional replacement of property [23 CFR 710.509]]	FHWA	FHWA
36	Waiver of the policy of the availability of comparable replacement dwelling before displacement under specified circumstances [49 CFR 24.204(b)]	FHWA	FHWA

Table 6: PS&E and Advertising

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
37	Approve PS&E [23 CFR 635.309(a)]	STATE	STATE
38	Approve utility or railroad force account work (23 CFR 140.916, 645.113, 646.216)	STATE	STATE
39	Approve utility and railroad agreements (23 CFR 140.916, 645.113, 646.216)	STATE	STATE
40	Approve use of consultants by utility and railroad companies [23 CFR 645.109(b), 646.216(b)]	STATE	STATE
41	Approve exceptions to maximum railroad protective insurance limits (23 CFR 140.916, 646.111)	STATE	STATE
42	Approve use of guaranty and warranty clauses for projects other than design-build projects [23 CFR 635.413(b)]	STATE	STATE
43	Recovery of railroad material - Approval of additional measures for restoration of areas affected by the removal of salvaged material for Railroad work (23 CFR 140.908)	STATE	STATE

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
44	Approve use of lump sum payments to reimburse railroad for work by its forces [23 CFR 646.216(d)(3)]	STATE	STATE
45	Waive Buy America provisions (23 CFR 635.410)	FHWA	FHWA
46	Training special provision - Approval of new project training programs [23 CFR 230.111(d)-(e)]	FHWA	FHWA

Table 7: Contract Advertisement and Award

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
47	Approve cost-effectiveness determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204)	FHWA	STATE
48	Approve emergency determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204)	FHWA	STATE
49	Subrecipient project administration - Approve arrangements for local agency to serve as the supervising agency for the project (23 CFR 635.105)	STATE	STATE
50	Approve advertising period less than 3 weeks [23 CFR 635.112(b)]	FHWA	STATE
51	Approve addenda during advertising period [23 CFR 635.112(c)]	STATE	STATE
52	Concur in award of contract or rejection of all bids (23 CFR 635.114)	STATE	STATE
53	Approval of design-build requests-for-proposals (RFP) and addenda for major changes to the RFP during solicitation period [23 CFR 635.112(i)(4)]	STATE	STATE
54	Approve award to the next low bidder [23 CFR 635.114(f)]	STATE	STATE

Table 8: Construction

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
55	Approve contract changes and extra work (23 CFR 635.120)	STATE	STATE
56	Approve contract time extensions [23 CFR 635.120, 635.121(b)]	STATE	STATE
57	Concur in use of mandatory borrow/disposal sites (23 CFR 635.407)	STATE	STATE

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
58	Approval of administrative settlements and contract claim awards and settlements (23 CFR 140.505, 635.124)	FHWA	STATE
59	Concur in termination of construction contracts [23 CFR 635.125(b)]	FHWA	STATE

Table 9: Construction Manager/General Contractor (CM/GC) and Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracting

#	ACTION	AGENCY RESPONSIBLE NHS	AGENCY RESPONSIBLE Non-NHS
60	Approval of advertising for bids or proposals for a CM/GC construction services phase contract [23 CFR 635.504(b)(6)]	STATE	STATE
61	Determination of indirect cost rate for preconstruction services for a CM/GC project in accordance with [23 CFR 635.504(e)(2)]	STATE	STATE
62	Approval of preconstruction price and cost/price analysis for preconstruction services for a CM/GC project [23 CFR 635.506(b)(2)]	STATE	STATE
63	Approval of price estimate for construction costs for the entire project for CM/GC project [23 CFR 635.506(d)(2)]	STATE	STATE
64	Approval of construction price analysis and agreed price for construction services of a CM/GC project or portion of the project [23 CFR 635.506(d)(4)]	STATE	STATE
65	Approval of CM/GC project preconstruction services contract award [23 CFR 635.506(e)]	STATE	STATE
66	Concur in advertising an ID/IQ solicitation prior to completion of NEPA [23 CFR 635.605(a)(2)]	STATE	STATE
67	Concur in awarding an ID/IQ contract prior to completion of NEPA [23 CFR 635.605(a)(3)]	STATE	STATE
68	Approve a time extension of an ID/IQ contract [23 CFR 635.604(a)(6)(i)]	STATE	STATE

ATTACHMENT B
Manuals, Agreements, Control, Monitoring, and Reporting Documents

This attachment lists manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects per section VI.B of this Agreement.

Documents that include items that must be submitted to FHWA for review and/or approval	
1.	Manuals, Agreements, Control, Monitoring and Reporting Documents necessary for the management of Federal-aid projects. Supplemental changes that conflict with, override, or supersede an approved manual will be sent to Division for FHWA review/approval.
2.	American with Disabilities Act (ADA) Transition Plan
3.	Construction Manager/General Contractor (CMGC) Procedures
4.	Data Quality Management Plan
5.	Disadvantaged Business Enterprise (DBE) Program Plan
6.	Delaware Manual on Uniform Traffic Control Devices (MUTCD)-State DOT manuals, agreements and other control, monitoring and reporting documents influencing the manual contained therein are submitted to FHWA Division Office for approval.
7.	Indefinite Delivery/Indefinite Quantity (IDIQ) Procedures
8.	Materials and Research Manual
9.	Noise Analysis and Abatement Policy
10.	On-the-Job-Training (OJT) Program Guidelines
11.	Professional Services Procurement Manual
12.	Project Development Manual
13.	Public Involvement Procedures
14.	Quality Assurance Program
15.	Right of Way Manual
16.	Road Design Manual
17.	Standard Construction Details
18.	Standard Specifications
19.	State Freight Plan-Any updates/changes to the plan requires FHWA approval
20.	Statewide Transportation Improvement Plan (STIP)
21.	Strategic Highway Safety Plan (SHSP) Process
22.	Title VI Plan
23.	Transportation Asset Management Plan (TAMP)-Certify the State approved Asset Management Plan meets all the requirements and annually cerify the plan is being followed in accordance with the requirements established by 23 U.S.C. 119 and 23 CFR part 515.
24.	Operating Agreements: Categorical Exclusions Programmatic Agreement, Section 106 of the Naitional Historic Preservation Act Programmatic Agreement

Attachment F

Legal Authorities

1. Federal Authority

a. Code of Federal Regulations

b. United States Code (U.S.C)

2. State of Delaware Authority

a. Delaware Statutory Code

b. Delaware Administrative Code

c. Delaware Superior Court Rule 71.1

d. DelDOT Policy Implement

Federal Code and Regulations

A. Code of Federal Regulations

1. 2 CFR 200.303 Internal Controls
2. 2 CFR 200.332 Requirements for pass-through entities.
3. 2 CFR 200.439 Equipment and other capital expenditures.
4. 23 CFR 1.23 Highways - Rights-of-Way
5. 23 CFR 140 Subpart F - Reimbursement for Bond Issue Projects
6. 23 CFR Part 450 Planning Assistance and Standards
7. 23 CFR 620.104 Highway - Standards
8. 23 CFR 620.203 Highways - Procedures
9. 23 CFR 625.3 Highways - Application
10. 23 CFR 630.1010 (e) – Highways - Preconstruction Projects - Significant Projects
11. 23 CFR Part 635 Engineering and Traffic Operations
12. 23 CFR Part 645 Highways - Utilities
13. 23 CFR Part 646 Highways - Railroads
14. 23 CFR 650.805 Highways - Bridges Not Requiring a USCG Permit
15. 23 CFR 650.807 Highways - Bridges Requiring a USCG Permit.
16. 23 CFR 655.606 Highways - Higher Cost Materials
17. 23 CFR 668.109 Highways, Emergency Relief Program - Eligibility
18. 23 CFR Part 710 Right of Way and Environment
19. 23 CFR Part 771 Environmental Impact and Related Procedures
20. 23 CFR 774.3 Section 4(f) Approvals
21. 23 CFR 810 Mass Transit and Special Use Highway Projects
22. 40 CFR Part 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures
23. 40 CFR 1508.27 Council on Environmental Quality – Significantly
24. 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

B. United States Code

1. 16 U.S.C. Sections 1531-1544 Endangered Species Act
2. 23 U.S.C. §106 Project Approval and Oversight
3. 23 U.S.C. §108 Advanced Acquisition of Real Property
4. 23 U.S.C. §109 Standards
5. 23 U.S.C §111 Agreements Relating to Use of and Access to Rights-of-Way-Interstate System
6. 23 U.S.C. §114 Construction
7. 23 U.S.C. §121 Payment to States for Construction
8. 23 U.S.C. §122 Payment to States for Bond and Other Debt Instrument Financing
9. 23 U.S.C. §125 Emergency Relief
10. 23 U.S.C. §134 Metropolitan Transportation Planning
11. 23 U.S.C. §135 Statewide Transportation Planning
12. 23 U.S.C. §138 Preservation of Parklands
13. 23 U.S.C. § 142 Public Transportation
14. 23 U.S.C. § 144 National Bridge and Tunnel Inventory and Inspection Standards
15. 23 U.S.C. § 156 Proceeds from the Sale or Lease of Real Property
16. 23 U.S.C. § 323 Donations and Credits
17. 23 U.S.C. § 326 State Assumption of Responsibility for Categorical Exclusions
18. 23 U.S.C. § 327 Surface Project Delivery Program
19. U.S. Code 42, Chapter 61 (Public Law 91-646)
20. Title VI of the Civil Rights Act of 1964 - 2000d- § 2000d-7
21. 49 U.S.C. § 303 Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites
22. 49 U.S.C. § 5303 Metropolitan Transportation Planning
23. 49 U.S.C. § 5304 Statewide and Nonmetropolitan Transportation Planning
24. 54 U.S.C. §306108 Effect of Undertaking on Historic Property

This content is from the eCFR and is authoritative but unofficial.

Title 2 —Federal Financial Assistance
Subtitle A —Office of Management and Budget Guidance for Federal Financial Assistance
Chapter II —Office of Management and Budget Guidance
Part 200 —Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
Subpart D —Post Federal Award Requirements

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.
Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

§ 200.303 Internal controls.

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control-Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) Evaluate and monitor the recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

This content is from the eCFR and is authoritative but unofficial.

Title 2 —Federal Financial Assistance
Subtitle A —Office of Management and Budget Guidance for Federal Financial Assistance
Chapter II —Office of Management and Budget Guidance
Part 200 —Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
Subpart D —Post Federal Award Requirements
Subrecipient Monitoring and Management

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.
Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

§ 200.332 Requirements for pass-through entities.

A pass-through entity must:

(a) Verify that the subrecipient is not excluded or disqualified in accordance with § 180.300. Verification methods are provided in § 180.300, which include confirming in *SAM.gov* that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must provide the unavailable information when it is obtained. Required information includes:

(1) Federal award identification.

(i) Subrecipient's name (must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated in the subaward;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required by the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of the Federal agency, pass-through entity, and contact information for awarding official of the pass-through entity;

(xii) Assistance Listings title and number; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at the time of disbursement;

(xiii) Identification of whether the Federal award is for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with § 200.414).

(2) All requirements of the subaward, including requirements imposed by Federal statutes, regulations, and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4) Indirect cost rate:

(i) An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient, in which case the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government. Subrecipients may elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to access the subrecipient's records and financial statements for the pass-through entity to fulfill its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

(c) Evaluate each subrecipient's fraud risk and risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (f) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of any Federal agency monitoring (for example, if the subrecipient also receives Federal awards directly from the Federal agency).

(d) If appropriate, consider implementing specific conditions in a subaward as described in § 200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(g) Verify that a subrecipient is audited as required by subpart F of this part.

(h) Consider whether the results of a subrecipient's audit, site visits, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 and in program regulations.

This content is from the eCFR and is authoritative but unofficial.

Title 2 —Federal Financial Assistance
Subtitle A —Office of Management and Budget Guidance for Federal Financial Assistance
Chapter II —Office of Management and Budget Guidance
Part 200 —Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
Subpart E —Cost Principles
General Provisions for Selected Items of Cost

Authority: 31 U.S.C. 503; 31 U.S.C. 6101-6106; 31 U.S.C. 6307; 31 U.S.C. 7501-7507.
Source: 89 FR 30136, Apr. 22, 2024, unless otherwise noted.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost, and capital assets.*

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are allowable as direct costs, but only with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are allowable as a direct cost, but only with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct cost in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter A —General Management and Administration
Part 1 —General

Authority: 23 U.S.C. 315; 49 CFR 1.48(b).
Source: 25 FR 4162, May 11, 1960, unless otherwise noted.

§ 1.23 Rights-of-way.

(a) ***Interest to be acquired.*** The State shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project.

(b) ***Use for highway purposes.*** Except as provided under paragraph (c) of this section, all real property, including air space, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes. No project shall be accepted as complete until this requirement has been satisfied. The State highway department shall be responsible for preserving such right-of-way free of all public and private installations, facilities or encroachments, except

(1) those approved under paragraph (c) of this section;

(2) those which the Administrator approves as constituting a part of a highway or as necessary for its operation, use or maintenance for public highway purposes and

(3) informational sites established and maintained in accordance with § 1.35 of the regulations in this part.

(c) ***Other use or occupancy.*** Subject to 23 U.S.C. 111, the temporary or permanent occupancy or use of right-of-way, including air space, for nonhighway purposes and the reservation of subsurface mineral rights within the boundaries of the rights-of-way of Federal-aid highways, may be approved by the Administrator, if he determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter B —Payment Procedures
Part 140 —Reimbursement

Authority: 23 U.S.C. 101(e), 106, 109(e), 114(a), 120(g), 121, 122, 130, and 315; and 49 CFR 1.48(b).

Subpart F Reimbursement for Bond Issue Projects

§ 140.601 Purpose.
§ 140.602 Requirements and conditions.
§ 140.603 Programs.
§ 140.604 Reimbursable schedule.
§ 140.605 Approval actions.
§ 140.606 Project agreements.
§ 140.607 Construction.
§ 140.608 Reimbursable bond interest costs of Interstate projects.
§ 140.609 Progress and final vouchers.
§ 140.610 Conversion from bond issue to funded project status.
§ 140.611 Determination of bond retirement.
§ 140.612 Cash management.

Appendix to Subpart F of Part 140
Reimbursable Schedule for Converted “E” (Bond Issue) Projects (other than Interstate Projects)

Subpart F—Reimbursement for Bond Issue Projects

Source: 48 FR 54971, Dec. 8, 1983, unless otherwise noted.

§ 140.601 Purpose.

To prescribe policies and procedures for the use of Federal funds by State highway agencies (SHAs) to aid in the retirement of the principal and interest of bonds, pursuant to 23 U.S.C. 122 and the payment of interest on bonds of eligible Interstate projects.

§ 140.602 Requirements and conditions.

(a) An SHA that uses the proceeds of bonds issued by the State, a county, city or other political subdivision of the State, for the construction of projects on the Federal-aid primary or Interstate system, or extensions of any of the Federal-aid highway systems in urban areas, or for substitute highway projects approved under

23 U.S.C. 103(e)(4), may claim payment of any portion of such sums apportioned to it for expenditures on such system to aid in the retirement of the principal of bonds at their maturities, to the extent that the proceeds of bonds have actually been expended in the construction of projects.

(b) Any interest earned and payable on bonds, the proceeds of which were expended on Interstate projects after November 6, 1978, is an eligible cost of construction. The amount of interest eligible for participation will be based on

(1) the date the proceeds were expended on the project,

(2) amount expended, and

(3) the date of conversion to a regularly funded project. As provided for in section 115(c), Pub. L. 95-599, November 6, 1978, interest on bonds issued in any fiscal year by a State after November 6, 1978, may be paid under the authority of 23 U.S.C. 122 only if such SHA was eligible to obligate Interstate Discretionary funds under the provisions of 23 U.S.C. 118(b) during such fiscal year, and the Administrator certifies that such eligible SHA has utilized, or will utilize to the fullest extent possible during such fiscal year, its authority to obligate funds under 23 U.S.C. 118(b).

(c) The Federal share payable at the time of conversion, as provided for in § 140.610 shall be the legal pro rata in effect at the time of execution of the project agreement for the bond issue project.

(d) The authorization of a bond issue project does not constitute a commitment of Federal funds until the project is converted to a regular Federal-aid project as provided for in § 140.610.

(e) Reimbursements for the redemption of bonds may not precede, by more than 60 days, the scheduled date of the retirement of the bonds.

(f) Federal funds are not eligible for payment into sinking funds created and maintained for the subsequent retirement of bonds.

§ 140.603 Programs.

Programs covering projects to be financed from the proceeds of bonds shall be prepared and submitted to FHWA. Project designations shall be the same as for regular Federal-aid projects except that the prefix letter “B” for bond issue shall be used as the first letter of each project designation, e.g., “BI” for Bond Issue Projects—Interstate.

§ 140.604 Reimbursable schedule.

Projects to be financed from other than Interstate funds shall be subject to a 36-month reimbursable schedule upon conversion to regular Federal-aid financing (See appendix). FHWA will consider requests for waiver of this provision at the time of conversion action. Waivers are subject to the availability of liquidating cash.

§ 140.605 Approval actions.

(a) Authorization to proceed with preliminary engineering and acquisition of rights-of-way shall be issued in the same manner as for regularly financed Federal-aid projects.

(b) Authorization of physical construction shall be given in the same manner as for regularly financed Federal-aid projects. The total cost and Federal funds required, including interest, shall be indicated in the plans, specifications, and estimates.

(c) Projects subject to the reimbursable schedule shall be identified as an “E” project when the SHA is authorized to proceed with all or any phase of the work.

(d) Concurrence in the award of contracts shall be given.

§ 140.606 Project agreements.

Project Agreements, Form PR-2, shall be prepared and executed. Agreement provision 8 on the reverse side of Form PR-2[1] shall apply for bond issue projects.

§ 140.607 Construction.

Construction shall be supervised by the SHA in the same manner as for regularly financed Federal-aid projects. The FHWA will make construction inspections and reports.

§ 140.608 Reimbursable bond interest costs of Interstate projects.

(a) Bond interest earned on bonds actually retired may be reimbursed on the Federal pro rata basis applicable to such projects in accordance with § 140.602(b) and (c).

(b) No interest will be reimbursed for bonds issued after November 6, 1978, used to retire or otherwise refinance bonds issued prior to that date.

§ 140.609 Progress and final vouchers.

(a) Progress vouchers may be submitted for the Federal share of bonds retired or about to be retired, including eligible interest on Interstate Bond Issue Projects, the proceeds of which have actually been expended for the construction of the project.

(b) Upon completion of a bond issue project, a final voucher shall be submitted by the SHA. After final review, the SHA will be advised as to the total cost and Federal fund participation for the project.

§ 140.610 Conversion from bond issue to funded project status.

(a) At such time as the SHA elects to apply available apportioned Federal-aid funds to the retirement of bonds, including eligible interest earned and payable on Interstate Bond Projects, subject to available obligational authority, its claim shall be supported by appropriate certifications as follows:

> I hereby certify that the following bonds, (list), the proceeds of which have been actually expended in the construction of bond issue projects authorized by title 23 U.S.C., section 122, (1) have been retired on _____, or (2) mature and are scheduled for retirement on _____, which is ____ days in advance of the maturity date of _____.

Eligible interest claimed on Interstate Bond Projects shall be shown for each bond and the certification shall include the statement:

> I also certify that interest earned and paid or payable for each bond listed has been determined from the date on and after which the respective bond proceeds were actually expended on the project.

[1] The text of FHWA Form PR-2 is found in 23 CFR part 630, subpart C, appendix A.

(b) The SHA's request for full conversion of a completed projects), or partial conversion of an active or completed project(s), may be made by letter, inclusive of the appropriate certification as described in § 140.610(a) making reference to any progress payments received or the final voucher(s) previously submitted and approved in accordance with § 140.609.

(c) Approval of the conversion action shall be by the Division Administrator.

(d) The SHA's request for partial conversion of an active or completed bond issue project shall provide for:

(1) Conversion to funded project status of the portion to be financed out of the balance of currently available apportioned funds, and

(2) retention of the unfunded portion of the project in the bond program.

(e) Where the SHA's request involves the partial conversion of a completed bond issue project, payment of the Federal funds made available under the conversion action shall be accomplished through use of Form PR-20, Voucher for Work Performed under Provisions of the Federal-aid and Federal Highway Acts, prepared in the division office and appropriately cross-referenced to the Bond Issue Project final voucher previously submitted and approved. The final voucher will be reduced by the amount of the approved reimbursement.

§ 140.611 Determination of bond retirement.

Division Administrators shall be responsible for the prompt review of the SHA's records to determine that bonds issued to finance the projects and for which reimbursement has been made, including eligible bond interest expense, have been retired pursuant to the State's certification required by § 140.610(a), and that such action is documented in the project file.

§ 140.612 Cash management.

By July 1 of each year the SHA will provide FHWA with a schedule, including the anticipated claims for reimbursement, of bond projects to be converted during the next two fiscal years. The data will be used by FHWA in determining liquidating cash required to finance such conversions.

Appendix to Subpart F of Part 140—Reimbursable Schedule for Converted "E" (Bond Issue) Projects (other than Interstate Projects)

Time in months following conversion from "E" (bond issue) project to regular project	Cumulative amount reimbursable (percent of Federal funds obligated)
1	1
2	2
3	5
4	9
5	13
6	18
7	23
8	29

Time in months following conversion from "E" (bond issue) project to regular project	Cumulative amount reimbursable (percent of Federal funds obligated)
9	34
10	39
11	44
12	49
13	54
14	58
15	61
16	64
17	67
18	70
19	73
20	75
21	77
22	79
23	81
24	83
25	85
26	87
27	89
28	91
29	93
30	94
31	95
32	96
34	97
35	99
36	100

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter E —Planning and Research

Part 450 Planning Assistance and Standards
- **Subpart A** Transportation Planning and Programming Definitions
  - **§ 450.100** Purpose.
  - **§ 450.102** Applicability.
  - **§ 450.104** Definitions.
- **Subpart B** Statewide and Nonmetropolitan Transportation Planning and Programming
  - **§ 450.200** Purpose.
  - **§ 450.202** Applicability.
  - **§ 450.204** Definitions.
  - **§ 450.206** Scope of the statewide and nonmetropolitan transportation planning process.
  - **§ 450.208** Coordination of planning process activities.
  - **§ 450.210** Interested parties, public involvement, and consultation.
  - **§ 450.212** Transportation planning studies and project development.
  - **§ 450.214** Development of programmatic mitigation plans.
  - **§ 450.216** Development and content of the long-range statewide transportation plan.
  - **§ 450.218** Development and content of the statewide transportation improvement program (STIP).
  - **§ 450.220** Self-certifications, Federal findings, and Federal approvals.
  - **§ 450.222** Project selection from the STIP.
  - **§ 450.224** Applicability of NEPA to statewide transportation plans and programs.
  - **§ 450.226** Phase-in of new requirements.
- **Subpart C** Metropolitan Transportation Planning and Programming
  - **§ 450.300** Purpose.
  - **§ 450.302** Applicability.
  - **§ 450.304** Definitions.
  - **§ 450.306** Scope of the metropolitan transportation planning process.
  - **§ 450.308** Funding for transportation planning and unified planning work programs.
  - **§ 450.310** Metropolitan planning organization designation and redesignation.
  - **§ 450.312** Metropolitan Planning Area boundaries.
  - **§ 450.314** Metropolitan planning agreements.
  - **§ 450.316** Interested parties, participation, and consultation.
  - **§ 450.318** Transportation planning studies and project development.

§ 450.320 Development of programmatic mitigation plans.
§ 450.322 Congestion management process in transportation management areas.
§ 450.324 Development and content of the metropolitan transportation plan.
§ 450.326 Development and content of the transportation improvement program (TIP).
§ 450.328 TIP revisions and relationship to the STIP.
§ 450.330 TIP action by the FHWA and the FTA.
§ 450.332 Project selection from the TIP.
§ 450.334 Annual listing of obligated projects.
§ 450.336 Self-certifications and Federal certifications.
§ 450.338 Applicability of NEPA to metropolitan transportation plans and programs.
§ 450.340 Phase-in of new requirements.

Appendix A to Part 450
Linking the Transportation Planning and NEPA Processes

PART 450—PLANNING ASSISTANCE AND STANDARDS

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

Source: 81 FR 34135, May 27, 2016, unless otherwise noted.

Subpart A—Transportation Planning and Programming Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, a redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes or changing the number of stations in the case of fixed guideway transit projects). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment and a redemonstration of fiscal constraint. If an amendment involves "non-exempt" projects in nonattainment and maintenance areas, a conformity determination is required.

Asset management means a strategic and systematic process of operating, maintaining, and improving physical assets, with a focus on both engineering and economic analysis based upon quality information, to identify a structured sequence of maintenance, preservation, repair, rehabilitation, and replacement actions that will achieve and sustain a desired state of good repair over the lifecycle of the assets at minimum practicable cost.

Attainment area means any geographic area in which levels of a given criteria air pollutant (e.g., ozone, carbon monoxide, PM_{10}, $PM_{2.5}$, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A "maintenance area" (see definition in this section) is not considered an attainment area for transportation planning purposes.

Available funds means funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered "available." A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

Committed funds means funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control may be considered "committed." Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (e.g., letter of intent) by the responsible official or body having control of the funds may be considered a commitment. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or an Expedited Grant Agreement (or equivalent) with the DOT shall be considered a multiyear commitment of Federal funds.

Conformity means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by a State Implementation Plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any required interim emission reductions or other milestones in any nonattainment or maintenance area. The transportation conformity regulations (40 CFR part 93, subpart A) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

Conformity lapse means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

Congestion Management Process means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C., and title 49 U.S.C., through the use of travel demand reduction and operational management strategies.

Consideration means that one or more parties takes into account the opinions, action, and relevant information from other parties in making a decision or determining a course of action.

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the "consultation" performed by the States and the Metropolitan Planning Organizations (MPOs) in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and tribal conservation plans or maps or inventories of natural or historic resources (see section 450.216(j) and sections 450.324(g)(1) and (g)(2)).

Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

Coordinated public transit-human services transportation plan means a locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

Coordination means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

Design concept means the type of facility identified for a transportation improvement project (e.g., freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or busway).

Design scope means the aspects that will affect the proposed facility's impact on the region, usually as they relate to vehicle or person carrying capacity and control (e.g., number of lanes or tracks to be constructed or added, length of project, signalization, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 that are attributable to urbanized areas of 200,000 or more in population, or a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

Environmental mitigation activities means strategies, policies, programs, and actions that, over time, will serve to avoid, minimize, rectify, reduce or eliminate impacts to environmental resources associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan.

Expedited Grant Agreement (EGA) means a contract that defines the scope of a Small Starts project, the Federal financial contribution, and other terms and conditions, in accordance with 49 U.S.C. 5309(h)(7).

Federal land management agency means units of the Federal Government currently responsible for the administration of public lands (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial plan means documentation required to be included with a metropolitan transportation plan and TIP (and optional for the long-range statewide transportation plan and STIP) that demonstrates the consistency between reasonably available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements.

Financially constrained or Fiscal constraint means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first 2 years of the TIP and STIP only if funds are "available" or "committed."

Freight shippers means any entity that routinely transport cargo from one location to another by providers of freight transportation services or by their own operations, involving one or more travel modes.

Full Funding Grant Agreement (FFGA) means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(k)(2).

Governor means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

Highway Safety Improvement Program (HSIP) means a State safety program with the purpose to reduce fatalities and serious injuries on all public roads through the implementation of the provisions of 23 U.S.C. 130, 148, and 150 including the development of a Strategic Highway Safety Plan (SHSP), Railway-Highway Crossings Program, and program of highway safety improvement projects.

Illustrative project means an additional transportation project that may be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become available.

Indian Tribal government means a duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454.

Intelligent Transportation System (ITS) means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

Interim metropolitan transportation plan means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

Interim Transportation Improvement Program (TIP) means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

Long-range statewide transportation plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Maintenance area means any geographic region of the United States that the Environmental Protection Agency (EPA) previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act, as amended (42 U.S.C. 7505a).

Management system means a systematic process, designed to assist decision makers in selecting cost effective strategies/actions to improve the efficiency or safety of, and protect the investment in the nation's infrastructure. A management system can include: Identification of performance measures; data collection and analysis; determination of needs; evaluation and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning agreement means a written agreement between the MPO, the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

Metropolitan planning area (MPA) means the geographic area determined by agreement between the MPO for the area and the Governor, in which the metropolitan transportation planning process is carried out.

Metropolitan Planning Organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

Metropolitan transportation plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon that the MPO develops, adopts, and updates through the metropolitan transportation planning process.

National Ambient Air Quality Standard (NAAQS) means those standards established pursuant to section 109 of the Clean Air Act (42 U.S.C. 7409).

Nonattainment area means any geographic region of the United States that EPA designates as a nonattainment area under section 107 of the Clean Air Act (42 U.S.C. 7407) for any pollutants for which an NAAQS exists.

Nonmetropolitan area means a geographic area outside a designated metropolitan planning area.

Nonmetropolitan local officials means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

Obligated projects means strategies and projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 for which the State or designated recipient authorized and committed the supporting Federal funds in preceding or current program years, and authorized by the FHWA or awarded as a grant by the FTA.

Operational and management strategies means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve congestion and maximize the safety and mobility of people and goods.

Performance measure refers to "Measure" as defined in 23 CFR 490.101.

Performance metric refers to "Metric" as defined in 23 CFR 490.101.

Performance target refers to "Target" as defined in 23 CFR 490.101.

Project selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first 4 years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

Provider of freight transportation services means any entity that transports or otherwise facilitates the movement of cargo from one location to another for others or for itself.

Public transportation agency safety plan means a comprehensive plan established by a State or recipient of funds under Title 49, Chapter 53 and in accordance with 49 U.S.C. 5329(d).

Public transportation operator means the public entity or government-approved authority that participates in the continuing, cooperative, and comprehensive transportation planning process in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, and is a recipient of Federal funds under title 49 U.S.C. Chapter 53 for transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include sightseeing, school bus, charter, certain types of shuttle service, intercity bus transportation, or intercity passenger rail transportation provided by Amtrak.

Regional ITS architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

Regionally significant project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation conformity regulations (40 CFR part 93, subpart A)) that is on a facility that serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Regional Transportation Planning Organization (RTPO) means a policy board of nonmetropolitan local officials or their designees created to carry out the regional transportation planning process.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an "amendment" while a minor revision is an "administrative modification."

Scenario planning means a planning process that evaluates the effects of alternative policies, plans and/or programs on the future of a community or region. This activity should provide information to decision makers as they develop the transportation plan.

State means any one of the 50 States, the District of Columbia, or Puerto Rico.

State Implementation Plan (SIP) means, as defined in section 302(q) of the Clean Air Act (CAA) (42 U.S.C. 7602(q)), the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA (42 U.S.C. 7410), or promulgated under section 110(c) of the CAA (42 U.S.C. 7410(c)), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA (42 U.S.C. 7601(d)) and which implements the relevant requirements of the CAA.

Statewide Transportation Improvement Program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of 4 years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Strategic Highway Safety Plan means a comprehensive, multiyear, data-driven plan, developed by a State DOT in accordance with the 23 U.S.C. 148.

Transit Asset Management Plan means a plan that includes an inventory of capital assets, a condition assessment of inventoried assets, a decision support tool, and a prioritization of investments.

Transit Asset Management System means a strategic and systematic process of operating, maintaining, and improving public transportation capital assets effectively, throughout the life cycles of those assets.

Transportation Control Measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in section 108 of the CAA (42 U.S.C. 7408) or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the Governor and the MPO and designated by the Secretary of Transportation.

Unified Planning Work Program (UPWP) means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon for metropolitan transportation plans and long-range statewide transportation plans, a 4-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs in nonattainment and maintenance areas).

Urbanized area (UZA) means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

Users of public transportation means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

Visualization techniques means methods used by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as GIS- or web-based surveys, inventories, maps, pictures, and/or displays identifying features such as roadway rights of way, transit, intermodal, and non-motorized transportation facilities, historic and cultural resources, natural resources, and environmentally sensitive areas, to promote improved understanding of existing or proposed transportation plans and programs.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93469, Dec. 20, 2016; 82 FR 56542, Nov. 29, 2017]

Subpart B—Statewide and Nonmetropolitan Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135, 23 U.S.C. 150, and 49 U.S.C. 5304, as amended, which require each State to carry out a continuing, cooperative, and comprehensive performance-based statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and STIP, that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity bus facilities and commuter van pool providers) and that fosters economic growth and development within and between States and urbanized areas, and take into consideration resiliency needs while minimizing transportation-related fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.202 Applicability.

The provisions of this subpart are applicable to States and any other organizations or entities (e.g., MPOs, RTPOs and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

§ 450.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.206 Scope of the statewide and nonmetropolitan transportation planning process.

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the United States, the States, metropolitan areas, and nonmetropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(7) Promote efficient system management and operation;

(8) Emphasize the preservation of the existing transportation system;

(9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(10) Enhance travel and tourism.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(c) ***Performance-based approach.***

(1) The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301.

(2) Each State shall select and establish performance targets in coordination with the relevant MPOs to ensure consistency to the maximum extent practicable. The targets shall address the performance areas described in 23 U.S.C. 150(c), and the measures established under 23 CFR part 490, where applicable, to use in tracking progress toward attainment of critical outcomes for the State. States shall establish performance targets that reflect the measures identified in 23 U.S.C. 150(c) not later than 1 year after the effective date of the DOT final rule on performance measures. Each State shall select and establish targets under this paragraph in accordance with the appropriate target setting framework established at 23 CFR part 490.

(3) In areas not represented by an MPO, the selection of public transportation performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(4) A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this section, in other State transportation plans and transportation processes, as well as any plans developed pursuant to chapter 53 of title 49 by providers of public transportation in areas not represented by an MPO required as part of a performance-based program. Examples of such plans and processes include the HSIP, SHSP, the State Asset Management Plan for the National Highway System (NHS), the State Freight Plan (if the State has one), the Transit Asset Management Plan, and the Public Transportation Agency Safety Plan.

(5) A State shall consider the performance measures and targets established under this paragraph when developing policies, programs, and investment priorities reflected in the long-range statewide transportation plan and statewide transportation improvement program.

(d) The failure to consider any factor specified in paragraph (a) or (c) of this section shall not be subject to review by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the statewide transportation planning process findings.

(e) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 49 U.S.C. 5307, 5310, and 5311 may also be used for statewide transportation planning. A State shall document statewide transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the transportation planning priorities facing the State.

§ 450.208 Coordination of planning process activities.

(a) In carrying out the statewide transportation planning process, each State shall, at a minimum:

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;

(2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;

(3) Consider the concerns of Federal land management agencies that have jurisdiction over land within the boundaries of the State;

(4) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through RTPOs described in section 450.210(d) in nonmetropolitan areas;

(5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;

(6) Consider related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective. The right to alter, amend, or repeal interstate compacts entered into under this part is expressly reserved.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) In carrying out the statewide transportation planning process, States should apply asset management principles and techniques consistent with the State Asset Management Plan for the NHS and the Transit Asset Management Plan, and Public Transportation Agency Safety Plan in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) For non-NHS highways, States may apply principles and techniques consistent with other asset management plans to the transportation planning and programming processes, as appropriate.

(g) The statewide transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(h) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the statewide transportation planning process.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93469, Dec. 20, 2016; 82 FR 56542, Nov. 29, 2017]

§ 450.210 Interested parties, public involvement, and consultation.

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decisionmaking processes to individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

(ii) Provide reasonable public access to technical and policy information used in the development of the long-range statewide transportation plan and the STIP;

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

(iv) To the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times;

(v) To the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies;

(vi) To the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information;

(vii) Demonstrate explicit consideration and response to public input during the development of the long-range statewide transportation plan and STIP;

(viii) Include a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services; and

(ix) Provide for the periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all interested parties and revise the process, as appropriate.

(2) The State shall provide for public comment on existing and proposed processes for public involvement in the development of the long-range statewide transportation plan and the STIP. At a minimum, the State shall allow 45 calendar days for public review and written comment before the procedures and any major revisions to existing procedures are adopted. The State shall provide copies of the approved public involvement process document(s) to the FHWA and the FTA for informational purposes.

(3) With respect to the setting of targets, nothing in this part precludes a State from considering comments made as part of the State's public involvement process.

(b) The State shall provide for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for cooperating with nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this cooperative process(es), the State shall provide copies of the process document(s) to the FHWA and the FTA for informational purposes.

(1) At least once every 5 years, the State shall review and solicit comments from nonmetropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the cooperative process and any proposed changes. The State shall direct a specific request for comments to the State association of counties, State municipal league, regional planning agencies, or directly to nonmetropolitan local officials.

(2) The State, at its discretion, is responsible for determining whether to adopt any proposed changes. If a proposed change is not adopted, the State shall make publicly available its reasons for not accepting the proposed change, including notification to nonmetropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of the Interior. States shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and Department of the Interior in the development of the long-range statewide transportation plan and the STIP.

(d) To carry out the transportation planning process required by this section, a Governor may establish and designate RTPOs to enhance the planning, coordination, and implementation of the long-range statewide transportation plan and STIP, with an emphasis on addressing the needs of nonmetropolitan areas of the State. In order to be treated as an RTPO for purposes of this Part, any existing regional planning organization must be established and designated as an RTPO under this section.

(1) Where established, an RTPO shall be a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(2) An RTPO shall establish, at a minimum:

(i) A policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(ii) A fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(3) The duties of an RTPO shall include:

(i) Developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(ii) Developing a regional TIP for consideration by the State;

(iii) Fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(iv) Providing technical assistance to local officials;

(v) Participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(vi) Providing a forum for public participation in the statewide and regional transportation planning processes;

(vii) Considering and sharing plans and programs with neighboring RTPOs, MPOs, and, where appropriate, Indian Tribal Governments; and

(viii) Conducting other duties, as necessary, to support and enhance the statewide planning process under § 450.206.

(4) If a State chooses not to establish or designate an RTPO, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

§ 450.212 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA-21 (Pub. L. 105-178), a State(s), MPO(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process

consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500-1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the statewide transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate. Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that is non-binding guidance material. The guidance in Appendix A applies only to paragraphs (a)-(c) in this section.

(d) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.214 Development of programmatic mitigation plans.

(a) A State may utilize the optional framework in this section to develop programmatic mitigation plans as part of the statewide transportation planning process to address the potential environmental impacts of future transportation projects. The State in consultation with FHWA and/or FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) ***Scope.***

(i) A State may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) ***Contents.*** The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value, and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects, which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A State may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A State may integrate a programmatic mitigation plan with other plans, including, watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) or other Federal environmental law.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the statewide and nonmetropolitan transportation planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.216 Development and content of the long-range statewide transportation plan.

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated. The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of

policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy), as appropriate, that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects contained in the HSIP, including the SHSP, required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in other transit safety and security planning and review processes, plans, and programs, as appropriate.

(f) The statewide transportation plan shall include:

(1) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.206(c); and

(2) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.206(c), including progress achieved by the MPO(s) in meeting the performance targets in comparison with system performance recorded in previous reports.

(g) Within each metropolitan area of the State, the State shall develop the long-range statewide transportation plan in cooperation with the affected MPOs.

(h) For nonmetropolitan areas, the State shall develop the long-range statewide transportation plan in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's cooperative process(es) established under § 450.210(b).

(i) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(j) The State shall develop the long-range statewide transportation plan, as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(k) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the long-range statewide transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The State shall develop the discussion in consultation with applicable Federal, State, regional, local and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation.

(l) In developing and updating the long-range statewide transportation plan, the State shall provide:

(1) To nonmetropolitan local elected officials, or, if applicable, through RTPOs described in § 450.210(d), an opportunity to participate in accordance with § 450.216(h); and

(2) To individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall use the public involvement process described under § 450.210(a).

(m) The long-range statewide transportation plan may include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may include additional projects that the State would include in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were to become available. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public-private partnerships, or other strategies) as revenue sources.

(n) The State is not required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (m) of this section.

(o) The State shall publish or otherwise make available the long-range statewide transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(p) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(q) The State shall provide copies of any new or amended long-range statewide transportation plan documents to the FHWA and the FTA for informational purposes.

§ 450.218 Development and content of the statewide transportation improvement program (STIP).

(a) The State shall develop a statewide transportation improvement program (STIP) for all areas of the State. The STIP shall cover a period of no less than 4 years and shall be updated at least every 4 years, or more frequently if the Governor of the State elects a more frequent update cycle. However, if the STIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), the State may develop a partial STIP covering the rest of the State.

(b) For each metropolitan area in the State, the State shall develop the STIP in cooperation with the MPO designated for the metropolitan area. The State shall include each metropolitan TIP without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to a FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or

maintenance area containing any part of a metropolitan area, projects must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(c) For each nonmetropolitan area in the State, the State shall develop the STIP in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through RTPOs described in § 450.210(d) using the State's consultation process(es) established under § 450.210(b).

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 201(c)(4).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 (including transportation alternatives and associated transit improvements; Tribal Transportation Program projects, Federal Lands Transportation Program projects, and Federal Lands Access Program projects; HSIP projects; trails projects; and accessible pedestrian walkways and bicycle facilities), except the following that may be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(d) and 49 U.S.C. 5305(d);

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) State planning and research projects funded with Surface Transportation Program funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) Research, development, demonstration, and deployment projects funded under 49 U.S.C. 5312, and technical assistance and standards development projects funded under 49 U.S.C. 5314;

(7) Project management oversight projects funded under 49 U.S.C. 5327; and

(8) State safety oversight programs funded under 49 U.S.C. 5329.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 funds (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23 U.S.C. or title 49 U.S.C. Chapter 53). For informational and conformity purposes, the STIP shall include (if appropriate and included in any TIPs) all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

(1) Sufficient descriptive material (*i.e.,* type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost or a project cost range, which may extend beyond the 4 years of the STIP;

(3) The amount of Federal funds proposed to be obligated during each program year. For the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds; and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the "exempt project" classifications contained in the EPA's transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.216 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.324.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the FHWA and the FTA on the STIP. Revenue and cost estimates for the STIP must use an inflation rate to reflect "year of expenditure dollars," based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(m) In nonattainment and maintenance areas, projects included in the first 2 years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (l) of this section. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. 5302).

(n) Projects in any of the first 4 years of the STIP may be advanced in place of another project in the first 4 years of the STIP, subject to the project selection requirements of § 450.222. In addition, subject to FHWA/FTA approval (see § 450.220), the State may revise the STIP at any time under procedures agreed to by the State, MPO(s), and public transportation operators consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(p) In cases where the FHWA and the FTA find a STIP to be fiscally constrained, and a revenue source is subsequently removed or substantially reduced (*i.e.,* by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended STIP that does not reflect the changed revenue situation.

(q) A STIP shall include, to the maximum extent practicable, a discussion of the anticipated effect of the STIP toward achieving the performance targets identified by the State in the statewide transportation plan or other State performance-based plan(s), linking investment priorities to those performance targets.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016; 82 FR 56543, Nov. 29, 2017]

§ 450.220 Self-certifications, Federal findings, and Federal approvals.

(a) At least every 4 years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. The State must also submit STIP amendments to the FHWA and the FTA for joint approval. At the time the entire proposed STIP or STIP amendments are submitted to the FHWA and the FTA for joint approval, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and 49 CFR part 21;

(3) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(4) Section 1101(b) of the FAST Act (Pub. L. 114-357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT funded projects;

(5) 23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(6) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(7) In States containing nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) 23 U.S.C. 324, regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP or the amended STIP, and make a joint finding on the extent to which the STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

(i) Approve the entire STIP;

(ii) Approve the STIP subject to certain corrective actions by the State; or

(iii) Under special circumstances, approve a partial STIP covering only a portion of the State.

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed 4 years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP past its update deadline, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond 4 years for all or part of the STIP for a period not to exceed 180 calendar days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish highway and transit operations, the FHWA and the FTA may approve operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved STIP.

§ 450.222 Project selection from the STIP.

(a) Except as provided in § 450.218(g) and § 450.220(d), only projects in a FHWA/FTA approved STIP are eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects proposed for funds administered by the FHWA or the FTA shall be selected from the approved STIP in accordance with project selection procedures provided in § 450.332.

(c) In nonmetropolitan areas, with the exclusion of specific projects as described in this section, the State shall select projects from the approved STIP in cooperation with the affected nonmetropolitan local officials, or if applicable, through RTPOs described in § 450.210(e). The State shall select transportation projects undertaken on the NHS, under the Bridge and Interstate Maintenance programs in title 23 U.S.C. and under sections 5310 and 5311 of title 49 U.S.C. Chapter 53 from the approved STIP in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(d) Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(e) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there is significant shifting of projects among years, § 450.332(a) provides for a revised list of "agreed to" projects to be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

§ 450.224 Applicability of NEPA to statewide transportation plans and programs.

Any decision by the Secretary concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135, 49 U.S.C. 5304, and this subpart shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 450.226 Phase-in of new requirements.

(a) Prior to May 27, 2018, a State may adopt a long-range statewide transportation plan that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, a State may only adopt a long-range statewide transportation plan that it has developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may approve a STIP update or amendment that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, FHWA/FTA may only approve a STIP update or amendment that a State has developed according to the provisions and requirements of this part, regardless of when the State developed the STIP.

(c) On and after May 27, 2018 (2 years after the publication date of this rule), the FHWA and the FTA will take action on an updated or amended STIP developed under the provisions of this part, even if the State has not yet adopted a new long-range statewide transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018, a State may make an administrative modification to a STIP that conforms to either the SAFETEA-LU requirements or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, FHWA/FTA will only approve an updated or amended STIP that is based on a statewide transportation planning process that meets the performance-based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may adopt a long-range statewide transportation plan that it has developed using the SAFETEA-LU requirements or the performance-based provisions and requirements of this part and in such a rule. Two years on or after the effective date of each rule

establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, a State may only adopt a long-range statewide transportation plan that it has developed according to the performance-based provisions and requirements of this part and in such a rule.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016; 82 FR 56543, Nov. 29, 2017]

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134, 23 U.S.C. 150, and 49 U.S.C. 5303, as amended, which:

(a) Set forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) fosters economic growth and development, and takes into consideration resiliency needs, while minimizing transportation-related fuel consumption and air pollution; and

(b) Encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016; 82 FR 56543, Nov. 29, 2017]

§ 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

§ 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.306 Scope of the metropolitan transportation planning process.

(a) To accomplish the objectives in § 450.300 and § 450.306(b), metropolitan planning organizations designated under § 450.310, in cooperation with the State and public transportation operators, shall develop long-range transportation plans and TIPs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(b) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(7) Promote efficient system management and operation;

(8) Emphasize the preservation of the existing transportation system;

(9) Improve the resiliency and reliability of the transportation system and reduce or mitigate stormwater impacts of surface transportation; and

(10) Enhance travel and tourism.

(c) Consideration of the planning factors in paragraph (b) of this section shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment (including Section 4(f) properties as defined in 23 CFR 774.17), and housing and community development.

(d) ***Performance-based approach.***

(1) The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decisionmaking to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301(c).

(2) ***Establishment of performance targets by metropolitan planning organizations.***

(i) Each metropolitan planning organization shall establish performance targets that address the performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c), and 49 U.S.C. 5329(d) to use in tracking progress toward attainment of critical outcomes for the region of the metropolitan planning organization.

(ii) The selection of targets that address performance measures described in 23 U.S.C. 150(c) shall be in accordance with the appropriate target setting framework established at 23 CFR part 490, and shall be coordinated with the relevant State(s) to ensure consistency, to the maximum extent practicable.

(iii) The selection of performance targets that address performance measures described in 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d) shall be coordinated, to the maximum extent practicable, with public transportation providers to ensure consistency with the performance targets that public transportation providers establish under 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

(3) Each MPO shall establish the performance targets under paragraph (d)(2) of this section not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(4) An MPO shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed under 49 U.S.C. chapter 53 by providers of public transportation, required as part of a performance-based program including:

(i) The State asset management plan for the NHS, as defined in 23 U.S.C. 119(e) and the Transit Asset Management Plan, as discussed in 49 U.S.C. 5326;

(ii) Applicable portions of the HSIP, including the SHSP, as specified in 23 U.S.C. 148;

(iii) The Public Transportation Agency Safety Plan in 49 U.S.C. 5329(d);

(iv) Other safety and security planning and review processes, plans, and programs, as appropriate;

(v) The Congestion Mitigation and Air Quality Improvement Program performance plan in 23 U.S.C. 149(l), as applicable;

(vi) Appropriate (metropolitan) portions of the State Freight Plan (MAP-21 section 1118);

(vii) The congestion management process, as defined in 23 CFR 450.322, if applicable; and

(viii) Other State transportation plans and transportation processes required as part of a performance-based program.

(e) The failure to consider any factor specified in paragraph (b) or (d) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(f) An MPO shall carry out the metropolitan transportation planning process in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(g) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(h) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, should be coordinated and consistent with the metropolitan transportation planning process.

(i) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and this part, taking into account the complexity of the transportation problems in the area. The MPO shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016; 82 FR 56543, Nov. 29, 2017]

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(d), 49 U.S.C. 5305(d), and 49 U.S.C. 5307, are available to MPOs to accomplish activities described in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(2) and 23 U.S.C. 505 may also be provided to MPOs for metropolitan transportation planning. At

the option of the State and operators of public transportation, funds provided under 49 U.S.C. 5305(e) may also be provided to MPOs for activities that support metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(4) for metropolitan transportation planning activities.

(b) An MPO shall document metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next 1- or 2-year period by major activity and task (including activities that address the planning factors in § 450.306(b)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation operator(s), in lieu of a UPWP. A simplified statement of work shall include a description of the major activities to be performed during the next 1- or 2-year period, who (e.g., State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100, as amended (Program Guidance for Metropolitan Planning and State Planning and Research Program Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, an MPO shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) The FHWA and the FTA shall identify as a TMA each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(d) TMA structure:

(1) Not later than October 1, 2014, each metropolitan planning organization that serves a designated TMA shall consist of:

(i) Local elected officials;

(ii) Officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(iii) Appropriate State officials.

(2) An MPO may be restructured to meet the requirements of this paragraph (d) without undertaking a redesignation.

(3) ***Representation.***

(i) Designation or selection of officials or representatives under paragraph (d)(1) of this section shall be determined by the MPO according to the bylaws or enabling statute of the organization.

(ii) Subject to the bylaws or enabling statute of the MPO, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(iii) An official described in paragraph (d)(1)(ii) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (d)(1) of this section.

(4) Nothing in this section shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(i) To develop the plans and TIPs for adoption by an MPO; and

(ii) To develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(e) To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area-make designation of more than one MPO appropriate. In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination, and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

(g) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(h) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(i) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(j) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) A substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(k) Redesignation of an MPO serving a multistate metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(l) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (j) of this section):

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements described in paragraph (d) of this section for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose local government, as established under MPO by-laws.

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire MPA. The consent of Congress is granted to any two or more States to:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under 23 U.S.C. 134 and 49 U.S.C. 5303 as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93470, Dec. 20, 2016; 82 FR 56543, Nov. 29, 2017]

§ 450.312 Metropolitan Planning Area boundaries.

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor.

(1) At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(2) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) An MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, shall retain the MPA boundary that existed on August 10, 2005. The MPA boundaries for such MPOs may only be adjusted by agreement of the Governor and the affected MPO in accordance with the redesignation procedures described in § 450.310(h). The MPA boundary for an MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPO (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall adjust them as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

[82 FR 56543, Nov. 29, 2017]

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for

the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO, the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(d) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) If more than one MPO has been designated to serve an urbanized area there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not designated as a TMA, the adjacent urbanized area shall not be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries,

including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

(h)

(1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:

(i) When one MPO serves an urbanized area;

(ii) When more than one MPO serves an urbanized area; and

(iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.

(2) These provisions shall be documented either:

(i) As part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section; or

(ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

[82 FR 56544, Nov. 29, 2017]

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The MPO shall develop the participation plan in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues that interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93, subpart A), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, tourism, natural disaster risk reduction, environmental protection, airport operations, or freight movements) or coordinate its planning process (to the maximum extent practicable) with such planning activities. In addition, the MPO shall develop the metropolitan transportation plans and TIPs with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 201-204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56544, Nov. 29, 2017]

§ 450.318 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA-21 (Pub. L. 105-178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500-1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material. The guidance in Appendix A applies only to paragraphs (a)-(c) in this section.

(e) In addition to the process for incorporation directly or by reference outlined in paragraph (b) of this section, an additional authority for integrating planning products into the environmental review process exists in 23 U.S.C. 168. As provided in 23 U.S.C. 168(f):

(1) The statutory authority in 23 U.S.C. 168 shall not be construed to limit in any way the continued use of processes established under other parts of this section or under an authority established outside of this part, and the use of one of the processes in this section does not preclude the subsequent use of another process in this section or an authority outside of this part.

(2) The statute does not restrict the initiation of the environmental review process during planning.

§ 450.320 Development of programmatic mitigation plans.

(a) An MPO may utilize the optional framework in this section to develop programmatic mitigation plans as part of the metropolitan transportation planning process to address the potential environmental impacts of future transportation projects. The MPO, in consultation with the FHWA and/or the FTA and with the agency or agencies with jurisdiction and special expertise over the resources being addressed in the plan, will determine:

(1) ***Scope.***

(i) An MPO may develop a programmatic mitigation plan on a local, regional, ecosystem, watershed, statewide or similar scale.

(ii) The plan may encompass multiple environmental resources within a defined geographic area(s) or may focus on a specific type(s) of resource(s) such as aquatic resources, parkland, or wildlife habitat.

(iii) The plan may address or consider impacts from all projects in a defined geographic area(s) or may focus on a specific type(s) of project(s).

(2) ***Contents.*** The programmatic mitigation plan may include:

(i) An assessment of the existing condition of natural and human environmental resources within the area covered by the plan, including an assessment of historic and recent trends and/or any potential threats to those resources.

(ii) An identification of economic, social, and natural and human environmental resources within the geographic area that may be impacted and considered for mitigation. Examples of these resources include wetlands, streams, rivers, stormwater, parklands, cultural resources, historic resources, farmlands, archeological resources, threatened or endangered species, and critical habitat. This may include the identification of areas of high conservation concern or value and thus worthy of avoidance.

(iii) An inventory of existing or planned environmental resource banks for the impacted resource categories such as wetland, stream, stormwater, habitat, species, and an inventory of federally, State, or locally approved in-lieu-of-fee programs.

(iv) An assessment of potential opportunities to improve the overall quality of the identified environmental resources through strategic mitigation for impacts of transportation projects which may include the prioritization of parcels or areas for acquisition and/or potential resource banking sites.

(v) An adoption or development of standard measures or operating procedures for mitigating certain types of impacts; establishment of parameters for determining or calculating appropriate mitigation for certain types of impacts, such as mitigation ratios, or criteria for determining appropriate mitigation sites.

(vi) Adaptive management procedures, such as protocols or procedures that involve monitoring actual impacts against predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring.

(vii) Acknowledgement of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(b) A MPO may adopt a programmatic mitigation plan developed pursuant to paragraph (a), or developed pursuant to an alternative process as provided for in paragraph (f) of this section through the following process:

(1) Consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) Make available a draft of the programmatic mitigation plan for review and comment by appropriate environmental resource agencies and the public;

(3) Consider comments received from such agencies and the public on the draft plan; and

(4) Address such comments in the final programmatic mitigation plan.

(c) A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, State Wildlife Action Plans, and land use plans.

(d) If a programmatic mitigation plan has been adopted pursuant to paragraph (b), any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project shall give substantial weight to the recommendations in the programmatic mitigation plan when carrying out its responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) or other Federal environmental law.

(e) Nothing in this section limits the use of programmatic approaches for reviews under NEPA.

(f) Nothing in this section prohibits the development, as part of or separate from the transportation planning process, of a programmatic mitigation plan independent of the framework described in paragraph (a) of this section. Further, nothing in this section prohibits the adoption of a programmatic mitigation plan in the metropolitan planning process that was developed under another authority, independent of the framework described in paragraph (a).

§ 450.322 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction (including intercity bus operators, employer-based commuting programs such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), job access projects, and operational management strategies.

(b) The development of a congestion management process should result in multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP.

(c) The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, improve transportation system management and operations, and improve efficient service integration within and across modes, including highway, transit, passenger and freight rail operations, and non-motorized transport. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(d) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the underlying causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area, including providers of public transportation;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management, and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity.

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decision makers and the public to provide guidance on selection of effective strategies for future implementation.

(e) In a TMA designated as nonattainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (*i.e.,* a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(f) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(g) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

(h) ***Congestion management plan.*** A MPO serving a TMA may develop a plan that includes projects and strategies that will be considered in the TIP of such MPO.

(1) Such plan shall:

(i) Develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;

(ii) Identify existing public transportation services, employer based commuter programs, and other existing transportation services that support access to jobs in the region; and

(iii) Identify proposed projects and programs to reduce congestion and increase job access opportunities.

(2) In developing the congestion management plan, an MPO shall consult with employers, private and nonprofit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

§ 450.324 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a 20-year planning horizon as of the effective date. In formulating the transportation plan, the MPO shall consider factors described in § 450.306 as the factors relate to a minimum 20-year forecast period. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that provide for the development of an integrated multimodal transportation system (including accessible pedestrian walkways and bicycle transportation facilities) to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every 4 years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The MPO shall approve the transportation plan (and any revisions) and submit it for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(e) The MPO, the State(s), and the public transportation operator(s) shall validate data used in preparing other existing modal plans for providing input to the transportation plan. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

(1) The current and projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, nonmotorized transportation facilities (e.g., pedestrian walkways and bicycle facilities), and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan.

(3) A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with § 450.306(d).

(4) A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in § 450.306(d), including—

(i) Progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports, including baseline data; and

(ii) For metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(5) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(6) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide.

(7) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system.

(8) Transportation and transit enhancement activities, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated, and including transportation alternatives, as defined in 23 U.S.C. 101(a), and associated transit improvements, as described in 49 U.S.C. 5302(a), as appropriate;

(9) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance areas for conformity determinations under the EPA's transportation conformity regulations (40 CFR part 93, subpart A). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(10) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The MPO shall develop the discussion in consultation with applicable Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(11) A financial plan that demonstrates how the adopted transportation plan can be implemented.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain the Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan transportation plan, the MPO(s), public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified.

(iii) The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified. The financial plan may include an assessment of the appropriateness of innovative finance techniques (for example, tolling, pricing, bonding, public private partnerships, or other strategies) as revenue sources for projects in the plan.

(iv) In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23 U.S.C., title 49 U.S.C. Chapter 53 or with other Federal funds; State assistance; local sources; and private participation. Revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect "year of expenditure dollars," based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (*i.e.,* beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.

(vii) For illustrative purposes, the financial plan may include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.,* by legislative or administrative actions), the FHWA and the FTA will not withdraw the original

determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(12) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g).

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should integrate the priorities, goals, countermeasures, strategies, or projects for the metropolitan planning area contained in the HSIP, including the SHSP required under 23 U.S.C. 148, the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d), or an Interim Agency Safety Plan in accordance with 49 CFR part 659, as in effect until completion of the Public Transportation Agency Safety Plan, and may incorporate or reference applicable emergency relief and disaster preparedness plans and strategies and policies that support homeland security, as appropriate, to safeguard the personal security of all motorized and non-motorized users.

(i) An MPO may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan.

(1) An MPO that chooses to develop multiple scenarios under this paragraph (i) is encouraged to consider:

(i) Potential regional investment strategies for the planning horizon;

(ii) Assumed distribution of population and employment;

(iii) A scenario that, to the maximum extent practicable, maintains baseline conditions for the performance areas identified in § 450.306(d) and measures established under 23 CFR part 490;

(iv) A scenario that improves the baseline conditions for as many of the performance measures identified in § 450.306(d) as possible;

(v) Revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vi) Estimated costs and potential revenues available to support each scenario.

(2) In addition to the performance areas identified in 23 U.S.C. 150(c), 49 U.S.C. 5326(c), and 5329(d), and the measures established under 23 CFR part 490, MPOs may evaluate scenarios developed under this paragraph using locally developed measures.

(j) The MPO shall provide individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cashout program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(k) The MPO shall publish or otherwise make readily available the metropolitan transportation plan for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(l) A State or MPO is not required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(11) of this section.

(m) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93, subpart A). A 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, in accordance with the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs can prepare an interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93, subpart A. An interim metropolitan transportation plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56544, Nov. 29, 2017]

§ 450.326 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO and the Governor. However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the MPO shall publish or otherwise make readily available the TIP for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall be designed such that once implemented, it makes progress toward achieving the performance targets established under § 450.306(d).

(d) The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

(e) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation alternatives; associated transit improvements; Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects; HSIP projects; trails projects; accessible pedestrian walkways; and bicycle facilities), except the following that may be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(d), and 49 U.S.C. 5305(d);

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the discretion of the State and MPO, metropolitan planning projects funded with Surface Transportation Program funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(f) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(g) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

(1) Sufficient descriptive material (*i.e.,* type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, which may extend beyond the 4 years of the TIP;

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);

(4) Identification of the agencies responsible for carrying out the project or phase;

(5) In nonattainment and maintenance areas, identification of those projects that are identified as TCMs in the applicable SIP;

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(h) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the "exempt project" classifications contained in the EPA transportation conformity regulations (40 CFR part 93, subpart A). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the TIP.

(i) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(j) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53, and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(6)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Revenue and cost estimates for the TIP must use an inflation rate(s) to reflect "year of expenditure dollars," based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(k) The TIP shall include a project, or a phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first 2 years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A) and shall provide for their timely implementation.

(l) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.,* by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

(m) Procedures or agreements that distribute suballocated Surface Transportation Program funds to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the metropolitan transportation planning process.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(o) In metropolitan nonattainment and maintenance areas, a 12-month conformity lapse grace period will be implemented when an area misses an applicable deadline, according to the Clean Air Act and the transportation conformity regulations (40 CFR part 93, subpart A). At the end of this 12-month grace period, the existing conformity determination will lapse. During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(p) Projects in any of the first 4 years of the TIP may be advanced in place of another project in the first 4 years of the TIP, subject to the project selection requirements of § 450.332. In addition, the MPO may revise the TIP at any time under procedures agreed to by the State, MPO, and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.330).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.328 TIP revisions and relationship to the STIP.

(a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. The MPO shall use public participation procedures consistent with § 450.316(a) in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO and the Governor, the State shall include the TIP without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, the FHWA and the FTA must make a conformity finding on the TIP before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when it has included a TIP including projects under the jurisdiction of these agencies in the STIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.330 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO, the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.336, a review of the metropolitan transportation plan by the FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP, in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If an MPO has not updated the metropolitan transportation plan in accordance with the cycles defined in § 450.324(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of § 450.326(a). Until the MPO approves (in attainment areas) or the FHWA and the FTA issue a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the MPO may not amend the TIP.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with § 450.220(b).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.332 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.326 has been developed and approved, the first year of the TIP will constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning

area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s) shall jointly develop a revised "agreed to" list of projects. If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, the State and/or the public transportation operator(s), in cooperation with the MPO shall select projects to be implemented using title 23 U.S.C. funds (other than Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects) or funds under title 49 U.S.C. Chapter 53, from the approved metropolitan TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(c) In areas designated as TMAs, the MPO shall select all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the NHS and Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program) in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. The State shall select projects on the NHS in cooperation with the MPO, from the approved TIP. Tribal Transportation Program, Federal Lands Transportation Program, and Federal Lands Access Program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 201, 202, 203, and 204.

(d) Except as provided in § 450.326(e) and § 450.330(f), projects not included in the federally approved STIP are not eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93, subpart A).

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.334 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.326(g)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.336 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every 4 years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In nonattainment and maintenance areas, sections 174 and 176(c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506(c) and (d)) and 40 CFR part 93;

(3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and 49 CFR part 21;

(4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(5) Section 1101(b) of the FAST Act (Pub. L. 114-357) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in DOT funded projects;

(6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

(1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and the MPO and the Governor have approved a TIP, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and the MPO and the Governor have approved a TIP, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for 4 years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The FHWA and the FTA shall notify the MPO(s), the State(s), and public transportation operator(s) of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

§ 450.338 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 450.340 Phase-in of new requirements.

(a) Prior to May 27, 2018, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018, an MPO may not adopt a metropolitan transportation plan that has not been developed according to the provisions and requirements of this part.

(b) Prior to May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may determine the conformity of, or approve as part of a STIP, a TIP that has been developed using SAFETEA-LU requirements or the provisions and requirements of this part. On or after May 27, 2018 (2 years after the publication date of this rule), FHWA/FTA may only determine the conformity of, or approve as part of a STIP, a TIP that has been developed according to the provisions and requirements of this part, regardless of when the MPO developed the TIP.

(c) On and after May 27, 2018 (2 years after the issuance date of this rule), the FHWA and the FTA will take action (*i.e.,* conformity determinations and STIP approvals) on an updated or amended TIP developed under the provisions of this part, even if the MPO has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the MAP-21.

(d) On or after May 27, 2018 (2 years after the publication date of this rule), an MPO may make an administrative modification to a TIP that conforms to either the SAFETEA-LU or to the provisions and requirements of this part.

(e) Two years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, and 49 U.S.C. 5329 FHWA/FTA will only determine the conformity of, or approve as part of a STIP, a TIP that is based on a metropolitan transportation planning process that meets the performance based planning requirements in this part and in such a rule.

(f) Prior to 2 years from the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may adopt a metropolitan transportation plan that has been developed using the SAFETEA-LU requirements or the performance-based planning requirements of this part and in such a rule. Two years on or after the effective date of each rule establishing performance measures under 23 U.S.C. 150(c), 49 U.S.C. 5326, or 49 U.S.C. 5329, an MPO may only adopt a metropolitan transportation plan that has been developed according to the performance-based provisions and requirements of this part and in such a rule.

(g) A newly designated TMA shall implement the congestion management process described in § 450.322 within 18 months of designation.

[81 FR 34135, May 27, 2016, as amended at 81 FR 93473, Dec. 20, 2016; 82 FR 56545, Nov. 29, 2017]

Appendix A to Part 450—Linking the Transportation Planning and NEPA Processes

Background and Overview

This Appendix provides additional information to explain the linkage between the transportation planning and project development/National Environmental Policy Act (NEPA) processes. It is intended to be non-binding and should not be construed as a rule of general applicability.

For 40 years, the Congress has directed that federally funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the NEPA of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted de novo, disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), or planning-level corridor/subarea/feasibility studies. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws, regardless of when the Notice of Intent has been

published. This Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages.

The information below is intended for use by State departments of transportation (State DOTs), metropolitan planning organizations (MPOs), and public transportation operators to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this Appendix in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.

This Appendix does not extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA-21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) specifically exempted transportation plans and programs from NEPA review. Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this Appendix document utilizes a “Question and Answer” format, organized into three primary categories (“Procedural Issues,” “Substantive Issues,” and “Administrative Issues”).

I. Procedural Issues

1. In what format should the transportation planning information be included?

> To be included in the NEPA process, work from the transportation planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be “reasonably available for inspection by potentially interested persons within the time allowed for comment.” Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information. To the extent possible, the documentation should be in a form such as official actions by the MPO, State DOT, or public transportation operator and/or correspondence within and among the organizations involved in the transportation planning process.

2. What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support recommended improvements in the statewide or metropolitan long-range transportation plan. The SAFETEA-LU requires transportation planning processes to focus on setting a context and following acceptable procedures. For example, the SAFETEA-LU requires a "discussion of the types of potential environmental mitigation activities" and potential areas for their implementation, rather than details on specific strategies. The SAFETEA-LU also emphasizes consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. The intent is not to require NEPA studies in the transportation planning process. As an option, the NEPA analyses prepared for project development can be integrated with transportation planning studies (see the response to Question 9 for additional information).

3. What type and extent of involvement from Federal, Tribal, State, and local environmental, regulatory, and resource agencies is needed in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process?

Sections 3005, 3006, and 6001 of the SAFETEA-LU established formal consultation requirements for MPOs and State DOTs to employ with environmental, regulatory, and resource agencies in the development of long-range transportation plans. For example, metropolitan transportation plans now "shall include a discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the [transportation] plan," and that these planning-level discussions "shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies." In addition, MPOs "shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan," and that this consultation "shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available." Similar SAFETEA-LU language addresses the development of the long-range statewide transportation plan, with the addition of Tribal conservation plans or maps to this planning-level "comparison."

In addition, section 6002 of the SAFETEA-LU established several mechanisms for increased efficiency in environmental reviews for project decision-making. For example, the term "lead agency" collectively means the U.S. Department of Transportation and a State or local governmental entity serving as a joint lead agency for the NEPA process. In addition, the lead agency is responsible for inviting and designating "participating agencies" (*i.e.,* other Federal or non-Federal agencies that may have an interest in the proposed project). Any Federal agency that is invited by the lead agency to

participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency:

(a) Has no jurisdiction or authority with respect to the project;

(b) has no expertise or information relevant to the project; and

(c) does not intend to submit comments on the project.

Past successful examples of using transportation planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Early participation in transportation planning provides environmental, regulatory, and resource agencies better insight into the needs and objectives of the locality. Additionally, early participation provides an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process, such as those related to permit applications. Moreover, Federal, Tribal, State, and local environmental, regulatory, and resource agencies are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

4. What is the procedure for using decisions or analyses from the transportation planning process?

The lead agencies jointly decide, and must agree, on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed decisions by the lead agencies on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, the FHWA and the FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

5. To what extent can the FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will allow planning-level decisions and analyses to be used in the NEPA process?

There are no guarantees. However, the potential is greatly improved for transportation planning processes that address the “3-C” planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects;

involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

6. What considerations will the FHWA/FTA take into account in their review of transportation planning products for acceptance in project development/NEPA?

The FHWA and the FTA will give deference to decisions resulting from the transportation planning process if the FHWA and FTA determine that the planning process is consistent with the "3-C" planning principles and when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (e.g., those of the Congestion Mitigation and Air Quality Improvement Program or the FTA's Capital Investment Grant program) also must be met.

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, the FHWA and the FTA should not revisit whether these are the best objectives or choices among other options. Rather, the FHWA and the FTA review would include making sure that objectives or choices derived from the transportation plan were: Based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. The FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable, scientifically acceptable, and consistent with goals, objectives, and policies set forth in long-range transportation plans. This review would include determining whether: (a) Assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. Substantive Issues

General Issues To Be Considered

7. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a "checklist," these questions are intended to guide the practitioner's analysis of the planning products:

• How much time has passed since the planning studies and corresponding decisions were made?

• Were the future year policy assumptions used in the transportation planning process related to land use, economic development, transportation costs, and network expansion consistent with those to be used in the NEPA process?

• Is the information still relevant/valid?

• What changes have occurred in the area since the study was completed?

• Is the information in a format that can be appended to an environmental document or reformatted to do so?

• Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable, defensible, and consistent with those used in other regional transportation studies and project development activities?

• Were the FHWA and FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?

• Were the planning products available to other agencies and the public during NEPA scoping?

• During NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?

• Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need

8. How can transportation planning be used to shape a project's purpose and need in the NEPA process?

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region's future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project's purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

23 U.S.C. 139(f), as amended by the SAFETEA-LU Section 6002, provides additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project. The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an applicable statewide or metropolitan transportation

plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) Goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) A general travel corridor or general mode or modes (e.g., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

Short of a fully integrated transportation decision-making process, many State DOTs develop information for their purpose and need statements when implementing interagency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

9. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the “tiered EIS,” in which the first-tier EIS evaluates general travel corridors, modes, and/or packages of projects at a planning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a project or series of projects. Subsequently, second-tier NEPA review(s) of the resulting projects would be performed in the usual way. The first-tier EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in the planning decisions, as well as to ensure the appropriate consideration of environmental factors in these planning decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea planning study.

Alternatives

10. In the context of this Appendix, what is the meaning of the term “alternatives”?

This Appendix uses the term “alternatives” as specified in the NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This Appendix does not use the term as it is used in many other contexts (e.g., “prudent and feasible alternatives” under Section 4(f) of the Department of Transportation Act or the “Least Environmentally Damaging Practicable Alternative” under the Clean Water Act.

11. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) Shaping the purpose and need for the project; or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to its start. Each approach requires careful attention, and is summarized below.

(a) Shaping the Purpose and Need for the Project: The transportation planning process should shape the purpose and need and, thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 8 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

(1) The transportation planning process has selected a general travel corridor as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

(2) The transportation planning process has selected a general mode (e.g., highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

(3) The transportation planning process determines that the project needs to be funded by tolls or other non-traditional funding sources in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

(b) Evaluating and Eliminating Alternatives During the Transportation Planning Process: The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the analysis of alternatives to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 4, 5, 6, and 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alternative(s) from detailed consideration in the NEPA process.

Development of planning Alternatives Analysis studies, required prior to MAP-21 for projects seeking funds through FTA's Capital Investment Grant program, are now optional, but may still be used to narrow the alternatives prior to the NEPA review, just as other planning studies may be used. In fact, through planning studies, FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the Locally Preferred Alternative. If the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

12. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) Identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based on a corridor study, thereby eliminating all alternatives along other alignments);

(b) Briefly summarize the reasons for eliminating the alternative; and

(c) Include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and participating agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain "reasonable" after the planning-level analysis must be addressed in the EIS, even when they are not the preferred alternative. When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences

13. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

• Regional development and growth analyses;

• Local land use, growth management, or development plans; and

• Population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

(a) Geographic information system (GIS) overlays showing the past, current, or predicted future conditions of the natural and built environments;

(b) Environmental scans that identify environmental resources and environmentally sensitive areas;

(c) Descriptions of airsheds and watersheds;

(d) Demographic trends and forecasts;

(e) Projections of future land use, natural resource conservation areas, and development; and

(f) The outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, special area management plans, and multiple species habitat conservation plans.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed or current enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

14. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

(a) Be sufficiently detailed that differences in consequences of alternatives can be readily identified;

(b) Be based on current data (e.g., data from the most recent Census) or be updated by additional information;

(c) Be based on reasonable assumptions that are clearly stated; and/or

(d) Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

Environmental Mitigation

15. How can planning-level efforts best support advance mitigation, mitigation banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation agreements and alternative mitigation options is the importance of beginning interagency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for “like” value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be

avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. Administrative Issues

16. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

• FHWA planning and research funds, as defined under 23 CFR part 420 (e.g., Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), STP, and Equity Bonus); and

• FTA planning and research funds (49 U.S.C. 5303), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation plans and programs under 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA's Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency's planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (see *http://www.gis.fhwa.dot.gov/* for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

18. How have environmental, regulatory, and resource agency liaisons (Federally and State DOT funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA-21 and its successor in SAFETEA-LU section 6002 speak specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2015), over 200 positions were being funded. Additional information on interagency funding agreements is available at: *http://environment.fhwa.dot.gov/strmlng/igdocs/index.htm*.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and work plans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

19. What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT; MPO; Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U.S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources (“green infrastructure”) with the development, economic, and other infrastructure needs of society (“gray infrastructure”).

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

IV. Additional Information on This Topic

Valuable sources of information are FHWA's environment Web site (*http://www.fhwa.dot.gov/environment/index.htm*) and FTA's environmental streamlining Web site (*http://www.environment.fta.dot.gov*). Another source of information and case studies is NCHRP Report 8-38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at *http://www4.trb.org/trb/crp.nsf/All??????38*. In addition, AASHTO's Center for Environmental Excellence Web site is continuously updated with news and links to information of interest to transportation and environmental professionals (*www.transportation.environment.org*).

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 620 —Engineering
Subpart A —Highway Improvements in the Vicinity of Airports

Source: 39 FR 35145, Sept. 30, 1974, unless otherwise noted.
Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48, 23 CFR 1.32.
Source: 39 FR 33311, Sept. 17, 1974, unless otherwise noted.

§ 620.104 Standards.

A finding of public interest by FHWA will be based on compliance with airway-highway clearances which conform to FAA standards for aeronautical safety.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 620 —Engineering
Subpart B —Relinquishment of Highway Facilities

Source: 39 FR 33311, Sept. 17, 1974, unless otherwise noted.
Authority: 23 U.S.C. 315 and 318; 49 CFR 1.48, 23 CFR 1.32.
Source: 39 FR 33311, Sept. 17, 1974, unless otherwise noted.

§ 620.203 Procedures.

(a) After final acceptance of a project on the Federal-aid primary, urban, or secondary system or after the date that the plans, specifications and estimates (PS&E) for the physical construction on the right-of-way for a Federal-aid Interstate project have been approved by the FHWA, relinquishment of the right-of-way or any change made in control of access shall be in accordance with the provisions of this section. For the purposes of this section, final acceptance for a project involving physical construction is the date of the acceptance of the physical construction by the FHWA and for right-of-way projects, the date the division engineer determines to be the date of the completion of the acquisition of the right-of-way shown on the final plans.

(b) Other than a conveyance made as part of a concession agreement as defined in section 710.703, for purposes of this section, *relinquishment* is defined as the conveyance of a portion of a highway right-of-way or facility by a State highway agency (SHA) to another Government agency for highway use.

(c) The following facilities may be relinquished in accordance with paragraph 203(f):

(1) Sections of a State highway which have been superseded by construction on new location and removed from the Federal-aid system and the replaced section thereof is approved by the FHWA as the new location of the Federal-aid route. Federal-aid funds may not participate in rehabilitation work performed for the purpose of placing the superseded section of the highway in a condition acceptable to the local authority. The relinquishment of any Interstate mileage shall be submitted to the Federal Highway Administrator as a special case for prior approval.

(2) Sections of reconstructed local facilities that are located outside the control of access lines, such as turn-arounds of severed local roads or streets adjacent to the Federal-aid project's right-of-way, and local roads and streets crossing over or under said project that have been adjusted in grade and/or alignment, including new right-of-way required for adjustments. Eligibility for Federal-aid participation in the costs of the foregoing adjustments is as determined at the time of PS&E approval under policies of the FHWA.

(3) Frontage roads or portions thereof that are constructed generally parallel to and outside the control of access lines of a Federal-aid project for the purpose of permitting access to private properties rather than to serve as extensions of ramps to connect said Federal-aid project with the nearest crossroad or street.

(d) The following facilities may be relinquished only with the approval of the Federal Highway Administrator in accordance with paragraph 203(g).

(1) Frontage roads or portions thereof located outside the access control lines of a Federal-aid project that are constructed to service (in lieu of or in addition to the purposes outlined under paragraph (c)(3) of this section) as connections between ramps to or from the Federal-aid project and existing public roads or streets.

(2) Ramps constructed to serve as connections for interchange of traffic between the Federal-aid project and local roads or streets.

(e) Where a frontage road is not on an approved Federal-aid system title to the right-of-way may be acquired initially in the name of the political subdivision which is to assume control thus eliminating the necessity of a formal transfer later. Such procedure would be subject to prior FHWA approval and would be limited to those facilities which meet the criteria set forth in paragraphs (c) (2) and (3) of this section.

(f) Upon presentation by a State that it intends to relinquish facilities such as described in paragraph (c) (1), (2) or (3) of this section to local authorities, the division engineer of the FHWA shall have appropriate field and office examination made thereof to assure that such relinquishments are in accordance with the provisions of the cited paragraphs. Relinquishments of the types described in paragraph (c) (1), (2) or (3) of this section may be made on an individual basis or on a project or route basis subject to the following conditions and understandings:

(1) Immediately following action by the State in approving a relinquishment, it shall furnish to the Division Administrator for record purposes a copy of a suitable map or maps identified by the Federal-aid project number, with the facilities to be relinquished and the date of such relinquishment action clearly delineated thereon.

(2) If it is found at any time after relinquishment that a relinquished facility is in fact required for the safe and proper operation of the Federal-aid highway, the State shall take immediate action to restore such facility to its jurisdiction without cost to Federal-aid highway funds.

(3) If it is found at any time that a relinquished frontage road or portion thereof or any part of the right-of-way therefor has been abandoned by local governmental authority and a showing cannot be made that such abandoned facility is no longer required as a public road, it is to be understood that the Federal Highway Administrator may cause to be withheld from Federal-aid highway funds due to the State an amount equal to the Federal-aid participation in the abandoned facility.

(4) In no case shall any relinquishment include any portion of the right-of-way within the access control lines as shown on the plans for a Federal-aid project approved by the FHWA, without the prior approval of the Federal Highway Administrator.

(5) There cannot be additional Federal-aid participation in future construction or reconstruction on any relinquished “off the Federal-aid system” facility unless the underlying reason for such future work is caused by future improvement of the associated Federal-aid highway.

(g) In the event that a State desires to apply for approval by the Federal Highway Administrator for the relinquishment of a facility such as described in paragraph (d) (1) and (2) of this section, the facts pertinent to such proposal are to be presented to the division engineer of the FHWA. The division engineer shall have appropriate review made of such presentation and forward the material presented by the State together with his findings thereon through the Regional Federal Highway Administrator for consideration by the Federal Highway Administrator and determination of action to be taken.

(h) No change may be made in control of access, without the joint determination and approval of the SHA and FHWA. This would not prevent the relinquishment of title, without prior approval of the FHWA, of a segment of the right-of-way provided there is an abandonment of a section of highway inclusive of such segment.

(i) Relinquishments must be justified by the State's finding concurred in by the FHWA, that:

(1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;

(2) That the right-of-way being retained is adequate under present day standards for the facility involved;

(3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;

(4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of 23 U.S.C. 319 and Pub. L. 89-285, Title III, sections 302-305 (Highway Beautification Act of 1965).

(j) If a relinquishment is to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor in such event any credit to Federal funds. If for any reason there is a charge, the STD may retain the Federal share of the proceeds if used for projects eligible under title 23 of the United States Code.

[39 FR 33311, Sept. 17, 1974, as amended at 64 FR 71289, Dec. 21, 1999; 73 FR 77502, Dec. 19, 2008]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 625 —Design Standards for Highways

Authority: 23 U.S.C. 103, 109, 315, and 402; Sec. 1073 of Pub. L. 102-240, 105 Stat. 1914, 2012; Sec. 1404 of Pub. L. 114-94, 129 Stat. 1312; 49 CFR 1.85.
Source: 62 FR 15397, Apr. 1, 1997, unless otherwise noted.

§ 625.3 Application.

(a) ***Applicable standards.***

(1) Design and construction standards for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the NHS shall be those approved by the Secretary in cooperation with the State DOTs. These standards must consider, in addition to the criteria described in § 625.2(a), the following:

(i) The constructed and natural environment of the area;

(ii) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

(iii) Cost savings by utilizing flexibility that exists in current design guidance and regulations; and

(iv) Access for other modes of transportation.

(2) Federal-aid projects not on the NHS are to be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(3) Interstate highways located in Alaska and Puerto Rico shall be designed in accordance with such geometric and construction standards as are adequate for current and probable future traffic demands and the needs of the locality of the highway.

(4) A State may allow a local jurisdiction to design a project using a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction resides if—

(i) The local jurisdiction is a direct recipient of Federal funds for the project;

(ii) The roadway design publication is adopted by the local jurisdiction and recognized by FHWA;

(iii) The design complies with all applicable Federal laws and regulations; and

(iv) The project is located on a roadway that is owned by the local jurisdiction and is not part of the Interstate System.

(b) ***Deviations from specific minimum values on the NHS.*** The standards, policies, and standard specifications cited in § 625.4 of this part contain specific criteria and controls for the design of NHS projects. Deviations from specific minimum values therein are to be handled in accordance with procedures in paragraph (f) of this section. If there is a conflict between criteria in the documents enumerated in § 625.4 of this part, the latest listed standard, policy, or standard specification will govern.

(c) ***Application of other FHWA regulations.*** Application of FHWA regulations, although cited in § 625.4 of this part as standards, policies, and standard specifications, shall be as set forth therein.

(d) ***Funding source.*** This regulation establishes Federal standards for work on the NHS regardless of funding source.

(e) ***Very minor or no roadway work.*** The Division Administrator shall determine the applicability of the roadway geometric design standards to traffic engineering, safety, and preventive maintenance projects which include very minor or no roadway work. Formal findings of applicability are expected only as needed to resolve controversies.

(f) ***Exceptions*** —

(1) ***Project exception.***

(i) Approval within the delegated authority provided by FHWA Order M1100.1A may be given on a project basis to designs on the NHS which do not conform to the minimum criteria as set forth in the standards, policies, and standard specifications for:

(A) Experimental features on projects; and

(B) Projects where conditions warrant that exceptions be made.

(ii) The determination to approve a project design that does not conform to the minimum criteria is to be made only after due consideration is given to all project conditions such as maximum service and safety benefits for the dollar invested, compatibility with adjacent sections of roadway and the probable time before reconstruction of the section due to increased traffic demands or changed conditions.

(2) ***Programmatic exception.*** Approval within the delegated authority provided by FHWA Order M1100.1A may be given, on a programmatic basis, to use a more recent edition of any standard or specification incorporated by reference under § 625.4(d).

[62 FR 15397, Apr. 1, 1997, as amended at 87 FR 41, Jan. 3, 2022]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 630 —Preconstruction Procedures
Subpart J —Work Zone Safety and Mobility

Source: 89 FR 87293, Nov. 1, 2024, unless otherwise noted.

Authority: 23 U.S.C. 106, 109, 112, 115, 315, 320, and 402(a); Sec. 1110, 1501, and 1503 of Pub. L. 109-59, 119 Stat. 1144; Pub. L. 105-178, 112 Stat. 193; Pub. L. 104-59, 109 Stat. 582; Pub. L. 97-424, 96 Stat. 2106; Pub. L. 90-495, 82 Stat. 828; Pub. L. 85-767, 72 Stat. 896; Pub. L. 84-627, 70 Stat. 380; 23 CFR 1.32 and 49 CFR 1.81 and 1.85, and Pub. L. 112-141, 126 Stat. 405, sections 1303 and 1405.

§ 630.1010 Significant projects.

(a) A significant project is one that, alone or in combination with other concurrent projects nearby, is anticipated to cause sustained work zone impacts (as defined in § 630.1004) that are greater than what is considered tolerable based on State policy and engineering judgment.

(b) The applicability of the provisions in §§ 630.1012(b)(2) and 630.1012(b)(3) is dependent upon whether a project is determined to be significant. The State shall identify upcoming projects that are expected to be significant. This identification of significant projects should be done as early as possible in the project delivery and development process, and in cooperation with FHWA. The State's work zone policy provisions, the project's characteristics, and the magnitude and extent of the anticipated work zone impacts should be considered when determining if a project is significant or not.

(c) All Interstate system projects within the boundaries of a designated Transportation Management Area that require intermittent or continuous lane closures for 3 or more consecutive days shall be considered as significant projects.

(d) For an Interstate system project or categories of Interstate system projects that are classified as significant through the application of the provisions in paragraph (c) of this section but in the judgment of the State do not cause sustained work zone impacts, the State may request from FHWA an exception to §§ 630.1012(b)(2) and 630.1012(b)(3). The FHWA may grant exceptions to these provisions based on the State's ability to show that the specific Interstate system project or categories of Interstate system projects do not have sustained work zone impacts.

(e) Non-interstate system projects with less than 3 consecutive days of intermittent or continuous lane closures do not require the transportation operations (TO) or public information and outreach (PIO) components of a TMP (as described in § 630.1012(b)).

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations

Part 635 Construction and Maintenance

Subpart A Contract Procedures
§ 635.101 Purpose.
§ 635.102 Definitions.
§ 635.103 Applicability.
§ 635.104 Method of construction.
§ 635.105 Supervising agency.
§ 635.106 Use of publicly owned equipment.
§ 635.107 Participation by disadvantaged business enterprises.
§ 635.108 Health and safety.
§ 635.109 Standardized changed condition clauses.
§ 635.110 Licensing and qualification of contractors.
§ 635.111 Tied bids.
§ 635.112 Advertising for bids and proposals.
§ 635.113 Bid opening and bid tabulations.
§ 635.114 Award of contract and concurrence in award.
§ 635.115 Agreement estimate.
§ 635.116 Subcontracting and contractor responsibilities.
§ 635.117 Labor and employment.
§ 635.118 Payroll and weekly statements.
§ 635.119 False statements.
§ 635.120 Changes and extra work.
§ 635.121 Contract time and contract time extensions.
§ 635.122 Participation in progress payments.
§ 635.123 Determination and documentation of pay quantities.
§ 635.124 Participation in contract claim awards and settlements.
§ 635.125 Termination of contract.
§ 635.126 [Reserved]
§ 635.127 Agreement provisions regarding overruns in contract time.
Subpart B Force Account Construction
§ 635.201 Purpose.
§ 635.202 Applicability.
§ 635.203 Definitions.

§ 635.204 Determination of more cost effective method or an emergency.
§ 635.205 Finding of cost effectiveness.
Subpart C Physical Construction Authorization
§ 635.301 Purpose.
§ 635.303 Applicability.
§ 635.305 Physical construction.
§ 635.307 Coordination.
§ 635.309 Authorization.
Subpart D General Material Requirements
§ 635.401 Purpose.
§ 635.403 Definitions.
§ 635.405 Applicability.
§ 635.407 Use of materials made available by a public agency.
§ 635.409 Restrictions upon materials.
§ 635.410 Buy America requirements.
§ 635.411 Culvert and storm sewer material types.
§ 635.413 Guaranty and warranty clauses.
§ 635.417 Convict produced materials.
Subpart E Construction Manager/General Contractor (CM/GC) Contracting
§ 635.501 Purpose.
§ 635.502 Definitions.
§ 635.503 Applicability.
§ 635.504 CM/GC Requirements.
§ 635.505 Relationship to the NEPA process.
§ 635.506 Project approvals and authorizations.
§ 635.507 Cost eligibility.
Subpart F Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracting
§ 635.601 Purpose.
§ 635.602 Definitions.
§ 635.603 Applicability.
§ 635.604 ID/IQ Requirements.
§ 635.605 Approvals and authorizations.
§ 635.606 ID/IQ procedures.

PART 635—CONSTRUCTION AND MAINTENANCE

Authority: Sections 1525 and 1303 of Pub. L. 112-141, Sec. 1503 of Pub. L. 109-59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.;* Sec. 1041(a), Pub. L. 102-240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.85(a)(1).

Editorial Note: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

Subpart A—Contract Procedures

Source: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.

§ 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

Administrator means the Federal Highway Administrator.

Calendar day means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

Construction Manager/General Contractor (CM/GC) project means a project to be delivered using a two-phase contract with a construction manager or general contractor for services during both the preconstruction and construction phases of a project.

Contract time means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

Design-build project means a project to be developed using one or more design-build contracts.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.

Force account means a basis of payment for the direct performance of highway construction work with payment based on the actual cost of labor, equipment, and materials furnished and consideration for overhead and profit.

Formal approval means approval in writing or the electronic transmission of such approval.

Incentive/disincentive for early completion as used in this subpart, describes a contract provision which compensates the contractor a certain amount of money for each day identified critical work is completed ahead of schedule and assesses a deduction for each day the contractor overruns the incentive/ disincentive time. Its use is primarily intended for those critical projects where traffic inconvenience and delays are to be held to a minimum. The amounts are based upon estimates of such items as traffic safety, traffic maintenance, and road user delay costs.

Indefinite Delivery/Indefinite Quantity (ID/IQ) Project means a project to be developed using one or more ID/IQ contracts.

Liquidated damages means the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a State transportation department because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified. The term may also mean the total of all daily amounts deducted under the terms of a particular contract.

Local public agency means any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

Major change or major extra work means a change which will significantly affect the cost of the project to the Federal Government or alter the termini, character or scope of the work.

Materially unbalanced bid means a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Federal Government.

Mathematically unbalanced bid means a bid containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

Public agency means any organization with administrative or functional responsibilities which are directly or indirectly affiliated with a governmental body of any nation, State, or local jurisdiction.

Publicly owned equipment means equipment previously purchased or otherwise acquired by the public agency involved primarily for use in its own operations.

Specialty items means work items identified in the contract which are not normally associated with highway construction and require highly specialized knowledge, abilities or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract; in general, these items are to be limited to minor components of the overall contract.

State department of transportation (State DOT) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" should be considered equivalent to State DOT if the context so implies. In addition, State Highway Agency (SHA), State Transportation Agency (STA), State Transportation Department, or other similar terms should be considered equivalent to State DOT if the context so implies.

Workday means a calendar day during which construction operations could proceed for a major part of a shift, normally excluding Saturdays, Sundays, and State-recognized legal holidays.

[62 FR 6873, Feb. 14, 1997, as amended at 67 FR 75924, Dec. 10, 2002; 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.103 Applicability.

The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects.

[69 FR 7118, Feb. 13, 2004]

§ 635.104 Method of construction.

(a) Actual construction work shall be performed by contract awarded by competitive bidding; unless, as provided in § 635.104(b), the State DOT demonstrates to the satisfaction of the Division Administrator that some other method is more cost effective or that an emergency exists. The State DOT shall assure

opportunity for free, open, and competitive bidding, including adequate publicity of the advertisements or calls for bids. The advertising or calling for bids and the award of contracts shall comply with the procedures and requirements set forth in §§ 635.112 and 635.114.

(b) Approval by the Division Administrator for construction by a method other than competitive bidding shall be requested by the State in accordance with subpart B of part 635 of this chapter. Before such finding is made, the State DOT shall determine that the organization to undertake the work is so staffed and equipped as to perform such work satisfactorily and cost effectively.

(c) In the case of a design-build project, the requirements of 23 CFR part 636 and the appropriate provisions pertaining to design-build contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the design-build delivery method.

(d) In the case of a CM/GC project, the requirements of subpart E and the appropriate provisions pertaining to the CM/GC method of contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the CM/GC delivery method.

(e) In the case of an ID/IQ project, the requirements of subpart F of this part and the appropriate provisions pertaining to the ID/IQ method of contracting in this part will apply. However, no justification of cost effectiveness is necessary in selecting projects for the ID/IQ delivery method.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.105 Supervising agency.

(a) The State DOT has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency. The State DOT shall be responsible for insuring that such projects receive adequate supervision and inspection to insure that projects are completed in conformance with approved plans and specifications.

(b) Although the State DOT may employ a consultant to provide construction engineering services, such as inspection or survey work on a project, the State DOT shall provide a full-time employed State engineer to be in responsible charge of the project.

(c) When a project is located on a street or highway over which the State DOT does not have legal jurisdiction, or when special conditions warrant, the State DOT, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project.

§ 635.106 Use of publicly owned equipment.

(a) Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. A proposal by any State DOT for the use of publicly owned equipment on such a project must be supported by a showing that it would clearly be cost effective to do so under the conditions peculiar to the individual project or locality.

(b) Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:

(1) The proposed use of such equipment is clearly set forth in the Plans, Specifications and Estimate (PS&E) submitted to the Division Administrator for approval.

(2) The advertised specifications specify the items of publicly owned equipment available for use by the successful bidder, the rates to be charged, and the points of availability or delivery of the equipment; and

(3) The advertised specifications include a notification that the successful bidder has the option either of renting part or all of such equipment from the State or local public agency or otherwise providing the equipment necessary for the performance of the contract work.

(c) In the rental of publicly owned equipment to contractors, the State or local public agency shall not profit at the expense of Federal funds.

(d) Unforeseeable conditions may make it necessary to provide publicly owned equipment to the contractor at rental rates agreed to between the contractor and the State or local public agency after the work has started. Any such arrangement shall not form the basis for any increase in the cost of the project on which Federal funds are to participate.

(e) When publicly owned equipment is used on projects constructed on a force account basis, costs may be determined by agreed unit prices or on an actual cost basis. When agreed unit prices are applied the equipment need not be itemized nor rental rates shown in the estimate. However, if such work is to be performed on an actual cost basis, the State DOT shall submit to the Division Administrator for approval the schedule of rates proposed to be charged, exclusive of profit, for the publicly owned equipment made available for use.

§ 635.107 Participation by disadvantaged business enterprises.

(a) The State DOT shall schedule contract lettings in a balanced program providing contracts of such size and character as to assure an opportunity for all sizes of contracting organizations to compete. In accordance with Title VI of the Civil Rights Act of 1964, subsequent Federal-aid Highway Acts, and 49 CFR part 26, the State DOT shall ensure equal opportunity for disadvantaged business enterprises (DBEs) participating in the Federal-aid highway program.

(b) In the case of a design-build, a CM/GC, or an ID/IQ project funded with title 23 funds, the requirements of 49 CFR part 26 and the State's approved DBE plan apply.

[67 FR 75925, Dec. 10, 2002, as amended at 81 FR 86942, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.108 Health and safety.

Contracts for projects shall include provisions designed:

(a) To insure full compliance with all applicable Federal, State, and local laws governing safety, health and sanitation; and

(b) To require that the contractor shall provide all safeguards, safety devices, and protective equipment and shall take any other actions reasonably necessary to protect the life and health of persons working at the site of the project and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

§ 635.109 Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project, including construction services contracts of CM/GC projects, approved under 23 U.S.C. 106:

(1) *Differing site conditions.*

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the State DOT's at their option.)

(2) *Suspensions of work ordered by the engineer.*

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by

weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) *Significant changes in the character of work.*

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State transportation department has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State transportation department may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State

developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

(c) In the case of a design-build project, State DOTs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

(d) For ID/IQ projects, State DOTs are strongly encouraged to use "suspensions of work ordered by the engineer" clauses, and may consider "differing site condition" clauses and "significant changes in the character of work" clauses, as appropriate.

[56 FR 37004, Aug. 2, 1991; 57 FR 10062, Mar. 23, 1992, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.110 Licensing and qualification of contractors.

(a) The procedures and requirements a State DOT proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 2 CFR parts 180 and 1200, or otherwise determined to be ineligible, shall be prohibited from participating in the Federal-aid highway program.

(f) In the case of design-build, CM/GC, and ID/IQ projects, the State DOTs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of procurement.

(1) The State DOTs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not be one of the selection criteria. However, the State DOTs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the State DOTs may require prequalification for construction contractors. The State DOTs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The State DOTs may require compliance with appropriate State or local licensing practices as a condition of contract award.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.111 Tied bids.

(a) The State DOT may tie or permit the tying of Federal-aid highway projects or Federal-aid and State-financed highway projects for bidding purposes where it appears that by so doing more favorable bids may be received. To avoid discrimination against contractors desiring to bid upon a lesser amount of work than that included in the tied combinations, provisions should be made to permit bidding separately on the individual projects whenever they are of such character as to be suitable for bidding independently.

(b) When Federal-aid and State-financed highway projects are tied or permitted to be tied together for bidding purposes, the bid schedule shall set forth the quantities separately for the Federal-aid work and the State-financed work. All proposals submitted for the tied projects must contain separate bid prices for each project individually. Federal participation in the cost of the work shall be on the basis of the lowest overall responsive bid proposal unless the analysis of bids reveals that mathematical unbalancing has caused an unsupported shift of cost liability to the Federal-aid work. If such a finding is made, Federal participation shall be based on the unit prices represented in the proposal by the individual contractor who would be the lowest responsive and responsible bidder if only the Federal-aid project were considered.

(c) Federal-aid highway projects and State-financed highway projects may be combined in one contract if the conditions of the projects are so similar that the unit costs on the Federal-aid projects should not be increased by such combinations of projects. In such cases, like quantities should be combined in the proposal to avoid the possibility of unbalancing of bids in favor of either of the projects in the combination.

§ 635.112 Advertising for bids and proposals.

(a) No work shall be undertaken on any Federal-aid project, nor shall any project be advertised for bids, prior to authorization by the Division Administrator.

(b) The advertisement and approved plans and specifications shall be available to bidders a minimum of 3 weeks prior to opening of bids except that shorter periods may be approved by the Division Administrator in special cases when justified.

(c) The State DOT shall obtain the approval of the Division Administrator prior to issuing any addenda which contain a major change to the approved plans or specifications during the advertising period. Minor addenda need not receive prior approval but should be identified by the State DOT at the time of or prior to requesting FHWA concurrence in award. The State DOT shall provide assurance that all bidders have received all issued addenda.

(d) Nondiscriminatory bidding procedures shall be afforded to all qualified bidders regardless of National, State or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. If any provisions of State laws, specifications, regulations, or policies may operate in any manner contrary to Federal requirements, including title VI of the Civil Rights Act of 1964, to prevent submission of a bid, or prohibit consideration of a bid submitted by any responsible bidder appropriately qualified in accordance with § 635.110, such provisions shall not be applicable to Federal-aid projects. Where such nonapplicable provisions exist, notices of advertising, specifications, special provisions or other governing documents shall include a positive statement to advise prospective bidders of those provisions that are not applicable.

(e) Except in the case of a concession agreement, as defined in section 710.703 of this title, no public agency shall be permitted to bid in competition or to enter into subcontracts with private contractors.

(f) The State DOT shall include a noncollusion provision substantially as follows in the bidding documents:

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

(1) The required form for the statement will be provided by the State to each prospective bidder.

(2) The statement shall either be in the form of an affidavit executed and sworn to by the bidder before a person who is authorized by the laws of the State to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(g) The State DOT shall include the lobbying certification requirement pursuant to 49 CFR part 20 and the requirements of 2 CFR parts 180 and 1200 regarding suspension and debarment certification in the bidding documents.

(h) The State DOT shall clearly identify in the bidding documents those requirements which the bidder must assure are complied with to make the bid responsive. Failure to comply with these identified bidding requirements shall make the bid nonresponsive and not eligible for award consideration.

(i) In the case of a design-build project, the following requirements apply:

(1) When a Request for Proposals document is issued after the NEPA process is complete, the FHWA Division Administrator's approval of the Request for Proposals document will constitute the FHWA's project authorization and the FHWA's approval of the State DOT's request to release the document. This approval will carry the same significance as plan, specification and estimate approval on a design-bid-build Federal-aid project.

(2) Where a Request for Proposals document is issued prior to the completion of the NEPA process, the FHWA's approval of the document will only constitute the FHWA's approval of the State DOT's request to release the document.

(3) The State DOT may decide the appropriate solicitation schedule for all design-build requests. This includes all project advertising, the release of the Request for Qualifications document, the release of the Request for Proposals document and all deadlines for the receipt of qualification statements and proposals. Typical advertising periods range from six to ten weeks and can be longer for large, complicated projects.

(4) The State DOT must obtain the approval of the Division Administrator prior to issuing addenda which result in major changes to the Request for Proposals document. Minor addenda need not receive prior approval but may be identified by the State DOT at the time of or prior to requesting the FHWA's concurrence in award. The State DOT must provide assurance that all offerors have received all issued addenda.

(j) In the case of a CM/GC project, the FHWA Division Administrator's approval of the solicitation document will constitute the FHWA's approval to use the CM/GC contracting method and approval to release the solicitation document. The State DOT must obtain the approval of the FHWA Division Administrator before issuing addenda which result in major changes to the solicitation document.

(k) In the case of an ID/IQ project, the FHWA Division Administrator's approval of the solicitation document will constitute FHWA's approval to use the ID/IQ contracting method and approval to release the solicitation document. The State DOT must obtain the approval of the FHWA Division Administrator before issuing addenda which result in major changes to the solicitation document.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007; 73 FR 77502, Dec. 19, 2008; 81 FR 86943, Dec. 2, 2016; 85 FR 72932, Nov. 16, 2020]

§ 635.113 Bid opening and bid tabulations.

(a) All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount. If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the letting. Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

(b) The State DOT shall prepare and forward tabulations of bids to the Division Administrator. These tabulations shall be certified by a responsible State DOT official and shall show:

(1) Bid item details for at least the low three acceptable bids and

(2) The total amounts of all other acceptable bids.

(c) In the case of a design-build project, the following requirements apply:

(1) All proposals received must be opened and reviewed in accordance with the terms of the solicitation. The State DOT must use its own procedures for the following:

(i) The process of handling proposals and information;

(ii) The review and evaluation of proposals;

(iii) The submission, modification, revision and withdrawal of proposals; and

(iv) The announcement of the successful offeror.

(2) The State DOT must submit a post-award tabulation of proposal prices to the FHWA Division Administrator. The tabulation of price proposal information may include detailed pricing information when available or lump sum price information if itemized prices are not used.

(d) In the case of a CM/GC project, the requirements of this section do not apply. See subpart E of this part for approval procedures.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016]

§ 635.114 Award of contract and concurrence in award.

(a) Federal-aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the State DOT in accordance with § 635.110. Award shall be within the time established by the State DOT and subject to the prior concurrence of the Division Administrator.

(b) The State DOT shall formally request concurrence by the Division Administrator in the award of all Federal-aid contracts. Concurrence in award by the Division Administrator is a prerequisite to Federal participation in construction costs and is considered as authority to proceed with construction, unless specifically stated otherwise. Concurrence in award shall be formally approved and shall only be given after receipt and review of the tabulation of bids.

(c) Following the opening of bids, the State DOT shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

(d) Where obvious unbalanced bid items exist, the State DOT's decision to award or reject a bid shall be supported by written justification. A bid found to be mathematically unbalanced, but not found to be materially unbalanced, may be awarded.

(e) When a low bid is determined to be both mathematically and materially unbalanced, the Division Administrator will take appropriate steps to protect the Federal interest. This action may be concurrence in a State DOT decision not to award the contract. If, however, the State DOT decides to proceed with the award and requests FHWA concurrence, the Division Administrator's action may range from nonconcurrence to concurrence with contingency conditions limiting Federal participation.

(f) If the State DOT determines that the lowest bid is not responsive or the bidder is not responsible, it shall so notify and obtain the Division Administrator's concurrence before making an award to the next lowest bidder.

(g) If the State DOT rejects or declines to read or consider a low bid on the grounds that it is not responsive because of noncompliance with a requirement which was not clearly identified in the bidding documents, it shall submit justification for its action. If such justification is not considered by the Division Administrator to be sufficient, concurrence will not be given to award to another bidder on the contract at the same letting.

(h) Any proposal by the State DOT to reject all bids received for a Federal-aid contract shall be submitted to the Division Administrator for concurrence, accompanied by adequate justification.

(i) In the event the low bidder selected by the State DOT for contract award forfeits the bid guarantee, the State DOT may dispose of the amounts of such forfeited guarantees in accordance with its normal practices.

(j) A copy of the executed contract between the State DOT and the construction contractor should be furnished to the Division Administrator as soon as practicable after execution.

(k) In the case of a design-build project, the following requirements apply: Design-build contracts shall be awarded in accordance with the Request for Proposals document. See 23 CFR Part 636, Design-build Contracting, for details.

(l) In the case of a CM/GC project, the CM/GC contract shall be awarded in accordance with the solicitation document. See subpart E for CM/GC project approval procedures.

(m) In the case of an ID/IQ project, the ID/IQ contract shall be awarded in accordance with the solicitation document. See subpart F of this part for ID/IQ project approval procedures.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020]

§ 635.115 Agreement estimate.

(a) Following the award of contract, an agreement estimate based on the contract unit prices and estimated quantities shall be prepared by the State DOT and submitted to the Division Administrator as soon as practicable for use in the preparation of the project agreement. The agreement estimate shall also include the actual or best estimated costs of any other items to be included in the project agreement.

(b) An agreement estimate shall be submitted by the State DOT for each force account project (see 23 CFR part 635, subpart B) when the plans and specifications are submitted to the Division Administrator for approval. It shall normally be based on the estimated quantities and the unit prices agreed upon in advance between the State DOT and the Division Administrator, whether the work is to be done by the State DOT or by a local public agency. Such agreed unit prices shall constitute a commitment as the basis for Federal participation in the cost of the project. The unit prices shall be based upon the estimated actual cost of performing the work but shall in no case exceed unit prices currently being obtained by competitive bidding on comparable highway construction work in the same general locality. In special cases involving unusual circumstances, the estimate may be based upon the estimated costs for labor, materials, equipment rentals, and supervision to complete the work rather than upon agreed unit prices. This paragraph shall not be applicable to agreement estimates for railroad and utility force account work.

§ 635.116 Subcontracting and contractor responsibilities.

(a) Contracts for projects shall specify the minimum percentage of work that a contractor must perform with its own organization. This percentage shall be not less than 30 percent of the total original contract price excluding any identified specialty items. Specialty items may be performed by subcontract and the amount of any such specialty items so performed may be deducted from the total original contract before computing the amount of work required to be performed by the contractor's own organization. The contract amount upon which the above requirement is computed includes the cost of materials and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

(b) The State DOT shall not permit any of the contract work to be performed under a subcontract, unless such arrangement has been authorized by the State DOT in writing. Prior to authorizing a subcontract, the State DOT shall assure that each subcontract is evidenced in writing and that it contains all pertinent provisions

and requirements of the prime contract. The Division Administrator may permit the State DOT to satisfy the subcontract assurance requirements by concurrence in a State DOT process which requires the contractor to certify that each subcontract arrangement will be in the form of a written agreement containing all the requirements and pertinent provisions of the prime contract. Prior to the Division Administrator's concurrence, the State DOT must demonstrate that it has an acceptable plan for monitoring such certifications.

(c) To assure that all work (including subcontract work) is performed in accordance with the contract requirements, the contractor shall be required to furnish:

(1) A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work), and;

(2) Such other of its own organizational resources (supervision, management, and engineering services) as the State DOT contracting officer determines are necessary to assure the performance of the contract.

(d) In the case of a design-build project, the following requirements apply:

(1) The provisions of paragraph (a) of this section are not applicable to design-build contracts;

(2) At their discretion, the State DOT's may establish a minimum percentage of work that must be done by the design-builder. For the purpose of this section, the term design-builder may include any firms that are equity participants in the design-builder, their sister and parent companies, and their wholly owned subsidiaries;

(3) No procedure, requirement or preference shall be imposed which prescribes minimum subcontracting requirements or goals (other than those necessary to meet the Disadvantaged Business Enterprise program requirements of 49 CFR part 26).

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

§ 635.117 Labor and employment.

(a) No construction work shall be performed by convict labor at the work site or within the limits of any Federal-aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the State DOT unless it is labor performed by convicts who are on parole, supervised release, or probation.

(b) No procedures or requirement shall be imposed by any State which will operate to discriminate against the employment of labor from any other State, possession or territory of the United States, in the construction of a Federal-aid project.

(c) The selection of labor to be employed by the contractor on any Federal-aid project shall be by the contractor without regard to race, color, religion, sex, national origin, age, or handicap and in accordance with 23 CFR part 230, 41 CFR part 60 and Exec. Order No. 11246 (Sept. 24, 1965), 3 CFR 339 (1964-1965), as amended.

(d) Pursuant to 23 U.S.C. 140(d), it is permissible for State DOT's to implement procedures or requirements which will extend preferential employment to Indians living on or near a reservation on eligible projects as defined in paragraph (e) of this section. Indian preference shall be applied without regard to tribal affiliation or place of enrollment. In no instance should a contractor be compelled to layoff or terminate a permanent core-crew employee to meet a preference goal.

(e) Projects eligible for Indian employment preference consideration are projects located on roads within or providing access to an Indian reservation or other Indian lands as defined under the term "Indian Reservation Roads" in 23 U.S.C. 101 and regulations issued thereunder. The terminus of a road "providing access to" is that point at which it intersects with a road functionally classified as a collector or higher classification (outside the reservation boundary) in both urban and rural areas. In the case of an Interstate highway, the terminus is the first interchange outside the reservation.

(f) The advertisement or call for bids on any contract for the construction of a project located on the Federal-aid system either shall include the minimum wage rates determined by the Secretary of Labor to be prevailing on the same type of work on similar construction in the immediate locality or shall provide that such rates are set out in the bidding documents and shall further specify that such rates are a part of the contract covering the project.

§ 635.118 Payroll and weekly statements.

For all projects, copies of payrolls and statements of wages paid, filed with the State as set forth in the required contract provisions for the project, are to be retained by the State DOT for the time period pursuant to 2 CFR 200.333 for review as needed by the Federal Highway Administration, the Department of Labor, the General Accounting Office, or other agencies.

[56 FR 37004, Aug. 2, 1991, as amended at 85 FR 7293, Nov. 16, 2020]

§ 635.119 False statements.

The following notice shall be posted on each Federal-aid highway project in one or more places where it is readily available to and viewable by all personnel concerned with the project:

Notice to All Personnel Engaged on Federal-Aid Highway Projects

United States Code, title 18, section 1020, reads as follows:

Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction of any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever, knowingly makes any false statement, false representation, false report, or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever, knowingly makes any false statement or false representation as to a material fact in any statement, certificate, or report submitted pursuant to the provisions of the Federal-aid Road Act approved July 11, 1916 (39 Stat. 355), as amended and supplemented,

Shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 635.120 Changes and extra work.

(a) Following authorization to proceed with a project, all major changes in the plans and contract provisions and all major extra work shall have formal approval by the Division Administrator in advance of their effective dates. However, when emergency or unusual conditions justify, the Division Administrator may give tentative advance approval orally to such changes or extra work and ratify such approval with formal approval as soon thereafter as practicable.

(b) For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The State DOT should establish and document with the Division Administrator's concurrence specific parameters as to what constitutes a non-major change and non-major extra work.

(c) Changes in contract time, as related to contract changes or extra work, should be submitted at the same time as the respective work change for approval by the Division Administrator.

(d) In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

(e) The State DOT shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of the cost analysis shall be subject to the approval of the Division Administrator.

(f) Proposed changes and extra work involved in nonparticipating operations that may affect the design or participating construction features of a project, shall be subject to review and concurrence by the Division Administrator.

§ 635.121 Contract time and contract time extensions.

(a) The State DOT should have adequate written procedures for the determination of contract time. These procedures should be submitted for approval to the Division Administrator within 6 months of the effective date of this Final Rule.

(b) Contract time extensions granted by a State DOT shall be subject to the concurrence of the Division Administrator and will be considered in determining the amount of Federal participation. Contract time extensions submitted for approval to the Division Administrator, shall be fully justified and adequately documented.

§ 635.122 Participation in progress payments.

(a) Federal funds will participate in the costs to the State DOT of construction accomplished as the work progresses, based on a request for reimbursement submitted by State transportation departments. When the contract provisions provide for payment for stockpiled materials, the amount of the reimbursement

request upon which participation is based may include the appropriate value of approved specification materials delivered by the contractor at the project site or at another designated location in the vicinity of such construction, provided that:

(1) The material conforms with the requirements of the plans and specifications.

(2) The material is supported by a paid invoice or a receipt for delivery of materials. If supported by a receipt of delivery of materials, the contractor must furnish the paid invoice within a reasonable time after receiving payment from the State DOT; and

(3) The quantity of a stockpiled material eligible for Federal participation in any case shall not exceed the total estimated quantity required to complete the project. The value of the stockpiled material shall not exceed the appropriate portion of the value of the contract item or items in which such materials are to be incorporated.

(b) The materials may be stockpiled by the contractor at a location not in the vicinity of the project, if the State DOT determines that because of required fabrication at an off-site location, it is not feasible or practicable to stockpile the materials in the vicinity of the project.

(c) In the case of a design-build project, the State DOT must define its procedures for making progress payments on lump sum contracts in the Request for Proposal document.

(d) In the case of a CM/GC project, the State DOT must define its procedures for making construction phase progress payments in either the solicitation or the construction services contract documents.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002; 81 FR 86943, Dec. 2, 2016]

§ 635.123 Determination and documentation of pay quantities.

(a) The State DOT shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.

(b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 2 CFR 200.333.

[56 FR 37004, Aug. 2, 1991, as amended at 85 FR 7293, Nov. 16, 2020]

§ 635.124 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement shall be determined on a case-by-case basis. Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the State DOT of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. It is expected that State DOTs will diligently pursue the satisfactory resolution of claims within a reasonable period of time. Claims arising on exempt non-NHS projects should be processed in accordance with the State's approved Stewardship Plan.

(c) When requesting Federal participation, the State DOT shall set forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a State DOT audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the State DOT shall include in its submission a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the State DOT receives an adverse decision in an amount more than the State DOT was able to support prior to the decision or settles a claim in an amount more than the State DOT can support, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that:

(1) The FHWA was consulted and concurred in the proposed course of action;

(2) All appropriate courses of action had been considered; and

(3) The State DOT pursued the case diligently and in a professional manner.

(e) Federal funds will not participate:

(1) If it has been determined that State DOT employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim;

(2) In such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and

(3) In tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rate provided for by the State statute or specification.

(g) In cases where State DOT's affirmatively recover compensatory damages through contract claims, cross-claims, or counter claims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[56 FR 37004, Aug. 2, 1991, as amended at 62 FR 6873, Feb. 14, 1997; 69 FR 7118, Feb. 13, 2004]

§ 635.125 Termination of contract.

(a) All contracts exceeding $10,000 shall contain suitable provisions for termination by the State, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(b) The State DOT prior to termination of a Federal-aid contract shall consult with and receive the concurrence of the Division Administrator. The extent of Federal-aid participation in contract termination costs, including final settlement, will depend upon the merits of the individual case. However, under no circumstances shall Federal funds participate in anticipated profit on work not performed.

(c) Except as provided for in paragraph (e) of this section, normal Federal-aid plans, specifications, and estimates, advertising, and award procedures are to be followed when a State DOT awards the contract for completion of a terminated Federal-aid contract.

(d) When a State DOT awards the contract for completion of a Federal-aid contract previously terminated for default, the construction amount eligible for Federal participation on the project should not exceed whichever amount is the lesser, either:

(1) The amount representing the payments made under the original contract plus payments made under the new contract; or

(2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

(e) If the surety awards a contract for completion of a defaulted Federal-aid contract or completes it by some other acceptable means, the FHWA will consider the terms of the original contract to be in effect and that the work will be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action will therefore be needed in connection with any defaulted Federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for Federal participation on the project should not exceed the amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

§ 635.126 [Reserved]

§ 635.127 Agreement provisions regarding overruns in contract time.

(a) Each State transportation department (State DOT) shall establish specific liquidated damages rates applicable to projects in that State. The rates may be project-specific or may be in the form of a table or schedule developed for a range of project costs and/or project types. These rates shall, as a minimum, be established to cover the estimated average daily construction engineering (CE) costs associated with the type of work encountered on the project. The amounts shall be assessed by means of deductions, for each calendar day or workday overrun in contract time, from payments otherwise due to the contractor for performance in accordance with the contract terms.

(b) The rates established shall be subject to FHWA approval either on a project-by-project basis, in the case of project-specific rates, or on a periodic basis after initial approval where a rate table or schedule is used. In the latter case, the State DOT shall periodically review its cost data to ascertain if the rate table/schedule closely approximates, at a minimum, the actual average daily CE costs associated with the type and size of the projects in the State. Where rate schedules or other means are already included in the State DOT

specifications or standard special provisions, verification by the State DOT that the amounts are adequate shall be submitted to the FHWA for review and approval. After initial approval by the FHWA of the rates, the State DOT shall review the rates at least every 2 years and provide updated rates, when necessary, for FHWA approval. If updated rates are not warranted, justification of this fact is to be sent to the FHWA for review and acceptance.

(c) The State DOT may, with FHWA concurrence, include additional amounts as liquidated damages in each contract to cover other anticipated costs of project related delays or inconveniences to the State DOT or the public. Costs resulting from winter shutdowns, retaining detours for an extended time, additional demurrage, or similar costs as well as road user delay costs may be included.

(d) In addition to the liquidated damages provisions, the State DOT may also include incentive/disincentive for early completion provisions in the contract. The incentive/disincentive amounts shall be shown separately from the liquidated damages amounts.

(e) Where there has been an overrun in contract time, the following principles shall apply in determining the cost of a project that is eligible for Federal-aid reimbursement:

(1) A proportional share, as used in this section, is the ratio of the final contract construction costs eligible for Federal participation to the final total contract construction costs of the project.

(2) Where CE costs are claimed as a participating item based upon actual expenses incurred or where CE costs are not claimed as a participating item, and where the liquidated damages rates cover only CE expenses, the total CE costs for the project shall be reduced by the assessed liquidated damages amounts prior to figuring any Federal pro rata share payable. If the amount of liquidated damages assessed is more than the actual CE totals for the project, a proportional share of the excess shall be deducted from the federally participating contract construction cost before determining the final Federal share.

(3) Where the State DOT is being reimbursed for CE costs on the basis of an approved percentage of the participating construction cost, the total contract construction amount that would be eligible for Federal participation shall be reduced by a proportional share of the total liquidated damages amounts assessed on the project.

(4) Where liquidated damages include extra anticipated non-CE costs due to contractor caused delays, the amount assessed shall be used to pay for the actual non-CE expenses incurred by the State DOT, and, if a Federal participating item(s) is involved, to reduce the Federal share payable for that item(s). If the amount assessed is more than the actual expenses incurred by the State DOT, a proportional share of the excess shall be deducted from the federally participating contract construction cost of the project before the Federal share is figured.

(f) When provisions for incentive/disincentive for early completion are used in the contract, a proportion of the increased project costs due to any incentive payments to the contractor shall be added to the federally participating contract construction cost before calculating the Federal share. When the disincentive provision is applicable, a proportion of the amount assessed the contractor shall be deducted from the federally participating contract construction cost before the Federal share calculation. Proportions are to be calculated in the same manner as set forth in paragraph (e)(1) of this section.

[52 FR 31390, Aug. 20, 1987. Redesignated at 62 FR 6872, Feb. 14, 1997]

Subpart B—Force Account Construction

§ 635.201 Purpose.

The purpose of this subpart is to prescribe procedures in accordance with 23 U.S.C. 112(b) for a State transportation department to request approval that highway construction work be performed by some method other than contract awarded by competitive bidding.

[48 FR 22912, May 23, 1983]

§ 635.202 Applicability.

This subpart applies to all Federal-aid and other highway construction projects financed in whole or in part with Federal funds and to be constructed by a State transportation department or a subdivision thereof in pursuant of agreements between any other State transportation department and the Federal Highway Administration (FHWA).

[69 FR 7119, Feb. 13, 2004]

§ 635.203 Definitions.

The following definitions shall apply for the purpose of this subpart:

(a) A *State transportation department* is that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* should be considered equivalent to *State transportation department* if the context so implies.

(b) Except as provided for as emergency repair work in § 668.105(i) and in § 635.204(b), the term *some other method* of construction as used in 23 U.S.C. 112(b) shall mean the *force account* method of construction as defined herein. In the unlikely event that circumstances are considered to justify a negotiated contract or another unusual method of construction, the policies and procedures prescribed herein for force account work will apply.

(c) The term *force account* shall mean the direct performance of highway construction work by a State transportation department, a county, a railroad, or a public utility company by use of labor, equipment, materials, and supplies furnished by them and used under their direct control.

(d) The term *county* shall mean any county, township, municipality or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters.

(e) The term *cost effective* shall mean the efficient use of labor, equipment, materials and supplies to assure the lowest overall cost.

(f) For the purpose of this part, an *emergency* shall be deemed to exist when emergency repair work as provided for in § 668.105(i) is necessary or when a major element or segment of the highway system has failed and the situation is such that competitive bidding is not possible or is impractical because immediate action is necessary to:

(1) Minimize the extent of the damage,

(2) Protect remaining facilities, or

(3) Restore essential travel.

This definition of *emergency* has no applicability to the Emergency Relief Program of 23 CFR part 668.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

§ 635.204 Determination of more cost effective method or an emergency.

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State transportation department or county for performance of highway work financed with the aid of Federal funds unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State transportation department determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the reason or reasons that an emergency exists.

(c) Except as provided in paragraph (b) of this section, when a State transportation department desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(b), be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.

(d) The Division Administrator shall notify the State transportation department in writing of his/her determination.

[52 FR 45172, Nov. 25, 1987]

§ 635.205 Finding of cost effectiveness.

(a) It may be found cost effective for a State transportation department or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or resposibilities of the community at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

[52 FR 45173, Nov. 25, 1987]

Subpart C—Physical Construction Authorization

Source: 40 FR 17251, Apr. 18, 1975, unless otherwise noted.

§ 635.301 Purpose.

To prescribe the policies and procedures under which a State transportation department may be authorized to advance a Federal-aid highway project to the physical construction stage.

§ 635.303 Applicability.

The provisions of this subpart are applicable to all Federal-aid highway construction projects.

[69 FR 7119, Feb. 13, 2004]

§ 635.305 Physical construction.

For purposes of this subpart the physical construction of a project is considered to consist of the actual construction of the highway itself with its appurtenant facilities. It includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for the physical construction.

§ 635.307 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project are to be accomplished in accordance with provisions of the following:

(1) 23 CFR part 140, subpart I;

(2) 23 CFR part 646, subpart B;

(3) 23 CFR 710.403; and

(4) 23 CFR part 645, subpart A.

[40 FR 17251, Apr. 18, 1975, as amended at 40 FR 25585, June 17, 1975; 64 FR 71289, Dec. 21, 1999]

§ 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) have been approved.

(b) A statement is received from the State, either separately or combined with the information required by paragraph (c) of this section, that either all right-of-way (ROW) clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is

determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems or the like, there shall be appropriate notification provided in the bid proposals identifying the ROW clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) Except as otherwise provided for design-build projects in § 710.309 of this chapter and paragraph (p) of this section, a statement is received from the State certifying that all individuals and families have been relocated to decent, safe, and sanitary housing or that the State has made available to relocatees adequate replacement housing in accordance with the provisions of the 49 CFR part 24 and that one of the following has application:

(1) All necessary ROW, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the ROW but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary ROW have not been fully acquired, the right to occupy and to use all ROW required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, the State may request the Federal Highway Administration (FHWA) to authorize actions based on a conditional certification as provided in this paragraph.

(i) The State may request approval for the advertisement for bids based on a conditional certification. The FHWA will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before acquisition activities are complete.

(ii) The State may request approval for physical construction under a contract or through force account work based on a conditional certification. The FHWA will approve the request only if FHWA finds there are exceptional circumstances that make it in the public interest to proceed with construction before acquisition activities are complete.

(iii) Whenever a conditional certification is used, the State shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the ROW are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

(iv) When the State requests authorization under a conditional certification to advertise for bids or to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefor, including identification of each such parcel, will be set forth in the State's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification must be provided in the request for bids, identifying all locations where right of occupancy and use has not been obtained. Prior to the State issuing a notice to

proceed with construction to the contractor, the State shall provide an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained along with a realistic date when physical occupancy and use is anticipated.

(v) Participation of title 23 funds in construction delay claims resulting from unavailable parcels shall be determined in accordance with § 635.124. The FHWA will determine the extent of title 23 participation in costs related to construction delay claims resulting from unavailable parcels where FHWA determines the State did not follow approved processes and procedures.

(d) The State transportation department (SDOT), in accordance with 23 CFR 771.111(h), has submitted public hearing transcripts, certifications and reports pursuant to 23 U.S.C. 128.

(e) An affirmative finding of cost effectiveness or that an emergency exists has been made as required by 23 U.S.C. 112, when construction by some method other than contract based on competitive bidding is contemplated.

(f) Minimum wage rates determined by the Department of Labor in accordance with the provisions of 23 U.S.C. 113, are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

(g) A statement has been received that ROW has been acquired or will be acquired in accordance with 49 CFR part 24 and part 710 of this chapter, or that acquisition of ROW is not required.

(h) A statement has been received that the steps relative to relocation advisory assistance and payments as required by 49 CFR part 24 have been taken, or that they are not required.

(i) The FHWA has determined that appropriate measures have been included in the PS&E in keeping with approved guidelines, for minimizing possible soil erosion and water pollution as a result of highway construction operations.

(j) The FHWA has determined that requirements of 23 CFR part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met.

(k) Where utility facilities are to use and occupy the right-of-way, the State has demonstrated to the satisfaction of the FHWA that the provisions of § 645.119(b) of this chapter have been fulfilled.

(l) The FHWA has verified the fact that adequate replacement housing is in place and has been made available to all affected persons.

(m) Where applicable, area wide agency review has been accomplished as required by 42 U.S.C. 3334 and 4231 through 4233.

(n) The FHWA has determined that the PS&E provide for the erection of only those information signs and traffic control devices that conform to the standards developed by the Secretary of Transportation or mandates of Federal law and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations, and related logos and symbols.

(o) The FHWA has determined that, where applicable, provisions are included in the PS&E that require the erection of funding source signs that comply with the Manual on Uniform Traffic Control Devices for Streets and Highways, for the life of the construction project, in accordance with section 154 of the Surface Transportation and Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*,) (Uniform Act).

(p) In the case of a design-build or CM/GC project, the following certification requirements apply

(1) The FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

(i) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(ii) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(iii) The NEPA review process has been concluded. (*See* § 636.109 of this chapter).

(iv) The Request for Proposals document has been approved.

(v) A statement is received from the SDOT that either all ROW, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of ROW, utility, and railroad work.

(vi) If the State DOT elects to include right-of-way, utility, and/or railroad services as part of the design-builder's or CM/GC contractor's scope of work, then the applicable design-build Request for Proposals document, or the CM/GC solicitation document must include:

(A) A statement concerning scope and current status of the required services; and

(B) A statement which requires compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and 23 CFR part 710.

(2) During a conformity lapse, an Early Acquisition Project carried out in accordance with § 710.501 of this chapter or a design-build project (including ROW acquisition activities) may continue if, prior to the conformity lapse, the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) process was completed and the project has not changed significantly in design scope, FHWA authorized the early acquisition or design-build project, and the project met transportation conformity requirements (40 CFR parts 51 and 93).

(3) Changes to the design-build or CM/GC project concept and scope may require a modification of the transportation plan and transportation improvement program. The project sponsor must comply with the metropolitan and statewide transportation planning requirements in 23 CFR part 450 and the transportation conformity requirements (40 CFR parts 51 and 93) in air quality nonattainment and maintenance areas, and provide appropriate approval notification to the design builder or the CM/GC contractor for such changes.

(q) In the case of an ID/IQ project, FHWA may authorize advertisement of the solicitation document prior to approving the PS&E. However, FHWA's project authorization for final design and physical construction will not be issued until the following conditions have been met:

(1) All projects must conform with the statewide and metropolitan transportation planning requirements (23 CFR part 450).

(2) All projects in air quality nonattainment and maintenance areas must meet all transportation conformity requirements (40 CFR parts 51 and 93).

(3) The NEPA process has been concluded as described in § 635.605.

(4) A statement is received from the State that either all ROW, utility, and railroad work has been completed or that all necessary arrangements will be made for the completion of ROW, utility, and railroad work.

[81 FR 57728, Aug. 23, 2016, as amended at 81 FR 86943, Dec. 2, 2016; 85 FR 72931, Nov. 16, 2020; 87 FR 67558, Nov. 9, 2022; 88 FR 87695, Dec. 19, 2023]

Subpart D—General Material Requirements

Source: 41 FR 36204, Aug. 27, 1976, unless otherwise noted.

§ 635.401 Purpose.

The purpose of this subpart is to prescribe requirements and procedures relating to product and material selection and use on Federal-aid highway projects.

§ 635.403 Definitions.

As used in this subpart, the following terms have the meanings indicated:

(a) *FHWA Division Administrator* means the chief Federal Highway Administration (FHWA) official assigned to conduct business in a particular State;

(b) *Material* means any tangible substance incorporated into a Federal-aid highway project;

(c) *PS&E* means plans, specifications, and estimates;

(d) *Special provisions* means additions and revisions to the standard and supplemental specifications applicable to an individual project;

(e) *Standard specifications* means a compilation in book form of specifications approved for general application and repetitive use;

(f) *State* has the meaning set forth in 23 U.S.C. 101;

(g) *State transportation department* means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction;

(h) *Supplemental specifications* means approved additions and revisions to the standard specifications.

§ 635.405 Applicability.

The requirements and procedures prescribed in this subpart apply to all contracts relating to Federal-aid highway projects.

[69 FR 7119, Feb. 13, 2004]

§ 635.407 Use of materials made available by a public agency.

(a) Contracts for highway projects shall require the contractor to furnish all materials to be incorporated in the work and shall permit the contractor to select the sources from which the materials are to be obtained. Exception to this requirement may be made when there is a definite finding by the State transportation department and concurred in by the FHWA Division Administrator, that it is in the public interest to require the contractor to use material furnished by the State transportation department or from sources designated by the State transportation department. In cases such as this, the FHWA does not expect mutual sharing of costs unless the State transportation department receives a related credit from another agency or political subdivision of the State. Where such a credit does accrue to the State transportation department, it shall be applied to the Federal-aid project involved. The designation of a mandatory material source may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost. Otherwise, if a State transportation department proposal to designate a material source for mandatory use would result in higher project costs, Federal-aid funds shall not participate in the increase even if the designation would conserve other public funds.

(b) The provisions of paragraph (a) of this section will not preclude the designation in the plans and specifications of sources of local natural materials, such as borrow aggregates, that have been investigated by the State transportation department and found to contain materials meeting specification requirements. The use of materials from such designated sources shall not be mandatory unless there is a finding of public interest as stated in paragraph (a) of this section.

(c) Federal funds may participate in the cost of specifications materials made available by a public agency when they have been actually incorporated in accepted items of work, or in the cost of such materials meeting the criteria and stockpiled at the locations specified in § 635.114 of this chapter.

(d) To be eligible for Federal participation in its cost, any material, other than local natural materials, to be purchased by the State transportation department and furnished to the contractor for mandatory use in the project, must have been acquired on the basis of competitive bidding, except when there is a finding of public interest justifying the use of another method of acquisition. The location and unit price at which such material will be available to the contractor must be stated in the special provisions for the benefit of all prospective bidders. The unit cost eligible for Federation participation will be limited to the unit cost of such material to the State transportation department.

(e) When the State transportation department or another public agency owns or has control over the source of a local natural material the unit price at which such material will be made available to the contractor must be stated in the plans or special provisions. Federal participation will be limited to

(1) the cost of the material to the State transportation department or other public agency; or

(2) the fair and reasonable value of the material, whichever is less. Special cases may arise that will justify Federal participation on a basis other than that set forth above. Such cases should be fully documented and receive advance approval by the FHWA Division Administrator.

(f) Costs incurred by the State transportation department or other public agency for acquiring a designated source or the right to take materials from it will not be eligible for Federal participation if the source is not used by the contractor.

(g) The contract provisions for one or a combination of Federal-aid projects shall not specify a mandatory site for the disposal of surplus excavated materials unless there is a finding by the State transportation department with the concurrence of the FHWA Division Administrator that such placement is the most economical except that the designation of a mandatory site may be permitted based on environmental considerations, provided the environment would be substantially enhanced without excessive cost.

§ 635.409 Restrictions upon materials.

No requirement shall be imposed and no procedure shall be enforced by any State transportation department in connection with a project which may operate:

(a) To require the use of or provide a price differential in favor of articles or materials produced within the State, or otherwise to prohibit, restrict or discriminate against the use of articles or materials shipped from or prepared, made or produced in any State, territory or possession of the United States; or

(b) To prohibit, restrict or otherwise discriminate against the use of articles or materials of foreign origin to any greater extent than is permissible under policies of the Department of Transportation as evidenced by requirements and procedures prescribed by the FHWA Administrator to carry out such policies.

§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either:

(i) Includes no permanently incorporated steel or iron materials, or

(ii) if iron or steel products are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The recipient has standard contract provisions that require the use of domestic materials and products, including iron or steel products, to the same or greater extent as the provisions set forth in this section.

(3) The recipient elects to include alternate bid provisions for foreign and domestic iron or steel products which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign iron or steel products which is acceptable to the Division Administrator may be used. The contract provisions must

(i) require all bidders to submit a bid based on furnishing domestic iron or steel products, and

(ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic iron or steel products unless such total bid exceeds the lowest total bid based on furnishing foreign iron or steel products by more than 25 percent.

(4) When iron or steel products are used in a project, the requirements of this section do not prevent a minimal use of foreign iron or steel products, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless the manufactured products used and permanently incorporated in such project are produced in the United States. To meet the requirement in this paragraph (c), the manufactured product must meet the following:

(1) The following definitions apply to this section:

(i) ***Component*** means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product.

(ii) ***Excluded materials*** means *section 70917(c) materials* as defined in 2 CFR 184.3.

(iii) ***Iron or steel products*** means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

(iv) ***Manufactured products*** means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, an excluded material, or other product category as specified by law or in 2 CFR part 184, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product may include components that are iron or steel products, excluded materials, or other product categories as specified by law or in 2 CFR part 184. Mixtures of excluded materials delivered to a work site without final form for incorporation into a project are not a manufactured product.

(v) ***Manufacturer,*** in the case of manufactured products, means the entity that performs the final manufacturing process that produces a manufactured product.

(vi) ***Predominantly of iron or steel or a combination of both*** means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

(vii) ***Produced in the United States,*** in the case of manufactured products, means:

(A) For projects obligated on or after October 1, 2025, the product was manufactured in the United States; and

(B) For projects obligated on or after October 1, 2026, the product was manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product.

(2) An article, material, or supply shall only be classified as an iron or steel product, a manufactured product, or other products as specified by law or in 2 CFR part 184. An iron or steel product must meet the requirements of paragraph (b) of this section. Except as otherwise provided in this

paragraph (c), an article, material, or supply shall not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the above-listed categories. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph (c) must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron or steel product or manufactured product will be incorporated.

(i) With respect to precast concrete products that are classified as manufactured products, components of precast concrete products that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of such components shall be included in the applicable calculation for purposes of determining whether the precast concrete product is produced in the United States.

(ii) With respect to intelligent transportation systems and other electronic hardware systems that are installed in the highway right of way or other real property and classified as manufactured products, the cabinets or other enclosures of such systems that consist wholly or predominantly of iron or steel or a combination of both shall meet the requirements of paragraph (b) of this section. The cost of cabinets or other enclosures shall be included in the applicable calculation for purposes of determining whether systems referred to in the preceding sentence are produced in the United States.

(3) In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, recipients shall determine the cost as follows:

(i) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(ii) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (c)(3)(i) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

(4) The provisions of this paragraph (c) are separate and severable from one another and from the other provisions of this section. If any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect.

(d) Standard recipient and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993; 90 FR 2957, Jan. 14, 2025]

§ 635.411 Culvert and storm sewer material types.

State Departments of Transportation (State DOTs) shall have the autonomy to determine culvert and storm sewer material types to be included in the construction of a project on a Federal-aid highway.

[84 FR 51028, Sept. 27, 2019]

§ 635.413 Guaranty and warranty clauses.

The State DOT may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:

(a) Warranty provisions shall be for a specific construction product or feature. Items of maintenance not eligible for Federal participation shall not be covered.

(b) All warranty requirements and subsequent revisions shall be submitted to the Division Administrator for advance approval.

(c) No warranty requirement shall be approved which, in the judgment of the Division Administrator, may place an undue obligation on the contractor for items over which the contractor has no control.

(d) A State DOT may follow its own procedures regarding the inclusion of warranty provisions in non-NHS Federal-aid contracts.

(e) In the case of a design-build project, the following requirements will apply instead of paragraphs (a) through (d) of this section.

(1) General project warranties may be used on NHS projects, provided:

(i) The term of the warranty is short (generally one to two years); however, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement.

(ii) The warranty is not the sole means of acceptance;

(iii) The warranty must not include items of routine maintenance which are not eligible for Federal participation; and,

(iv) The warranty may include the quality of workmanship, materials and other specific tasks identified in the contract.

(2) Performance warranties for specific products on NHS projects may be used at the State DOT's discretion. If performance warranties are used, detailed performance criteria must be provided in the Request for Proposal document.

(3) The State DOT may follow its own procedures regarding the inclusion of warranty provisions on non-NHS Federal-aid design-build contracts.

(4) For best value selections, the State DOT may allow proposers to submit alternate warranty proposals that improve upon the warranty terms in the RFP document. Such alternate warranty proposals must be in addition to the base proposal that responds to the RFP requirements.

[60 FR 44274, Aug. 25, 1995, as amended at 67 FR 75926, Dec. 10, 2002; 72 FR 45336, Aug. 14, 2007]

§ 635.417 Convict produced materials.

(a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

(1) Produced by convicts who are on parole, supervised release, or probation from a prison or

(2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

(b) *Qualified prison facility* means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-aid highway construction projects.

[53 FR 1923, Jan. 25, 1988, as amended at 58 FR 38975, July 21, 1993]

Subpart E—Construction Manager/General Contractor (CM/GC) Contracting

Source: 81 FR 86943, Dec. 2, 2016, unless otherwise noted.

§ 635.501 Purpose.

The regulations in this subpart prescribe policies, requirements, and procedures relating to the use of the CM/GC method of contracting on Federal-aid projects.

§ 635.502 Definitions.

As used in this subpart:

Agreed price means the price agreed to by the Construction Manager/General Contractor (CM/GC) contractor and the contracting agency to provide construction services for a specific scope and schedule.

CM/GC contractor means the entity that has been awarded a two-phase contract for a CM/GC project and is responsible for providing preconstruction services under the first phase and, if a price agreement is reached, construction services under the second phase of such contract.

CM/GC project means a project to be delivered using a two-phase contract with a CM/GC contractor for services during the preconstruction and, if there is an agreed price, construction phases of a project.

Construction services means the physical construction work undertaken by a CM/GC contractor to construct a project or a portion of the project (including early work packages). Construction services include all costs to perform, supervise, and administer physical construction work. Construction services may be authorized as a single contract for the project, or through a combination of contracts covering portions of the CM/GC project.

Contracting agency means the State Transportation Agency (STA), and any State or local government agency, public-private partnership, or Indian tribe (as defined in 2 CFR 200.54) that is the acting under the supervision of the STA and is awarding and administering a CM/GC contract.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State.

Early work package means a portion or phase of physical construction work (including but not limited to site preparation, structure demolition, hazardous material abatement/treatment/removal, early material acquisition/fabrication contracts, or any action that materially affects the objective consideration of alternatives in the NEPA review process) that is procured after NEPA is complete but before all design work for the project is complete. Contracting agencies may procure an early work package when construction risks have been addressed (both agency and CM/GC contractor risks) and the scope of work

is defined sufficiently for the contracting agency and the CM/GC contractor to reasonably determine price. The requirements in § 635.506 (including § 635.506(d)(2)) and § 635.507 apply to procuring an early work package and FHWA authorization for an early work package.

Final design has the same meaning as defined in § 636.103 of this chapter.

NEPA process means the environmental review required under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), applicable portions of the NEPA implementing regulations at 40 CFR parts 1500-1508, and part 771 of this chapter.

Preconstruction services means consulting to provide a contracting agency and its designer with information regarding the impacts of design on the physical construction of the project, including but not limited to: Scheduling, work sequencing, cost engineering, constructability, cost estimating, and risk identification. Under a preconstruction services contract, the CM/GC contractor may provide consulting services during both preliminary and, subject to provisions in this subpart, final design. Such services may include on-site material sampling and data collection to assist the contacting agency's design team in its preliminary design work, but do not include design and engineering-related services as defined in § 172.3 of this chapter. The services may include the preparation of plans typically developed by a construction contractor during the construction phase (such as preliminary staging or preliminary falsework plans) when needed for the NEPA process. However, services involving plans or submittals that are considered elements of final design and not needed for the NEPA process (such as shop drawings or fabrication plans) is not allowed, even on an at-risk basis, prior to the completion of the NEPA review process.

Preliminary design has the same meaning as defined in section 636.103 of this title.

Solicitation document means the document used by the contracting agency to advertise the CM/GC project and request expressions of interest, statements of qualifications, proposals, or offers.

State transportation agency (STA) has the same meaning as the term State transportation department (State DOT) under § 635.102 of this chapter.

§ 635.503 Applicability.

The provisions of this subpart apply to all Federal-aid projects within the right-of-way of a public highway, those projects required by law to be treated as if located on a Federal-aid highway, and other projects which are linked to such projects (*i.e.,* the project would not exist without another Federal-aid highway project) that are to be delivered using the CM/GC contractor method.

§ 635.504 CM/GC Requirements.

(a) *In general.* A contracting agency may award a two-phase contract to a CM/GC contractor for preconstruction and construction services. The first phase of this contract is the preconstruction services phase. The second phase is the construction services phase. The construction services phase may occur under one contract or under multiple contracts covering portions of the project, including early work packages.

(b) *Procurement requirements.*

(1) The contracting agency may procure the CM/GC contract using applicable State or local competitive selection procurement procedures as long as those procedures do not serve as a barrier to free and open competition or conflict with applicable Federal laws and regulations.

(2) Contracting agency procedures may use any of the following solicitation options in procuring a CM/GC contract: Letters of interest, requests for qualifications, interviews, request for proposals or other solicitation procedures provided by applicable State law, regulation or policy. Single-phase or multiple-phase selection procedures may also be used.

(3) Contracting agency procedures shall require, at a minimum, that a CM/GC contract be advertised through solicitation documents that:

(i) Clearly define the scope of services being requested;

(ii) List evaluation factors and significant subfactors and their relative importance in evaluating proposals;

(iii) List all required deliverables;

(iv) Identify whether interviews will be conducted before establishing the final rank (however, the contracting agency may reserve the right to make a final determination whether interviews are needed based on responses to the solicitation); and

(v) Include or reference sample contract form(s).

(4) If interviews are used in the selection process, the contracting agency must offer the opportunity for an interview to all short listed firms (or firms that submitted responsive proposals, if a short list is not used). Also, if interviews are used, then the contracting agency must not engage in conduct that favors one firm over another and must not disclose a firm's offer to another firm.

(5) A contracting agency may award a CM/GC contract based on qualifications, experience, best value, or any other combination of factors considered appropriate by the contracting agency and the Division Administrator and which are clearly specified in the solicitation documents.

(6) In the event that the contracting agency is unwilling or unable to enter into a contract with the CM/GC contractor for the construction services phase of the project (including any early work package), after the concurrence of the Division Administrator, the contracting agency may initiate a new procurement process meeting the requirements of subpart A of this part, or of another approved method for the affected portion of the construction work. If Federal-aid participation is being requested in the cost of construction, the contracting agency must request FHWA's approval before advertising for bids or proposals in accordance with § 635.112 and part 636 of this chapter. When the contracting agency makes a decision to initiate a new procurement, the contracting agency may determine that the CM/GC contractor is likely to have a competitive advantage that could adversely affect fair and open competition and not allow the CM/GC contractor to submit competitive bids.

(c) *FHWA approval of CM/GC procedures.*

(1) The STA must submit its proposed CM/GC procurement procedures to the FHWA Division Administrator for review and approval. Any changes in approved procedures and requirements shall also be subject to approval by the Division Administrator. Other contracting agencies may follow STA approved procedures, or their own procedures if approved by both the STA and FHWA.

(2) The Division Administrator may approve procedures that conform to the requirements of this subpart and which do not, in the opinion of the Division Administrator, operate to restrict competition. The Division Administrator's approval of CM/GC procurement procedures may not be delegated or assigned to the STA.

(d) *Subcontracting.* Consistent with § 635.116(a), contracts for construction services must specify a minimum percentage of work (no less than 30 percent of the total cost of all construction services performed under the CM/GC contract, excluding specialty work) that a contractor must perform with its own forces. If required by State law, regulation, or administrative policy, the contracting agency may require the CM/GC contractor to competitively let and award subcontracts for construction services to the lowest responsive bidder.

(e) *Payment methods.*

(1) The method of payment to the CM/GC contractor shall be set forth in the original solicitation documents, contract, and any contract modification or change order thereto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

(2) The methods of payment for preconstruction services shall be: Lump sum, cost plus fixed fee, cost per unit of work, specific rates of compensation, or other comparable payment method permitted in State law and regulation. When compensation is based on actual costs, an approved indirect cost rate must be used. The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.

(3) The method of payment for construction services may include any method of payment authorized by State law (including, but not limited to, lump sum, unit price, and target price). The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.

§ 635.505 Relationship to the NEPA process.

(a) In procuring a CM/GC contract before the completion of the NEPA process, the contracting agency may:

(1) Issue solicitation documents;

(2) Proceed with the award of a CM/GC contract providing for preconstruction services and an option to enter into a future contract for construction services once the NEPA review process is complete;

(3) Issue notices to proceed to the CM/GC contractor for preconstruction services, excluding final design-related activities; and

(4) Issue a notice-to-proceed to a consultant design firm for the preliminary design and any work related to preliminary design of the project to the extent that those actions do not limit any reasonable range of alternatives.

(b) The contracting agency shall not initiate construction activities (even on an at-risk basis) or allow such activities to proceed prior to the completion of the NEPA process. The contracting agency shall not perform or contract for construction services (including early work packages of any kind) prior to the completion of the NEPA process.

(c) A contracting agency may proceed, solely at the risk and expense of the contracting agency, with design activities at any level of detail, including final design and preconstruction services associated with final design, for a CM/GC project before completion of the NEPA process without affecting subsequent approvals required for the project. However, FHWA shall not authorize final design activities and preconstruction services associated with final design, and such activities shall not be eligible for Federal funding as provided in § 635.506(c), until after the completion the NEPA process. A contracting agency may use a CM/GC contractor for preconstruction services associated with at-risk final design only if the contracting agency has a procedure for segregating the costs of the CM/GC contractor's at-risk work from

preconstruction services eligible for reimbursement during the NEPA process. If a contracting agency decides to perform at-risk final design, it must notify FHWA of its decision to do so before undertaking such activities.

(d) The CM/GC contract must include termination provisions in the event the environmental review process does not result in the selection of a build alternative. This termination provision is in addition to the termination for cause or convenience clause required by Appendix II to 2 CFR part 200.

(e) If the contracting agency expects to use information from the CM/GC contractor in the NEPA review for the project, then the contracting agency is responsible for ensuring its CM/GC contract gives the contracting agency the right to obtain, as needed, technical information on all alternatives analyzed in the NEPA review.

(f) The CM/GC contract must include appropriate provisions ensuring no commitments are made to any alternative during the NEPA process, and that the comparative merits of all alternatives identified and considered during the NEPA process, including the no-build alternative, will be evaluated and fairly considered.

(g) The CM/GC contractor must not prepare NEPA documentation or have any decisionmaking responsibility with respect to the NEPA process. However, the CM/GC contractor may be requested to provide information about the project and possible mitigation actions, including constructability information, and its work product may be considered in the NEPA analysis and included in the record.

(h) Any contract for construction services under a CM/GC contract must include appropriate provisions ensuring that all environmental and mitigation measures identified in the NEPA documentation and committed to in the NEPA determination for the selected alternative will be implemented, excepting only measures the contracting agency expressly describes in the CM/GC contract as excluded because they are the responsibility of others.

§ 635.506 Project approvals and authorizations.

(a) *In general.*

(1) Under 23 U.S.C. 106(c), the States may assume certain FHWA responsibilities for project design, plans, specifications, estimates, contract awards, and inspections. Any individual State's assumption of FHWA responsibilities for approvals and determinations for CM/GC projects, as described in this subpart, will be addressed in the State's FHWA/STA Stewardship and Oversight Agreement. The State may not further delegate or assign those responsibilities. If an STA assumes responsibility for an FHWA approval or determination contained in this subpart, the STA will include documentation in the project file sufficient to substantiate its actions and to support any request for authorization of funds. The STA will provide FHWA with the documentation upon request.

(2) States cannot assume FHWA review or approval responsibilities for §§ 635.504(c) (review and approval of CM/GC procurement procedures) or 635.506(c) (FHWA post-NEPA review of at-risk final design costs for eligibility).

(3) In accordance with 23 U.S.C. 106(c), States may assume FHWA review or approval responsibilities for §§ 635.504(b)(6) (approval of bidding), 635.504(e)(3) (approval of indirect cost rate), 635.506(b) (approval of preconstruction price and cost/price analysis), 635.506(d)(2) (approval of price estimate for entire project), 635.506(d)(4) (approval of construction price analysis for each construction services contract), and 635.506(e) (approval of preconstruction services and

construction services contract awards) for CM/GC projects on the National Highway System, including projects on the Interstate System, and must assume such responsibilities for projects off the National Highway System unless the State determines such assumption is not appropriate.

(b) *Preconstruction services approvals and authorization.*

(1) If the contracting agency wishes Federal participation in the cost of the CM/GC contractor's preconstruction services, it must request FHWA's authorization of preliminary engineering before incurring such costs, except as provided by section 1440 of the Fixing America's Surface Transportation Act, Pub. L. 114-357 (December 1, 2015).

(2) Before authorizing pre-construction services by the CM/GC contractor, the Division Administrator must review and approve the contracting agency's cost or price analysis for the preconstruction services procurement (including contract modifications). A cost or price analysis is encouraged but not required for procurements less than the simplified acquisition threshold in 2 CFR 200.88. The requirements of this paragraph apply when the contracting agency is requesting Federal assistance in the cost of preconstruction services.

(c) *Final design during NEPA process.*

(1) If the contracting agency proceeds with final design activities, including CM/GC preconstruction services associated with final design activities, at its own expense before the completion of the NEPA process, then those activities for the selected alternative may be eligible for Federal reimbursement after the completion of the NEPA process so long as the Division Administrator finds that the contracting agency's final design-related activities:

(i) Did not limit the identification and fair evaluation of a reasonable range of alternatives for the proposed project;

(ii) Did not result in an irrevocable commitment by the contracting agency to the selection of a particular alternative;

(iii) Did not have an adverse environmental impact; and

(iv) Are necessary and reasonable and adequately documented.

(2) If, during the NEPA process, the Division Administrator finds the final design work limits the fair evaluation of alternatives, irrevocably commits the contracting agency to the selection of any alternative, or causes an adverse environmental impact, then the Division Administrator shall require the contracting agency to take any necessary action to ensure the integrity of the NEPA process regardless of whether or not the contracting agency wishes to receive Federal reimbursement for such activities.

(d) *Construction services approvals and authorizations.*

(1) Subject to the requirements in § 635.505, the contracting agency may request Federal participation in the construction services costs associated with a CM/GC construction project, or portion of a project (including an early work package). In such cases, FHWA's construction contracting requirements will apply to all of the CM/GC project's construction contracts if any portion (including an early work package) of the CM/GC project construction is funded with title 23 funds. Any expenses incurred for construction services before FHWA authorization shall not be eligible for reimbursement except as may be determined in accordance with § 1.9 of this chapter.

(2) The Division Administrator must approve the price estimate for construction costs for the entire project before authorization of construction services (including authorization of an early work package).

(3) The contracting agency must perform a price analysis for any contract (or contract modification) that establishes or revises the scope, schedule or price for the construction of the CM/GC project or a portion of the project (including an early work package). The price analysis must compare the agreed price with the contracting agency's engineer's estimate or an independent cost estimate (if required by the contracting agency). A price analysis is encouraged but not required for procurements less than the simplified acquisition threshold in 2 CFR 200.88.

(4) The Division Administrator must review and approve the contracting agency's price analysis and agreed price for the construction services of a CM/GC project or a portion of the project (including an early work package) before authorization of construction services.

(5) Where the contracting agency and the CM/GC contractor agree on a price for construction services that is approved under paragraph (d)(4) of this section, FHWA's authorization of construction services will be based on the approved agreed price for the project or portion of the project. The authorization may include authorization of an early work package, including the advanced acquisition of materials consistent with § 635.122 and this subpart. In the event that construction materials are acquired for a CM/GC project but not installed in the CM/GC project, the cost of such material will not be eligible for Federal-aid participation. In accordance with § 635.507 and 2 CFR part 200, FHWA may deny eligibility for part or all of an early work package if such work is not needed for, or used for, the project.

(e) *Contract award.* The award of a Federal-aid CM/GC contract for preconstruction services and the award of contract(s) for construction services require prior concurrence from the Division Administrator. The concurrence is a prerequisite to authorization of preconstruction and construction services (including authorization for an early work package). Concurrence in the CM/GC contract award for construction services constitutes approval of the agreed price, scope, and schedule for the work under that contract. Where the contracting agency has established a Disadvantaged Business Enterprise (DBE) contract goal for the CM/GC construction services contract, the initial proposal for CM/GC construction services must include the DBE documentation required by 49 CFR 26.53(b)(2), or it must include a contractually binding commitment to meet the DBE contract goal, with the information required by 49 CFR 26.53(b)(2) provided before the contracting agency awards the contract for construction services. A copy of the executed contract between the contracting agency and the CM/GC contractor, including any contract for construction services, shall be furnished to the Division Administrator as soon as practical after execution. If the contracting agency decides not to proceed with the award of a CM/GC construction services contract, then it must notify the FHWA Division Administrator as provided in § 635.504(b)(6).

§ 635.507 Cost eligibility.

(a) Costs, or prices based on estimated costs, under a CM/GC contract shall be eligible for Federal-aid reimbursement only to the extent that costs incurred, or cost estimates included in negotiated prices, are allowable in accordance with the Federal cost principles (as specified in 2 CFR part 200, subpart E). Contracting agencies must perform a cost or price analysis in connection with procurement actions, including contract modifications, in accordance with 2 CFR 200.323(a) and this subpart.

(1) For preconstruction services, to the extent that actual costs or cost estimates are included in negotiated prices that will be used for cost reimbursement, the costs must comply with the Federal cost principles to be eligible for participation.

(2) For construction services, the price analysis must confirm the agreed price is reasonable in order to satisfy cost eligibility requirements (see § 635.506(d)(3)). The FHWA will rely on an approved price analysis when authorizing funds for construction.

(b) *Indirect cost rates.* Where preconstruction service payments are based on actual costs the CM/GC contractor must provide an indirect cost rate established in accordance with the Federal cost principles (as specified in 2 CFR part 200 subpart E).

(c) *Cost certification.*

(1) If the CM/GC contractor presents an indirect cost rate established in accordance with the Federal cost principles (as specified in 2 CFR part 200 subpart E), it shall include a certification by an official of the CM/GC contractor that all costs are allowable in accordance with the Federal cost principles.

(2) An official of the CM/GC contractor shall be an individual executive or financial officer of the CM/GC contractor's organization, at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to make representations about the financial information utilized to establish the indirect cost rate proposal submitted.

(3) The certification of final indirect costs shall read as follows:

Certificate of Final Indirect Costs

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles in 2 CFR part 200 subpart E; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of 2 CFR part 200 subpart E.

Subpart F—Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracting

Source: 85 FR 72932, Nov. 16, 2020, unless otherwise noted.

§ 635.601 Purpose.

The regulations in this subpart prescribe policies, requirements, and procedures relating to the use of the ID/IQ method of contracting on Federal-aid construction projects.

§ 635.602 Definitions.

As used in this subpart:

Best value selection means any selection process in which proposals contain both price and qualitative components and award of the contract is based upon a combination of price and qualitative considerations. Qualitative considerations may include past performance, timeliness, reliability, experience, work quality, safety, or other considerations.

Contracting agency means the State department of transportation (State DOT), and any State or local government agency, public-private partnership, or Indian tribe (as defined in 2 CFR part 200) that is the acting under the supervision of the State DOT and is awarding and administering an Indefinite Delivery/ Indefinite Quantity (ID/IQ) contract.

ID/IQ means a method of contracting that allows an indefinite quantity of services for a fixed time. This method is used when a contracting agency anticipates a recurring need but has not determined, above a specified minimum, the precise quantities of services that it will require during the contract period. Contractors bid unit prices for estimated quantities of standard work items, and work orders are used to define the location and quantities for specific work.

ID/IQ contract means the principal contract between the contracting agency and the contractor. Contracting agencies may use other names for ID/IQ contracts including job order contracting (JOC) contracts, master contracts, on-call contracts, push-button contracts, design-build ID/IQ contracts, design-build push button contracts, stand-by contracts, or task order contracts.

JOC, or Job order contracting, means a form of ID/IQ contracting that uses a unit price book in the solicitation and the bidder's adjustment factors or multipliers to establish contract prices.

JOC contract means a type of ID/IQ contract delivered using the JOC method. Requirements for ID/IQ contracts apply to JOC contracts unless otherwise specified in this subpart.

NEPA process has the same meaning as defined in § 635.502 of this part.

Unit price book means a book, guide, list, or similar document which includes defined construction tasks, and for each task, includes a unit of measure and a preset unit price.

Work order means the contract document issued for a definite scope of work under an ID/IQ contract. It defines the location, time, and scope of work required by the contracting agency. It also defines required pay items, quantities, and unit prices, as applicable. Contracting agencies may use other names for work orders including job orders, service orders, task orders, or task work orders.

§ 635.603 Applicability.

(a) Except as provided in paragraph (b) of this section, the provisions of this subpart apply to all Federal-aid construction projects.

(b) This subpart does not apply to engineering and design service contracts, to which 23 CFR part 172 applies, or Federal Lands Highway contracts, to which 48 CFR subpart 16.5 applies.

§ 635.604 ID/IQ Requirements.

(a) *Procurement requirements.*

(1) The contracting agency may procure the ID/IQ contract using applicable State or local competitive selection procurement procedures if those procedures:

(i) Comply with this section;

(ii) Are effective in securing competition; and

(iii) Do not conflict with applicable Federal laws and regulations.

(2) The solicitation for an ID/IQ contract shall state the procedures and criteria the contracting agency will use to award the ID/IQ contract.

(3) In addition to the requirements set forth under (a)(2), the ID/IQ contract, and any solicitation for an ID/IQ contract, must:

(i) Specify the period of the contract, including the number of optional contract extensions and the period for which the contracting agency may extend the contract under each optional extension.

(ii) Specify the basis, such as a published index, and procedure to be used for adjusting prices for optional contract extensions when optional contract extensions are included. Negotiated contract price adjustments for optional contract extensions are not eligible for Federal-aid participation.

(iii) Specify the estimated quantity or value of services the contracting agency anticipates it may acquire under the contract, either on an annual basis or over the entire initial term of the ID/IQ contract.

(iv) Include appropriate statements of work, specifications, or other descriptions that reasonably and accurately describe the general scope, nature, complexity, and purpose of the services the contracting agency will acquire under the contract.

(v) State the procedures that the contracting agency will use in issuing work orders, and, if multiple awards may be made, state the procedures and selection criteria that the contracting agency will use to provide awardees a fair opportunity to be considered for each work order.

(vi) Include the contracting agency's dispute resolution procedures available to awardees if multiple awards may be made.

(4) In addition to the requirements set forth under (a)(3), a JOC contract shall:

(i) Use a unit price book to contain or reference the information described under (a)(3)(iv).

(ii) Include the unit price book both in the contract and the solicitation.

(iii) Include prices adjusted by the contractor's adjustment factors or multipliers for each item in the unit price book.

(5) The contracting agency's procurement procedures may include selection of one or multiple contractors based on competitive low bid or best value selection under a single solicitation. For contracts awarded to multiple contractors under a single solicitation, the issuance of work orders must be based on lowest cost or lowest cost plus time to the government for the specified work. Work orders shall not be issued to contractors on a rotating basis or other non-competitive method.

(6) The sum of the duration of the initial ID/IQ contract and any optional contract extensions shall not exceed five years. The contracting agency may include a provision in the ID/IQ contract to exercise an option or options to extend the contract for a term or terms such that the duration of each optional contract extension does not exceed the initial duration of the ID/IQ contract.

(i) Prior to granting a contract extension, the contracting agency must receive concurrence from the Division Administrator.

(ii) For ID/IQ contracts where prevailing wages apply under 23 U.S.C. 113, the current prevailing wage rate determination as determined by the U.S. Department of Labor in effect on the date of the execution of the contract extension shall apply to work covered under the contract extension.

(iii) For ID/IQ contracts exceeding one year in duration, the contracting agency may use price escalation methods, such as referring to a published index, to adjust the payment for items of work in the issuance of work orders. Such price escalation methods, however, shall not be applied to items of work when those items are separately covered under commodity price escalation clauses in the ID/IQ contract.

(7) Contracting agency payment to a contractor to satisfy a minimum award provision that is not supported by eligible work is not eligible for Federal-aid participation.

(b) ***Participation by disadvantaged business enterprises.*** The requirements of 49 CFR part 26 and the State's approved Disadvantaged Business Enterprise (DBE) plan apply to ID/IQ contracts. At the option of the State DOT, DBE contract or project goal setting and goal attainment may apply to ID/IQ contracts in their entirety, or to individual work orders for ID/IQ contracts with single or multiple awards, or both. The solicitation for ID/IQ contracts shall specify the applicable requirements.

(c) ***Subcontracting.*** At the option of the State DOT, the minimum prime contractor participation requirement set forth at § 635.116 may be applied over the entirety of the ID/IQ contract or applied to each individual work order. The solicitation shall specify the applicable requirements.

(d) ***Liquidated damages.*** When a contracting agency's processes or procedures use project cost to establish the assessed rate of liquidated damages under § 635.127, the work order cost shall be used to determine the rate when liquidated damages are assessed.

(e) ***Applicable State procedures.*** Nothing in this subpart shall be construed as prohibiting a State DOT from adopting more restrictive policies and procedures than contained herein regarding ID/IQ contracts.

[85 FR 72932, Nov. 16, 2020, as amended at 87 FR 67558, Nov. 9, 2022]

§ 635.605 Approvals and authorizations.

(a) ***Advertisement, award, and the relationship to NEPA.***

(1) The solicitation for an ID/IQ contract may identify all, some, or none of the specific locations where construction is to be required under the ID/IQ contract.

(2) With prior concurrence of the Division Administrator, the contracting agency may advertise the solicitation for an ID/IQ contract prior to the completion of the NEPA process.

(3) With prior concurrence of the Division Administrator, the contracting agency may award an ID/IQ contract prior to the completion of the NEPA process.

(4) An authorization to proceed, or formal project agreement under § 630.106 of this chapter for an ID/IQ contract, shall not be issued or executed for final design or physical construction for work until the NEPA process has been completed for said work. An authorization or agreement under this paragraph may apply to work in multiple locations.

(5) With the approval of the Division Administrator, the formal project agreement under § 630.106 of this chapter for final design or physical construction under an ID/IQ contract may be amended as necessary as additional work locations are identified and the NEPA process is completed for the additional work locations.

(6) The agreement estimate for final design or physical construction required for an ID/IQ contract under § 635.115 shall not exceed the actual or best estimated costs of items necessary to complete the scope of work considered in applicable work orders and in the completed NEPA processes as described in paragraphs (4) and (5) of this subsection. The estimate shall be adjusted as necessary as set forth under § 630.106(a)(4) of this chapter.

(b) *Federal participation.*

(1) Subject to the requirements in this subpart, the contracting agency may request Federal participation in the costs associated with an ID/IQ contract, or portion of a contract. In such cases, FHWA's construction contracting requirements will apply to all ID/IQ contract work orders if any ID/IQ contract work orders are funded with Title 23, U.S.C. funds. Any expenses incurred before FHWA authorization shall not be eligible for reimbursement except as may be determined in accordance with § 1.9 of this chapter.

(2) The applicable Federal share for each work order shall be specified in the relevant project agreement.

§ 635.606 ID/IQ procedures.

(a) *FHWA approval.* The State DOT shall submit its proposed ID/IQ procurement procedures to the Division Administrator for review and approval. Following approval by the Division Administrator, any subsequent changes in procedures and requirements shall also be subject to approval by the Division Administrator before they are implemented. Other contracting agencies may follow approved State DOT procedures in their State or their own procedures if approved by both the State DOT and FHWA. The Division Administrator's approval of ID/IQ procurement procedures may not be delegated or assigned to the State DOT.

(b) *Competition.* ID/IQ procurement procedures shall effectively secure competition in the judgment of the Division Administrator.

(c) *Procurement requirements.* ID/IQ procurement procedures shall include the following procedures and responsibilities:

(1) Review and approval of ID/IQ solicitations;

(2) Review and approval of work item descriptions and specifications;

(3) Approval to advertise solicitations;

(4) Concurrence with ID/IQ contract awards to single or multiple contractors;

(5) Approval of and amendments to formal project agreements and authorizations to proceed pursuant to § 630.106 of this chapter;

(6) Issuance of work orders;

(7) Approval of and amendments to agreement estimates pursuant to § 635.115;

(8) Changed conditions clauses;

(9) Approval of contract changes and extra work pursuant to § 635.120; and

(10) Other procedures as needed to ensure compliance with other requirements in this subpart and under Title 23, U.S.C. and its implementing regulations and 49 CFR part 26.

(d) *Design-build and ID/IQ.* Subject to the approval of the Division Administrator, as described in § 635.606(a), contracting agencies may incorporate the design-build contracting method with ID/IQ contracts. In addition to the requirements of this section, the contracting agency shall include procedures as needed to ensure compliance with part 636 of this chapter and related requirements.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations

Part 645 Utilities
Subpart A Utility Relocations, Adjustments, and Reimbursement
§ 645.101 Purpose.
§ 645.103 Applicability.
§ 645.105 Definitions.
§ 645.107 Eligibility.
§ 645.109 Preliminary engineering.
§ 645.111 Right-of-way.
§ 645.113 Agreements and authorizations.
§ 645.115 Construction.
§ 645.117 Cost development and reimbursement.
§ 645.119 Alternate procedure.
Subpart B Accommodation of Utilities
§ 645.201 Purpose.
§ 645.203 Applicability.
§ 645.205 Policy.
§ 645.207 Definitions.
§ 645.209 General requirements.
§ 645.211 State transportation department accommodation policies.
§ 645.213 Use and occupancy agreements (permits).
§ 645.215 Approvals.
Subpart C Broadband Infrastructure Deployment
§ 645.301 Purpose.
§ 645.303 Applicability.
§ 645.305 Definitions.
§ 645.307 General requirements.
§ 645.309 Limitations.

PART 645—UTILITIES

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 47 U.S.C. 1504; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

Editorial Note: Nomenclature changes to part 645 appear at 65 FR 70311, Nov. 22, 2000.

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Source: 50 FR 20345, May 15, 1985, unless otherwise noted.

§ 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

§ 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State transportation department (STD) for costs incurred under an approved and properly executed transportation department (TD)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR part 645, subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR 710.203, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the STD will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the STD subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the STD or TD are inapplicable, and it is intended that the FHWA be considered in the relative position of the STD or TD.

[50 FR 20345, May 15, 1985, as amended at 64 FR 71289, Dec. 21, 1999]

§ 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

Authorization —for Federal-aid projects authorization to the STD by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

Betterment —any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

Cost of relocation —the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

Cost of Removal —the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

Cost of salvage —the amount expended to restore salvaged utility property to usable condition after its removal.

Direct Federal projects —highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

Indirect or overhead costs —those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

Relocation —the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

Salvage value —the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

State transportation department —the transportation department of one of the 50 States, the District of Columbia, or Puerto Rico.

Transportation department(TD) —that department, commission, board, or official of any State or political subdivison thereof, charged by its law with the responsibility for highway administration.

Use and occupancy agreement —the document (written agreement or permit) by which the TD approves the use and occupancy of highway right-of-way by utility facilities or private lines.

Utility —a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

Work order system —a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

[50 FR 20345, May 15, 1985, as amended at 65 FR 70311, Nov. 22, 2000]

§ 645.107 Eligibility.

(a) When requested by the STD, Federal funds may participate, subject to the provisions of § 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an TD for the costs of utility relocations. Federal funds may participate in safety corrective measures made under the provisions of § 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of highway project made under one or more of the following conditions when:

(1) The STD certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain,

(2) The utility occupies privately or publicly owned land, including public road or street right-of-way, and the STD certifies that the payment by the TD is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicy owned land, including public road and street right-of-way, and is owned by a public agency or political subdivision of the State, and is not required by law or agreement to move at its own expense, and the STD certifies that the TD has the legal authority or obligation to make such payments.

(b) On projects which the STD has the authority to participate in project costs, Federal funds may not participate in payments made by a political subdivision for relocation of utility facilities, other than those proposed under the provisions of § 645.107(k) of this part, when State law prohibits the STD from making payment for relocation of utility facilities.

(c) On projects which the STD does not have the authority to participate in project costs, Federal funds may participate in payments made by a political subdivision for relocation of utility facilities necessitated by the actual construction of a highway project when the STD certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the TD or for utility safety corrective measures under the provisions of § 645.107(k) of this part.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the TD, except for utilities owned by the political subdivision on projects which qualify under the provisions of § 645.107(c) of this part in which case the costs of the utility are considered to be costs of the TD.

(e) The FHWA may deny Federal fund participation in any payments made by a TD for the relocation of utility facilities when such payments do not constitute a suitable basis for Federal fund participation under the provisions of title 23 U.S.C.

(f) The rights of any public agency or political subdivision of a State under contract, franchise, or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the STD in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by § 645.107(a) and (c), the STD may file a statement with the FHWA setting forth the conditions under which the STD will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the STD under the conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for Federal fund participation under the provisions of 23 U.S.C. 123.

(h) Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.

(i) When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the TD, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to authorization of the work by the FHWA. Subject to the other provisions of this regulation, Federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the STD to proceed in accordance with 23 CFR part 630, subpart A, Federal-Aid Programs Approval and Project Authorization.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

(Information collection requirements in paragraph (g) were approved by the Office of Management and Budget under control number 2125-0515)

[50 FR 20345, May 15, 1985, as amended at 53 FR 24932, July 1, 1988]

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the TD and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

(1) The TD's or utility's engineering forces;

(2) An engineering consultant selected by the TD, after consultation with the utility, the contract to be administered by the TD; or,

(3) An engineering consultant selected by the utility, with the approval of the TD, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the STD in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable.

(c) The procedures in 23 CFR part 172, Administration of Engineering and Design Related Service Contracts, may be used as a guide for reviewing proposed consultant contracts.

[50 FR 20345, May 15, 1985, as amended at 60 FR 34850, July 5, 1995; 65 FR 70311, Nov. 22, 2000]

§ 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location beause it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the TD for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the TD on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR 710.203.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR 710.203.

[50 FR 20345, May 15, 1985, as amended at 64 FR 71289, Dec. 21, 1999]

§ 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the TD shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method proposed by the utility for developing relocation costs must be acceptable to both the TD and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the TD in connection with payments by the TD to the utility under the provisions of § 645.107 of this regulation.

(c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the TD and the FHWA with a clear description of the work required.

(d) When the relocation involves both work to be done at the TD's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.

(e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the TD and the FHWA.

(f) When proposed utility relocation and adjustment work on a project for a specific utility company can be clearly defined and the cost can be accurately estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the STD to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved Statewide transportation improvement program,

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR 710.503, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the TD and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the STD shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the STD with the understanding that Federal funds will not be paid for work done by the utility until the STD proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

[50 FR 20345, May 15, 1985, as amended at 60 FR 34850, July 5, 1995; 64 FR 71289, Dec. 21, 1999; 65 FR 70311, Nov. 22, 2000]

§ 645.115 Construction.

(a) Part 635, subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the

utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the TD or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the TD's highway construction contract let by the TD as agreed to by the utility,

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the TD or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under part 635, subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the TD. The special provisions of contracts let by the utility or the TD shall be explicit in this respect. The costs of force account work performed for the utility by the TD and of contract work performed for the utility under a contract let by the TD shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) ***Developing and recording costs.***

(1) All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the TD and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements shall be kept separately from those relating to construction.

(3) The STD may develop, or work in concert with utility companies to develop, other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods shall be founded in generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained data base of relocation expenses. Development of any alternate costing method should consider the factors listed in paragraphs (b) through (g) of this section. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by the FHWA is required for any costing method used other than actual cost.

(b) ***Direct labor costs.***

(1) Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by adequate records. This includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

(3) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) ***Labor surcharges.***

(1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

(2) When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

(d) ***Overhead and indirect construction costs.***

(1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, actually incurred by the utility, and consistent with the provisions of 48 CFR part 31.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) ***Material and supply costs.***

(1) Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a considertion for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the TD or utility following an opportunity for TD inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates which are representative of actual costs may be used if approved by the STD and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

(f) ***Equipment costs.*** The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid

(1) to the lowest qualified bidder,

(2) under existing continuing contracts at reasonable costs, or

(3) as an exception by negotiation when paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) ***Transportation costs.***

(1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

(h) ***Credits.***

(1) Credit to the highway project will be required for the cost of any betterments to the facility being replaced or adjusted, and for the salvage value of the materials removed.

(2) Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost. Credit for accrued depreciation shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

(i) Required by the highway project,

(ii) Replacement devices or materials that are of equivalent standards although not identical,

(iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in § 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) ***Billings.***

(1) After the executed TD/utility agreement has been approved by the FHWA, the utility may be reimbursed through the STD by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed TD/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

(3) All utility cost records and accounts relating to the project are subject to audit by representatives of the State and Federal Government for a period of 3 years from the date final payment has been received by the utility.

(Information collection requirements in paragraph (i) were approved by the Office of Management and Budget under control number 2125-0159)

[50 FR 20345, May 15, 1985, as amended at 60 FR 34850, July 5, 1995; 65 FR 70311, Nov. 22, 2000]

§ 645.119 Alternate procedure.

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the STD is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the STD's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of § 645.113 (h), (i), and (j), and § 645.107(i) of this regulation.

(c) To adopt the alternate procedure, the STD must file a formal application for approval by the FHWA. The application must include the following:

(1) The STD's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by § 645.119(b), and the provisions of 23 CFR part 645, subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to establish the legal basis of the TD's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with STD policies and the provisions of this regulation, shall be retained by the STD.

(2) A statement signed by the chief administrative officer of the STD certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the STD's utility policies and procedures submitted under § 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The STD's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the STD to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The STD must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under § 645.119(c)(1).

(Information collection requirements in paragraph (c) were approved by the Office of Management and Budget under control number 2125-0533)

[50 FR 20345, May 15, 1985, as amended at 65 FR 70311, Nov. 22, 2000]

Subpart B—Accommodation of Utilities

Source: 50 FR 20354, May 15, 1985, unless otherwise noted.

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid or direct Federal highway projects.

§ 645.203 Applicability.

This subpart applies to:

(a) New utility installations within the right-of-way of Federal-aid or direct Federal highway projects,

(b) Existing utility facilities which are to be retained, relocated, or adjusted within the right-of-way of active projects under development or construction when Federal-aid or direct Federal highway funds are either being or have been used on the involved highway facility. When existing utility installations are to remain in place without adjustments on such projects the transportation department and utility are to enter into an appropriate agreement as discussed in § 645.213 of this part,

(c) Existing utility facilities which are to be adjusted or relocated under the provisions of § 645.209(k), and

(d) Private lines which may be permitted to cross the right-of-way of a Federal-aid or direct Federal highway project pursuant to State law and regulations and the provisions of this subpart. Longitudinal use of such right-of-way by private lines is to be handled under the provisions of 23 CFR 1.23(c).

§ 645.205 Policy.

(a) Pursuant to the provisions of 23 CFR 1.23, it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

(c) The manner is which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation.

(d) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988]

§ 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

Aesthetic quality —those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

Border area —the area between the traveled way and the right-of-way line.

Clear roadside policy —that policy employed by a transportation department to provide a clear zone in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration shall be given to sound engineering principles and economic factors.

Clear zone —the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The current edition of the AASHTO "Roadside Design Guide" should be used as a guide for establishing clear zones for various types of highways and operating conditions. This publication is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001, or electronically at *http://www.aashto.org*.

Direct Federal highway projects —those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA)

Federal-aid highway projects —those active or completed highway projects administered by or through a State transportation department which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under 23 U.S.C. 319, Landscaping and Scenic Enhancement.

Freeway —a divided arterial highway with full control of access.

Highway —any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

Transportation department —that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

Private lines —privately owned facilities which convey or transmit the commodities outlined in the definition of *utility facility* of this section, but devoted exclusively to private use.

Right-of-way —real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired under 23 U.S.C. 319 shall be considered to be highway right-of-way.

State transportation department —the transportation department of one of the 50 States, the District of Columbia, or Puerto Rico.

Use and occupancy agreement —the document (written agreement or permit) by which the transportation department approves the use and occupancy of highway right-of-way by utility facilities or private lines.

Utility facility —privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

[50 FR 20345, May 15, 1985, as amended at 51 FR 16834, May 7, 1986; 53 FR 2833, Feb. 2, 1988; 55 FR 25828, June 25, 1990; 60 FR 34850, July 5, 1995; 61 FR 12022, Mar. 25, 1996; 65 FR 70311, Nov. 22, 2000]

§ 645.209 General requirements.

(a) ***Safety.*** Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. The lack of sufficient right-of-way width to accommodate utilities outside the desirable clear zone, in and of itself, is not a valid reason to preclude utilities from occupying the highway right-of-way. However, due to the nature and volume of highway traffic, the effect of such joint use on the traveling public must be carefully considered by transportation departments before approval of utility use of the right-of-way of Federal-aid or direct Federal highway projects is given. Adjustments in the operating characteristics of the utility or the highway or other special efforts may be necessary to increase the compatibility of utility-highway joint use. The possibility of this joint use should be a consideration in establishing right-of-way requirements for highway projects. In any event, the design, location, and manner in which utilities use and occupy the right-of-way of Federal-aid or direct Federal highway projects must conform to the clear roadside policies for the highway involved and otherwise provide for a safe traveling environment as required by 23 U.S.C. 109(l)(1).

(b) ***New above ground installations.*** On Federal-aid or direct Federal highway projects, new above ground utility installations, where permitted, shall be located as far from the traveled way as possible, preferably along the right-of-way line. No new above ground utility installations are to be allowed within the established clear zone of the highway unless a determination has been made by the transportation department that placement underground is not technically feasible or is unreasonably costly and there are no feasible alternate locations. In exceptional situations when it is essential to locate such above ground utility facilities within the established clear zone of the highway, appropriate countermeasures to reduce hazards shall be used. Countermeasures include placing utility facilities at locations which protect or minimize exposure to out-of-control vehicles, using breakaway features, using impact attenuation devices, using delineation, or shielding.

(c) ***Installations within freeways.***

(1) Each State transportation department shall submit an accommodation plan in accordance with §§ 645.211 and 645.215 which addresses how the State transportation department will consider applications for longitudinal utility installations within the access control lines of a freeway. This includes utility installations within interchange areas which must be constructed or serviced by

direct access from the main lanes or ramps. If a State transportation department elects to permit such use, the plan must address how the State transportation department will oversee such use consistent with this subpart, Title 23 U.S.C., and the safe and efficient use of the highways.

(2) Any accommodation plan shall assure that installations satisfy the following criteria:

(i) The effects utility installations will have on highway and traffic safety will be ascertained, since in no case shall any use be permitted which would adversely affect safety.

(ii) The direct and indirect environmental and economic effects of any loss of productive agricultural land or any productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for accommodation of such utility facility will be evaluated.

(iii) These environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility will be considered.

(iv) [Reserved]

(v) A utility strip will be established along the outer edge of the right-of-way by locating a utility access control line between the proposed utility installation and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. The State or political subdivision is to retain control of the utility strip right-of-way including its use by utility facilities. Service connections to adjacent properties shall not be permitted from within the utility strip.

(3) Nothing in this part shall be construed as prohibiting a transportation department from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or for servicing such installations.

(d) ***Uniform policies and procedures.*** For a transportation department to fulfill its responsibilities to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

(e) ***Private lines.*** Because there are circumstances when private lines may be allowed to cross or otherwise occupy the right-of-way of Federal-aid projects, transportation departments shall establish uniform policies for properly controlling such permitted use. When permitted, private lines must conform to the provisions of this part and the provisions of 23 CFR 1.23(c) for longitudinal installations.

(f) ***Direct Federal highway projects.*** On direct Federal highway projects, the FHWA will apply, or cause to be applied, utility and private line accommodation policies similar to those required on Federal-aid highway projects. When appropriate, agreements will be entered into between the FHWA and the transportation department or other government agencies to ensure adequate control and regulation of use by utilities and private lines of the right-of-way on direct Federal highway projects.

(g) ***Projects where state lacks authority.*** On Federal-aid highway projects where the State transportation department does not have legal authority to regulate highway use by utilities and private lines, the State transportation department must enter into formal agreements with those local officials who have such authority. The agreements must provide for a degree of protection to the highway at least equal to the

protection provided by the State transportation department's utility accommodation policy approved under the provisions of § 645.215(b) of this part. The project agreement between the State transportation department and the FHWA on all such Federal-aid highway projects shall contain a special provision incorporating the formal agreements with the responsible local officials.

(h) ***Scenic areas.*** New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in 23 U.S.C. 138, scenic strips, overlooks, rest areas and landscaped areas. The State transportation department may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) Placement underground is not technically feasible or is unreasonably costly, and

(iii) The proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of paragraph (c) of this section must also be satisfied.

(i) ***Joint use agreements.*** When the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly occupied and used for highway and utility purposes, the transportation department and utility shall agree in writing as to the obligations and responsibilities of each party. Such joint-use agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the transportation department and the rights and privileges retained by the utility. In any event, the interest to be acquired by or vested in the transportation department in any portion of the right-of-way of a Federal-aid or direct Federal highway project to be vacated, used or occupied by utilities or private lines, shall be adequate for the construction, safe operation, and maintenance of the highway project.

(j) ***Traffic control plan.*** Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force in accordance with procedures established by the transportation department. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the current edition of the “Manual on Uniform Traffic Control Devices” (MUTCD) and 23 CFR part 630, subpart J. This publication is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.

(k) ***Corrective measures.*** When the transportation department determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the transportation department shall initiate or cause to be initiated in consultation with the affected utilities, corrective measures to provide for a safer traffic environment. The corrective measures may include changes to utility or highway facilities and should be prioritized to maximum safety benefits in the most cost-effective manner. The scheduling of utility safety improvements should take into consideration planned utility replacement or upgrading schedules, accident potential, and the availability of resources. It is expected that the requirements of this paragraph will result in an orderly and positive process to address the identified utility hazard problems in a timely and reasonable manner with due regard to the effect of the corrective measures on both the utility consumer and the road user. The type of corrective measures are not prescribed. Any requests received involving Federal participation in the cost of adjusting or relocating utility facilities pursuant to this paragrpah shall be subject to the provisions of 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 924, Highway Safety Improvement Program.

(l) ***Wetlands.*** The installation of privately owned lines or conduits on the right-of-way of Federal-aid or direct Federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is considered to be inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall be prohibited.

(m) ***Utility determination.*** In determining whether a proposed installation is a utility or not, the most important consideration is how the STD views it under its own State laws and/or regulations.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988; 60 FR 34851, July 5, 1995; 65 FR 70311, Nov. 22, 2000]

§ 645.211 State transportation department accommodation policies.

The FHWA should use the current editions of the AASHTO publications, “A Guide for Accommodating Utilities Within Highway Right-of-Way” and “Roadside Design Guide” to assist in the evaluation of adequacy of STD utility accommodation policies. These publications are available for inspection from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, DC 20001, or electronically at *http://www.aashto.org.* At a minimum, such policies shall make adequate provisions with respect to the following:

(a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety. Uniform procedures controlling the manner, nature and extent of such utility use shall be established.

(b) Consideration shall be given to the effect of utility installations in regard to safety, aesthetic quality, and the costs or difficulty of highway and utility construction and maintenance.

(c) The State transportation department's standards for regulating the use and occupancy of highway right-of-way by utilities must include, but are not limited to, the following:

(1) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to ensure compliance with the clear roadside policies for the particular highway involved.

(2) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards or other measures which the State transportation department deems necessary to provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.

(3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by § 645.209(h) of this part should be prescribed as necessary to protect highway interests.

(4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans, limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State transportation department may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State transportation department's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State transportation department utility accommodation policies must be assured. The responsible State transportation department's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise occupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State transportation department. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(e) The State transportation department shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of § 645.209(c) of this part. The State transportation department also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State transportation department plan.

(Information collection requirements in paragraphs (a), (b) and (c) were approved under control number 2125-0522, and paragraph (d) under control number 2125-0514)

[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988; 55 FR 25828, June 25, 1990; 65 FR 70312, Nov. 22, 2000]

§ 645.213 Use and occupancy agreements (permits).

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

(a) The transportation department standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and any special conditions applicable to each installation.

(b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.

(c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.

(d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(e) The action to be taken in case of noncompliance with the transportation department's requirements.

(f) Other provisions as deemed necessary to comply with laws and regulations.

(Approved by the Office of Management and Budget under control number 2125-0522)

§ 645.215 Approvals.

(a) Each State transportation department shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State transportation department's power to regulate such use, and the policies the State transportation department employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State transportation department shall include similar information on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of Federal-aid highways within its borders where the State transportation department is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agreements with local officials required by § 645.209(g) of this part. It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State transportation department's policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State

(c) Any changes, additions or deletions the State transportation department proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this regulation or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(e) The State transportation department's practices under the policies or agreements approved under § 645.215(b) of this part shall be periodically reviewed by the FHWA.

(Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 2125-0514)

[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988; 60 FR 34851, July 5, 1995; 65 FR 70312, Nov. 22, 2000]

Subpart C—Broadband Infrastructure Deployment

Source: 86 FR 68559, Dec. 3, 2021, unless otherwise noted.

§ 645.301 Purpose.

To prescribe additional requirements to facilitate the installation of broadband infrastructure pursuant to 47 U.S.C. 1504.

§ 645.303 Applicability.

This subpart applies to each State that receives funds under Chapter 1 of Title 23 of the U.S.C. and only to activities for which Federal obligations or expenditures are initially approved on or after the effective date of this subpart.

§ 645.305 Definitions.

For purposes of this subpart, the terms defined in 47 U.S.C. 1504(a) shall have the same meaning where used in these regulations, notwithstanding other provisions of this part or Title 23 of the U.S.C.

§ 645.307 General requirements.

(a) A State department of transportation, in consultation with appropriate State agencies, shall:

(1) Identify a broadband utility coordinator, whether in the State department of transportation or in another State agency, that is responsible for facilitating the broadband infrastructure right-of-way efforts within the State. The broadband utility coordinator may have additional responsibilities.

(2) Establish a process for the registration of broadband infrastructure entities that seek to be included in those broadband infrastructure right-of-way facilitation efforts within the State.

(3) Establish a process to notify electronically broadband infrastructure entities identified under subsection (2) of the State Transportation Improvement Program on an annual basis and provide additional notifications as necessary to achieve the goals of this subpart; and

(4) Coordinate initiatives carried out under this subpart with other statewide telecommunication and broadband plans and State and local transportation and land use plans, including strategies to minimize repeated excavations that involve the installation of broadband infrastructure in a right-of-way.

(b) If a State chooses to provide for the installation of broadband infrastructure in the right-of-way of an applicable Federal-aid highway project under this section, the State department of transportation shall carry out any appropriate measures to ensure that any existing broadband infrastructure entities are not disadvantaged, as compared to other broadband infrastructure entities, with respect to the program under this section.

§ 645.309 Limitations.

Nothing in this subpart establishes a mandate or requirement that a State install or allow the installation of broadband infrastructure in a highway right-of-way. Nothing in this subpart authorizes the Secretary to withhold or reserve funds or approval of a project under Title 23 of the U.S.C.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations

Part 646 Railroads
Subpart A Railroad-Highway Insurance Protection
§ 646.101 Purpose.
§ 646.103 Application.
§ 646.105 Contractor's public liability and property damage insurance.
§ 646.107 Railroad protective insurance.
§ 646.109 Types of coverage.
§ 646.111 Amount of coverage.
Subpart B Railroad-Highway Projects
§ 646.200 Purpose and applicability.
§ 646.202 [Reserved]
§ 646.204 Definitions.
§ 646.206 Types of projects.
§ 646.208 Funding.
§ 646.210 Classification of projects and railroad share of the cost.
§ 646.212 Federal share.
§ 646.214 Design.
§ 646.216 General procedures.
§ 646.218 Simplified procedure for accelerating grade crossing improvements.
§ 646.220 Alternate Federal-State procedure.
Appendix to Subpart B of Part 646
Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures

PART 646—RAILROADS

Authority: 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; 49 CFR 1.48(b).

Subpart A—Railroad-Highway Insurance Protection

So urce: 39 FR 36474, Oct. 10, 1974, unless otherwise noted.

§ 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors (a) for their own operations, and (b) on behalf of railroads on or about whose right-of-way the contractors are required to work in the construction of highway projects financed in whole or in part with Federal funds.

§ 646.103 Application.

(a) This part applies:

(1) To a contractors' legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(3) To damage to property owned by or in the care, custody or control of the railroads, both as such liability or damage may arise out of the contractor's operations, or may result from work performed by railroads at or about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of the Federal Highway Administration (FHWA), all references herein to the State shall be considered as references to the FHWA.

§ 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury to or death of persons, and injury to, or destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located in whole or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection to cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors respecting their operations in performing work covered by their contract.

(b) Where a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

§ 646.107 Railroad protective insurance.

In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by §§ 646.109 through 646.111 shall be adhered to insofar as the insurance laws of the State will permit.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

§ 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted in § 646.109(b)(4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroads;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (b)(4) (i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

§ 646.111 Amount of coverage.

(a) The maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of $2 million per occurrence with an aggregate of $6 million applying separately to each annual period except as provided in paragraph (b) of this section.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

[39 FR 36474, Oct. 10, 1974, as amended at 47 FR 33955, Aug. 5, 1982]

Subpart B—Railroad-Highway Projects

So urce: 40 FR 16059, Apr. 9, 1975, unless otherwise noted.

§ 646.200 Purpose and applicability.

(a) The purpose of this subpart is to prescribe policies and procedures for advancing Federal-aid projects involving railroad facilities.

(b) This subpart, and all references hereinafter made to *projects,* applies to Federal-aid projects involving railroad facilities, including projects for the elimination of hazards of railroad-highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.

(c) Additional instructions for projects involving the elimination of hazards of railroad/highway grade crossings pursuant to 23 U.S.C. 130 are set forth in 23 CFR part 924.

(d) Procedures on reimbursement for projects undertaken pursuant to this subpart are set forth in 23 CFR part 140, subpart I.

(e) Procedures on insurance required of contractors working on or about railroad right-of-way are set forth in 23 CFR part 646, subpart A.

[40 FR 16059, Apr. 9, 1975, as amended at 45 FR 20795, Mar. 31, 1980; 62 FR 45328, Aug. 27, 1997]

§ 646.202 [Reserved]

§ 646.204 Definitions.

For the purposes of this subpart, the following definitions apply:

Active warning devices means those traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

Company shall mean any railroad or utility company including any wholly owned or controlled subsidiary thereof.

Construction shall mean the actual physical construction to improve or eliminate a railroad-highway grade crossing or accomplish other railroad involved work.

A diagnostic team means a group of knowledgeable representatives of the parties of interest in a railroad-highway crossing or a group of crossings.

Main line railroad track means a track of a principal line of a railroad, including extensions through yards, upon which trains are operated by timetable or train order or both, or the use of which is governed by block signals or by centralized traffic control.

Passive warning devices means those types of traffic control devices, including signs, markings and other devices, located at or in advance of grade crossings to indicate the presence of a crossing but which do not change aspect upon the approach or presence of a train.

Preliminary engineering shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, including locating, surveying, designing, and related work.

Railroad shall mean all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads and passenger carrying railroads such as rapid transit, commuter and street railroads.

Utility shall mean the lines and facilities for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, water, steam, sewer and similar commodities.

[40 FR 16059, Apr. 9, 1975, as amended at 62 FR 45328, Aug. 27, 1997]

§ 646.206 Types of projects.

(a) Projects for the elimination of hazards, to both vehicles and pedestrians, of railroad-highway crossings may include but are not limited to:

(1) Grade crossing elimination;

(2) Reconstruction of existing grade separations; and

(3) Grade crossing improvements.

(b) Other railroad-highway projects are those which use railroad properties or involve adjustments to railroad facilities required by highway construction but do not involve the elimination of hazards of railroad-highway crossings. Also included are adjustments to facilities that are jointly owned or used by railroad and utility companies.

§ 646.208 Funding.

(a) Railroad/highway crossing projects may be funded through the Federal-aid funding source appropriate for the involved project.

(b) Projects for the elimination of hazards at railroad/highway crossings may, at the option of the State, be funded with the funds provided by 23 U.S.C. 133(d)(1).

[62 FR 45328, Aug. 27, 1997]

§ 646.210 Classification of projects and railroad share of the cost.

(a) State laws requiring railroads to share in the cost of work for the elimination of hazards at railroad-highway crossings shall not apply to Federal-aid projects.

(b) Pursuant to 23 U.S.C. 130(b), and 49 CFR 1.48:

(1) Projects for grade crossing improvements are deemed to be of no ascertainable net benefit to the railroads and there shall be no required railroad share of the costs.

(2) Projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs.

(3) On projects for the elimination of existing grade crossings at which active warning devices are in place or ordered to be installed by a State regulatory agency, the railroad share of the project costs shall be 5 percent.

(4) On projects for the elimination of existing grade crossings at which active warning devices are not in place and have not been ordered installed by a State regulatory agency, or on projects which do not eliminate an existing crossing, there shall be no required railroad share of the project cost.

(c) The required railroad share of the cost under § 646.210(b)(3) shall be based on the costs for preliminary engineering, right-of-way and construction within the limits described below:

(1) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the State highway agency.

(2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in § 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

(3) Where a grade crossing is eliminated by railroad or highway relocation, the actual cost of the relocation project, the estimated cost of the relocation project, or the estimated cost of a structure and approaches as described in § 646.210(c)(1), whichever is less.

(d) Railroads may voluntarily contribute a greater share of project costs than is required. Also, other parties may voluntarily assume the railroad's share.

§ 646.212 Federal share.

(a) ***General.***

(1) Federal funds are not eligible to participate in costs incurred solely for the benefit of the railroad.

(2) At grade separations Federal funds are eligible to participate in costs to provide space for more tracks than are in place when the railroad establishes to the satisfaction of the State highway agency and FHWA that it has a definite demand and plans for installation of the additional tracks within a reasonable time.

(3) The Federal share of the cost of a grade separation project shall be based on the cost to provide horizontal and/or vertical clearances used by the railroad in its normal practice subject to limitations as shown in the appendix or as required by a State regulatory agency.

(b) The Federal share of railroad/highway crossing projects may be:

(1) Regular pro rata sharing as provided by 23 U.S.C. 120(a) and 120(b).

(2) One hundred percent Federal share, as provided by 23 U.S.C. 120(c).

(3) Ninety percent Federal share for funds made available through 23 U.S.C. 133(d)(1).

[40 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982; 53 FR 32218, Aug. 24, 1988; 62 FR 45328, Aug. 27, 1997]

§ 646.214 Design.

(a) ***General.***

(1) Facilities that are the responsibility of the railroad for maintenance and operation shall conform to the specifications and design standards used by the railroad in its normal practice, subject to approval by the State highway agency and FHWA.

(2) Facilities that are the responsibility of the highway agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice for Federal-aid projects.

(b) ***Grade crossing improvements.***

(1) All traffic control devices proposed shall comply with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways supplemented to the extent applicable by State standards.

(2) Pursuant to 23 U.S.C. 109(e), where a railroad-highway grade crossing is located within the limits of or near the terminus of a Federal-aid highway project for construction of a new highway or improvement of the existing roadway, the crossing shall not be opened for unrestricted use by traffic or the project accepted by FHWA until adequate warning devices for the crossing are installed and functioning properly.

(3)

(i) ***Adequate warning devices,*** under § 646.214(b)(2) or on any project where Federal-aid funds participate in the installation of the devices are to include automatic gates with flashing light signals when one or more of the following conditions exist:

(A) Multiple main line railroad tracks.

(B) Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the movement of another train approaching the crossing.

(C) High Speed train operation combined with limited sight distance at either single or multiple track crossings.

(D) A combination of high speeds and moderately high volumes of highway and railroad traffic.

(E) Either a high volume of vehicular traffic, high number of train movements, substantial numbers of schoolbuses or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

(F) A diagnostic team recommends them.

(ii) In individual cases where a diagnostic team justifies that gates are not appropriate, FHWA may find that the above requirements are not applicable.

(4) For crossings where the requirements of § 646.214(b)(3) are not applicable, the type of warning device to be installed, whether the determination is made by a State regulatory agency, State highway agency, and/or the railroad, is subject to the approval of FHWA.

(c) ***Grade crossing elimination.*** All crossings of railroads and highways at grade shall be eliminated where there is full control of access on the highway (a freeway) regardless of the volume of railroad or highway traffic.

[40 FR 16059, Apr. 9, 1975, as amended at 47 FR 33955, Aug. 5, 1982; 62 FR 45328, Aug. 27, 1997]

§ 646.216 General procedures.

(a) ***General.*** Unless specifically modified herein, applicable Federal-aid procedures govern projects undertaken pursuant to this subpart.

(b) ***Preliminary engineering and engineering services.***

(1) As mutually agreed to by the State highway agency and railroad, and subject to the provisions of § 646.216(b)(2), preliminary engineering work on railroad-highway projects may be accomplished by one of the following methods:

(i) The State or railroad's engineering forces;

(ii) An engineering consultant selected by the State after consultation with the railroad, and with the State administering the contract; or

(iii) An engineering consultant selected by the railroad, with the approval of the State and with the railroad administering the contract.

(2) Where a railroad is not adequately staffed, Federal-aid funds may participate in the amounts paid to engineering consultants and others for required services, provided such amounts are not based on a percentage of the cost of construction, either under contracts for individual projects or under existing written continuing contracts where such work is regularly performed for the railroad in its own work under such contracts at reasonable costs.

(c) ***Rights-of-way.***

(1) Acquisition of right-of-way by a State highway agency on behalf of a railroad or acquisition of nonoperating real property from a railroad shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable FHWA right-of-way procedures in 23 CFR, chapter I, subchapter H. On projects for the elimination of hazards of railroad-highway crossings by the relocation of railroads, acquisition or replacement right-of-way by a railroad shall be in accordance with 42 U.S.C. 4601 *et seq.*

(2) Where buildings and other depreciable structures of the railroad (such as signal towers, passenger stations, depots, and other buildings, and equipment housings) which are integral to operation of railroad traffic are wholly or partly affected by a highway project, the costs of work necessary to functionally restore such facilities are eligible for participation. However, when replacement of such facilities is necessary, credits shall be made to the cost of the project for:

(i) Accrued depreciation, which is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

(ii) Additions or improvements which provide higher quality or increased service capability of the facility and which are provided solely for the benefit of the railroad.

(iii) Actual salvage value of the material recovered from the facility being replaced. Total credits to a project shall not be required in excess of the replacement cost of the facility.

(3) Where Federal funds participate in the cost of replacement right-of-way, there will be no charge to the project for the railroad's existing right-of-way being transferred to the State highway agency except when the value of the right-of-way being taken exceeds the value of the replacement right-of-way.

(d) ***State-railroad agreements.***

(1) Where construction of a Federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the State highway agency and the railroad company.

(2) The written agreement between the State and the railroad shall, as a minimum include the following, where applicable:

(i) The provisions of this subpart and of 23 CFR part 140, subpart I, incorporated by reference.

(ii) A detailed statement of the work to be performed by each party.

(iii) Method of payment (either actual cost or lump sum),

(iv) For projects which are not for the elimination of hazards of railroad-highway crossings, the extent to which the railroad is obligated to move or adjust its facilities at its own expense,

(v) The railroad's share of the project cost,

(vi) An itemized estimate of the cost of the work to be performed by the railroad,

(vii) Method to be used for performing the work, either by railroad forces or by contract,

(viii) Maintenance responsibility,

(ix) Form, duration, and amounts of any needed insurance,

(x) Appropriate reference to or identification of plans and specifications,

(xi) Statements defining the conditions under which the railroad will provide or require protective services during performance of the work, the type of protective services and the method of reimbursement to the railroad, and

(xii) Provisions regarding inspection of any recovered materials.

(3) On work to be performed by the railroad with its own forces and where the State highway agency and railroad agree, subject to approval by FHWA, an agreement providing for a lump sum payment in lieu of later determination of actual costs may be used for any of the following:

(i) Installation or improvement of grade crossing warning devices and/or grade crossing surfaces, regardless of cost, or

(ii) Any other eligible work where the estimated cost to the State of the proposed railroad work does not exceed $100,000 or

(iii) Where FHWA finds that the circumstances are such that this method of developing costs would be in the best interest of the public.

(4) Where the lump sum method of payment is used, periodic reviews and analyses of the railroad's methods and cost data used to develop lump sum estimates will be made.

(5) Master agreements between a State and a railroad on an areawide or statewide basis may be used. These agreements would contain the specifications, regulations, and provisions required in conjunction with work performed on all projects. Supporting data for each project or group of projects must, when combined with the master agreement by reference, satisfy the provisions of § 646.216(d)(2).

(6) Official orders issued by regulatory agencies will be accepted in lieu of State-railroad agreements only where, together with supplementary written understandings between the State and the railroad, they include the items required by § 646.216(d)(2).

(7) In extraordinary cases where FHWA finds that the circumstances are such that requiring such agreement or order would not be in the best interest of the public, projects may be approved for construction with the aid of Federal funds, provided satisfactory commitments have been made with respect to construction, maintenance and the railroad share of project costs.

(e) ***Authorizations.***

(1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved statewide transportation improvement program and authorized by the FHWA are eligible for Federal-aid participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by a railroad prior to authorization by the FHWA, although not reimbursable, may be included as part of the railroad share of project cost where such a share is required.

(2) Prior to issuance of authorization by FHWA either to advertise the physical construction for bids or to proceed with force account construction for railroad work or for other construction affected by railroad work, the following must be accomplished:

(i) The plans, specifications and estimates must be approved by FHWA.

(ii) A proposed agreement between the State and railroad must be found satisfactory by FHWA. Before Federal funds may be used to reimburse the State for railroad costs the executed agreement must be approved by FHWA. However, cost for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings prior to the approval of the executed State-Railroad Agreement in accordance with 23 CFR 140.922(a) and § 646.218 of this part.

(iii) Adequate provisions must be made for any needed easements, right-of-way, temporary crossings for construction purposes or other property interests.

(iv) The pertinent portions of the State-railroad agreement applicable to any protective services required during performance of the work must be included in the project specifications and special provisions for any construction contract.

(3) In unusual cases, pending compliance with § 646.216(e)(2)(ii), (iii) and (iv), authorization may be given by FHWA to advertise for bids for highway construction under conditions where a railroad grants a right-of-entry to its property as necessary to prosecute the physical construction.

(f) ***Construction.***

(1) Construction may be accomplished by:

(i) Railroad force account,

(ii) Contracting with the lowest qualified bidder based on appropriate solicitation,

(iii) Existing continuing contracts at reasonable costs, or

(iv) Contract without competitive bidding, for minor work, at reasonable costs.

(2) Reimbursement will not be made for any increased costs due to changes in plans:

(i) For the convenience of the contractor, or

(ii) Not approved by the State and FHWA.

(3) The State and FHWA shall be afforded a reasonable opportunity to inspect materials recovered by the railroad prior to disposal by sale or scrap. This requirement will be satisfied by the railroad giving written notice, or oral notice with prompt written confirmation, to the State of the time and place where the materials will be available for inspection. The giving of notice is the responsibility of the railroad, and it may be held accountable for full value of materials disposed of without notice.

(4) In addition to normal construction costs, the following construction costs are eligible for participation with Federal-aid funds when approved by the State and FHWA:

(i) The cost of maintaining temporary facilities of a railroad company required by and during the highway construction to the extent that such costs exceed the documented normal cost of maintaining the permanent facilities.

(ii) The cost of stage or extended construction involving grade corrections and/or slope stabilization for permanent tracks of a railroad which are required to be relocated on new grade by the highway construction. Stage or extended construction will be approved by FHWA only when documentation submitted by the State establishes the proposed method of construction to be the only practical method and that the cost of the extended construction within the period specified is estimated to be less than the cost of any practicable alternate procedure.

(iii) The cost of restoring the company's service by adustments of existing facilities away from the project site, in lieu of and not to exceed the cost of replacing, adjusting or relocating facilities at the project site.

(iv) The cost of an addition or improvement to an existing railroad facility which is required by the highway construction.

[40 FR 16059, Apr. 9, 1975, as amended at 40 FR 29712, July 15, 1975; 47 FR 33956, Aug. 5, 1982; 62 FR 45328, Aug. 27, 1997]

§ 646.218 Simplified procedure for accelerating grade crossing improvements.

(a) The procedure set forth in this section is encouraged for use in simplifying and accelerating the processing of single or multiple grade crossing improvements.

(b) Eligible preliminary engineering costs may include those incurred in selecting crossings to be improved, determining the type of improvement for each crossing, estimating the cost and preparing the required agreement.

(c) The written agreement between a State and a railroad shall contain as a minimum:

(1) Identification of each crossing location.

(2) Description of improvement and estimate of cost for each crossing location.

(3) Estimated schedule for completion of work at each location.

(d) Following programming, authorization and approval of the agreement under § 646.218(c), FHWA may authorize construction, including acquisition of warning device materials, with the condition that work at any particular location will not be undertaken until the proposed or executed State-railroad agreement

under § 646.216(d)(2) is found satisfactory by FHWA and the final plans, specifications, and estimates are approved and with the condition that only material actually incorporated into the project will be eligible for Federal participation.

(e) Work programmed and authorized under this simplified procedure should include only that which can reasonably be expected to reach the construction stage within one year and be completed within two years after the initial authorization date.

§ 646.220 Alternate Federal-State procedure.

(a) On other than Interstate projects, an alternate procedure may be used, at the election of the State, for processing certain types of railroad-highway work. Under this procedure, the State highway agency will act in the relative position of FHWA for reviewing and approving projects.

(b) The scope of the State's approval authority under the alternate procedure includes all actions necessary to advance and complete the following types of railroad-highway work:

(1) All types of grade crossing improvements under § 646.206(a)(3).

(2) Minor adjustments to railroad facilities under § 646.206(b).

(c) The following types of work are to be reviewed and approved in the normal manner, as prescribed elsewhere in this subpart.

(1) All projects under § 646.206(a) (1) and (2).

(2) Major adjustments to railroad facilities under § 646.206(b).

(d) Any State wishing to adopt the alternate procedure may file a formal application for approval by FHWA. The application must include the following:

(1) The State's written policies and procedures for administering and processing Federal-aid railroad-highway work, which make adequate provisions with respect to all of the following:

(i) Compliance with the provisions of title 23 U.S.C., title 23 CFR, and other applicable Federal laws and Executive Orders.

(ii) Compliance with this subpart and 23 CFR part 140, subpart I and 23 CFR part 172.

(iii) For grade crossing safety improvements, compliance with the requirements of 23 CFR part 924.

(2) A statement signed by the Chief Administrative Officer of the State highway agency certifying that:

(i) The work will be done in accordance with the applicable provisions of the State's policies and procedures submitted under § 646.220(d)(1), and

(ii) Reimbursement will be requested in only those costs properly attributable to the highway construction and eligible for Federal fund participation.

(e) When FHWA has approved the alternate procedure, it may authorize the State to proceed in accordance with the State's certification, subject to the following conditions:

(1) The work has been programmed.

(2) The State submits in writing a request for such authorization which shall include a list of the improvements or adjustments to be processed under the alternate procedure, along with the best available estimate of cost.

(f) The FHWA Regional Administrator may suspend approval of the certified procedure, where FHWA reviews disclose noncompliance with the certification. Federal-aid funds will not be eligible to participate in costs that do not qualify under § 646.220(d)(1).

[40 FR 16059, Apr. 9, 1975; 40 FR 29712, July 15, 1975; 40 FR 31211, July 25, 1975; 42 FR 30835, June 17, 1977, as amended at 45 FR 20795, Mar. 31, 1980]

Appendix to Subpart B of Part 646—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures

The following implements provisions of 23 CFR 646.212(a)(3).

a. ***Lateral Geometrics***

A cross section with a horizontal distance of 6.1 meters, measured at right angles from the centerline of track at the top of rails, to the face of the embankment slope, may be approved. The 6.1-meters distance may be increased at individual structure locations as appropriate to provide for drainage if justified by a hydraulic analysis or to allow adequate room to accommodate special conditions, such as where heavy and drifting snow is a problem. The railroad must demonstrate that this is its normal practice to address these special conditions in the manner proposed. Additionally, this distance may also be increased up to 2.5 meters as may be necessary for off-track maintenance equipment, provided adequate horizontal clearance is not available in adjacent spans and where justified by the presence of an existing maintenance road or by evidence of future need for such equipment. All piers should be placed at least 2.8 meters horizontally from the centerline of the track and preferably beyond the drainage ditch. For multiple track facilities, all dimensions apply to the centerline of the outside track.

Any increase above the 6.1-meters horizontal clearance distance must be required by specific site conditions and be justified by the railroad to the satisfaction of the State highway agency (SHA) and the FHWA.

b. ***Vertical Clearance***

A vertical clearance of 7.1 meters above the top of rails, which includes an allowance for future ballasting of the railroad tracks, may be approved. Vertical clearance greater than 7.1 meters may be approved when the State regulatory agency having jurisdiction over such matters requires a vertical clearance in excess of 7.1 meters or on a site by site basis where justified by the railroad to the satisfaction of the SHA and the FHWA. A railroad's justification for increased vertical clearance should be based on an analysis of engineering, operational and/or economic conditions at a specific structure location.

Federal-aid highway funds are also eligible to participate in the cost of providing vertical clearance greater than 7.1 meters where a railroad establishes to the satisfaction of a SHA and the FHWA that it has a definite formal plan for electrification of its rail system where the proposed grade separation project is located. The plan must cover a logical independent segment of the rail system and be approved by the railroad's corporate headquarters. For 25 kv line, a vertical clearance of 7.4 meters may be approved. For 50 kv line, a vertical clearance of 8.0 meters may be approved.

A railroad's justification to support its plan for electrification shall include maps and plans or drawings showing those lines to be electrified; actions taken by its corporate headquarters committing it to electrification including a proposed schedule; and actions initiated or completed to date implementing its electrification plan such as a showing of the amounts of funds and identification of structures, if any,

where the railroad has expended its own funds to provide added clearance for the proposed electrification. If available, the railroad's justification should include information on its contemplated treatment of existing grade separations along the section of its rail system proposed for electrification.

The cost of reconstructing or modifying any existing railroad-highway grade separation structures solely to accommodate electrification will not be eligible for Federal-aid highway fund participation.

c. ***Railroad Structure Width***

Two and eight tenths meters of structure width outside of the centerline of the outside tracks may be approved for a structure carrying railroad tracks. Greater structure width may be approved when in accordance with standards established and used by the affected railroad in its normal practice.

In order to maintain continuity of off-track equipment roadways at structures carrying tracks over limited access highways, consideration should be given at the preliminary design stage to the feasibility of using public road crossings for this purpose. Where not feasible, an additional structure width of 2.5 meters may be approved if designed for off-track equipment only.

[53 FR 32218, Aug. 24, 1988, as amended at 62 FR 45328, Aug. 27, 1997]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 650 —Bridges, Structures, and Hydraulics
Subpart H —Navigational Clearances for Bridges

Source: 52 FR 28139, July 28, 1987, unless otherwise noted.
Authority: 23 U.S.C. 119, 144, and 315.

§ 650.805 Bridges not requiring a USCG permit.

(a) The FHWA has the responsibility under 23 U.S.C. 144(h) to determine that a USCG permit is not required for bridge construction. This determination shall be made at an early stage of project development so that any necessary coordination can be accomplished during environmental processing.

(b) A USCG permit shall not be required if the FHWA determines that the proposed construction, reconstruction, rehabilitation, or replacement of the federally aided or assisted bridge is over waters

(1) which are not used or are not susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce and

(2) which are

(i) not tidal, or

(ii) if tidal, used only by recreational boating, fishing, and other small vessels less than 21 feet in length.

(c) The highway agency (HA) shall assess the need for a USCG permit or navigation lights or signals for proposed bridges. The HA shall consult the appropriate District Offices of the U.S. Army Corps of Engineers if the susceptibility to improvement for navigation of the water of concern is unknown and shall consult the USCG if the types of vessels using the waterway are unknown.

(d) For bridge crossings of waterways with navigational traffic where the HA believes that a USCG permit may not be required, the HA shall provide supporting information early in the environmental analysis stage of project development to enable the FHWA to make a determination that a USCG permit is not required and that proposed navigational clearances are reasonable.

(e) Since construction in waters exempt from a USCG permit may be subject to other USCG authorizations, such as approval of navigation lights and signals and timely notice to local mariners of waterway changes, the USCG should be notified whenever the proposed action may substantially affect local navigation.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 650 —Bridges, Structures, and Hydraulics
Subpart H —Navigational Clearances for Bridges

Source: 52 FR 28139, July 28, 1987, unless otherwise noted.
Authority: 23 U.S.C. 119, 144, and 315.

§ 650.807 Bridges requiring a USCG permit.

(a) The USCG has the responsibility

(1) to determine whether a USCG permit is required for the improvement or construction of a bridge over navigable waters except for the exemption exercised by FHWA in § 650.805 and

(2) to approve the bridge location, alignment and appropriate navigational clearances in all bridge permit applications.

(b) A USCG permit shall be required when a bridge crosses waters which are:

(1) tidal and used by recreational boating, fishing, and other small vessels 21 feet or greater in length or

(2) used or susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce. If it is determined that a USCG permit is required, the project shall be processed in accordance with the following procedures.

(c) The HA shall initiate coordination with the USCG at an early stage of project development and provide opportunity for the USCG to be involved throughout the environmental review process in accordance with 23 CFR part 771. The FHWA and Coast Guard have developed internal guidelines which set forth coordination procedures that both agencies have found useful in streamlining and expediting the permit approval process. These guidelines include

(1) USCG/FHWA Procedures for Handling Projects which Require a USCG Permit[1] and

(2) the USCG/FHWA Memorandum of Understanding on Coordinating The Preparation and Processing of Environmental Projects.[2]

(d) The HA shall accomplish sufficient preliminary design and consultation during the environmental phase of project development to investigate bridge concepts, including the feasibility of any proposed movable bridges, the horizontal and vertical clearances that may be required, and other location considerations

[1] This document is an internal directive in the USCG Bridge Administration Manual, Enclosure 1a, COMDT INST M16590.5, change 2 dated Dec. 1, 1983. It is available for inspection and copying from the U.S. Coast Guard or the Federal Highway Administration as prescribed in 49 CFR part 7, appendices B and D.

[2] FHWA Notice 6640.22 dated July 17, 1981, is available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

which may affect navigation. At least one fixed bridge alternative shall be included with any proposal for a movable bridge to provide a comparative analysis of engineering, social, economic and environmental benefit and impacts.

(e) The HA shall consider hydraulic, safety, environmental and navigational needs along with highway costs when designing a proposed navigable waterway crossing.

(f) For bridges where the risk of ship collision is significant, HA's shall consider, in addition to USCG requirements, the need for pier protection and warning systems as outlined in FHWA Technical Advisory 5140.19, Pier Protection and Warning Systems for Bridges Subject to Ship Collisions, dated February 11, 1983.

(g) Special navigational clearances shall normally not be provided for accommodation of floating construction equipment of any type that is not required for navigation channel maintenance. If the navigational clearances are influenced by the needs of such equipment, the USCG should be consulted to determine the appropriate clearances to be provided.

(h) For projects which require FHWA approval of plans, specifications and estimates, preliminary bridge plans shall be approved at the appropriate level by FHWA for structural concepts, hydraulics, and navigational clearances prior to submission of the permit application.

(i) If the HA bid plans contain alternative designs for the same configuration (fixed or movable), the permit application shall be prepared in sufficient detail so that all alternatives can be evaluated by the USCG. If appropriate, the USCG will issue a permit for all alternatives. Within 30 days after award of the construction contract, the USCG shall be notified by the HA of the alternate which was selected. The USCG procedure for evaluating permit applications which contain alternates is presented in its Bridge Administration Manual (COMDT INST M16590.5).[3] The FHWA policy on alternates, Alternate Design for Bridges; Policy Statement, was published at 48 FR 21409 on May 12, 1983.

[3] United States Coast Guard internal directives are available for inspection and copying as prescribed in 49 CFR part 7, appendix B.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways

Chapter I —Federal Highway Administration, Department of Transportation

Subchapter G —Engineering and Traffic Operations

Part 655 —Traffic Operations

Subpart F —Traffic Control Devices on Federal-Aid and Other Streets and Highways

Source: 48 FR 46776, Oct. 14, 1983, unless otherwise noted.
Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and, 49 CFR 1.85.

§ 655.606 Higher cost materials.

The use of signing, pavement marking, and signal materials (or equipment) having distinctive performance characteristics, but costing more than other materials (or equipment) commonly used may be approved by the FHWA Division Administrator when the specific use proposed is considered to be in the public interest.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations
Part 668 —Emergency Relief Program
Subpart A —Procedures for Federal-Aid Highways

Source: 52 FR 21948, June 10, 1987, unless otherwise noted.
Authority: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR 1.48(b).

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements as necessary to restore the facility to pre-disaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of way (ROW);

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster;

(6) Betterments, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of betterment against the risk of eligible recurring damage and the cost of future repair;

(7) Temporary work to maintain essential traffic, such as raising roadway grade during a period of flooding by placing fill and temporary surface material;

(8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame. Such grade raises are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6); and

(9) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits off the traveled way, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except ER funds may participate in:

(i) Repair of surface damage to any public road caused by traffic making repairs to Federal-aid highways.

(ii) Repair of surface damage to designated detours (which may lie on both Federal-aid and non-Federal-aid routes) caused by traffic that has been detoured from a damaged Federal-aid highway; and

(iii) Repair of surface damage to Federal-aid highways caused by vehicles responding to a disaster; provided the surface damage has occurred during the first 60 days after a disaster occurrence, unless otherwise approved by the FHWA Division Administrator.

(3) Repair of damage not directly related to, and isolated away from, the pattern of the disaster;

(4) Routine maintenance of detour routes, not related to the increased traffic volumes, such as mowing, maintaining drainage, pavement signing, snow plowing, etc.;

(5) Replacement of damaged or lost material not incorporated into the highway such as stockpiled materials or items awaiting installation;

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, long-term rises in water levels in basins or slow moving slides, except for raising grades as noted in § 668.109(b)(8);

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. A project is considered scheduled if the construction phase is included in the FHWA approved Statewide Transportation Improvement Program (STIP);

(8) Other normal maintenance and operation functions on the highway system including snow and ice removal; and

(9) Reimbursing loss of toll revenue.

(d) Replacement of a highway facility at its existing location is appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and is limited in ER reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life. Where it is neither practical nor feasible to replace a damaged highway facility in

kind at its existing location, an alternative selected through the National Environmental Policy Act (NEPA) process, if of comparable function and character to the destroyed facility, is eligible for ER reimbursement.

(e) Except as otherwise provided in paragraph (b)(6) of this section, the total cost of a project eligible for ER funding may not exceed the cost of repair or reconstruction of a comparable facility. ER funds may participate to the extent of eligible repair costs when proposed projects contain unjustified betterments or other work not eligible for ER funds.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996; 65 FR 25444, May 2, 2000]

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter H —Right-of-Way and Environment

Part 710 Right-of-Way and Real Estate
Subpart A General
§ 710.101 Purpose.
§ 710.103 Applicability.
§ 710.105 Definitions.
Subpart B Program Administration
§ 710.201 Grantee and subgrantee responsibilities.
§ 710.203 Title 23 funding and reimbursement.
Subpart C Project Development
§ 710.301 General.
§ 710.303 Project authorization and agreements.
§ 710.305 Acquisition.
§ 710.307 Construction advertising.
§ 710.309 Design-build projects.
Subpart D Real Property Management
§ 710.401 General.
§ 710.403 Management.
§ 710.405 ROW use agreements.
§ 710.407 [Reserved]
§ 710.409 Disposal of excess real property.
Subpart E Property Acquisition Alternatives
§ 710.501 Early acquisition.
§ 710.503 Protective buying and hardship acquisition.
§ 710.505 Real property donations.
§ 710.507 State and local contributions.
§ 710.509 Functional replacement of real property in public ownership.
§ 710.511 Transportation Alternatives.
Subpart F Federal Assistance Programs
§ 710.601 Federal land transfers.
§ 710.603 Direct Federal acquisition.
Subpart G Concession Agreements
§ 710.701 Purpose.
§ 710.703 Definitions.

§ 710.705 Applicability.
§ 710.707 Fair market value.
§ 710.709 Determination of fair market value.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

Authority: Secs.1302 and 1321, Pub. L. 112-141, 126 Stat. 405. Sec. 1307, Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d *et seq.*, 4633, 4651-4655; 2 CFR 200.311; 49 CFR 1.48(b) and (cc), parts 21 and 24; 23 CFR 1.32.

Source: 64 FR 71290, Dec. 21, 1999, unless otherwise noted.

Subpart A—General

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.101 Purpose.

The primary purpose of the requirements in this part is to ensure the prudent use of Federal funds under title 23, United States Code, in the acquisition, management, and disposal of real property. In addition to the requirements of this part, other real property related provisions apply and are found at 49 CFR part 24.

§ 710.103 Applicability.

(a) This part applies whenever title 23, United States Code, grant funding is used, including when grant funds are expended or participate in project costs incurred by the State or other Title 23 grantee. This part applies to programs and projects administered by the Federal Highway Administration (FHWA) and, unless otherwise stated in this part, to all property purchased with title 23 grant funds or incorporated into a project carried out with grant funding provided under title 23, except property for which the title is vested in the United States upon project completion. Grantees are accountable to FHWA for complying with, and are responsible for ensuring their subgrantees, contractors, and other project partners comply with applicable Federal laws, including this part.

(b) The parties responsible for ROW and real estate activities, and for compliance with applicable Federal requirements, can vary by the nature of the responsibility or the underlying activity. Throughout this part, the FHWA identifies the parties subject to a particular provision through the use of terms of reference defined as set forth in § 710.105. It is important to refer to those definitions, such as "State Department of Transportation (SDOT)," "grantee," "subgrantee," "State agency" and "acquiring agency," when applying the provisions in this part.

(c) Where title 23 funds are transferred to other Federal agencies to administer, those agencies' ROW and real estate procedures may be utilized. Additional guidance is available electronically at the FHWA Real Estate Services Web site: *http://www.fhwa.dot.gov/realestate/index.htm.*

§ 710.105 Definitions.

(a) Terms defined in 23 U.S.C. 101(a) and 49 CFR part 24 have the same meaning where used in this part, except as modified in this section.

(b) The following terms where used in this part have the following meaning:

Access rights mean the right of ingress to and egress from a property to a public way.

Acquiring agency means a State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

Acquisition means activities to obtain an interest in, and possession of, real property.

Damages means the loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

Disposal means the transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in § 710.403(b) of this part. The term "disposal" includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

Donation means the voluntary transfer of privately owned real property, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

Early acquisition means acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

Early Acquisition Project means a project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501 of this part. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

Easement means an interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently.

Excess real property means a real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

Federal-aid project means a project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in chapter 1 of title 23, United States Code.

Federally assisted means a project or program that receives grant funds under title 23, United States Code.

Grantee means the party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

Mitigation property means real property interests acquired to mitigate for impacts of a project eligible for funding under title 23.

Option means the purchase of a right to acquire real property within an agreed-to period of time for an agreed-to amount of compensation or through an agreed-to method by which compensation will be calculated.

Person means any individual, family, partnership, corporation, or association.

Real Estate Acquisition Management Plan (RAMP) means a written document that details how a non-State department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 projects or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

Real property or *real property interest* means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms "real property" and "real property interest" are synonymous unless otherwise specified.

Relinquishment means the conveyance of a portion of a highway ROW or facility by a grantee under title 23, United States Code, or its subgrantee, to another government agency for continued transportation use. (See part 620, subpart B of this chapter.)

Right-of-way (ROW) means real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

ROW manual means an operations manual that establishes a grantee's acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with § 710.201(c).

ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.

Settlement means the result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

(1) An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official.

(2) A *legal settlement* is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.

(3) A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

State agency means: A department, agency, or instrumentality of a State or of a political subdivision of a State; any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State department of transportation (SDOT) means the State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned.

Stewardship/Oversight Agreement means the written agreement between the SDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Subgrantee means a government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.

Temporary development restriction means the purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed to time period, defines specifically what is restricted or controlled, and is for an agreed to amount of compensation.

Transportation project means any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used in this part, the term "transportation project" does not include an Early Acquisition Project as defined in this section.

Uneconomic remnant means a remainder property which the acquiring agency has determined has little or no utility or value to the owner.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91-646, 84 Stat. 1894; primarily codified in 42 U.S.C. 4601 *et seq.*), and the implementing regulations at 49 CFR part 24.

Subpart B—Program Administration

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.201 Grantee and subgrantee responsibilities.

(a) *Program oversight.* States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those

projects are carried out by the SDOT's subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for ensuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.

(b) *Organization.* Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.

(c) *ROW manual.*

(1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) to meet the requirements in this paragraph; however, the ROW manual options can only be used with SDOT approval and permission. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.

(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:

(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than August 23, 2018.

(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.

(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.

(d) *ROW manual alternatives.* Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the following methods:

(1) Certification in writing that the acquiring agency will adopt and use the FHWA-approved SDOT ROW manual;

(2) Submission of the acquiring agency's own ROW manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or

(3)

(i) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.

(ii) Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.

(e) *Record keeping.* The acquiring agency shall maintain adequate records of its acquisition and property management activities.

(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:

(i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or

(ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under § 710.501.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.

(f) *Procurement.* Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR part 172 for engineering and design related consultant services.

(g) *Use of other public land acquisition organizations, conservation organizations, or private consultants.* The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

(h) *Assignment of FHWA approval actions to an SDOT.* The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

§ 710.203 Title 23 funding and reimbursement.

(a) *General conditions.* Except as otherwise provided in § 710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with title 23 grant funds if the following conditions are satisfied:

(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);

(2) The grantee has executed a project agreement or other agreement recognized under title 23 reflecting the Federal funding terms and conditions for the project;

(3) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in § 646.204 of this chapter, prior to completion of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) review, while other work involving contact with affected property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in § 710.501, early acquisition; and in § 710.503 for protective buying and hardship acquisition; and

(4) Costs have been incurred in conformance with State and Federal requirements.

(b) *Direct eligible costs.* Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in § 710.203(d) or specifically provided by statute. Participation is provided for:

(1) *Real property acquisition.* Usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:

(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;

(ii) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;

(iii) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights-of

way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (b)(5) of this section);

(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA;

(v) The cost of minimum payments and waiver valuation amounts included in the approved ROW manual or approved RAMP; and

(vi) Ordinary and reasonable costs associated with closing, and costs of finalizing the acquisition.

(2) *Relocation assistance and payments.* Usual costs and disbursements associated with the following:

(i) Relocation assistance and payments required under 49 CFR part 24; and

(ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.

(3) *Damages.* The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.

(4) *Property management.* The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

(5) *Payroll-related expenses.* Salary and related expenses (compensation for personal services) of employees of an acquiring agency for work on a project funded by a title 23 grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A-87), as are salary and related expenses of a grantee's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.

(6) *Property not incorporated into a project funded under title 23, United States Code.* The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

(i) *General.* Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives (TA) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing; and

(ii) *Easements and alternate access not incorporated into the ROW.* The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.

(7) *Uneconomic remnants.* The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

(8) *Access rights.* Payment for full or partial control of access on an existing road or highway (*i.e.,* one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.

(9) *Utility and railroad property.*

(i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an acquiring agency for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, subpart B, Railroad-Highway Projects; and

(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.

(c) *Withholding payment.* The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

(d) *Indirect costs.* Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A-87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-SDOT personnel.

Subpart C—Project Development

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.301 General.

The project development process typically follows a sequence of actions and approvals in order to qualify for funding. The key steps in this process typically are planning, environmental review, project agreement/authorization, acquisition, construction advertising, and construction.

§ 710.303 Project authorization and agreements.

As a condition of Federal funding under title 23, the grantee shall obtain FHWA authorization in writing or electronically before proceeding with any real property acquisition using title 23 funds, including early acquisitions under § 710.501(e) and hardship acquisition and protective buying under § 710.503. For projects funded under chapter 1, title 23, United States Code, the grantee must prepare a project agreement in accordance with 23 CFR part 630, subpart A. Authorizations and agreements shall be based on an acceptable estimate for the cost of acquisition.

§ 710.305 Acquisition.

(a) *General.* The process of acquiring real property includes appraisal, appraisal review, waiver valuations, establishing estimates of just compensation, negotiations, relocation assistance, administrative and legal settlements, and court settlements and condemnations. Grantees must ensure all acquisition and related relocation assistance activities are performed in accordance with 49 CFR part 24 and this part. If a grantee does not directly own the real property interests used for a title 23 project, the grantee must have an enforceable subgrant agreement or other agreement with the owner of the ROW that permits the grantee to enforce applicable Federal requirements affecting the real property interests, including real property management requirements under subpart D of this part.

(b) *Adequacy of real property interest.* The real property interests acquired for any project funded under title 23 must be adequate to fulfill the purpose of the project. Except in the case of an Early Acquisition Project, this means adequate for the construction, operation, and maintenance of the resulting facility, and for the protection of both the facility and the traveling public.

(c) *Establishment and offer of just compensation.* The amount believed to be just compensation shall be approved by a responsible official of the acquiring agency. This shall be done in accordance with 49 CFR 24.102(d).

(d) *Description of acquisition process.* The acquiring agency shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and this part, and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English in accordance with 49 CFR 24.5, 24.102(b), and 24.203.

§ 710.307 Construction advertising.

(a) The grantee must manage real property acquired for a project until it is required for construction. Except for properties acquired under the early acquisition provisions of 23 CFR 710.501(e), clearance of improvements can be scheduled during the acquisition phase of the project using sale/removal agreements, separate demolition contracts, or be included as a work item in the construction contract. The grantee shall develop ROW availability statements and certifications related to project acquisitions as described in 23 CFR 635.309.

(b) The FHWA-SDOT Stewardship/Oversight Agreement will specify SDOT responsibility for the review and approval of the ROW availability statements and certifications in accordance with applicable law. Generally, for non-National Highway System projects, the SDOT has full responsibility for determining that right-of-way is available for construction. For non-SDOT grantees, FHWA will be responsible for the review and approval.

§ 710.309 Design-build projects.

(a) In the case of a design-build project, ROW must be acquired and cleared in accordance with the Uniform Act and the FHWA-approved ROW manual or RAMP, as provided in § 710.201(c) and (d). The grantee shall submit a ROW certification in accordance with 23 CFR 635.309(p) when requesting FHWA's authorization. The grantee shall ensure that ROW is available prior to the start of physical construction on individual properties.

(b) The decision to advance a ROW segment to the construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project ROW.

(c) The grantee may choose not to allow construction to commence until all property is acquired and relocations have been completed; or, the grantee may permit the construction to be phased or segmented to allow ROW activities to be completed on individual properties or a group of properties, with ROW certifications done in a manner satisfactory to the grantee for each phase or segment.

(d) If the grantee elects to include ROW services within the design-builder's scope of work for the design-build contract, the following provisions must be addressed in the request for proposals document:

(1) The design-builder must submit written certification in its proposal that it will comply with the process and procedures in the FHWA-approved ROW manual or RAMP as provided in § 710.201(c) and (d).

(2) When relocation of displaced persons from their dwellings has not been completed, the grantee or design-builder shall establish a hold off zone around all occupied properties to ensure compliance with ROW procedures prior to starting construction activities in affected areas. The limits of this zone should be established by the grantee prior to the design-builder entering onto the property. There should be no construction-related activity within the hold off zone until the property is vacated. The design-builder must have written notification of vacancy from the grantee prior to entering the hold off zone.

(3) Contractors activities must be limited to those that the grantee determines do not have a material adverse impact on the quality of life of those in occupied properties that have been or will be acquired.

(4) The grantee will provide a ROW project manager who will serve as the first point of contact for all ROW issues.

(e) If the grantee elects to perform all ROW services relating to the design-build contract, the provisions in § 710.307 will apply. The grantee will notify potential offerors of the status of all ROW issues in the request for proposal document.

Subpart D—Real Property Management

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.401 General.

This subpart describes the grantee's responsibilities to control the use of real property acquired for a project in which Federal funds participated in any phase of the project. The grantee shall specify in its approved ROW manual or RAMP, the procedures for the maintenance, ROW use agreements, and disposal of real property interests acquired with title 23 funds. The grantee shall ensure that subgrantees, including local agencies, follow Federal requirements and approved ROW procedures as provided in § 710.201(c) and (d).

§ 710.403 Management.

(a) As provided in § 710.201(h), FHWA and SDOT may use their Stewardship/Oversight Agreement to enter into a written agreement establishing which approvals the SDOT may make on behalf of FHWA, provided FHWA may not assign to the SDOT the decision to allow any ROW use agreement or any disposal on or within the approved ROW limits of the Interstate, including any change in access control. The assignment agreement provisions in § 710.201(h) and this paragraph do not apply to non-SDOT grantees.

(b) The grantee must ensure that all real property interests within the approved ROW limits or other project limits of a facility that has been funded under title 23 are devoted exclusively to the purposes of that facility and the facility is preserved free of all other public or private alternative uses, unless such non-highway alternative uses are permitted by Federal law (including regulations) or the FHWA. An alternative use, whether temporary under § 710.405 or permanent as provided in § 710.409, must be in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use must not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). Park and Ride lots are exempted from the provisions of this part. Park and Ride lots requirements are found 23 U.S.C. 137 and 23 CFR 810.106.

(c) Grantees shall specify procedures in their approved ROW manual or RAMP for determining when a real property interest is excess real property and may be disposed of in accordance with this part. These procedures must provide for coordination among relevant State organizational units that may be interested in the proposed use or disposal of the real property. Grantees also shall specify procedures in their ROW manual or RAMP for determining when a real property interest is excess and when a real property interest may be made available under a ROW use agreement for an alternative use that satisfies the requirements described in paragraph (b) of this section.

(d) Disposal actions and ROW use agreements, including leasing actions, are subject to 23 CFR part 771.

(e) Current fair market value must be charged for the use or disposal of all real property interests if those real property interests were obtained with title 23, United States Code, funding except as provided in paragraphs (e)(1) through (6) of this section. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions. Exceptions to the requirement for charging fair market value must be submitted to FHWA in writing and may be approved by FHWA in the following situations:

(1) When the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. The grantee's ROW manual or RAMP must include criteria for evaluating disposals at less than fair market value, and a method for ensuring the public will receive the benefit used to justify the less than fair market value disposal.

(2) Use by public utilities in accordance with 23 CFR part 645.

(3) Use by railroads in accordance with 23 CFR part 646.

(4) Use for bikeways and pedestrian walkways in accordance with 23 CFR part 652.

(5) Uses under 23 U.S.C. 142(f), Public Transportation. Lands and ROWs of a highway constructed using Federal-aid highway funds may be made available without charge to a publicly owned mass transit authority for public transit purposes whenever the public interest will be served, and where this can be accomplished without impairing automotive safety or future highway improvements.

(6) Use for other transportation projects eligible for assistance under title 23 of the United States Code, provided that a concession agreement, as defined in § 710.703, shall not constitute a transportation project exempt from fair market value requirements.

(f) The Federal share of net income from the use or disposal of real property interests obtained with title 23 funds shall be used by the grantee for activities eligible for funding under title 23. Where project income derived from the use or disposal of real property interests is used for subsequent title 23-eligible projects, the funds are not considered Federal financial assistance and use of the income does not cause title 23 requirements to apply.

§ 710.405 ROW use agreements.

(a) A ROW use agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with § 710.403 and this section. Any non-highway alternative use of real property interests requires approval by FHWA, including a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic as described in § 710.403(b). Except for Interstate Highways, where the SDOT controls the real property interest, the FHWA may assign its determination and approval responsibilities to the SDOT in their Stewardship/Oversight Agreement.

(1) This section applies to highways as defined in 23 U.S.C. 101(a) that received title 23, United States Code, financial assistance in any way.

(2) This section does not apply to the following:

(i) Uses by railroads and public utilities which cross or otherwise occupy Federal-aid highway ROW and that are governed by other sections of this title;

(ii) Relocations of railroads or utilities for which reimbursement is claimed under 23 CFR part 140, subparts E and H, 23 CFR part 645, or 23 CFR part 646, subpart B; and

(iii) Bikeways and pedestrian walkways as covered in 23 CFR part 652.

(b) Subject to the requirements in this subpart, ROW use agreements for a time-limited occupancy or use of real property interests may be approved if the grantee has acquired sufficient legal right, title, and interest in the ROW of a federally assisted highway to permit the non-highway use. A ROW use agreement must contain provisions that address the following items:

(1) Ensure the safety and integrity of the federally assisted facility;

(2) Define the term of the agreement;

(3) Identify the design and location of the non-highway use;

(4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;

(5) Provide for adequate insurance to hold the grantee and the FHWA harmless;

(6) Require compliance with nondiscrimination requirements;

(7) Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and

(8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

(9) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at *http://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm.* The terms and conditions listed in the guidance are not mandatory requirements.

(c) Where a proposed use requires changes in the existing highway, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the grantee and FHWA.

(d) Proposed uses of real property interests shall conform to the current design standards and safety criteria of FHWA for the functional classification of the highway facility in which the property is located.

(e) An individual, company, organization, or public agency desiring to use real property interests shall submit a written request to the grantee, together with an application supporting the proposal. If FHWA is the approving authority, the grantee shall forward the request, application, and the SDOT's recommendation if the proposal affects a Federal-aid highway, and the proposed ROW use agreement, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to all requirements contained in this subpart and must include the following information:

(1) Identification of the party responsible for developing and operating the proposed use;

(2) A general statement of the proposed use;

(3) A description of why the proposed use would be in the public interest;

(4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;

(5) The proposed design for the use of the space, including any facilities to be constructed;

(6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;

(7) Provision for vertical and horizontal access for maintenance purposes;

(8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and

(9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

§ 710.407 [Reserved]

§ 710.409 Disposal of excess real property.

(a) Excess real property outside or within the approved right-of-way limits or other project limits may be sold or conveyed to a public entity or to a private party in accordance with § 710.403(a), (c), (d), (e), (f) and this section. Approval by FHWA is required for disposal of excess real property unless otherwise provided in this section or in the FHWA-SDOT Stewardship/Oversight Agreement.

(b) Federal, State, and local agencies shall be afforded the opportunity to acquire excess real property considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the grantee shall notify the appropriate agencies of its intentions to dispose of the real property interests determined to be excess.

(c) The grantee may decide to retain excess real property to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

(d) Where the transfer of excess real property to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by FHWA under § 710.403(e), the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value, no reversion clause is required.

(e) No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did not participate in the acquisition cost of the real property.

(f) Highway facilities in which Federal funds participated in either the ROW or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR part 620, subpart B.

(g) A request for approval of a disposal must demonstrate compliance with the requirements of § 710.403(a), (c), (d), (e), (f) and this section. An individual, company, organization, or public agency requesting a grantee to approve of a disposal of excess real property within the approved ROW limits or other project limits, or to approve of a disposal of excess real property outside the ROW limits that was acquired with title 23 of the United States Code funding, shall submit a written request to the grantee, together with an application supporting the proposal. If the FHWA is the approving authority, the grantee shall forward the request, the SDOT recommendation if the proposal affects a Federal-aid highway, the application, and proposed terms and conditions, together with its recommendation and any necessary supplemental information, to FHWA. The submission shall affirmatively provide for adherence to requirements contained in this section and must include the information specified in § 710.405(e)(1) through (9).

Subpart E—Property Acquisition Alternatives

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.501 Early acquisition.

(a) *General.* A State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The State agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, State agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

(b) *State-funded early acquisition without Federal credit or reimbursement.* A State agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the State agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of § 710.501(c)(1) through (5).

(c) *State-funded early acquisition eligible for future credit.* Subject to § 710.203(b) (direct eligible costs), § 710.505(b), and § 710.507 (State and local contributions), Early Acquisition Project costs incurred by a State agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:

(1) The property was lawfully obtained by the State agency;

(2) The property was not land described in 23 U.S.C. 138;

(3) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;

(4) The State agency complied with the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4);

(5) The State agency determined, and FHWA concurred, the early acquisition did not influence the environmental review process for the proposed transportation project, including:

(i) The decision on need to construct the proposed transportation project;

(ii) The consideration of any alternatives for the proposed transportation project required by applicable law; and

(iii) The selection of the design or location for the proposed transportation project; and

(6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.

(d) *State-funded early acquisition eligible for future reimbursement.* Early Acquisition Project costs incurred by a State agency prior to completion of the environmental review process for the transportation project are eligible for reimbursement from title 23 funds apportioned to the State once the real property interests are incorporated into a project eligible for surface transportation program funds if the State agency demonstrates, and FHWA concurs, that the terms and conditions specified in the requirements of § 710.501(c)(1) through (5), and the requirements of § 710.203(b) (direct eligible costs) have been met. The State agency must demonstrate that it has met the following requirements, as set forth in 23 U.S.C. 108(c)(3):

(1) Any land acquired, and relocation assistance provided, complied with the Uniform Act;

(2) The requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(3) The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(4) The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;

(5) The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(6) Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

(7) Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(e) ***Federally funded early acquisition.*** The FHWA may authorize the use of funds apportioned to a State under title 23 for an Early Acquisition Project if the State agency certifies, and FHWA concurs, that all of the following conditions have been met:

(1) The State has authority to acquire the real property interest under State law; and

(2) The acquisition of the real property interest—

(i) Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3;

(ii) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;

(iii) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;

(iv) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;

(v) Is consistent with the State transportation planning process under 23 U.S.C. 135;

(vi) Complies with other applicable Federal laws (including regulations);

(vii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and

(viii) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

(4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

(f) *Prohibited activities.* Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, "development in anticipation of a transportation project" means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a State agency may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.

(g) *Reimbursement.* If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.

(h) *Relocation assistance eligibility.* In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).

§ 710.503 Protective buying and hardship acquisition.

(a) *General conditions.* Prior to final environmental approval of a transportation project, the grantee may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

(1) The transportation project is included in the currently approved STIP;

(2) The grantee has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

(3) A determination has been completed for any property interest subject to the provisions of 23 U.S.C. 138; and

(4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to (54 U.S.C. 306108), (historic properties).

(b) *Protective buying.* The grantee must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

(c) *Hardship acquisitions.* The grantee must accept and concur in an owner's request for a hardship acquisition based on a property owner's written submission that—

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

(d) *Environmental decisions.* Acquisition of property under this section is subject to environmental review under part 771 of this chapter. Acquisitions under this section shall not influence the environmental review of a transportation project which would use the property, including decisions about the need to construct the transportation project or the selection of an alternative.

§ 710.505 Real property donations.

(a) *Donations of property being acquired.* A non-governmental owner whose real property is required for a title 23 project may donate the property. Donations may be made at any time during the development of a project subject to applicable State laws. Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and of all other applicable financial and non-financial assistance provided under 49 CFR part 24 and applicable State law. All donations of property received prior to the approval of the NEPA document for the project must meet the requirements specified in 23 U.S.C. 323(d).

(b) *Credit for donations.* Donations of real property may be credited to the State's matching share of the project in accordance with 23 U.S.C. 323. As required by 23 U.S.C. 323(b)(2), credit to the State's matching share for donated property shall be based on fair market value established on the earlier of the following: Either the date on which the donation becomes effective, or the date on which equitable title to the property vests in the State. The fair market value shall not include increases or decreases in value caused by the project. The grantee shall ensure sufficient documentation is developed to indicate compliance with paragraph (a) of this section and with the provisions of 23 U.S.C. 323, and to support the amount of credit applied. The total credit cannot exceed the State's pro-rata share under the project agreement to which it is applied.

(c) *Donations and conveyances in exchange for construction features or services.* A property owner may donate property in exchange for construction features or services. The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of project costs.

§ 710.507 State and local contributions.

(a) *Credit for State and local government contributions.* If the requirements of 23 U.S.C. 323 are met, real property owned by State and local governments that is incorporated within a project receiving financial assistance from the Highway Trust Fund can be used as a credit toward the grantee or subgrantee's

matching share of total project cost. A credit cannot exceed the grantee or subgrantee's matching share required by the project agreement. The grantee must ensure there is documentation supporting all credits, including the following:

(1) A certification that the State or local government acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6); and

(2) Justification of the value of credit applied. Acquisition costs incurred by the State or local government to acquire title can be used as justification for the value of the real property.

(b) *Exemptions.* Credits are not available for real property acquired with any form of Federal financial assistance except as provided in 23 U.S.C. 120(j), or for real property already incorporated into existing ROW and used for transportation purposes.

(c) *Contributions without credit.* Property may be presented for project use with the understanding that no credit for its use is sought. In such case, the grantee shall assure that the acquisition satisfied the conditions in 23 CFR 710.501(c)(1) through (6).

§ 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership and use;

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are—

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

§ 710.511 Transportation Alternatives.

(a) *General.* 23 U.S.C. 133(h) sets aside an amount from each State's Surface Transportation Block Grant apportionment for Transportation Alternatives (TA). The TA projects that involve the acquisition, management, and disposition of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified in paragraph (b)(2) of this section.

(b) *Requirements.*

(1) Acquisition and relocation activities for TA projects are subject to the Uniform Act.

(2) When a person or agency acquires real property for a project receiving title 23 grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.

(3) When, subsequent to Federal approval of property acquisition, a person or agency acquires real property for a project receiving title 23 grant funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(b)(2) apply.

(c) *Property management and disposal of property acquired for TA projects.* Subpart D of this part applies to the management and disposal of real property interests acquired with TA funds, including alternate uses authorized under ROW use agreements. A TA project involving acquisition of any real property interest must have a real property agreement between FHWA and the grantee that identifies the expected useful life of the TA project and establishes a pro rata formula for repayment of TAP funding by the grantee if—

(1) The acquired real property interest is used in whole or in part for purposes other than the TA project purposes for which it was acquired; or

(2) The actual TA project life is less than the expected useful life specified in the real property agreement.

Subpart F—Federal Assistance Programs

Source: 81 FR 57729, Aug. 23, 2016, unless otherwise noted.

§ 710.601 Federal land transfers.

(a) The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, 104 Stat. 1808, as amended).

(b) Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers (SDOTs and their nominees).

(c) An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.

(d) Applications under this section shall include the following information:

(1) The purpose for which the lands are to be used;

(2) The estate or interest in the land required for the project;

(3) The Federal project number or other appropriate references;

(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;

(5) A map showing the survey of the lands to be acquired;

(6) A legal description of the lands desired; and

(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and any other applicable Federal environmental laws, including the National Historic Preservation Act (54 U.S.C. 306108), and 23 U.S.C. 138.

(e) If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.

(f) The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

(g) Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CF R 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.

(h) Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.

(i) When the need for the interest acquired under this subpart no longer exists, the party that received the real property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land management agency that such interest will

immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

§ 710.603 Direct Federal acquisition.

(a) The provisions of this paragraph may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:

(1) Justification for the Federal acquisition of the lands or interests in lands;

(2) The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111;

(3) The necessity for acquisition of the particular lands under request;

(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;

(5) The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;

(6) A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable;

(7) Adequate legal descriptions, plats, appraisals, and title data;

(8) An outline of the negotiations that have been conducted with landowners;

(9) An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and

(10) A statement that assures compliance with the applicable provisions of the Uniform Act.

(b) Except as provided in paragraph (a) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

(c) If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

(d) When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:

(1) The right to take possession of unoccupied properties;

(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;

(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;

(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;

(5) The right to clear improvements and other obstructions;

(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;

(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects; and

(8) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

(e) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

(f) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

(g) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:

(1) Maintain control of access where applicable;

(2) Accept title thereto;

(3) Maintain the project constructed thereon;

(4) Abide by any conditions which may set forth in the deed; and

(5) Notify the FHWA at the appropriate time that all the conditions have been performed.

(h) The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

[81 FR 57729, Aug. 23, 2016, as amended at 83 FR 21710, May 10, 2018]

Subpart G—Concession Agreements

Authority: 23 U.S.C. 156 and 315; 23 CFR 1.32; 49 CFR 1.48.

Source: 73 FR 77503, Dec. 19, 2008, unless otherwise noted.

§ 710.701 Purpose.

The purpose of this subpart is to prescribe the standards that ensure fair market value is received by a highway agency under concession agreements involving federally funded highways.

§ 710.703 Definitions.

As used in this subpart:

(a) ***Best value*** means the proposal offering the most overall public benefits as determined through an evaluation of the amount of the concession payment and other appropriate considerations. Such other appropriate considerations may include, but are not limited to, qualifications and experience of the concessionaire, expected quality of services to be provided, the history or track record of the concessionaire in providing the services, timelines for the delivery of services, performance standards, complexity of the services to be rendered, and revenue sharing. Such appropriate considerations may also include, but are not limited to, policy considerations that are important, but not quantifiable, such as retaining the ability to amend the concession agreement if conditions change, having a desired level of oversight over the facility, ensuring a certain level of maintenance and operations for the facility, considerations relative to the structure and amount of the toll rates, economic development impacts and considerations, or social and environmental benefits and impacts.

(b) *Concession agreement* means an agreement between a highway agency and a concessionaire under which the concessionaire is given the right to operate and collect revenues or fees for the use of a federally funded highway in return for compensation to be paid to the highway agency. A concession agreement may include, but not be limited to, obligations concerning the development, design, construction, maintenance, operation, level of service, and/or capital improvements to a facility over the term of the agreement. Concession agreement shall not include agreements between government entities, even when compensation is paid, where the primary purpose of the transaction is not commercial in nature but for the purpose of determining governmental ownership, control, jurisdiction, or responsibilities with respect to the operation of a federally funded highway. The highway agency's determination as to whether an agreement between government entities constitutes a concession agreement shall be controlling.

(c) *Concessionaire* means any private or public entity that enters into a concession agreement with a highway agency.

(d) *Fair market value* means the price at which a highway agency and concessionaire are ready and willing to enter into a concession agreement for a federally funded highway on, or as if in, the open market for a reasonable period of time and in an arm's length transaction to any willing, knowledgeable, and able buyer. For purposes of this subpart, a concession agreement based on best value shall be deemed fair market value.

(e) *Federally funded highway* means any highway (including highways, bridges, and tunnels) acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). A highway shall be deemed to be acquired with Federal assistance if Federal assistance participated in either the purchase of any real property, or in any capital expenditures in any fixtures located on real property, within the right-of-way, including the highway and any structures located upon the property.

(f) *Highway agency* in this subpart means any SDOT or other public authority with jurisdiction over a federally funded highway.

[73 FR 77503, Dec. 19, 2008, as amended at 81 FR 57741, Aug. 23, 2016]

§ 710.705 Applicability.

This subpart applies to all concession agreements involving federally funded highways that are executed after January 18, 2009.

§ 710.707 Fair market value.

A highway agency shall receive fair market value for any concession agreement involving a federally funded highway.

§ 710.709 Determination of fair market value.

(a) Fair market value may be determined either on a best value basis, highest net present value of the payments to be received over the life of the agreement, or highest bid received, as may be specified by the highway agency in the request for proposals or other relevant solicitation. If best value is used, the highway agency should identify, in the relevant solicitation, the criteria to be used as well as the weight afforded to the criteria.

(b) In order to be considered fair market value, the terms of the concession agreement must be both legally binding and enforceable.

(c) Any concession agreement awarded pursuant to a competitive process with more than one bidder shall be deemed to be fair market value. Any concession agreement awarded pursuant to a competitive process with only one bidder shall be presumed to be fair market value. Such presumption may be overcome only if the highway agency determines the proposal to not be fair market value based on the highway agency's estimates. Nothing in this subpart shall be construed to require a highway agency to accept any proposal, even if the proposal is deemed fair market value. For purposes of this subsection, a competitive process shall afford all interested proposers an equal opportunity to submit a proposal for the concession agreement and shall comply with applicable State and local law.

(d) If a concession agreement is not awarded pursuant to a competitive process, the highway agency must receive fair market value, as determined by the highway agency in accordance with State law, so long as an independent third party assessment is conducted and made publicly available.

(e) Nothing in this subpart is intended to waive the requirements of part 172, part 635, and part 636 whenever any Federal-aid (including TIFIA assistance) is to be used for a project under the concession agreement.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter H —Right-of-Way and Environment

Part 771 Environmental Impact and Related Procedures
§ 771.101 Purpose.
§ 771.103 [Reserved]
§ 771.105 Policy.
§ 771.107 Definitions.
§ 771.109 Applicability and responsibilities.
§ 771.111 Early coordination, public involvement, and project development.
§ 771.113 Timing of Administration activities.
§ 771.115 Classes of actions.
§ 771.116 FRA categorical exclusions.
§ 771.117 FHWA categorical exclusions.
§ 771.118 FTA categorical exclusions.
§ 771.119 Environmental assessments.
§ 771.121 Findings of no significant impact.
§ 771.123 Draft environmental impact statements.
§ 771.124 Final environmental impact statement/record of decision document.
§ 771.125 Final environmental impact statements.
§ 771.127 Record of decision.
§ 771.129 Re-evaluations.
§ 771.130 Supplemental environmental impact statements.
§ 771.131 Emergency action procedures.
§ 771.133 Compliance with other requirements.
§ 771.137 International actions.
§ 771.139 Limitations on actions.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303; 49 U.S.C. 24201; 40 CFR parts 1500-1508; 49 CFR 1.81, 1.85, and 1.91; Pub. L. 109-59, 119 Stat. 1144, Sections 6002 and 6010; Pub. L. 112-141, 126 Stat. 405, Sections 1315, 1316, 1317, 1318, and 1319; and Public Law 114-94, 129 Stat. 1312, Sections 1304 and 1432.

Source: 83 FR 54493, Oct. 29, 2018, unless otherwise noted.

§ 771.101 Purpose.

This part prescribes the policies and procedures of the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulations of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulations). Together these regulations set forth all FHWA, FRA, FTA, and U.S. Department of Transportation (DOT) requirements under NEPA for the processing of highway, public transportation, and railroad actions. This part also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, and 327; 49 U.S.C. 303; 49 U.S.C. 24201; and 5323(q); Public Law 112-141, 126 Stat. 405, section 1301 as applicable; and Public Law 114-94, 129 Stat. 1312, section 1304.

§ 771.103 [Reserved]

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the maximum extent practicable and consistent with Federal law, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by this part.[1]

(b) Programmatic approaches be developed for compliance with environmental requirements (including the requirements found at 23 U.S.C. 139(b)(3)), coordination among agencies and/or the public, or to otherwise enhance and accelerate project development.

(c) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(d) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(e) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, executive order, or Administration regulation or policy.

(f) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

[1] FHWA, FRA, and FTA have supplementary guidance on environmental documents and procedures for their programs available on the internet at *http://www.fhwa.dot.gov*, *http://www.fra.dot.gov*, and *http://www.fta.dot.gov*, or in hardcopy by request.

(g) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this part.

§ 771.107 Definitions.

The definitions contained in the CEQ regulations and in titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply to this part.

Action. A highway, transit, or railroad project proposed for U.S. DOT funding. It also can include activities such as joint and multiple use permits, changes in access control, or rulemakings, which may or may not involve a commitment of Federal funds.

Administration. The FHWA, FRA, or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the FHWA, FRA, or FTA, or a State when the State is functioning as the FHWA, FRA, or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. A reference herein to the FHWA, FRA, or FTA means the State when the State is functioning as the FHWA, FRA, or FTA respectively in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law. Nothing in this definition alters the scope of any delegation or assignment made by FHWA, FRA, or FTA.

Administration action. FHWA, FRA, or FTA approval of the applicant's request for Federal funds for construction. It also can include approval of activities, such as joint and multiple use permits, changes in access control, rulemakings, etc., that may or may not involve a commitment of Federal funds.

Applicant. Any Federal, State, local, or federally recognized Indian Tribal governmental unit that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this section) may assume the responsibilities of the applicant in this part. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant in this part.

Environmental studies. The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

Lead agencies. The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulations.

Participating agency. A Federal, State, local, or federally recognized Indian Tribal governmental unit that may have an interest in the proposed project and has accepted an invitation to be a participating agency or, in the case of a Federal agency, has not declined the invitation in accordance with 23 U.S.C. 139(d)(3).

Programmatic approaches. An approach that reduces the need for project-by-project reviews, eliminates repetitive discussion of the same issue, or focuses on the actual issues ripe for analyses at each level of review, consistent with NEPA and other applicable law.

Project sponsor. The Federal, State, local, or federally recognized Indian Tribal governmental unit, or other entity, including any private or public-private entity that seeks Federal funding or an Administration action for a project. Where it is not the applicant, the project sponsor may conduct some of the activities on the applicant's behalf.

Section 4(f). Refers to 49 U.S.C. 303 and 23 U.S.C. 138 (as implemented by 23 CFR part 774).

§ 771.109 Applicability and responsibilities.

(a)

(1) The provisions of this part and the CEQ regulations apply to actions where the Administration exercises sufficient control to condition the permit, project, or other approvals. Steps taken by the applicant that do not require Federal approvals, such as preparation of a regional transportation plan, are not subject to this part.

(2) This part does not apply to or alter approvals by the Administration made prior to November 28, 2018.

(3) For FHWA and FTA, environmental documents accepted or prepared after November 28, 2018 must be developed in accordance with this part.

(4) FRA will apply this part to actions initiated after November 28, 2018.

(b)

(1) The project sponsor, in cooperation with the Administration, is responsible for implementing those mitigation measures stated as commitments in the environmental documents prepared pursuant to this part unless the Administration approves of their deletion or modification in writing. The FHWA will ensure that this is accomplished as a part of its stewardship and oversight responsibilities. The FRA and FTA will ensure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(2) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, FHWA must ensure that the State highway agency constructs the project in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents.

(c) The following roles and responsibilities apply during the environmental review process:

(1) The lead agencies are responsible for managing the environmental review process and the preparation of the appropriate environmental review documents.

(2) Any State or local governmental entity applicant that is or is expected to be a direct recipient of funds under title 23, U.S. Code or chapter 53 of title 49, U.S. Code for the action, or is or is expected to be a direct recipient of financial assistance for which FRA is responsible (e.g., Subtitle V of Title 49, U.S. Code) must serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance and independently evaluates the documents.

(3) The Administration may invite other Federal, State, local, or federally recognized Indian Tribal governmental units to serve as joint lead agencies in accordance with the CEQ regulations. If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the Administration will determine the role of the applicant in accordance with the CEQ regulations and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of section 102(2)(D) of NEPA, may prepare the EIS and other environmental review documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) Subject to paragraph (e) of this section, the role of a project sponsor that is a private institution or firm is limited to providing technical studies and commenting on environmental review documents.

(7) A participating agency must provide input during the times specified in the coordination plan under 23 U.S.C. 139(g) and within the agency's special expertise or jurisdiction. Participating agencies provide comments and concurrence on the schedule within the coordination plan.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, the State highway agency must ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents unless the State requests and receives written FHWA approval to modify or delete such mitigation features.

(e) When FRA is the lead Federal agency, the project sponsor is a private entity, and there is no applicant acting as a joint-lead agency, FRA and the project sponsor may agree to use a qualified third-party contractor to prepare an EIS. Under this arrangement, a project sponsor retains a contractor to assist FRA in conducting the environmental review. FRA selects, oversees, and directs the preparation of the EIS and retains ultimate control over the contractor's work. To enter into a third-party contract, FRA, the project sponsor, and the contractor will enter into a memorandum of understanding (MOU) that outlines at a minimum the conditions and procedures to be followed in carrying out the MOU and the responsibilities of the parties to the MOU. FRA may require use of a third-party contractor for preparation of an EA at its discretion.

§ 771.111 Early coordination, public involvement, and project development.

(a)

(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental review documents an action requires, the scope of the document, the level of analysis, and related environmental requirements. These activities contribute to reducing or eliminating delay, duplicative processes, and conflict, including by incorporating planning outcomes that have been reviewed by agencies and Indian Tribal partners in project development.

(2)

(i) The information and results produced by or in support of the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR parts 1500 through 1508, 23 CFR part 450, 23 CFR part 450 Appendix A, or 23 U.S.C. 139(f), 168, or 169, as applicable.

(ii) The planning process described in paragraph (a)(2)(i) of this section may include mitigation actions consistent with a programmatic mitigation plan developed pursuant to 23 U.S.C. 169 or from a programmatic mitigation plan developed outside of that framework.

(3) Applicants intending to apply for funds or request Administration action should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action (see § 771.115) and

related environmental laws and requirements and of the need for specific studies and findings that would normally be developed during the environmental review process. A lead agency, in consultation with participating agencies, must develop an environmental checklist, as appropriate, to assist in resource and agency identification.

(b)

(1) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action.

(2) For projects to be evaluated with an EIS, the Administration must respond in writing to a project sponsor's formal project notification within 45 days of receipt.

(c) When the FHWA, FRA, or FTA are jointly involved in the development of an action, or when the FHWA, FRA, or FTA act as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis. A project sponsor may request the Secretary to designate the lead Federal agency when project elements fall within the expertise of multiple U.S. DOT agencies.

(d) During early coordination, the lead agencies may invite other agencies that may have an interest in the action to participate. The lead agencies must, however, invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139 within 45 days from publication of the notice of intent.[2] Any such agencies with special expertise concerning the action may also be invited to become cooperating agencies. Any such agencies with jurisdiction by law concerning the action must be invited to become cooperating agencies.

(e) Other States and Federal land management entities that may be significantly affected by the action or by any of the alternatives must be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will provide direction to the applicant on how to approach any significant unresolved issues as early as possible during the environmental review process.

(f) Any action evaluated under NEPA as a categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS) must:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, *i.e.,* be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

[2] The Administration has guidance on 23 U.S.C. 139 available at *http://www.fhwa.dot.gov* or in hard copy upon request.

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139 and CEQ regulations.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process;

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions;

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project that requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest;

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice must also provide information required to comply with public involvement requirements of other laws, executive orders, and regulations;

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process, and

(E) The State highway agency's procedures for receiving both oral and written statements from the public;

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing;

(vii) An opportunity for public involvement in defining the purpose and need and the range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139; and

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 23 CFR 774.5(b)(2)(i).

(i) Applicants for FRA programs or the FTA capital assistance program:

(1) Achieve public participation on proposed actions through activities that engage the public, including public hearings, town meetings, and charrettes, and seek input from the public through scoping for the environmental review process. Project milestones may be announced to the public using electronic or paper media (e.g., newsletters, note cards, or emails) pursuant to 40 CFR 1506.6. For

actions requiring EISs, an early opportunity for public involvement in defining the purpose and need for the action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS.

(2) May participate in early scoping as long as enough project information is known so the public and other agencies can participate effectively. Early scoping constitutes initiation of NEPA scoping while local planning efforts to aid in establishing the purpose and need and in evaluating alternatives and impacts are underway. Notice of early scoping must be made to the public and other agencies. If early scoping is the start of the NEPA process, the early scoping notice must include language to that effect. After development of the proposed action at the conclusion of early scoping, FRA or FTA will publish the notice of intent if it is determined at that time that the proposed action requires an EIS. The notice of intent will establish a 30-day period for comments on the purpose and need, alternatives, and the scope of the NEPA analysis.

(3) Are encouraged to post and distribute materials related to the environmental review process, including, environmental documents (e.g., EAs and EISs), environmental studies (e.g., technical reports), public meeting announcements, and meeting minutes, through publicly-accessible electronic means, including project websites. Applicants should keep these materials available to the public electronically until the project is constructed and open for operations.

(4) Should post all findings of no significant impact (FONSIs), combined final environmental impact statements (final EISs)/records of decision (RODs), and RODs on a project website until the project is constructed and open for operation.

(j) Information on the FHWA environmental process may be obtained from: FHWA Director, Office of Project Development and Environmental Review, Federal Highway Administration, Washington, DC 20590, or *www.fhwa.dot.gov*. Information on the FRA environmental process may be obtained from: FRA Chief, Environmental and Corridor Planning Division, Office of Program Delivery, Federal Railroad Administration, Washington, DC 20590, or *www.fra.dot.gov*. Information on the FTA environmental process may be obtained from: FTA Director, Office of Environmental Programs, Federal Transit Administration, Washington, DC 20590 or *www.fta.dot.gov*.

§ 771.113 Timing of Administration activities.

(a) The lead agencies, in cooperation with the applicant and project sponsor, as appropriate, will perform the work necessary to complete the environmental review process. This work includes drafting environmental documents and completing environmental studies, related engineering studies, agency coordination, public involvement, and identification of mitigation measures. Except as otherwise provided in law or in paragraph (d) of this section, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction must not proceed until the following have been completed:

(1)

(i) The Administration has classified the action as a CE;

(ii) The Administration has issued a FONSI; or

(iii) The Administration has issued a combined final EIS/ROD or a final EIS and ROD;

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, subpart B, and 23 CFR part 630, subpart A, have been met.

(b) For FHWA actions, completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental review documents unless otherwise specified by the approving official.

(c) Letters of Intent issued under the authority of 49 U.S.C. 5309(g) are used by FTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by FTA until the NEPA process is completed.

(d) The prohibition in paragraph (a)(1) of this section is limited by the following exceptions:

(1) Early acquisition, hardship and protective acquisitions of real property in accordance with 23 CFR part 710, subpart E for FHWA. Exceptions for the acquisitions of real property are addressed in paragraphs (c)(6) and (d)(3) of § 771.118 for FTA.

(2) The early acquisition of right-of-way for future transit use in accordance with 49 U.S.C. 5323(q) and FTA guidance.

(3) A limited exception for rolling stock is provided in 49 U.S.C. 5309(l)(6).

(4) FRA may make exceptions on a case-by-case basis for purchases of railroad components or materials that can be used for other projects or resold.

§ 771.115 Classes of actions.

There are three classes of actions that prescribe the level of documentation required in the NEPA process. A programmatic approach may be used for any class of action.

(a) ***EIS (Class I).*** Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally require an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located primarily within an existing transportation right-of-way.

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing transportation right-of-way.

(5) New construction or extension of a separate roadway for buses not located primarily within an existing transportation right-of-way.

(6) New construction of major railroad lines or facilities (e.g., terminal passenger stations, freight transfer yards, or railroad equipment maintenance facilities) that will not be located within an existing transportation right-of-way.

(b) ***CE (Class II).*** Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 771.117(c) for FHWA actions or pursuant to § 771.118(c) for FTA actions. When appropriately documented, additional projects may also qualify as CEs pursuant to § 771.117(d) for FHWA actions or pursuant to § 771.118(d) for FTA actions. FRA's CEs are listed in § 771.116.

(c) ***EA (Class III).*** Actions for which the Administration has not clearly established the significance of the environmental impact. All actions that are not EISs or CEs are EAs. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

§ 771.116 FRA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FRA's past experience with similar actions, do not involve significant environmental impacts. They are actions that do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FRA approval. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.

(1) Administrative procurements (e.g., for general supplies) and contracts for personal services, and training.

(2) Personnel actions.

(3) Planning or design activities that do not commit to a particular course of action affecting the environment.

(4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(5) Internal orders, policies, and procedures not required to be published in the FEDERAL REGISTER under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).

(6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.

(7) Financial assistance to an applicant where the financial assistance funds an activity that is already completed, such as refinancing outstanding debt.

(8) Hearings, meetings, or public affairs activities.

(9) Maintenance or repair of existing railroad facilities, where such activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting, of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or facilities, such as advances in signal communication or train control systems, equipment, or track, provided that such activities do not require the acquisition of a significant amount of right-of-way and do not significantly alter the traffic density characteristics of the existing rail line or facility.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.

(16) Alterations to existing facilities, locomotives, stations, and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(17) The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment, including locomotives, passenger coachers, freight cars, trainsets, and construction, maintenance or inspection equipment, that does not significantly alter the traffic density characteristics of an existing rail line.

(19) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(21) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities, and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(22) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

(d) Any action qualifying as a CE under § 771.117 or § 771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.

§ 771.117 FHWA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FHWA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's highway safety plan under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 23 U.S.C. 125; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally funded projects:

(i) That receive less than $5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

(f) Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

(g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and that meet the criteria for a CE under 40 CFR 1508.4, and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement; and

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed.

(h) Any action qualifying as a CE under § 771.116 or § 771.118 may be approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

§ 771.118 FTA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FTA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section normally do not require any further NEPA approvals by FTA.

(1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: Utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.

(2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.

(3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.

(4) Planning and administrative activities that do not involve or lead directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

(5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.

(6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: Acquisition for scenic easements or historic sites for the purpose of preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

(7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.

(8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: Improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.

(9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: Buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.

(10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: Police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.

(11) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):

(i) Emergency repairs under 49 U.S.C. 5324; and

(ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

(12) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(13) Federally funded projects:

(i) That receive less than $5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) of Federal funds; or

(ii) With a total estimated cost of not more than $30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see *www.fhwa.dot.gov* or *www.fta.dot.gov*) and Federal funds comprising less than 15 percent of the total estimated project cost.

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts and drainage pipes.

(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (e.g., lanes for parking, weaving, turning, climbing).

(2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

(5) [Reserved]

(6) Facility modernization through construction or replacement of existing components.

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.

(e) Any action qualifying as a CE under § 771.116 or § 771.117 may be approved by FTA when the applicable requirements of those sections have been met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.

(f) Where a pattern emerges of granting CE status for a particular type of action, FTA will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section.

§ 771.119 Environmental assessments.

(a)

(1) The applicant must prepare an EA in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration concludes an EA would assist in determining the need for an EIS.

(2) When FTA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor must execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor's scope of work for the preparation of the EA should not be finalized until the early coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EA content).

(3) When FRA or the applicant, as joint lead agency, select a contractor to prepare the EA, then the contractor must execute an FRA conflict of interest disclosure statement. In the absence of an applicant, FRA may require private project sponsors to provide a third-party contractor to prepare the EA as described in 771.109(e).

(b) For actions that require an EA, the applicant, in consultation with the Administration, must, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures that might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements that should be performed concurrently with the EA. The applicant must accomplish this through early coordination activities or through a scoping process. The applicant must summarize the public involvement process and include the results of agency coordination in the EA.

(c) The Administration must approve the EA before it is made available to the public as an Administration document.

(d) The applicant does not need to circulate the EA for comment, but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices or, for FRA at Headquarters, for 30 days and in accordance with paragraphs (e) and (f) of this section. The applicant must send the notice of availability of the EA, which briefly describes the action and its impacts, to the affected units of Federal, Tribal, State and local government. The applicant must also send notice to the State intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the EA available.

(e) When a public hearing is held as part of the environmental review process for an action, the EA must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The applicant must publish a notice of the public hearing in local newspapers that announces the availability of the EA and where it may be obtained or reviewed. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in § 771.111.

(f) When a public hearing is not held, the applicant must place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice must invite comments from all interested parties. Any comments must be submitted in writing to the applicant or the Administration during the 30-day availability period of the EA unless the Administration determines, for good cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant must furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the FHWA expects to issue a FONSI for an action described in § 771.115(a), copies of the EA must be made available for public review (including the affected units of government) for a minimum of 30 days before the FHWA makes its final decision (See 40 CFR 1501.4(e)(2)). This public availability must be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA must be prepared in accordance with the applicable provisions of that statute.

§ 771.121 Findings of no significant impact.

(a) The Administration will review the EA, comments submitted on the EA (in writing or at a public hearing or meeting), and other supporting documentation, as appropriate. If the Administration agrees with the applicant's recommendations pursuant to § 771.119(g), it will issue a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After the Administration issues a FONSI, a notice of availability of the FONSI must be sent by the applicant to the affected units of Federal, State and local government, and the document must be available from the applicant and the Administration upon request by the public. Notice must also be sent to the State

intergovernmental review contacts established under Executive Order 12372. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the FONSI available.

(c) If another Federal agency has issued a FONSI on an action that includes an element proposed for Administration funding or approval, the Administration will evaluate the other agency's EA/FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's EA/FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

§ 771.123 Draft environmental impact statements.

(a) A draft EIS must be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e), and the decision has been made by the Administration to prepare an EIS, the Administration will issue a notice of intent (40 CFR 1508.22) for publication in the FEDERAL REGISTER. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the State or local level.

(b)

(1) After publication of the notice of intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process that may take into account any planning work already accomplished, in accordance with 23 CFR 450.212, 450.318, 23 CFR part 450 Appendix A, or any applicable provisions of the CEQ regulations at 40 CFR parts 1500-1508. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. Scoping is normally achieved through public and agency involvement procedures required by § 771.111. If a scoping meeting is to be held, it should be announced in the Administration's notice of intent and by appropriate means at the State or local level.

(2) The lead agencies must establish a coordination plan, including a schedule, within 90 days of notice of intent publication.

(c) The draft EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS must evaluate all reasonable alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The range of alternatives considered for further study must be used for all Federal environmental reviews and permit processes, to the maximum extent practicable and consistent with Federal law, unless the lead and participating agencies agree to modify the alternatives in order to address significant new information and circumstances or to fulfill NEPA responsibilities in a timely manner, in accordance with 23 U.S.C. 139(f)(4)(B). The draft EIS must also summarize the studies, reviews, consultations, and coordination required by environmental laws or executive orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c). When FTA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor must execute an FTA conflict of interest disclosure statement. The statement must be maintained in the FTA Regional Office and with the applicant. The contractor's scope of work for the preparation of the EIS will not be finalized until the early

coordination activities or scoping process found in paragraph (b) of this section is completed (including FTA approval, in consultation with the applicant, of the scope of the EIS content). When FRA or the applicant, as joint lead agency, select a contractor to prepare the EIS, then the contractor must execute an FRA conflict of interest disclosure statement.

(e) The draft EIS should identify the preferred alternative to the extent practicable. If the draft EIS does not identify the preferred alternative, the Administration should provide agencies and the public with an opportunity after issuance of the draft EIS to review the impacts of the preferred alternative.

(f) At the discretion of the lead agency, the preferred alternative (or portion thereof) for a project, after being identified, may be developed to a higher level of detail than other alternatives in order to facilitate the development of mitigation measures or compliance with other legal requirements, including permitting. The development of such higher level of detail must not prevent the lead agency from making an impartial decision as to whether to accept another alternative that is being considered in the environmental review process.[3]

(g) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet. The cover sheet should include a notice that after circulation of the draft EIS and consideration of the comments received, the Administration will issue a combined final EIS/ROD document unless statutory criteria or practicability considerations preclude issuance of the combined document.

(h) A lead, joint lead, or a cooperating agency must be responsible for publication and distribution of the EIS. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee that is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the draft EIS available.

(i) The applicant, on behalf of the Administration, must circulate the draft EIS for comment. The draft EIS must be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS must be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Cooperating and participating agencies. The draft EIS must also be transmitted directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These transmittals must be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

[3] FHWA Order 6640.1A clarifies the Federal Highway Administration's (FHWA) policy regarding the permissible project related activities that may be advanced prior to the conclusion of the NEPA process.

(j) When a public hearing on the draft EIS is held (if required by § 771.111), the draft EIS must be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS must be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice must be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(k) The FEDERAL REGISTER public availability notice (40 CFR 1506.10) must establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter must identify where comments are to be sent.

§ 771.124 Final environmental impact statement/record of decision document.

(a)

(1) After circulation of a draft EIS and consideration of comments received, the lead agencies, in cooperation with the applicant (if not a lead agency), must combine the final EIS and ROD, to the maximum extent practicable, unless:

(i) The final EIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the impacts of the proposed action.

(2) When the combined final EIS/ROD is a single document, it must include the content of a final EIS presented in § 771.125 and present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter.

(3) If the comments on the draft EIS are minor and confined to factual corrections or explanations that do not warrant additional agency response, an errata sheet may be attached to the draft statement pursuant to 23 U.S.C. 139(n)(1) and 40 CFR 1503.4(c), which together must then become the combined final EIS/ROD.

(4) A combined final EIS/ROD will be reviewed for legal sufficiency prior to issuance by the Administration.

(5) The Administration must indicate approval of the combined final EIS/ROD by signing the document. The provision on Administration's Headquarters prior concurrence in § 771.125(c) applies to the combined final EIS/ROD.

(b) The FEDERAL REGISTER public availability notice published by EPA (40 CFR 1506.10) will not establish a waiting period or a period of time for the return of comments on a combined final EIS/ROD. When filed with EPA, the combined final EIS/ROD must be available at the applicant's offices and at appropriate Administration offices. A copy should also be made available at institutions such as local government offices, libraries, and schools, as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the combined final EIS/ROD available.

§ 771.125 Final environmental impact statements.

(a)

(1) After circulation of a draft EIS and consideration of comments received, a final EIS must be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The final EIS must identify the preferred alternative and evaluate all reasonable alternatives considered. It must also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in paragraphs (b) and (d) of § 771.109. The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and executive orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort must be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS must identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that:

(i) Additional coordination with other Federal, State or local governmental agencies is needed;

(ii) The social, economic, or environmental impacts of the action may need to be more fully explored;

(iii) The impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or

(iv) The action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(d) Approval of the final EIS is not an Administration action as defined in § 771.107 and does not commit the Administration to approve any future request for financial assistance to fund the preferred alternative.

(e) The initial publication of the final EIS must be in sufficient quantity to meet the request for copies that can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee that is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(f) The final EIS must be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant must also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13, which

implements Executive Order 12372. When filed with EPA, the final EIS must be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the final EIS available.

(g) The final EIS may take the form of an errata sheet pursuant to 23 U.S.C. 139(n)(1) and 40 CFR 1503.4(c).

§ 771.127 Record of decision.

(a) When the final EIS is not combined with the ROD, the Administration will complete and sign a ROD no sooner than 30 days after publication of the final EIS notice in the FEDERAL REGISTER or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project, and document any required Section 4(f) approval in accordance with part 774 of this chapter. To minimize hardcopy requests and printing costs, the Administration encourages the use of project websites or other publicly accessible electronic means to make the ROD available.

(b) If the Administration subsequently wishes to approve an alternative that was not identified as the preferred alternative but was fully evaluated in the draft EIS, combined FEIS/ROD, or final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised or amended ROD must be subject to review by those Administration offices that reviewed the final EIS under § 771.124(a) or § 771.125(c). To the extent practicable, the approved revised or amended ROD must be provided to all persons, organizations, and agencies that received a copy of the final EIS.

§ 771.129 Re-evaluations.

The Administration must determine, prior to granting any new approval related to an action or amending any previously approved aspect of an action, including mitigation commitments, whether an approved environmental document remains valid as described in this section.

(a) The applicant must prepare a written evaluation of the draft EIS, in cooperation with the Administration, if an acceptable final EIS is not submitted to the Administration within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether or not a supplement to the draft EIS or a new draft EIS is needed.

(b) The applicant must prepare a written evaluation of the final EIS before the Administration may grant further approvals if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After the Administration issues a combined final EIS/ROD, ROD, FONSI, or CE designation, the applicant must consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

§ 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS must be supplemented whenever the Administration determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD must be prepared and circulated in accordance with § 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration must so indicate in the project file.

(d) A supplement is to be developed using the same process and format (*i.e.,* draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) In some cases, an EA or supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental document must not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities, for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration must suspend any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental document is completed.

§ 771.131 Emergency action procedures.

Responses to some emergencies and disasters are categorically excluded under § 771.117 for FHWA, § 771.118 for FTA, or § 771.116 for FRA. Otherwise, requests for deviations from the procedures in this part because of emergency circumstances (40 CFR 1506.11) must be referred to the Administration's Headquarters for evaluation and decision after consultation with CEQ.

§ 771.133 Compliance with other requirements.

(a) The combined final EIS/ROD, final EIS or FONSI should document compliance with requirements of all applicable environmental laws, executive orders, and other related requirements. If full compliance is not possible by the time the combined final EIS/ROD, final EIS or FONSI is prepared, the combined final EIS/ROD, final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes

adoption of any Administration findings and determinations that are contained therein. The FHWA's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

(b) In consultation with the Administration and subject to Administration approval, an applicant may develop a programmatic approach for compliance with the requirements of any law, regulation, or executive order applicable to the project development process.

§ 771.137 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions that significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration must coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

§ 771.139 Limitations on actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the FEDERAL REGISTER indicating that such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 150 days after the date of publication of the limitations on claims notice by FHWA or FTA. Claims arising under Federal law seeking judicial review of any such decisions are time barred unless filed within 2 years after the date of publication of the limitations on claims notice by FRA. These time periods do not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.[5] This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

[5]The FHWA published a detailed discussion of the Department's interpretation of 23 U.S.C. 139(l), in appendix E to the 'SAFETEA-LU Environmental Review Process: Final Guidance,' dated November 15, 2006. The implementation procedures in appendix E apply only to FHWA projects. The setion 6002 guidance, including appendix E, is available at *http://www.fhwa.dot.gov/*, or in hard copy by request.

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter H —Right-of-Way and Environment
Part 774 —Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))

Authority: 23 U.S.C. 103(c), 109(h), 138, 325, 326, 327 and 204(h)(2); 49 U.S.C. 303; Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005, 119 Stat. 1144); 49 CFR 1.81 and 1.91; and, Pub. L. 114-94, 129 Stat. 1312, Sections 1303 and 11502.
Source: 73 FR 13395, Mar. 12, 2008, unless otherwise noted.

§ 774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in § 774.17, of Section 4(f) property unless a determination is made under paragraph (a) or (b) of this section.

(a) The Administration determines that:

(1) There is no feasible and prudent avoidance alternative, as defined in § 774.17, to the use of land from the property; and

(2) The action includes all possible planning, as defined in § 774.17, to minimize harm to the property resulting from such use; or

(b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in § 774.17, on the property.

(c) If the analysis in paragraph (a)(1) of this section concludes that there is no feasible and prudent avoidance alternative, then the Administration may approve, from among the remaining alternatives that use Section 4(f) property, only the alternative that:

(1) Causes the least overall harm in light of the statute's preservation purpose. The least overall harm is determined by balancing the following factors:

(i) The ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);

(ii) The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;

(iii) The relative significance of each Section 4(f) property;

(iv) The views of the official(s) with jurisdiction over each Section 4(f) property;

(v) The degree to which each alternative meets the purpose and need for the project;

(vi) After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and

(vii) Substantial differences in costs among the alternatives.

(2) The alternative selected must include all possible planning, as defined in § 774.17, to minimize harm to Section 4(f) property.

(d) Programmatic Section 4(f) evaluations are a time-saving procedural alternative to preparing individual Section 4(f) evaluations under paragraph (a) of this section for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations are developed by the Administration based on experience with a specific set of conditions that includes project type, degree of use and impact, and evaluation of avoidance alternatives.[1] An approved programmatic Section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in the programmatic evaluation are met

(1) The determination whether a programmatic Section 4(f) evaluation applies to the use of a specific Section 4(f) property shall be documented as specified in the applicable programmatic Section 4(f) evaluation.

(2) The Administration may develop additional programmatic Section 4(f) evaluations. Proposed new or revised programmatic Section 4(f) evaluations will be coordinated with the Department of Interior, Department of Agriculture, and Department of Housing and Urban Development, and published in the FEDERAL REGISTER for comment prior to being finalized. New or revised programmatic Section 4(f) evaluations shall be reviewed for legal sufficiency and approved by the Headquarters Office of the Administration.

(e) The coordination requirements in § 774.5 must be completed before the Administration may make Section 4(f) approvals under this section. Requirements for the documentation and timing of Section 4(f) approvals are located in §§ 774.7 and 774.9, respectively.

[73 FR 13395, Mar. 12, 2008, as amended at 73 FR 31610, June 3, 2008; 83 FR 54506, Oct. 29, 2018]

[1] FHWA Section 4(f) Programmatic Evaluations can be found at *www.environment.fhwa.dot.gov/4f/4fnationwideevals.asp.*

This content is from the eCFR and is authoritative but unofficial.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter I —Public Transportation

Part 810 Mass Transit and Special Use Highway Projects
Subpart A General
§ 810.2 Purpose.
§ 810.4 Definitions.
§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.
§ 810.8 Coordination.
Subpart B Highway Public Transportation Projects and Special Use Highway Facilities
§ 810.100 Purpose.
§ 810.102 Eligible projects.
§ 810.104 Applicability of other provisions.
§ 810.106 Approval of fringe and transportation corridor parking facilities.
§ 810.108 Designation of existing facilities.
Subpart C Making Highway Rights-of-Way Available for Mass Transit Projects
§ 810.200 Purpose.
§ 810.202 Applicability.
§ 810.204 Application by mass transit authority.
§ 810.206 Review by the State Highway Agency.
§ 810.208 Action by the Federal Highway Administrator.
§ 810.210 Authorization for use and occupancy by mass transit.
§ 810.212 Use without charge.
Subpart D Federal-Aid Urban System Nonhighway Public Mass Transit Projects
§ 810.300 Purpose.
§ 810.302 Eligible projects.
§ 810.304 Submission of projects.
§ 810.306 Reservation of funds.
§ 810.308 Approval of urban system nonhighway public mass transit projects.
§ 810.310 Applicability of other provisions.

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

Authority: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97-134, 95 Stat. 1699; secs. 118, 120, and 163 of

Pub. L. 97-424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

Source: 50 FR 33917, Aug. 22, 1985, unless otherwise noted.

Subpart A—General

§ 810.2 Purpose.

The purpose of this regulation is to implement sections 137, 142, and 149 of title 23, U.S.C.

§ 810.4 Definitions.

(a) Except as otherwise provided terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) The following terms, where used in the regulations in this subpart have the following meanings:

(1) Exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes-one or more lanes of a highway facility or an entire highway facility where high occupancy vehicles, trucks or emergency vehicles or any combination thereof, are given, at all times or at any regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of mixed highway traffic. Carpool lane(s)—is any high occupancy vehicle lane which allows use by carpools.

(2) Fringe and transportation corridor parking facilities—those facilities which are intended to be used for the temporary storage of vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in such vehicles to and from high occupancy vehicles and/or public mass transportation systems including rail. The term *parking facilities* includes but is not limited to access roads, buildings, structures, equipment, improvements and interests in land.

(3) High occupancy vehicle—a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) Highway traffic control devices—traffic control devices as defined by the currently approved "Manual on Uniform Traffic Control Devices for Streets and Highways."[1]

(5) Metropolitan Planning Organization—that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(1), 8 (a) and (c) and 9(e)(3)(G) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G). This organization shall be the forum for cooperative transportation decisionmaking.

(6) Nonhighway public mass transit project—a project to develop or improve public mass transit facilities or equipment. A project need not be physically located or operated on a route designated as part of the Federal-aid urban system, but must be included in and related to a program for the development or improvement of an urban public mass transit system which includes the purchase and rehabilitation of passenger buses and rolling stock for fixed rail facilities, and the purchase, construction, reconstruction or improvement of fixed rail passenger operating facilities. Such projects may also include the construction, reconstruction or rehabilitation of passenger loading and unloading facilities for either bus or rail passengers.

[1] The MUTCD is incorporated by reference at 23 CFR part 655, subpart F.

(7) Passenger loading areas and facilities (including shelters)—areas and facilities located at or near passenger loading points for safety, protection, comfort, or convenience of high occupancy vehicle passengers. The term *areas and facilities* includes but is not limited to access roads, buildings, structures, equipment, improvements, and interest in land.

(8) Responsible local officials—

(i) In areas under 50,000 population, the principal elected officials of general purpose local governments; or

(ii) In urbanized areas, the principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization.

[50 FR 33917, Aug. 22, 1985, as amended at 51 FR 16834, May 7, 1986]

§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.

(a) Projects in an urbanized area must be based on a continuing comprehensive transportation planning process, carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR part 450, subpart A and included in the transportation improvement program required by 23 CFR part 450, subpart B.

(b) Except as otherwise provided by 23 CFR 450.202, projects under this subpart located outside the urbanized area boundaries should be coordinated with the appropriate local officials of the urbanized area as necessary to insure compatibility with the area's urban transportation plan.

(c) All proposed projects must be included in a program of projects approved pursuant to 23 CFR part 630, subpart A (Federal-Aid Program Approval and Authorization).

§ 810.8 Coordination.

The Federal Highway Administrator and the Urban Mass Transportation Administrator shall coordinate with each other on any projects involving public mass transit to facilitate project selection, approval and completion.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

§ 810.100 Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 137, 142(a)(1), 142(b), and 149, which authorize various highway public mass transportation improvements and special use highway facilities as Federal-aid highway projects.

§ 810.102 Eligible projects.

Under this subpart the Federal Highway Administrator may approve on any Federal-aid system projects which facilitate the use of high occupancy vehicles and public mass transportation systems so as to increase the traffic capacity of the Federal-aid system for the movement of persons. Eligible projects include:

(a) Construction of exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes, except the construction of exclusive or preferential lanes limited to use by emergency vehicles can be approved only on the Federal-aid Interstate System;

(b) Highway traffic control devices;

(c) Passenger loading areas and facilities (including shelters) that are on or serve a Federal-aid system; and

(d) Construction or designation of fringe and transportation corridor parking facilities. For parking facilities located in the central business district the Federal-aid project must be limited to space reserved exclusively for the parking of high occupancy vehicles used for carpools or vanpools.

§ 810.104 Applicability of other provisions.

(a) Projects authorized under § 810.102 shall be deemed to be highway projects for all purposes of title 23 U.S.C., and shall be subject to all regulations of title 23 CFR.

(b) Projects approved under this subpart on the Federal-aid Interstate System for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle lanes are excepted from the minimum four-lane requirement of 23 U.S.C. 109(b).

(c) Exclusive or preferential lanes on the Interstate System, including approaches and directly related facilities, can be constructed with Interstate construction funds only if they were approved in the 1981 Interstate Cost Estimate.

(d) The Federal proportional share of a project approved under this subpart shall be as provided in 23 U.S.C. 120 for the class of funds involved. The Federal share for Interstate substitution projects is 85 percent except for signalization projects which may be 100 percent as provided by 23 U.S.C. 120(d). The provisions of section 120(d) title 23 U.S.C. may also be applied to regularly funded projects under § 810.102 of this subpart as follows:

(1) Signalization projects.

(2) Passenger loading area and facilities which principally serve carpools and vanpools.

(3) Fringe and transportation corridor parking facilities or portions thereof which are reserved exclusively for use by carpool and vanpool passengers and vehicles.

(e) As required by section 163 of the Surface Transportation Assistance Act of 1982, approval of Federal-aid highway funding for a physical construction or resurfacing project having a carpool lane(s) within the project limits may not be granted unless the project allows the use of the carpool lane(s) by motorcycles or it is certified by the State that such use will create a safety hazard. This requirement does not apply to high occupancy vehicle lanes which exclude carpools or to carpool lanes constructed by the State without the use of Federal-aid Highway funds. The issue of the extent of utilization of these facilities including those constructed prior to January 6, 1982 with Federal-aid Highway funds is a matter for individual determination by the State Highway Agency.

§ 810.106 Approval of fringe and transportation corridor parking facilities.

(a) In approving fringe and transportation corridor parking facilities, the Federal Highway Administrator:

(1) Shall make a determination that the proposed parking facility will benefit the Federal-aid systems by improving its traffic capacity for the movement of persons;

(2) May approve acquisition of land proximate to the right-of-way of a Federal-aid highway;

(3) May approve construction of publicly-owned parking facilities on land within the right-of-way of any Federal-aid highway, including the use of the airspace above and below the established gradeline of the highway pavement, and on land, acquired with or without Federal-aid funds which is not within

the right-of-way of any Federal-aid highway but which was acquired in accordance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 *et seq.*);

(4) May permit the charging of fees for the use of the facility, except that the rate of the fee shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility (including compensation to any person for operating such facility and for providing such shuttle service);

(5) Shall determine that the State, or the political subdivision thereof, where the project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility.

(6) Shall receive assurance from the State that the facility will remain in public ownershp as long as the facility is needed and that any change in ownership shall have prior FHWA approval;

(7) Shall enter into an agreement with the State, political subdivision, agency, or instrumentality governing the financing, maintenance, and operation of the parking facility; and

(8) Shall approve design standards for constructing the facility as developed in cooperation with the State highway agency.

(b) A State political subdivision, agency, or instrumentality thereof may contract with any person to operate any parking facility constructed under this section.

(c) In authorizing projects involving fringe and transportation corridor parking facilities, the class of Federal-aid funds (primary, secondary, or urban system) used for projects under this subpart may be either funds designated for the Federal-aid system on which the facility is located or the Federal-aid system substantially benefited. For Interstate funds to be used for such eligible projects the Federal-aid Interstate system must be the system which substantially benefits. The benefiting system is that system which would have otherwise carried the high occupancy vehicle or rail passengers to their destination. Interstate construction funds may be used only where the parking facility was approved in the 1981 Interstate Cost Estimate and is constructed in conjunction with a high occupancy vehicle lane approved in the 1981 Interstate Cost Estimate.

§ 810.108 Designation of existing facilities.

(a) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing parking facilities (such as at shopping centers or other public or private locations) for fringe and transportation corridor parking.

(1) Eligible activities include the acquisition of or the initial and renewal costs for leasing existing parking space, signing of and modifications to existing facilities, trail blazer signs, and passenger loading areas and facilities.

(2) The approval criteria in 23 CFR 810.106 (a)(1), (4), (5), (7) and (8) apply to these parking facilities.

(b) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing highway lanes as high occupancy vehicle lanes.

(1) Eligible activities include preliminary engineering, signing, pavement marking, traffic control devices, minor physical modifications and initial inspection or monitoring of use.

(2) Such improvements may be approved on any public road if they facilitate more efficient use of any Federal-aid highway.

(c) Interstate construction funds may be used only where the proposed projects were approved in the 1981 Interstate Cost Estimate.

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

§ 810.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(g), which permits the Federal Highway Administrator to authorize a State to make available to a publicly-owned mass transit authority existing highway rights-of-way for rail or other non-highway public mass transit facilities.

§ 810.202 Applicability.

(a) The provisions of this subpart are applicable to the rights-of-way of all Federal-aid highways in which Federal-aid highway funds have participated or will participate in any part of the cost of the highway.

(b) The provisions of this subpart do not preclude acquisition of rights-of-way for use involving mass transit facilities under the provisions of subparts B and D of this part. Rights-of-way made available under this subpart may be used in combination with rights-of-way acquired under subparts B and D of this part.

§ 810.204 Application by mass transit authority.

A publicly-owned mass transit authority desiring to utilize land existing within the publicly acquired right-of-way of any Federal-aid highway for a rail or other nonhighway public mass transit facility may submit an application therefor to the State highway agency.

§ 810.206 Review by the State Highway Agency.

The State highway agency, after reviewing the application, may request the Federal Highway Administrator to authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility. A request shall be accompanied by evidence that utilization of the land for the proposed purposes will not impair future highway improvements or the safety of highway users.

§ 810.208 Action by the Federal Highway Administrator.

The Federal Highway Administrator may authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility, if it is determined that:

(a) The evidence submitted by the State highway agency under § 810.206 is satisfactory;

(b) The public interest will be served thereby; and

(c) The proposed action in urbanized areas is based on a continuing, comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as described under 23 CFR part 450, subpart A.

§ 810.210 Authorization for use and occupancy by mass transit.

(a) Upon being authorized by the Federal Highway Administrator, the State shall enter into a written agreement with the publicly-owned mass transit authority relating to the use and occupancy of highway right-of-way subject to the following conditions:

(1) That any significant revision in the design, construction, or use of the facility for which the land was made available shall receive prior review and approval by the State highway agency.

(2) The use of the lands made available to the publicly-owned mass transit authority shall not be transferred to another party without the prior approval of the State highway agency.

(3) That, if the publicly-owned mass transit authority fails within a reasonable or agreed time to use the land for the purpose for which it was made available, or if it abandons the land or the facility developed, such use shall terminate. Any abandoned facility developed or under development by the publicly-owned mass transit authority which was financed all or in part with Federal funds shall be disposed of in a manner prescribed by OMB Circular A-102, Attachment N. The land shall revert to the State for its original intended highway purpose.

(b) A copy of the use and occupancy agreement and any modification under paragraphs (a) (1), (2), and (3) of this section shall be forwarded to the Federal Highway Administrator.

§ 810.212 Use without charge.

The use and occupancy of the lands made available by the State to the publicly owned transit authority may be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly owned mass transit authority.

[81 FR 57741, Aug. 23, 2016]

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

§ 810.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(a)(2), which allows the Urban Mass Transportation Administrator, by delegation of the Secretary, to approve nonhighway public mass transit projects as Federal-aid urban system projects.

§ 810.302 Eligible projects.

(a) Eligible projects are those defined as nonhighway public mass transit projects in § 810.4 of this part subject to the limitations in paragraph (b) of this section.

(b) All projects under this subpart for the construction, reconstruction, or improvement of fixed rail facilities shall be located within the urban boundaries established under 23 U.S.C. 101(a).

§ 810.304 Submission of projects.

(a) An application for an urban system nonhighway public mass transit project shall be developed by a public body as defined under the UMTA Discretionary Capital Assistance Program and shall be prepared in accordance with procedures for the same Discretionary Capital Assistance program.

(b) The application shall be submitted concurrently to the State highway agency and to the UMTA Administrator. The State highway agency, if it concurs, shall submit a request to the FHWA Administrator for a reservation of apportioned Federal-aid urban system funds. The State shall include in its submission advice that such reservation of funds will not impair its ability to comply with the provisions of section 105(d) of Pub. L. 97-424 (if a State certifies it does not need forty percent of its Federal-aid urban system funds for 4R work, and the Secretary accepts such certification, the State may spend that unneeded amount for other eligible FAUS purpose, including nonhighway public mass transit projects).

§ 810.306 Reservation of funds.

(a) The FHWA Administrator shall review the State request, determine whether sufficient Federal-aid urban system funds are available, and notify the State highway agency and the UMTA Administrator of the reservation of funds.

(b) The apportioned funds reserved for the proposed project under paragraph (a) of this section shall remain available for obligation unless the FHWA Administrator is notified that the application has been disapproved by the UMTA Administrator, or unless the responsible local officials in whose jurisdiction the project is to be located and the State highway agency jointly request the withdrawal of the project application.

§ 810.308 Approval of urban system nonhighway public mass transit projects.

(a) An urban system public mass transit project may be approved by the UMTA Administrator when it is determined that:

(1) The application and project are in accordance with the current UMTA procedures relating to discretionary capital assistance grants; and

(2) Notification has been received from the FHWA Administrator that sufficient apportioned Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project.

(b) Approval of the plans, specifications, and estimates of a nonhighway public mass transit project shall be deemed to occur on the date the UMTA Administrator approves the project application. This approval which is subject to the availability of obligation authority at the time of approval, will obligate the United States to pay its proportional share of the cost of the project.

(c) Upon approval of an urban system nonhighway public mass transit project, the UMTA Administrator will execute a grant contract covering implementation of the project.

§ 810.310 Applicability of other provisions.

The Federal proportional share of the cost of an urban system nonhighway public mass transit project approved under this subpart shall be equal to the Federal share which would have been paid if the project were a highway project as determined under 23 U.S.C. 120(a).

This content is from the eCFR and is authoritative but unofficial.

Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter R —Toxic Substances Control Act

Part 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures

Subparts A-C [Reserved]

Subpart D Lead-Based Paint Hazards

§ 745.61 Scope and applicability.
§ 745.63 Definitions.
§ 745.65 Lead-based paint hazards.
§ 745.67 Incorporation by reference.

Subpart E Residential Property Renovation

§ 745.80 Purpose.
§ 745.81 Effective dates.
§ 745.82 Applicability.
§ 745.83 Definitions.
§ 745.84 Information distribution requirements.
§ 745.85 Work practice standards.
§ 745.86 Recordkeeping and reporting requirements.
§ 745.87 Enforcement and inspections.
§ 745.88 Recognized test kits.
§ 745.89 Firm certification.
§ 745.90 Renovator certification and dust sampling technician certification.
§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.
§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

Subpart F Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.
§ 745.101 Scope and applicability.
§ 745.102 Effective dates.
§ 745.103 Definitions.
§ 745.107 Disclosure requirements for sellers and lessors.
§ 745.110 Opportunity to conduct an evaluation.
§ 745.113 Certification and acknowledgment of disclosure.
§ 745.115 Agent responsibilities.
§ 745.118 Enforcement.

§ 745.119 Impact on State and local requirements.

Subparts G-K [Reserved]

Subpart L Lead-Based Paint Activities

§ 745.220 Scope and applicability.

§ 745.223 Definitions.

§ 745.225 Accreditation of training programs: target housing and child occupied facilities.

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

§ 745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.233 Lead-based paint activities requirements.

§ 745.235 Enforcement.

§ 745.237 Inspections.

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

§ 745.239 Effective dates.

Subparts M-P [Reserved]

Subpart Q State and Indian Tribal Programs

§ 745.320 Scope and purpose.

§ 745.323 Definitions.

§ 745.324 Authorization of State or Tribal programs.

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

§ 745.326 Renovation: State and Tribal program requirements.

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

§ 745.339 Effective date.

PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

Source: 61 FR 9085, Mar. 6, 1996, unless otherwise noted.

Subparts A-C [Reserved]

Subpart D—Lead-Based Paint Hazards

Source: 66 FR 1237, Jan. 5, 2001, unless otherwise noted.

§ 745.61 Scope and applicability.

(a) This subpart identifies lead-based paint hazards.

(b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(c) Nothing in this subpart requires the owner of property(ies) subject to these standards to evaluate the property(ies) for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

(d) Before January 13, 2025, the levels identified in 40 CFR 745.227(e)(8)(viii) were referred to as clearance levels. On or after January 13, 2025, the levels identified in § 745.227(e)(8)(viii) are referred to as action levels.

[66 FR 1237, Jan. 5, 2001, as amended at 89 FR 89456, Nov. 12, 2024]

§ 745.63 Definitions.

The following definitions apply to part 745.

Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Common area group means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

Concentration means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dripline means the area within 3 feet surrounding the perimeter of a building.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room.

Lead-based paint hazard means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in § 745.65.

Loading means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

Mid-yard means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

Play area means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

Reportable level means the lowest analyte concentration (or amount) that does not contain a "less than" qualifier and that is reported with confidence for a specific method by a laboratory recognized by EPA under TSCA section 405(b).

Residential building means a building containing one or more residential dwellings.

Room means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

Soil sample means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 $\mu g/ft^2$, a composite sample (three subsamples) containing 100 $\mu g/ft^2$, and a composite sample (4 subsamples) containing 110 $\mu g/ft^2$ is 100 $\mu g/ft^2$. This result is based on the equation [60 + (3*100) + (4*110)]/(1 + 3 + 4).

Window trough means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

Wipe sample means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

Wipe sample means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728/E1728M-20 (incorporated by reference, see § 745.67), or equivalent method, with an acceptable wipe material as defined in ASTM E1792-20 (incorporated by reference, see § 745.67).

[66 FR 1237, Jan. 5, 2001, as amended at 89 FR 89456, Nov. 12, 2024]

§ 745.65 Lead-based paint hazards.

(a) ***Paint-lead hazard.*** A paint-lead hazard is any of the following:

(1) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in paragraph (b) of this section.

(2) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame.

(3) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(4) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) ***Dust-lead hazard.*** Before January 12, 2026, a dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 10 μg/ft^2 for floors or 100 μg/ft^2 for interior window sills based on wipe samples. On or after January 12, 2026, a dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of any reportable level of lead for floors or for interior window sills based on wipe samples analyzed by an NLLAP-recognized laboratory.

(c) ***Soil-lead hazard.*** A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (μg/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

(d) ***Work practice requirements.*** Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations issued by EPA at 40 CFR part 745, subpart L and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(1) Two square feet of deteriorated lead-based paint per room or equivalent,

(2) Twenty square feet of deteriorated paint on the exterior building, or

(3) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

[66 FR 1237, Jan. 5, 2001, as amended at 84 FR 32648, July 9, 2019; 89 FR 89456, Nov. 12, 2024]

§ 745.67 Incorporation by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Environmental Protection Agency (EPA) and at the National Archives and Records Administration (NARA). Contact EPA at: OPPT Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*. The material may be obtained from the following sources:

(a) ***ASTM.*** ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428-2959; (877) 909-ASTM; *www.astm.org*.

(1) ASTM E1728/E1728M-20, Standard Practice for Collection of Settled Dust Samples Using Wipe Sampling Methods for Subsequent Lead Determination, Approved January 1, 2020; IBR approved for § 745.63.

(2) ASTM E1792-20, Standard Specification for Wipe Sampling Materials for Lead in Surface Dust, Approved September 1, 2020; IBR approved for § 745.63.

(b) [Reserved]

[89 FR 89456, Nov. 12, 2024]

Subpart E—Residential Property Renovation

Source: 63 FR 29919, June 1, 1998, unless otherwise noted.

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

[73 FR 21758, Apr. 22, 2008]

§ 745.81 Effective dates.

(a) ***Training, certification and accreditation requirements and work practice standards.*** The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) ***Training programs.*** Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.

(2) ***Firms.***

(i) Firms may apply for certification under § 745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(3) ***Individuals.*** On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(4) ***Work practices.*** On or after July 6, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(1) and (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in § 745.82(a).

(5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

(b) ***Renovation-specific pamphlet.*** On or after December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program must provide owners and occupants the following EPA pamphlet: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools.*

(c) ***Pre-Renovation Education Rule.*** With the exception of the requirement to use the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

[73 FR 21758, Apr. 22, 2008, as amended at 75 FR 24818, May 6, 2010; 89 FR 89457, Nov. 12, 2024]

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components

affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(3) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

[73 FR 21758, Apr. 22, 2008, as amended at 75 FR 24818, May 6, 2010; 76 FR 47938, Aug. 5, 2011]

§ 745.83 Definitions.

For purposes of this part, the definitions in § 745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways,

stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Electronic means the submission of an application, payment, or notification using the Agency's Central Data Exchange (CDX), or successor platform.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Painted surface means a component surface covered in whole or in part with paint or other surface coatings.

Pamphlet means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Vertical containment means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21758, Apr. 22, 2008; 76 FR 47938, Aug. 5, 2011; 89 FR 89457, Nov. 12, 2024]

§ 745.84 Information distribution requirements.

(a) ***Renovations in dwelling units.*** No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) ***Renovations in common areas.*** No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(1) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) ***Comply with one of the following.***

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by § 745.86(c) and (d), at no cost to the occupants, or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) ***Renovations in child-occupied facilities.*** No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)

(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by § 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(3) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(d) ***Written acknowledgment.*** The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

(1) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(2) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(3) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

[63 FR 29919, June 1, 1998. Redesignated and amended at 73 FR 21760, Apr. 22, 2008; 75 FR 24818, May 6, 2010]

§ 745.85 Work practice standards.

(a) ***Standards for renovation activities.*** Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).

(1) ***Occupant protection.*** Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) ***Containing the work area.*** Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) ***Interior renovations.*** The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) ***Exterior renovations.*** The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(3) ***Prohibited and restricted practices.*** The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(4) ***Waste from renovations.***

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(5) ***Cleaning the work area.*** After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) ***Interior and exterior renovations.*** The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) ***Additional cleaning for interior renovations.*** The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) ***Walls.*** Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) ***Remaining surfaces.*** Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) ***Standards for post-renovation cleaning verification*** —

(1) ***Interiors.***

(i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(*1*) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(*2*) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(*3*) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(*4*) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(*1*) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(*2*) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(*3*) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(2) ***Exteriors.*** A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) ***Optional dust clearance testing.*** Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust sample results are below the dust-lead action levels in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) ***Activities conducted after post-renovation cleaning verification.*** Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

[73 FR 21761, Apr. 22, 2008, as amended at 76 FR 47938, Aug. 5, 2011; 89 FR 89457, Nov. 12, 2024]

§ 745.86 Recordkeeping and reporting requirements.

(a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in § 745.82(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(2) Signed and dated acknowledgments of receipt as described in § 745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).

(3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).

(4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in § 745.84(c)(2).

(6) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers

who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c)

(1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by § 745.86(b)(1)(ii) and the training and work practice compliance information required by § 745.86(b)(6).

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(1) The owner of the building; and, if different,

(2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

[73 FR 21761, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010; 76 FR 47939, Aug. 5, 2011]

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21763, Apr. 22, 2008]

§ 745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: *http://www.epa.gov/etv/howtoapply.html*.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) ***Response criteria*** —

(1) ***Negative response criteria.*** For paint containing lead at or above the regulated level, 1.0 mg/cm^2 or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) ***Positive response criteria.*** For paint containing lead below the regulated level, 1.0 mg/cm^2 or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

[73 FR 21763, Apr. 22, 2008]

§ 745.89 Firm certification.

(a) ***Initial certification.***

(1) Firms that perform renovations for compensation must electronically apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay electronically at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) ***Re-certification.*** To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) ***Timely and complete application.*** To be re-certified, a firm must submit a complete electronic application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is electronically submitted 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) ***EPA action on an application.*** After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) ***Amendment of certification.*** A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend certification, a firm must electronically submit a completed “Application for Firms,” signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) ***Firm responsibilities.*** Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

(4) The pre-renovation education requirements of § 745.84 have been performed.

(5) The recordkeeping requirements of § 745.86 are met.

[73 FR 21764, Apr. 22, 2008, as amended at 89 FR 89457, Nov. 12, 2024]

§ 745.90 Renovator certification and dust sampling technician certification.

(a) ***Renovator certification and dust sampling technician certification.***

(1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011 may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011 may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under Subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who take a renovator refresher course that does not include hands-on training will be certified for 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for 5 years. Individuals who take the renovator refresher without hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

(b) ***Renovator responsibilities.*** Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).

(2) Must provide training to workers on the work practices required by § 745.85(a) that they will be using in performing their assigned tasks.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.

(4) Must regularly direct work being performed by other individuals to ensure that the work practices required by § 745.85(a) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by § 745.86(b)(1)(ii) and (6).

(c) ***Dust sampling technician responsibilities.*** When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the action levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

[73 FR 21765, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010; 76 FR 47939, Aug. 5, 2011; 80 FR 20446, Apr. 16, 2015; 81 FR 7995, Feb. 17, 2016; 89 FR 89457, Nov. 12, 2024]

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)

(1) ***Grounds for suspending, revoking, or modifying an individual's certification.*** EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) ***Grounds for suspending, revoking, or modifying a firm's certification.*** EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) ***Process for suspending, revoking, or modifying certification.***

(1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public,

except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

(7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:

(i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.

(ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

(iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

[73 FR 21765, Apr. 22, 2008]

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

(a) ***Persons who must pay fees.*** Fees in accordance with paragraph (b) of this section must be paid by:

(1) ***Training programs*** —

(i) ***Non-exempt training programs.*** All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.

(ii) ***Exemption.*** No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or non-profit organization. This exemption does not apply to the certification of firms or individuals.

(2) ***Firms.*** All firms applying to EPA for certification and re-certification to conduct renovations.

(b) ***Fee amounts*** —

(1) ***Certification and accreditation fees.*** Initial and renewal certification and accreditation fees are specified in the following table:

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Renovator or Dust Sampling Technician Course	$560	$340
Refresher Renovator or Dust Sampling	$400	$310

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Technician Course		
Renovation Firm	Certification	Re-certification (every 5 years see 40 CFR 745.89(b))
Firm	$300	$300
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20
Tribal Firm	$20	$20

(2) ***Lost certificate.*** A $15 fee will be charged for the replacement of a firm certificate.

(c) ***Certificate replacement.*** Firms seeking certificate replacement must:

(1) Complete the applicable portions of the "Application for Firms" in accordance with the instructions provided.

(2) Submit the application and a payment of $15 electronically in accordance with the instructions provided with the application package.

(3) ***Accreditation or certification amendments.*** No fee will be charged for accreditation or certification amendments.

(d) ***Failure to remit fees.***

(1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.

(2) EPA will not replace a certificate for any firm that does not remit the $15 fee in accordance with the procedures specified in paragraph (c) of this section.

[74 FR 11869, Mar. 20, 2009, as amended at 76 FR 47939, Aug. 5, 2011; 89 FR 89457, Nov. 12, 2024]

Subpart F—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 745.101 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 745.102 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

[61 FR 9085, Mar. 6, 1996, as amended at 89 FR 89458, Nov. 12, 2024]

§ 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Not withstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 745.113 Certification and acknowledgment of disclosure.

(a) ***Seller requirements.*** Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information

available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2686.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(b) ***Lessor requirements.*** Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2686.

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor as obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(c) ***Retention of Certification and Acknowledgment Information.***

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

[61 FR 9085, Mar. 6, 1996, as amended at 89 FR 89458, Nov. 12, 2024]

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§ 745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with § 745.107 (disclosure requirements for sellers and lessors), § 745.110 (opportunity to conduct an evaluation), § 745.113 (certification and acknowledgment of disclosure), or § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than $11,000 for all violations occuring after July 28, 1997; all violations occuring on or prior to that date are subject to a penalty not more than $10,000. The civil monetary penalty amounts listed in this section may not reflect recent inflation adjustments EPA is required to make. The current maximum and minimum statutory civil penalty amounts are located in § 19.4.

[61 FR 9085, Mar. 6, 1996, as amended at 62 FR 35041, June 27, 1997; 89 FR 88656, Nov. 8, 2024]

§ 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

Subparts G-K [Reserved]

Subpart L—Lead-Based Paint Activities

Source: 61 FR 45813, Aug. 29, 1996, unless otherwise noted.

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in § 745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to § 745.324 of subpart Q.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be

subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

[61 FR 45813, Aug. 29, 1996, as amended at 73 FR 21766, Apr. 22, 2008]

§ 745.223 Definitions.

The definitions in subpart A apply to this subpart. In addition, the following definitions apply.

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the action levels. Abatement includes, but is not limited to:

(1) The removal of paint and dust (in the case of dust-lead hazards to below the action levels), the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the action levels; or

(B) Are designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the action levels, and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the action levels, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the action levels, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the action levels, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the action levels, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards, in the case of dust-lead hazards to below the action levels.

Action levels are the values that indicate the amount of lead in dust on a surface following completion of an abatement activity. To complete abatement when dust sampling is required, values below these levels must be achieved. EPA previously used the term "clearance levels" to refer to these levels.

Accredited training program means a training program that has been accredited by EPA pursuant to § 745.225 to provide training for individuals engaged in lead-based paint activities.

Adequate quality control means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

Business day means Monday through Friday with the exception of Federal holidays.

Certified firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to § 745.226(f).

Certified inspector means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement-related testing.

Certified abatement worker means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to perform abatements.

Certified project designer means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

Certified risk assessor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement-related testing.

Certified supervisor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

Common area means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

Component or building component means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

Containment means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

Course agenda means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

Course test means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

Course test blue print means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Discipline means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, "abatement worker" is a discipline.

Distinct painting history means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

Documented methodologies are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

Electronic means the submission of an application, payment, or notification using the Agency's Central Data Exchange (CDX), or successor platform.

Elevated blood lead level (EBL) means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 µg/dl in two consecutive tests taken 3 to 4 months apart.

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Encapsulation means the application of an encapsulant.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

Hands-on skills assessment means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in § 745.225(d), as well as any other skill taught in a training course.

Hazardous waste means any waste as defined in 40 CFR 261.3.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Interim certification means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to § 745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

Lead-based paint activities courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

Lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in § 745.227(c).

Living area means any area of a residential dwelling used by one or more children under age 6 including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

Permanently covered soil means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

Recognized laboratory means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means

(1) a detached single family dwelling unit, including attached structures such as porches and stoops; or

(2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment means

(1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and

(2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

Training provider means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

Visual inspection for abatement-related testing means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

Visual inspection for risk assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 31097, June 9, 1999; 66 FR 1239, Jan. 5, 2001; 69 FR 18495, Apr. 8, 2004; 86 FR 994, Jan. 7, 2021; 89 FR 89458, Nov. 12, 2024]

§ 745.225 Accreditation of training programs: target housing and child occupied facilities.

(a) ***Scope.***

(1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA- accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(4) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application and all of the requirements and limitations specified in any accreditation documents issued to training programs.

(b) ***Application process.*** The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) A training program seeking accreditation shall submit an electronic application to EPA containing the following information:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(iii) The name and documentation of the qualifications of the training program manager.

(iv) The name(s) and documentation of qualifications of any principal instructor(s).

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course.

(B) A copy of the course agenda for each course.

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

(c) ***Requirements for the accreditation of training programs.*** A training program accredited by EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(1) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated the principal instructor.

(4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (i) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (c)(7) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course.

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (i) of this section.

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module.

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students to do not receive feedback on their test answers until after they have completed and submitted the test.

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual.

(ii) The name of the particular course that the individual completed.

(iii) Dates of course completion/test passage.

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.

(viii) For renovator course completion certificates, the expiration date of certification.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(ii) Procedures for the training manager's annual review of principal instructor competency.

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

(13) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by EPA at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course.

(ii) The training manager must provide EPA updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor's name.

(G) Training manager's name and signature.

(vi) Notification must be accomplished electronically. Instructions can be obtained online at *https://www.epa.gov/lead* or from the NLIC at 1-800-424-LEAD (5323). Hearing- or speech-impaired persons may reach this telephone number through TTY by calling the toll-free Federal Communications Commission's Telecommunications Relay Service at 711.

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling, or lead-based paint activities course. This notification must be received by EPA no later than 10 business days following course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via the Central Data Exchange no later than the 10th day of the month and include all students trained in the previous month.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(*1*) Name.

(*2*) Address.

(*3*) Date of birth.

(*4*) Course completion certificate number.

(*5*) Course test score.

(*6*) For renovator or dust sampling technician courses, a digital photograph of the student.

(*7*) For renovator refresher courses, the expiration date of certification.

(E) Training manager's name and signature.

(iii) Notification must be accomplished electronically. Instructions can be obtained online at *https://www.epa.gov/lead* or from the NLIC at 1-800-424-LEAD (5323).

(d) ***Minimum training curriculum requirements.*** A training program accredited by EPA to offer lead-based paint courses in the specific disciplines listed in this paragraph (d) must ensure that its courses of study include, at a minimum, the following course topics.

(1) ***Inspector.*** Instruction in the topics described in paragraphs (d)(1)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and lead- based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Action levels and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

(2) ***Risk assessor.*** Instruction in the topics described in paragraphs (d)(2)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable Federal or State guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(3) ***Supervisor.*** Instruction in the topics described in paragraphs (d)(3)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Action levels and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(4) ***Project designer.***

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Action levels and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) ***Abatement worker.*** Instruction in the topics described in paragraphs (d)(5)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(6) ***Renovator.*** Instruction in the topics described in paragraphs (d)(6)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vii) Interior and exterior containment and cleanup methods.

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.

(ix) Waste handling and disposal.

(x) Providing on-the-job training to other workers.

(xi) Record preparation.

(7) ***Dust sampling technician.*** Instruction in the topics described in paragraphs (d)(6)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Action levels and testing.

(vi) Report preparation.

(e) ***Requirements for the accreditation of refresher training programs.*** A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by EPA to offer refresher training must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other recertification.

(3) Except for renovator and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other recertification.

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c)(1) through (5), (c)(6)(viii) and (c)(7) through (14), and (e)(1) through (3) of this section shall also apply.

(5) A training program seeking accreditation to offer refresher training courses only shall submit an electronic application to EPA containing the following information:

(i) The refresher training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) The name and documentation of the qualifications of the training program manager.

(iv) The name(s) and documentation of the qualifications of the principal instructor(s).

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under § 745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course.

(B) A copy of the course agenda for each course.

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(viii) The requirements in paragraphs (c)(1) through (5), (c)(6)(viii) and (c)(7) through (14) of this section apply to refresher training providers.

(ix) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(f) ***Re-accreditation of training programs.***

(1) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be reaccredited.

(2) A training program seeking re-accreditation shall submit an electronic application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(3) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number.

(ii) A list of courses for which it is applying for re-accreditation.

(iii) The name and qualifications of the training program manager.

(iv) The name(s) and qualifications of the principal instructor(s).

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn.

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.

(vii) A payment of appropriate fees in accordance with § 745.238.

(4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

(g) ***Suspension, revocation, and modification of accredited training programs.***

(1) EPA may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to EPA and/or the student population.

(ii) Failed to submit required information or notifications in a timely manner.

(iii) Failed to maintain required records.

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.

(v) Failed to comply with the training standards and requirements in this section.

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(h) ***Procedures for suspension, revocation or modification of training program accreditation.***

(1) Prior to taking action to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the accredited training program, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

(iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by 40 CFR part 2. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or 40 CFR part 2.

(6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

(i) ***Training program recordkeeping requirements.***

(1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:

(i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment.

(B) How the skills are graded.

(C) What facilities are used.

(D) The pass/fail rate.

(v) The quality control plan as described in paragraph (c)(9) of this section.

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate.

(vii) Any other material not listed in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course.

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(2) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months.

(ii) [Reserved]

(iii) Records pertaining to renovator or dust sampling technician courses offered on or after April 22, 2010 must be retained for a minimum of 5 years.

(3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(j) ***Amendment of accreditation.***

(1) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(2) To amend an accreditation, a training program must electronically submit a completed "Accreditation Application for Training Providers," signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(3) ***Training managers, principal instructors, permanent training locations.*** If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until EPA either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that EPA has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to EPA. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if EPA approves the amendment or if EPA does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to EPA. The training provider may continue to provide training at the new permanent training location if EPA approves the amendment or if EPA does not disapprove the amendment within 30 days.

[76 FR 47939, Aug. 5, 2011, as amended at 81 FR 7995, Feb. 17, 2016; 89 FR 89459, Nov. 12, 2024; 89 FR 101490, Dec. 16, 2024]

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

(a) ***Certification of individuals.***

(1) Individuals seeking certification by EPA to engage in lead-based paint activities must either:

(i) Submit to EPA an electronic application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or

(ii) Submit to EPA an electronic application attaching a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to Subpart Q of this part.

(2) [Reserved]

(3) Following the submission of an electronic application demonstrating that all the requirements of this section have been meet, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(4) Upon receiving EPA certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in § 745.227.

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in § 745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

(6) Individuals applying for certification must submit the appropriate fees in accordance with § 745.238.

(b) ***Inspector, risk assessor or supervisor.***

(1) To become certified by EPA as an inspector, risk assessor, or supervisor, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Pass the certification exam in the appropriate discipline offered by EPA; and,

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors.

(*1*) No additional experience and/or education requirements.

(*2*) [Reserved]

(B) Risk assessors.

(*1*) Successful completion of an accredited training course for inspectors; and

(*2*) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(*3*) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(*4*) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

(C) Supervisor:

(*1*) One year of experience as a certified lead-based paint abatement worker; or

(*2*) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in (b)(2)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(4) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(5) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (b)(1) of this section, an individual shall be issued a certificate by EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(6) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(7) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from EPA.

(c) ***Abatement worker and project designer.***

(1) To become certified by EPA as an abatement worker or project designer, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers.

(*1*) No additional experience and/or education requirements.

(*2*) [Reserved]

(B) Project designers.

(*1*) Successful completion of an accredited training course for supervisors.

(*2*) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(*3*) Four years of experience in building construction and design or a related field.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) The course completion certificate shall serve as an interim certification until certification from EPA is received, but shall be valid for no more than 6 months from the date of completion.

(4) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (c)(1) of this section, an individual shall be issued a certificate from EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(d) ***Certification based on prior training.***

(1) Any individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999 shall be eligible for certification by EPA under the alternative procedures contained in this paragraph. Individuals who have received lead-based paint activities training at an EPA-authorized State or Tribal accredited training program shall also be eligible for certification by EPA under the following alternative procedures:

(i) Applicants for certification as an inspector, risk assessor, or supervisor shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam administered by EPA for the appropriate discipline.

(ii) Applicants for certification as an abatement worker or project designer shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraphs (c)(1) of this section; and

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(2) Individuals shall have until March 1, 2000, to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is being sought.

(e) ***Re-certification.***

(1) To maintain certification in a particular discipline, a certified individual shall apply electronically to and be re-certified by EPA in that discipline by EPA either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and electronically submits a valid copy of the appropriate refresher course completion certificate.

(3) Individuals applying for re-certification must submit the appropriate fees in accordance with § 745.238.

(f) ***Certification of firms.***

(1) All firms which perform or offer to perform any of the lead-based paint activities described in § 745.227 after March 1, 2000, shall be certified by EPA.

(2) A firm seeking certification shall electronically submit to EPA an application attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in § 745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's electronic application requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(4) The firm shall maintain all records pursuant to the requirements in § 745.227.

(5) [Reserved]

(6) Firms applying for certification must submit the appropriate fees in accordance with § 745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with § 745.238 every 3 years.

(g) ***Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.***

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means.

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

(iv) Performed work requiring certification at a job site without having proof of certification.

(v) Permitted the duplication or use of the individual's own certificate by another.

(vi) Performed work for which certification is required, but for which appropriate certification has not been received.

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at § 745.227.

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(h) ***Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.***

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to comply with the work practice standards established in § 745.227.

(iii) Misrepresented facts in its application for certification to EPA.

(iv) Failed to maintain required records.

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(i) ***Procedures for suspension, revocation, or modification of the certification of individuals or firms.***

(1) If EPA decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke, or modify certification.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the certified individual or firm, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertion of the legal and factual basis and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing;

(ii) Consider all relevant evidence, explanation, comment, and argument submitted; and

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it shall be issued at the same time the immediate suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds upon which the immediate suspension is based and why it is necessary to suspend the entity's accreditation before an opportunity for a hearing to suspend, revoke, or modify the individual's or firm's certification.

(iii) Notify the affected entity of the commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 31098, June 9, 1999; 64 FR 42851, Aug. 6, 1999; 89 FR 89459, Nov. 12, 2024]

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) ***Effective date, applicability, and terms.***

(1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and quidelines.

(b) ***Inspection.***

(1) An inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection.

(ii) Address of building.

(iii) Date of construction.

(iv) Apartment numbers (if applicable).

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing.

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable.

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.

(ix) Specific locations of each painted component tested for the presence of lead-based paint.

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(c) ***Lead hazard screen.***

(1) A lead hazard screen shall be conducted only by a person certified by EPA as a risk assessor.

(2) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under age 6 shall be collected.

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present, and

(B) Locate at least two dust sampling locations.

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, under age 6, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(2)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, under age 6, are most likely to come into contact with dust.

(3) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(ii) All collected dust samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (d) of this section, including paragraphs (d)(11)(i) through (d)(11)(xiv), and excluding paragraphs (d)(11)(xv) through (d)(11)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (c)(2)(i) of this section shall be included in the risk assessment report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(d) ***Risk assessment.***

(1) A risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under age 6 shall be collected.

(4) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, under age 6, are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, under age 6, are likely to come into contact with dust.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, under age 6, and in other common areas in the child-occupied facility where one or more children, under age 6, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present.

(iii) Dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment number (if applicable).

(v) Name, address, and telephone number of each owner of each building.

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment.

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable.

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure for paint analysis employed.

(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to paragraph (d)(3) of this section.

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(e) ***Abatement.***

(1) An abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

(4) A certified firm must notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, EPA must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by EPA at least 5 business days before the start date of any lead-based paint abatement activities.

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than, the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the notification to take advantage of this abbreviated notification period.

(iii) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to EPA an updated notification must be received by EPA at least 5 business days before the new start date included in the notification.

(B) For lead-based paint abatement activities beginning after the start date provided to EPA an updated notification must be received by EPA on or before the start date provided to EPA.

(iv) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to EPA.

(v) Updated notification must be provided to EPA when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by EPA on or before the start date provided to EPA, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will start.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm's name, EPA certification number, address, telephone number.

(E) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number(s) (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (e)(4)(ii) of this section.

(I) Name and EPA certification number of the project supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(L) Name, title, and signature of the representative of the certified firm who prepared the notification.

(vii) Notification must be accomplished electronically. Instructions can be obtained online at *https://www.epa.gov/lead,* or from the NLIC at 1-800-424-LEAD (5323).

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities according to the requirements of this paragraph.

(5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(6) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm.

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(ii) If soil is not removed, the soil shall be permanently covered, as defined in § 745.223.

(8) The following post-abatement procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the post-abatement testing procedures.

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (e)(8)(i) of this section, post-abatement sampling for lead in dust shall be conducted. Post-abatement sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iii) Dust samples for post-abatement testing purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.

(iv) Dust samples for post-abatement testing purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.

(v) The following post-abatement testing activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(vi) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with action levels in paragraph (e)(8)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable action levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable action level or if the residual lead level in a composite dust sample equals or exceeds the applicable action level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested.

(viii) Before January 12, 2026, the action levels for lead in dust are 10 $\mu g/ft^2$ for floors, 100 $\mu g/ft^2$ for interior window sills, and 400 $\mu g/ft^2$ for window troughs. On or after January 12, 2026, the action levels for lead in dust are 5 $\mu g/ft^2$ for floors, 40 $\mu g/ft^2$ for interior window sills, and 100 $\mu g/ft^2$ for window troughs.

(9) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of post-abatement testing may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate action levels.

(iii) The randomly selected residential dwellings shall be sampled and evaluated according to the post-abatement testing procedures found in paragraph (e)(8) of this section.

(10) An abatement report shall be prepared by a certified supervisor or project designer. The abatement report shall include the following information:

(i) Start and completion dates of abatement.

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project.

(iii) The occupant protection plan prepared pursuant to paragraph (e)(5) of this section.

(iv) The name, address, and signature of each certified risk assessor or inspector conducting post-abatement sampling and the date of sampling.

(v) The results of post-abatement dust-lead testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses.

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(vii) On or after January 12, 2026, when post-abatement dust-lead testing results are below the dust-lead action levels and at or above the dust-lead reportable levels, a dust-lead hazard statement with the following language must be included:

Although the completed abatement project achieved dust-lead below action levels, some dust-lead hazards remain because any reportable level of dust-lead is considered a dust-lead hazard by the U.S. Environmental Protection Agency in a residential dwelling or child-occupied facility. In order for abatement work to be considered complete under EPA regulations, dust-lead levels must be below the action levels, which are established based on reliability, effectiveness and safety. To continue to reduce lead exposure from dust, the EPA pamphlet entitled *Protect Your Family From Lead in Your Home* includes recommendations such as: using a vacuum with a high-efficiency particulate air (HEPA) filter on furniture and other items returned to the work area, and regularly cleaning hard surfaces with a damp cloth or sponge and a general all-purpose cleaner. For more information on how to continue to reduce lead exposure, see *Protect Your Family From Lead in Your Home*.

(f) ***Collection and laboratory analysis of samples.*** Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) Collected by persons certified by EPA as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(g) ***Composite dust sampling.*** Composite dust sampling may only be conducted in the situations specified in paragraphs (c) through (e) of this section. If such sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two subsamples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one type of component.

(h) ***Determinations.***

(1) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(2) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (*e.g.,* the window sill or floor) are equal to or greater than the dust hazard levels identified in § 745.65(b);

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is cause by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame; and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) Dust-lead hazards and dust-lead action levels are identified for residential dwellings and child-occupied facilities as follows:

(i) Before January 12, 2026, a dust lead-hazard is present in a residential dwelling or child-occupied facility on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 10 μg/ft^2 for floors and 100 μg/ft^2 for interior window sills, respectively; for projects where post-abatement dust-lead testing is required or otherwise performed, levels of lead in dust must be below 10 μg/ft^2 for floors, 100 μg/ft^2 for interior window sills, and 400 μg/ft^2 for window troughs for purposes of the action levels; on or after January 12, 2026, a dust lead-hazard is present in a residential dwelling or child-occupied facility on floors and interior window sills when the lead loading for any single surface or composite sample of floors and interior window sills is equal to or greater than any reportable level of dust-lead for floors and for interior window sills; for projects where post-abatement dust-lead testing is required or otherwise performed, levels of lead in dust must be below 5 μg/ft^2 for floors, 40 μg/ft^2 for interior window sills, and 100 μg/ft^2 for window troughs for purposes of clearing the action level;

(ii) A dust lead-hazard is present on floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property (and, for projects where post-abatement dust-lead testing is required or otherwise performed, levels of lead in dust must be below the applicable value from paragraph (i) of this paragraph for purposes of the action levels); and

(iii) A dust lead-hazard is present on floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property (and, for projects where post-abatement dust-lead testing is required or otherwise performed, levels of lead in dust must be below the applicable value from paragraph (i) of this paragraph for purposes of the action levels).

(4) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(i) ***Recordkeeping.*** All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 42852, Aug. 6, 1999; 66 FR 1239, Jan. 5, 2001; 69 FR 18496, Apr. 8, 2004; 84 FR 32648, July 9, 2019; 86 FR 994, Jan. 7, 2021; 89 FR 89459, Nov. 12, 2024; 89 FR 101490, Dec. 16, 2024]

Editorial Note: At 89 FR 89459, Nov. 12, 2024, and corrected at 89 FR 101490, Dec. 16, 2024, § 745.227 was amended in part by revising paragraph (e)(8)(v). However, the set-out text included revised text for the introductory paragraph of (e)(8)(v), and not the subparagraphs.

§ 745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]

§ 745.233 Lead-based paint activities requirements.

Lead-based paint activities, as defined in this part, shall only be conducted according to the procedures and work practice standards contained in § 745.227 of this subpart. No individual or firm may offer to perform or perform any lead-based paint activity as defined in this part, unless certified to perform that activity according to the procedures in § 745.226.

§ 745.235 Enforcement.

(a) Failure or refusal to comply with any requirement of § 745.225, § 745.226, § 745.227, or § 745.233 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by § 745.225, § 745.226, or § 745.227 is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(c) Failure or refusal to permit entry or inspection as required by § 745.237 and section 11 of TSCA (15 U.S.C. 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689).

(d) In addition to the above, any individual or firm that performs any of the following acts shall be deemed to have committed a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. 2614, 2689). These include the following:

(i) Obtaining certification through fraudulent representation;

(ii) Failing to obtain certification from EPA and performing work requiring certification at a job site; or

(iii) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

(e) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.

§ 745.237 Inspections.

EPA may conduct reasonable inspections pursuant to the provisions of section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

(a) ***Purpose.*** To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) ***Persons who must pay fees.*** Fees in accordance with paragraph (c) of this section must be paid by:

(1) ***Training programs.***

(i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(ii) ***Exemptions.*** No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) ***Firms and individuals.*** All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

(c) ***Fee amounts*** —

(1) ***Certification and accreditation fees.*** Initial and renewal certification and accreditation fees are specified in the following table:

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Course		
Inspector	$870	$620
Risk assessor	$870	$620
Supervisor	$870	$620
Worker	$870	$620
Project Designer	$870	$620
Refresher Course		
Inspector	$690	$580
Risk assessor	$690	$580

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Supervisor	$690	$580
Worker	$690	$580
Project Designer	$690	$580
Lead-based Paint Activities—Individual	Certification	Re-certification (every 3 years, see 40 CFR 745.226(e)(1) for details)
Inspector	$410	$410
Risk assessor	$410	$410
Supervisor	$410	$410
Worker	$310	$310
Project designer	$410	$410
Tribal certification (each discipline)	$10	$10
Lead-based Paint Activities—Firm	Certification	Re-certification (every 3 years, see 40 CFR 745.226(f)(7) for details)
Firm	$550	$550
Combined Renovation and Lead-based Paint Activities Firm Application	$550	$550
Combined Renovation and Lead-based Paint Activities Tribal Firm Application	$20	$20
Tribal Firm	$20	$20

(2) ***Certification examination fee.*** Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of $70 for each exam attempt.

(3) ***Lost identification card or certificate.*** A $15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(4) ***Accreditation amendment fees.*** No fee will be charged for accreditation amendments.

(d) ***Application/payment procedure*** —

(1) ***Certification and re-certification.*** —

(i) ***Individuals.*** Submit a completed application electronically (titled "Application for Individuals to Conduct Lead-based Paint Activities"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(ii) ***Firms.*** Submit a completed application electronically (titled "Application for Firms"), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(2) ***Accreditation and re-accreditation.*** Submit a completed application electronically (titled "Accreditation Application for Training Programs"), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(e) ***Identification card replacement and certificate replacement.***

(1) Parties seeking identification card or certificate replacement shall electronically complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) ***Individuals.*** "Application for Individuals to Conduct Lead-based Paint Activities."

(ii) ***Firms.*** "Application for Firms."

(iii) ***Training programs.*** "Accreditation Application for Training Programs."

(2) Submit application and payment electronically in the amount specified in paragraph (c)(3) of this section in accordance with the instructions.

(f) ***Adjustment of fees.***

(1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the FEDERAL REGISTER.

(g) ***Failure to remit a fee.***

(1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

[64 FR 31098, June 9, 1999, as amended at 74 FR 11870, Mar. 20, 2009; 76 FR 47945, Aug. 5, 2011; 81 FR 7996, Feb. 17, 2016; 89 FR 89461, Nov. 12, 2024]

§ 745.239 Effective dates.

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after March 1, 2000.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after March 1, 2000.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 42852, Aug. 6, 1999]

Subparts M-P [Reserved]

Subpart Q—State and Indian Tribal Programs

Source: 61 FR 45825, Aug. 29, 1996, unless otherwise noted.

§ 745.320 Scope and purpose.

(a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.

(b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§ 745.225, 745.226, and 745.227. The provisions of §§ 745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326 apply for the purposes of such program authorizations.

(d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at § 745.327(a).

(e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.

(f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.

(g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

[61 FR 45825, Aug. 29, 1996, as amended at 73 FR 21767, Apr. 22, 2008]

§ 745.323 Definitions.

The definitions in subpart A apply to this subpart. In addition, the definitions in § 745.223 and the following definitions apply:

Indian Country means

(1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and

(3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

§ 745.324 Authorization of State or Tribal programs.

(a) ***Application content and procedures.***

(1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

(2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.

(3) A State or Tribal application shall include:

(i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.

(ii) A summary of the State or Tribal program. This summary will be used to provide notice to residents of the State or Tribe.

(iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.

(iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.

(v) Copies of all applicable State or Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

(4) After submitting an application, the Agency will publish a FEDERAL REGISTER notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.

(5) Within 60 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) ***Program description.*** A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

(1)

(i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.

(ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.

(iii) In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The desciption shall explain and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the within the State or Indian Tribe.

(2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:

(i) A description of the program that demonstrates that the program contains all of the elements specified in § 745.325, § 745.326, or both; and

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

(3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at § 745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at § 745.327.

(4)

(i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.

(ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:

(A) Is recognized by the Secretary of the Interior.

(B) has an existing government exercising substantial governmental duties and powers.

(C) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.

(D) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

(iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) ***Attorney General's statement.***

(1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.

(2) The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe's authorization application.

(3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant's authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) ***Program certification.***

(1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(2) If this certification is contained in a State's application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

(4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of this section as the basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.

(e) ***EPA approval.***

(1) EPA will fully review and consider all portions of a State or Tribal application.

(2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

(ii) The State or Tribal program provides adequate enforcement.

(3) EPA shall notify in writing the State or Indian Tribe of the Administrator's decision to authorize the State or Tribal program or disapprove the State's or Indian Tribe's application.

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

(f) ***EPA administration and enforcement.***

(1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(g) ***Oversight.*** EPA shall periodically evaluate the adequacy of a State's or Indian Tribe's implementation and enforcement of its authorized programs.

(h) ***Reports.*** Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years. The report shall include the following information:

(1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and

(2) All information regarding the lead-based paint enforcement and compliance activities listed at § 745.327(d) “Summary on Progress and Performance.”

(i) ***Withdrawal of authorization.***

(1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw shall:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.

(4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State's or Indian Tribe's authorization should be withdrawn.

(5) If EPA finds that deficiencies warranting withdrawal did not exist or were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.

(6) Where EPA finds that deficiencies in the State or Tribal program exist that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

[61 FR 45825, Aug. 29, 1996, as amended at 73 FR 21767, Apr. 22, 2008]

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

(a) ***Program elements.*** To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:

(1) Procedures and requirements for the accreditation of lead-based paint activities training programs.

(2) Procedures and requirements for the certification of individuals engaged in lead-based paint activities.

(3) Work practice standards for the conduct of lead-based paint activities.

(4) Requirements that all lead-based paint activities be conducted by appropriately certified contractors.

(5) Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) ***Accreditation of training programs.*** The State or Indian Tribe must have either:

(1) Procedures and requirements for the accreditation of training programs that establish:

(i) Requirements for the accreditation of training programs, including but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures for the suspension, revocation, or modification of training program accreditations; or

(2) Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

(c) ***Certification of individuals.*** The State or Indian Tribe must have requirements for the certification of individuals that:

(1) Ensure that certified individuals:

(i) Are trained by an accredited training program; and

(ii) Possess appropriate education or experience qualifications for certification.

(2) Establish procedures for re-certification.

(3) Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.

(4) Establish procedures for the suspension, revocation, or modification of certifications.

(5) Establish requirements and procedures for the administration of a third-party certification exam.

(d) ***Work practice standards for the conduct of lead-based paint activities.*** The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) The work practice standards for the inspection for the presence of lead-based paint must require that:

(i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.

(ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.

(iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.

(iv) A report is developed that clearly documents the results of the inspection.

(v) Records are retained by the certified inspector or the firm.

(2) The work practice standards for risk assessment must require that:

(i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.

(ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.

(iii) Risk assessments consist of, at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;

(B) Environmental sampling for lead in paint, dust, and soil;

(C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and

(D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.

(iv) The program elements required in paragraph (d)(2)(iii)(C) and (d)(2)(iii)(D) of this section shall be adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.

(v) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.

(vi) The certified risk assessor or the firm retains the appropriate records.

(3) The work practice standards for abatement must require that:

(i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.

(ii) Abatements permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the action levels, and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

(iii) Abatements include post-abatement lead in dust sampling and conformance with the action levels established or adopted by the State or Indian Tribe.

(iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.

(v) The certified abatement contractor or the firm retains appropriate records.

(e) ***Revisions to lead-based paint activities program requirements.*** When EPA publishes in the FEDERAL REGISTER revisions to the lead-based paint activities program requirements contained in subpart L of this part:

(1) A State or Tribe with a lead-based paint activities program approved before the effective date of the revisions to the lead-based paint activities program requirements in subpart L of this part must demonstrate that it meets the requirements of this section in a report that it submits pursuant to § 745.324(h) but no later than two years after the effective date of the revisions.

(2) A State or Tribe with an application for approval of a lead-based paint activities program submitted but not approved before the effective date of the revisions to the lead-based paint activities program requirements in subpart L of this part must demonstrate that it meets the requirements of this section either by amending its application or in a report that it submits pursuant to § 745.324(h) but no later than two years after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a lead-based paint activities program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new lead-based paint activities program requirements in subpart L of this part.

[61 FR 45825, Aug. 29, 1996, as amended at 66 FR 1240, Jan. 5, 2001; 84 FR 32648, July 9, 2019; 89 FR 89461, Nov. 12, 2024]

§ 745.326 Renovation: State and Tribal program requirements.

(a) ***Program elements.*** To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs. A State and Tribal program is not required to include procedures and requirements for the dust sampling technician training discipline if the State or Tribal program requires dust sampling to be performed by a certified lead-based paint inspector or risk assessor.

(ii) Procedures and requirements for accredited initial and refresher training for renovators and dust sampling technicians and on-the-job training for other individuals who perform renovations.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) ***Pre-renovation education.*** To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools,* developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools,* must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before June 23, 2008, must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) on or after April 22, 2009.

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 23, 2008, must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part on or after April 22, 2009.

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 23, 2008, must demonstrate in its application that it meets the requirements of this section.

(c) ***Accreditation of training programs.*** To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) ***Certification of individuals and/orrenovation firms.*** To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements that ensure that individuals who perform or direct renovations are properly trained. These procedures and requirements must include:

(i) A requirement that renovations be performed and directed by at least one individual who has been trained by an accredited training program.

(ii) Procedures and requirements for accredited refresher training for these individuals.

(iii) Procedures and requirements for individuals who have received accredited training to provide on-the-job training for those individuals who perform renovations but do not receive accredited training. A State and Tribal program is not required to include procedures and requirements for on-the-job training for renovation workers if the State or Tribal program requires accredited initial and refresher training for all persons who perform renovations.

(2) Establish procedures and requirements for the formal certification and re-certification of renovation firms.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) ***Work practice standards for renovations.*** To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified renovation firms, using trained individuals.

(2) Renovations are conducted using lead-safe work practices that are at least as protective to occupants as the requirements in § 745.85.

(3) Certified individuals and/or renovation firms must retain appropriate records.

(f) ***Revisions to renovation program requirements.*** When EPA publishes in the FEDERAL REGISTER revisions to the renovation program requirements contained in subparts E and L of this part:

(1) A State or Tribe with a renovation program approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) but no later than 2 years after the effective date of the revisions.

(2) A State or Tribe with an application for approval of a renovation program submitted but not approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to § 745.324(h) of this part but no later than 2 years after the effective date of the revisions.

(3) A State or Tribe submitting its application for approval of a renovation program on or after the effective date of the revisions must demonstrate in its application that it meets the requirements of the new renovation program requirements in subparts E and L of this part.

[73 FR 21768, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010; 76 FR 47945, Aug. 5, 2011]

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

(a) ***Approval of compliance and enforcement programs.*** A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(1) ***Interim approval.*** Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

(i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at § 745.324(a):

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.

(B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section must be fully implemented no later than 3 years from the date of EPA's interim approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA's interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA's interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe's authorization pursuant to § 745.324(i).

(2) ***Final approval.*** Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at § 745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(i) For the compliance and enforcement program to be considered adequate for final approval through the application described at § 745.324(a), a State or Indian Tribe must, in its application:

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:

(A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(D) To the extent not previously submitted through the application described at § 745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established in paragraphs (b) and (c) of this section.

(b) ***Standards, regulations, and authority.*** The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.

(1) ***Lead-based paint activities or renovation requirements.*** State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at § 745.324(b)(2), that it has established a lead-based paint program that contains all of the elements specified in § 745.325 or § 745.326, or both, as applicable.

(2) ***Authority to enter.*** State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint violations may occur for purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities or renovations conduct business.

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint inspection process.

(3) ***Flexible remedies.*** A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement statutory and regulatory authorities and remedies. At a minimum, these authorities and remedies, which must also be reflected in an enforcement response policy, must include the following:

(i) The authority to issue warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;

(ii) The authority to assess administrative or civil fines, including a maximum penalty authority for any violation in an amount no less than $5,000 per violation per day;

(iii) The authority to assess the maximum penalties or fines for each instance of violation and, if the violation is continuous, the authority to assess penalties or fines up to the maximum amount for each day of violation, with all penalties assessed or collected being appropriate for the violation after consideration of factors as the State or Tribe determine to be relevant, including the size or viability of the business, enforcement history, risks to human health or the environment posed by the violation, and other similar factors;

(iv) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to recover penalties;

(v) The authority to suspend, revoke, or modify the accreditation of any training provider or the certification of any individual or firm;

(vi) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, without the necessity of a prior suspension or revocation of a trainer's accreditation or a firm's or individual's certification;

(vii) The authority to apply criminal sanctions, including recovering fines; and

(viii) The authority to enforce its authorized program using a burden of proof standard, including the degree of knowledge or intent of the respondent that is no greater than it is for EPA under TSCA.

(4) ***Adequate resources.*** An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

(c) ***Performance elements.*** The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(1) ***Training.*** A State or Tribal lead-based paint compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well trained. Enforcement personnel must understand case development procedures and the maintenance of proper case files. Inspectors must successfully demonstrate

knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

(2) ***Compliance assistance.*** A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of lead-based paint activities or renovations. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

(3) ***Sampling techniques.*** A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at § 745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

(4) ***Tracking tips and complaints.*** A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.

(5) ***Targeting inspections.*** A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.

(6) ***Follow up to inspection reports.*** A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.

(7) ***Compliance monitoring and enforcement.*** A State or Tribal lead-based paint compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

(d) ***Summary on Progress and Performance.*** The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of

implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities. The report shall be submitted according to the requirements at § 745.324(h).

(e) ***Memorandum of Agreement.*** An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over $5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.

(f) ***Electronic reporting under State or Indian Tribe programs.*** States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3—(Electronic reporting) are satisfied in their lead-based paint program.

[61 FR 45825, Aug. 29, 1996, as amended at 70 FR 59889, Oct. 13, 2005; 73 FR 21769, Apr. 22, 2008; 76 FR 47946, Aug. 5, 2011]

§ 745.339 Effective date.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008.

[73 FR 21769, Apr. 22, 2008]

40 CFR §1508.27 Significantly

consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

(1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

§ 1508.26 Special expertise.

Special expertise means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

Significantly as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity*. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

§ 1508.28 Tiering.

Tiering refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement

This content is from the eCFR and is authoritative but unofficial.

Title 49 —Transportation
Subtitle A —Office of the Secretary of Transportation

Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

Subpart A General

§ 24.1 Purpose.
§ 24.2 Definitions and acronyms.
§ 24.3 No duplication of payments.
§ 24.4 Assurances, monitoring, and corrective action.
§ 24.5 Manner of notices and electronic signatures.
§ 24.6 Administration of jointly-funded projects.
§ 24.7 Federal agency waiver of regulations in this part.
§ 24.8 Compliance with other laws and regulations.
§ 24.9 Recordkeeping and reports.
§ 24.10 Appeals.
§ 24.11 Adjustments of limits and payments.

Subpart B Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.
§ 24.102 Basic acquisition policies.
§ 24.103 Criteria for appraisals.
§ 24.104 Review of appraisals.
§ 24.105 Acquisition of tenant-owned improvements.
§ 24.106 Expenses incidental to transfer of title to the agency.
§ 24.107 Certain litigation expenses.
§ 24.108 Donations.

Subpart C General Relocation Requirements

§ 24.201 Purpose.
§ 24.202 Applicability.
§ 24.203 Relocation notices.
§ 24.204 Availability of comparable replacement dwelling before displacement.
§ 24.205 Relocation planning, advisory services, and coordination.
§ 24.206 Eviction for cause.
§ 24.207 General requirements—claims for relocation payments.
§ 24.208 Aliens not lawfully present in the United States.
§ 24.209 Relocation payments not considered as income.

Subpart D Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.
§ 24.302 Fixed payment for moving expenses—residential moves.
§ 24.303 Related nonresidential eligible expenses.
§ 24.304 Reestablishment expenses—nonresidential moves.
§ 24.305 Fixed payment for moving expenses—nonresidential moves.

§ 24.306 Discretionary utility relocation payments.
Subpart E Replacement Housing Payments
§ 24.401 Replacement housing payment for 90-day homeowner-occupants.
§ 24.402 Replacement housing payment for 90-day tenants and certain others.
§ 24.403 Additional rules governing replacement housing payments.
§ 24.404 Replacement housing of last resort.
Subpart F Mobile Homes
§ 24.501 Applicability.
§ 24.502 Replacement housing payment for a 90-day mobile homeowner displaced from a mobile home and/or from the acquired mobile home site.
§ 24.503 Replacement housing payment for 90-day mobile home occupants.
Subpart G Certification
§ 24.601 Purpose.
§ 24.602 Certification application.
§ 24.603 Monitoring and corrective action.
Appendix A to Part 24
Additional Information
Appendix B to Part 24
Statistical Report Form

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.85.

Source: 89 FR 36944, May 3, 2024, unless otherwise noted.

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (Uniform Act), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally assisted land acquisition programs;

(b) To ensure that persons displaced as a direct result of Federal or federally assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that agencies implement the regulations in this part in a manner that is efficient and cost effective.

§ 24.2 Definitions and acronyms.

(a) *Definitions.* Unless otherwise noted, the following terms used in this part shall be understood as defined in this section:

Agency means any entity utilizing Federal funds or Federal financial assistance for a project or program that acquires real property or displaces a person.

(i) *Federal agency* means any department, agency, or instrumentality in the executive branch of the United States Government, any wholly owned U.S. Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(ii) *State agency* means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

Alien not lawfully present in the United States means an alien who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

(i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*) and whose stay in the United States has not been authorized by the U.S. Secretary of Homeland Security; and

(ii) An alien who is present in the United States after the expiration of the period of stay authorized by the U.S. Secretary of Homeland Security or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Business means any lawful activity, except a farm operation, that is conducted:

(i) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property;

(ii) Primarily for the sale of services to the public;

(iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(iv) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

Comparable replacement dwelling means a dwelling which is:

(i) Decent, safe, and sanitary as described in the definition of *decent, safe, and sanitary* in this paragraph (a);

(ii) Functionally equivalent to the displacement dwelling. The term *functionally equivalent* means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling (see appendix A of this part, *Section 24.2(a) Comparable replacement dwelling*);

(iii) Adequate in size to accommodate the occupants;

(iv) In an area not subject to unreasonable adverse environmental conditions;

(v) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(vi) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (*See also* § 24.403(a)(2));

(vii) Currently available to the displaced person on the private market except as provided in paragraph (ix) of this definition (see appendix A to this part, Section 24.2(a), definition of *comparable replacement dwelling*); and

(viii) Within the financial means of the displaced person:

(A) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(f), plus any additional amount required to be paid under § 24.404.

(B) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in § 24.402(b)(2). Such rental assistance must be paid under § 24.404.

(ix) For a person receiving Government housing assistance before displacement, a dwelling that may reflect similar Government housing assistance. In such cases any requirements of the Government housing assistance program, including fair housing, civil rights, and those relating to the size of the replacement dwelling, shall apply. However, nothing in this part prohibits an agency from offering, or precludes a person from accepting, assistance under a Government housing program, even if the person did not receive similar assistance before displacement, subject to the eligibility requirements of the Government housing assistance program. An agency is obligated to inform the person of his or her options under this part and the implications of accepting a different form of assistance than the assistance that the person may currently be receiving. If a person accepts assistance under a Government housing assistance program, the rules of that program apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government housing assistance has been applied. In determining comparability of housing under this part:

(A) A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit.

(B) A privately owned unit with a housing project—based rental program subsidy (*e.g.,* tied to the unit or building) may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing unit.

(C) An offer for tenant-based rental assistance, such as a HUD Section 8 Housing Choice Voucher, may be provided along with an offer of a comparable replacement dwelling to a person receiving a similar subsidy assistance or occupying a privately owned subsidized unit or public housing unit before displacement. The displacing agency must confirm that the owner will accept tenant based rental assistance before offering the unit as comparable replacement housing. *(see* appendix A to this part, section 24.2(a), definition of *comparable replacement dwelling*)

Contribute materially means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the agency determines to be more equitable, a business or farm operation:

(i) Had average annual gross receipts of at least $5,000; or

(ii) Had average annual net earnings of at least $1,000; or

(iii) Contributed at least $33^{1}/_{3}$ percent of the owner's or operator's average annual gross income from all sources.

(iv) If the application of the above criteria creates an inequity or hardship in any given case, the agency may approve the use of other criteria as determined appropriate. *(See* appendix A of this part, section 24.305(e))

Decent, safe, and sanitary (DSS) dwelling means a dwelling which meets the requirements of paragraphs (i) through (vii) of this definition or the most stringent of the local housing code, Federal agency regulations, or the agency's regulations or written policy. The DSS dwelling shall:

(i) Be structurally sound, weather tight, and in good repair;

(A) Many local housing and occupancy codes require the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, in protecting the public health and safety. Where such standards exist, they must be honored;

(B) [Reserved]

(ii) Contain a safe electrical wiring system adequate for lighting and other devices;

(iii) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system;

(iv) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by the most stringent of the local housing code, Federal agency regulations or requirements, or the agency's regulations or written policy. In addition, the Federal funding agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such agencies;

(v) There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub, or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. When required by local code standards for residential occupancy, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator (see appendix A to this part, section 24.2(a), definition of *DSS*);

(vi) Contains unobstructed egress to safe, open space at ground level; and

(vii) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (*See* appendix A of this part, *Section 24.2(a)*, definition of *DSS*)

Displaced person means:

(i) ***Generally.*** Except as provided in paragraph (ii) of this definition, any person who permanently moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at §§ 24.401(a) and 24.402(a).)

(A) As a direct result of a written notice of intent to acquire, rehabilitate, and/or demolish (*see* § 24.203(d)), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project;

(B) As a direct result of rehabilitation or demolition for a project; or

(C) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph (i)(C) applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302, or § 24.303.

(ii) *Persons required to move temporarily.* A person who is required to move or moves his or her personal property from the real property as a direct result of the project but is not required to relocate permanently. Such determination shall be made by the agency in accordance with any requirement, policy, or guidance established by the Federal agency funding the project (see appendix A to this part, section 24.2(a)). All benefits for persons required to move on a temporary basis are described in § 24.202(a).

(iii) *Voluntary acquisitions.* A tenant who moves as a direct result of a voluntary acquisition as described in § 24.101(b)(1) through (3) is eligible for relocation assistance when there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. Federal Funding agencies should develop policies identifying the types of agreements used in its programs or projects which it considers to be binding and which would therefore trigger eligibility for tenants as displaced persons. Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this paragraph (iii) until all conditions to the agency's obligation to purchase the real property have been satisfied. Provided that, the agency may determine that a tenant who moves before there is a binding agreement is eligible for relocation assistance once a binding agreement exists allowing establishment of eligibility (see appendix A to this part, section 24.2(a)).

(iv) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(A) A person who moves before the initiation of negotiations (see § 24.403(d)), unless the agency determines that the person was displaced as a direct result of the program or project;

(B) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(C) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(D) An owner-occupant who moves as a result of an acquisition of real property as described in § 24.101(a)(2) or (b)(1) or (2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation, or demolition for a Federal or federally assisted project is subject to this part.);

(E) A person whom the agency determines is not displaced as a direct result of a partial acquisition;

(F) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(G) An owner-occupant who conveys his or her property, as described in § 24.101(a)(2) or (b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(H) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency;

(I) An owner who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Public Law 93-477, Appropriations for National Park System, or Public Law 93-303, Land and Water Conservation Fund, except that such owner remains a displaced person for purposes of subpart D of this part;

(J) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law, as provided for in § 24.206. However, advisory assistance may be provided to unlawful occupants at the option of the agency in order to facilitate the project;

(K) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208; or

(L) Temporary, daily, or emergency shelter occupants are in most cases not considered displaced persons. However, agencies may determine that a person occupying a shelter is a displaced person due to factors which could include reasonable expectation of a prolonged stay, or other extenuating circumstances. At a minimum, agencies shall provide advisory assistance to all occupants at initiation of negotiations. (See appendix A to this part, section 24.2(a), definition of *displaced persons.*)

Dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a mobile home, or any other residential unit.

Dwelling site means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area. (See appendix A to this part, section 24.2(a).)

Farm operation means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Federal financial assistance means a grant, loan, or contribution provided by the United States, except any Federal guarantee, insurance or tax credits (Low Income Housing Tax Credit) and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

Household income means total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include

income received or earned by dependent children under 18, or full-time students who are students for at least 5 months of the year and are under the age of 24. (See appendix A to this part, section 24.2(a), for examples of exclusions to income.)

Initiation of negotiations, unless a different action is specified in applicable Federal program regulations, means the following:

(i) Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the term means the delivery of the initial written offer of just compensation by the agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire, rehabilitate, or demolish the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the term means the actual move of the person from the property.

(ii) Whenever the displacement is caused by rehabilitation, demolition, or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the term means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(iii) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or Superfund), the term means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(iv) In the case of permanent relocation of a tenant as a result of a voluntary-acquisition of real property described in § 24.101(b)(1) the tenant is not eligible for relocation assistance under this part, until there is a binding written agreement between the agency and the owner that obligates the agency, without further election, to purchase the real property. (See appendix A to this part, section 24.2(a).) Agreements such as options to purchase and conditional purchase and sale agreements are not considered a binding agreement within the meaning of this part unless such agreements satisfy the requirements of the Federal agency providing the Federal financial assistance or until all conditions to the agency's obligation to purchase the real property have been satisfied.

Lead Agency means the Department of Transportation acting through the Federal Highway Administration.

Mobile home (manufactured home), when used in this part, includes manufactured homes and recreational vehicles used as residences. The term *manufactured home* is defined at 24 CFR part 3280 (see appendix A to this part, section 24.2(a)).

Mortgage means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Nonprofit organization means an organization that is incorporated under the applicable laws of a State as a nonprofit organization and exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(i) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

(ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(iii) A contract to purchase any of the interests or estates described in this section; or

(iv) Any other interest, including a partial interest, which in the judgment of the agency warrants consideration as ownership.

Owner's or tenant's designated representative means a representative designated by a property owner or tenant to receive all required notifications and documents from the agency. The owner or tenant must provide the agency a written notification which states that they are designating a representative, provide that person's name and contact information and what if any notices or information, the representative is not authorized to receive.

Person means any individual, family, partnership, corporation, or association.

Program or project means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The recipient is accountable to the Federal funding agency for the use of the funds and for compliance with applicable Federal requirements. The term recipient does not include subrecipients.

Reverse mortgage (also known as a Home Equity Conversion Mortgage (HECM)) means a first mortgage which provides for future payments to the homeowner based on accumulated equity and which a housing creditor is authorized to make under any Federal law or State constitution, law, or regulation. See 12 U.S.C. 1715z-20 for additional information. It is a class of lien generally available to persons 62 years of age or older. Reverse mortgages do not require a monthly mortgage payment and can also be used to access a home's equity. The reverse mortgage becomes due when none of the original borrowers lives in the home, if taxes or insurance become delinquent, or if the property falls into disrepair.

Salvage value means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (*i.e.,* not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

Small business means a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.303 or § 24.304.

State means any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

Subrecipient means a government agency or legal entity that enters into an agreement with a recipient to carry out part or all of the activity funded by Federal program grant funds. A subrecipient is accountable to the recipient for the use of the funds and for compliance with applicable Federal requirements.

Temporary, daily, or emergency shelter (shelter) means any facility, the primary purpose of which is to provide a person with a temporary overnight shelter which does not allow prolonged or guaranteed occupancy. A shelter typically requires the occupants to remove their personal property and themselves from the premises on a daily basis, offers no guarantee of reentry in the evening, and in most cases does not meet the definition of dwelling as used in this part.

Tenant means a person who has the temporary use and occupancy of real property owned by another.

Uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owners' property, and which the agency has determined has little or no value or utility to the owner.

Uniform Act or *Act* means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 *et seq.*), and amendments thereto.

Unlawful occupant means a person who occupies without property right, title, or payment of rent, or a person legally evicted, with no legal rights to occupy a property under State law. An agency, at its discretion, may consider such person to be in lawful occupancy for the purpose of determining eligibility for assistance under the Uniform Act.

Utility costs means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.

Utility facility means:

(i) Any line, facility, or system for producing, transporting, transmitting, or distributing communications, cable, television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(ii) The term shall also mean the utility company including any substantially owned or controlled subsidiary. For the purposes of this part the term includes those utility-type facilities which are owned or leased by a Government agency for its own use, or otherwise dedicated solely to Governmental use. The term utility includes those facilities used solely by the utility which are part of its operating plant.

Utility relocation means the adjustment of a utility facility required by the program or project undertaken by the agency. It includes removing and reinstalling the facility, including necessary temporary facilities; necessary right-of-way on a new location; moving, rearranging, or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

Waiver valuation means the valuation process used and the product produced when the agency determines that an appraisal is not required, pursuant to § 24.102(c)(2) appraisal waiver provisions. Waiver valuations are not appraisals as defined by the Uniform Act and this part.

(b) *Acronyms.* The following acronyms are commonly used in the implementation of programs subject to this part:

(1) DOT (U.S. Department of Transportation).

(2) FEMA (Federal Emergency Management Agency).

(3) FHA (Federal Housing Administration).

(4) FHWA (Federal Highway Administration).

(5) FIRREA (Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(6) HLR (housing of last resort).

(7) HUD (U.S. Department of Housing and Urban Development).

(8) MIDP (mortgage interest differential payment).

(9) RHP (replacement housing payment).

(10) STURAA (Surface Transportation and Uniform Relocation Assistance Act of 1987).

(11) UA or URA (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970).

(12) USCIS (U.S. Citizenship and Immigration Services).

(13) USPAP (Uniform Standards of Professional Appraisal Practice).

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the agency to have the same purpose and effect as such payment under this part. (See appendix A to this part, section 24.3.)

§ 24.4 Assurances, monitoring, and corrective action.

(a) *Assurances.*

(1) Before a Federal agency may approve any grant to, or contract, or agreement with, an agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the agency must provide appropriate assurances that it will comply with the Uniform Act and this part. An agency's assurances shall be in accordance with sections 4630 and 4655 of the Uniform Act. The agency's Uniform Act section 4655 assurances must contain specific reference to any State law which the agency believes provides an exception to sections 4651 or 4652 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, an agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects. An agency, which both acquires real property and displaces persons, may combine its sections 4630 and 4655 of the Uniform Act assurances in one document.

(2) If a Federal agency or recipient provides Federal financial assistance to a person causing displacement, such Federal agency or recipient is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the recipient to comply with the requirements of this part.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a recipient after it has accepted a certification by such recipient in accordance with the requirements in subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (*Also see* § 24.603)

(c) *Prevention of fraud, waste, and mismanagement.* The agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices and electronic signatures.

(a) Each notice that the agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested (or by companies other than the United States Postal Service that provide the same function as certified mail with return receipts) and documented in agency files. A Federal funding agency may approve a process to permit the displaced person to elect to receive required notices by electronic delivery in lieu of the use of certified or registered first-class mail, return receipt requested, or personally served notices, when an agency demonstrates a means to document receipt of such notices by the property owner or occupant. A Federal funding agency may approve a process to permit the use of electronic signature which meet the requirements of paragraph (e) of this section.

(b) An agency requesting use of electronic delivery of notices must include the following safeguards:

(1) A process to inform property owners and occupants they will continue to receive Notices as described in paragraph (a) of this section unless they voluntarily elect to receive electronic notices.

(2) A process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention.

(3) A process to link the electronic signature with an electronic document in a way that can be used to determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

(4) A certification that use of electronic notices is consistent with existing State and Federal laws.

(c) Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. (*See* appendix A to this part, section 24.5.)

(d) A property owner or tenant may designate a representative to receive offers, correspondence, and information and to provide any information on their behalf required by the displacing agency by providing a written request to the agency (see § 24.2(a), definition of *owner's or tenant's designated representative*).

(e) An agency requesting use of electronic signature of documents must include the following safeguards:

(1) A process to document and record when information is legally delivered in digital format. A date and timestamp must establish the date of delivery and receipt with an electronic record capable of retention.

(2) A process to link the electronic signature with an electronic document in a way that can be used to determine whether the electronic document was changed subsequent to when an electronic signature was applied to the document.

(3) A certification that use of electronic signatures is consistent with existing State and Federal laws.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an agency or agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the Lead Agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall ensure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations in this part.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part must be in compliance with other applicable Federal laws and implementing regulations, including, but not limited to, the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) The Fair Housing Act (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4002 *et seq.*).

(g) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(h) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12892.

(i) Executive Order 11246—Equal Employment Opportunity, as amended.

(j) Executive Order 11625—Minority Business Enterprise.

(k) Executive Orders 11988—Floodplain Management, and 11990—Protection of Wetlands.

(l) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(m) Executive Order 12630—Governmental Actions and Interference with Constitutionally Protected Property Rights.

(n) Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

(o) Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing.

§ 24.9 Recordkeeping and reports.

(a) *Records.* The agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

(b) *Confidentiality of records.* Records maintained by an agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* Each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of the Uniform Act shall provide to the Lead Agency an annual summary report by November 15 that describes the real property acquisitions, displacements, and related activities conducted by the Federal agency for the prior calendar year. (*See* appendix A to this part, section 24.9(c).)

§ 24.10 Appeals.

(a) *General.* The agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the agency in any case in which the person believes that the agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the agency. The agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the agency shall inform the person that the determination is the agency's final decision and that the person may seek judicial review of the agency's determination.

(h) *Agency official to review appeal.* The agency official conducting the review of the appeal shall be either the head of the agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

§ 24.11 Adjustments of limits and payments.

(a) The Lead Agency may adjust the following valuation limits and maximum relocation benefits payments:

(1) The waiver valuation limits at § 24.102(c)(2)(ii) introductory text and (c)(2)(ii)(C);

(2) The conflict of interest valuation limits at § 24.102(n)(3); and

(3) The maximum amounts of relocation payments provided at §§ 24.301, 24.304, 24.305, 24.401, 24.402, 24.502, and 24.503.

(b) The head of the Lead Agency will evaluate whether the cost of living, inflation, or other factors indicate that limits, and payments provided in paragraph (a) of this section, should be adjusted to meet the policy objectives of the Uniform Act. The Lead Agency will divide the Consumer Price Index for All Urban Consumers (CPI-U) index for the year of the assessment (current year), by the CPI-U index for the year of the previous assessment (base year index/year of last adjustment) to determine the effect of inflation over the assessment period. If adjustments are determined to be necessary, the head of the Lead Agency will publish the new maximum benefit limits eligible for Federal participation in the FEDERAL REGISTER. (*See* appendix A to this part, section 24.11.)

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *Direct Federal program or project.*

(1) The requirements of this subpart apply to any acquisition of real property for a direct Federal program or project, except acquisition for a program or project that is undertaken by the Tennessee Valley Authority or the Rural Utilities Service. *(See* appendix A to this part, section 24.101(a).)

(2) If a Federal agency (except for the Tennessee Valley Authority or the Rural Utilities Service) will not acquire a property because negotiations fail to result in an agreement, the owner of the property or the owner's designated representative shall be so informed in writing. Owners of such properties are not displaced persons, and as such, are not entitled to relocation assistance benefits. However, tenants on such properties may be eligible for relocation assistance benefits. (*See* § 24.2(a).)

(b) *Programs and projects receiving Federal financial assistance.* The requirements of this subpart apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs except for the acquisitions described in paragraphs (b)(1) through (3) of this section. The relocation assistance provisions in this part are not applicable to owner-occupants who move as a result of a voluntary acquisition. (*See* § 24.2(a), definition of *displaced person.*) The relocation

assistance provisions in this part are applicable to tenants who must permanently relocate as a result of an acquisition described in paragraphs (b)(1) through (3) of this section. Such tenants are considered displaced persons. (See § 24.2(a), definition of *displaced person*.)

(1) The agency will not use the power of eminent domain to acquire the property, and the following conditions are met:

(i) No later than the time of the offer the agency informs the owner of the property or the owner's designated representative in writing of the following:

(A) The agency will not acquire the property if negotiations fail to result in an amicable agreement; and

(B) The agency's estimate of fair market value for the property to be acquired. (See appendix A to this part, sections 24.101(b)(1)(i) and 24.101(b)(1)(i)(B).)

(ii) Where an agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. (See appendix A to this part, section 24.101(b)(1)(ii).)

(iii) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits. (See appendix A to this part, section 24.101(b)(1)(iii).)

(2) The acquisition of real property by a cooperative from a person who, as a condition of membership in the cooperative, has agreed to provide without charge any real property that is needed by the cooperative.

(3) Acquisition for a program or project that receives Federal financial assistance from the Tennessee Valley Authority or the Rural Utilities Service.

(c) *Less-than-full-fee interest in real property.*

(1) The provisions of this subpart apply when acquiring fee title subject to retention of a life estate or a life use; to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more; and, to the acquisition of permanent and/or temporary easements necessary for the project. However, the agency may apply the regulations in this subpart to any less-than-full-fee acquisition that, in its judgment, should be covered.

(2) The provisions of this subpart do not apply to temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

(d) *Federally-assisted projects.* For projects receiving Federal financial assistance, the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the greatest extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the agency shall notify the owner in writing of the agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See §§ 24.203 and 24.5(d) and appendix A to this part, section 24.102(b).)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in paragraph (c)(2) of this section, and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the agency from its obligation to appraise the property; or

(ii) The agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and has a low fair market value, and the anticipated value of the proposed acquisition is estimated at $15,000 or less, based on a review of available data. The agency representative making the determination to use the waiver valuation option must understand valuation principles, techniques, and use of appraisals in order to be able to determine whether the valuation of the proposed acquisition is uncomplicated and has a low fair market value. (See appendix A to this part, section 24.102(c)(2).)

(A) When an appraisal is determined to be unnecessary, the agency shall prepare a waiver valuation.

(*1*) Waiver valuations are not appraisals by definition in this part (See § 24.2). Persons preparing or reviewing a waiver valuation are precluded from complying with Standards Rules 1, 2, 3, and 4 of the "Uniform Standards of Professional Appraisal Practice," as promulgated by the Appraisal Standards Board of The Appraisal Foundation[1] (see appendix A to this part, sections 24.102(c) and 24.103(a).)

(*2*) Because a waiver valuation is not an appraisal, a review of a waiver valuation is not required. However, some recipients may also be subject to State laws or agency requirements to review a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market in order to be qualified to perform the waiver valuation.

(C) The Federal agency funding the project may approve exceeding the $15,000 threshold, up to an amount of $35,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property.

(D) If the agency determines that the proposed acquisition is uncomplicated and has a low fair market value, and if the agency acquiring the real property offers the property owner the option of having the agency appraise the property, the agency may request approval from the Federal funding agency to use a waiver valuation for properties with estimated values of more than $35,000 and up to $50,000. Approval for using a waiver valuation of more than $35,000, but up to $50,000 may only be requested on a project-by-project basis and the request for doing so shall be made in writing to the Federal funding agency setting forth the anticipated benefits of, and reasons for, raising the waiver valuation ceiling above

[1] Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation.

$35,000. Within 6 months of completion of acquisition activities a close-out report measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metric which the funding agency requires to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations of more than $35,000, but up to $50,000 shall be submitted to the funding agency.

(E) Under paragraphs (c)(2)(ii)(C) and (D) of this section, if the property owner elects to have the agency appraise the property, the agency must obtain an appraisal and shall not use the waiver valuation procedures described in paragraphs (c)(2)(ii)(A) through (D) of this section. (*See* appendix A to this part, section 24.102(c)(2).)

(d) ***Establishment and offer of just compensation.*** Before the initiation of negotiations, the agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal or waiver valuation of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An agency official must establish the amount believed to be just compensation. (*See* § 24.104.) Promptly thereafter, the agency shall make a written offer to the owner or the designated owner's representative to acquire the property for the full amount believed to be just compensation. (*See* appendix A to this part, section 24.102(d).)

(e) ***Summary statement.*** Along with the initial written purchase offer, the owner or the designated owner's representative shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, *e.g.,* a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) ***Basic negotiation procedures.*** The agency shall make all reasonable efforts to contact the owner or the owner's designated representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The agency shall consider the owner's or the designated owner's representative's presentation. (*See* appendix A to this part, section 24.102(f).)

(g) ***Updating offer of just compensation.*** If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new waiver valuation or appraisal information, or if a significant delay has occurred since the time of the appraisal(s) or waiver valuation of the property, the agency shall have the appraisal(s) or waiver valuation updated or obtain a new appraisal(s) or waiver valuation. If the latest appraisal or waiver valuation information indicates that a change in the purchase offer is warranted, the agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The agency shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A to this part, section 24.102(i).)

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner or the owner's designated representative, the agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A to this part, section 24.102(j).)

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(a).)

(l) *Inverse condemnation.* If the agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A to this part, section 24.102(m).)

(n) *Conflict of interest.*

(1) The appraiser, review appraiser, or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the agency. Compensation for developing an appraisal or waiver valuation shall not be based on the reported opinion of value.

(2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation aspect of an appraisal, waiver valuation, or review of appraisals or waiver valuations. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it determines it would create a hardship for the agency.

(3) An appraiser, review appraiser, or waiver valuation preparer may be authorized by the agency to act as a negotiator for the acquisition of real property for which that person has performed an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is $15,000, or less. Agencies that wish to use this same authority to act as the negotiator on a valuation greater than $15,000, and up to $35,000, may not use a waiver valuation, and these acquisitions are subject to the following conditions:

(i) For those acquisitions where the appraiser or review appraiser will also act as the negotiator, an appraisal must be performed in compliance with § 24.103 and reviewed in compliance with § 24.104;

(ii) Agencies and recipients desiring to exercise this option must request approval in writing from the Federal funding agency;

(iii) The requesting agency shall have a separate and distinct quality control process in place and set forth in the written procedures approved by the Federal funding agency; and

(4) Agencies wishing to allow subrecipients to use conflict of interest waivers of more than $15,000 must determine and document that the subrecipient has a separate and distinct quality control process in place which is set forth in written procedures approved by the agency or in an agency approved subrecipient's written procedures. (*See* appendix A to this part, section 24.102(n).) Agencies and recipients desiring to exercise this option must request approval in writing from the Federal funding agency.

§ 24.103 Criteria for appraisals.

(a) ***Appraisal requirements.*** This section sets forth the requirements for real property acquisition appraisals for Federal and federally assisted programs. Appraisals are to be performed according to this section, which is intended to be consistent with the USPAP. (*See* appendix A to this part, section 24.103(a).) The agency may have appraisal requirements that supplement this section, including, and to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA), also commonly referred to as the "Yellow Book". The USPAP is published by The Appraisal Foundation. The UASFLA is published by the Appraisal Foundation in partnership with the Department of Justice on behalf of the Interagency Land Acquisition Conference. The UASFLA is a compendium of Federal eminent domain appraisal law, both case and statute, regulations, and practices.[1] Copies of the USPAP and the UASFLA may be ordered from The Appraisal Foundation in print and electronic forms.[2]

(1) The agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and performance of an appraisal under this section depends on the complexity of the appraisal problem.

(2) The agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally assisted program appraisal practice, and at a minimum, comply with the definition of appraisal in § 24.2(a) and the requirements in paragraphs (a)(2)(i) through (v) of this section. (*See* appendix A to this part, sections 24.103 and Section 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (*See* appendix A to this part, section 24.103(a)(1).)

[2] *http://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/TAF/Standards.aspx.*

[1] *www.justice.gov/file/408306/download.*

(ii) All relevant and reliable approaches to value consistent with established Federal and federally assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value use that is sufficient to support the appraiser's opinion of value. (See appendix A to this part, section 24.103(a).)

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. (*See* appendix A to this part, section 24.103(b).)

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall not be less than the difference between the amount determined to be just compensation for the owner's interest in the real property and the salvage value (defined at § 24.2(a)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.*

(1) The agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the agency to be qualified. (*See* appendix A to this part, section 24.103(d)(1).)

(2) If the agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*).

§ 24.104 Review of appraisals.

The agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (*see* § 24.103(d)(1) and appendix A to this part, section 24.104) shall examine the presentation and analysis of market information in all appraisals to ensure that they meet the definition of appraisal found in § 24.2(a), appraisal requirements found in § 24.103, and other applicable requirements (including, to the extent appropriate, the UASFLA), and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem (*see* § 24.103(a)(1) and appendix A, section 24.104(a)). As needed, the review appraiser shall, prior to acceptance of an appraisal report, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount believed to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the agency to do so, the staff review appraiser shall also

approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A to this part, section 24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 24.103 to support a recommended (or approved) value. (See appendix A to this part, section 24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A to this part, section 24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement owned by a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for a tenant-owned improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a).)

(d) *Special conditions for tenant-owned improvements.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the agency all of the tenant-owner's right, title, and interest in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency. However, the agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the agency cannot acquire the real property by condemnation;

(b) The condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the agency as such owner shall determine. The agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

The requirements in this subpart apply to the relocation of any permanently or temporarily displaced person, as defined at § 24.2(a). Any person who qualifies as a permanently or temporarily displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this part. (See appendix A to this part, section 24.202.)

(a) *Persons required to move temporarily.*

(1) Appropriate notices must be provided in accordance with § 24.203 and appropriate advisory services must be provided in accordance with § 24.205;

(2) For persons occupying a dwelling, at least one comparable dwelling, is made available prior to requiring a person to move, except in the case of an emergency move as described in § 24.204(b)(1), (2), or (3) (see appendix A, to this part, section 24.202);

(3) Similarly, if a person's business will be shut down due to a project which either requires the occupant to vacate the property or which denies physical access to the property, it may be temporarily relocated and reimbursed for all reasonable out of pocket expenses or must be determined to be permanently displaced at the agency's option;

(4) Payment is provided for all out-of-pocket expenses incurred in connection with the temporary relocation as the agency determines to be reasonable and necessary, associated with comparable replacement dwelling, and incidental to selecting a temporary comparable replacement dwelling. Such payments may include the reasonable and necessary costs of temporarily moving personal property from the real property and returning to the real property. Storage of the personal property may be allowed when approved by the displacing agency;

(5) A person's temporary move from their dwelling or business for the project may not exceed 12 months. The agency must contact any person who has temporarily moved from their dwelling or business when that temporary move has lasted for a period beyond 12 months because that person is considered permanently displaced and eligible as a displaced person. The agency shall offer such eligible persons all required relocation assistance benefits and services for permanently displaced persons. An agency may not deduct any temporary relocation assistance benefits previously provided when determining permanent relocation benefits eligibility; and

(6) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with § 24.208 is not eligible for temporary relocation assistance unless such denial of benefits would create an extremely unusual hardship to a designated family member in accordance with § 24.208(h).

(b) [Reserved]

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person who may be displaced or who may be required to move temporarily shall be furnished with a general written description of the agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced (or, if appropriate, required to move temporarily from his or her unit) for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);

(2) Informs the displaced person (or person required to move temporarily from his or her unit, if appropriate) that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the displaced person successfully relocate;

(3) Informs the displaced person (or person required to move temporarily from his or her dwelling when required by the Federal funding agency) that he or she will not be required to move without at least 90 days advance written notice (see paragraph (c) of this section), and informs any person to be

displaced from a dwelling, either permanently or temporarily (when required by the Federal funding agency), that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available;

(4) Informs the displaced person or person required to move temporarily that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments under this part, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, pursuant to § 24.208(h); and

(5) Describes to the displaced person (or persons required to move temporarily) their right to appeal the agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the earliest of: the date of a notice of intent to acquire, rehabilitate, and/or demolish (described in paragraph (d) of this section); the initiation of negotiations (defined in § 24.2(a)); the date that an agreement for voluntary acquisition becomes binding (defined in § 24.2(a)); or actual acquisition. When this occurs, the agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice* —

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The agency may issue the notice 90 days or earlier before it expects the person to be displaced.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (*See* § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the agency's determination shall be included in the applicable case file.

(d) *Notice of intent to acquire, rehabilitate, and/or demolish.* A notice of intent to acquire, rehabilitate, and/or demolish is an agency's written communication that is provided to a person to be displaced, including persons required to temporarily move, which clearly sets forth that the agency intends to acquire, rehabilitate, and/or demolish the property. A notice of intent to acquire, rehabilitate, and/or demolish establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance to the activity. (*See* § 24.2 (a).)

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be permanently displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(a)) has been made available to the person. Information on comparable replacement dwellings that were used in the determination process

must be provided to permanently displaced persons. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed in writing of its location;

(2) The person has sufficient time to negotiate and enter into a purchase or lease agreement for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the requirement in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5122);

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person to be displaced is required to move from the displacement dwelling for a temporary period because of an emergency as described in paragraph (b) of this section, the agency shall:

(1) Take whatever steps are necessary to assure that the person who is required to move from their dwelling is relocated to a DSS dwelling;

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the emergency move; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment; the date of displacement is the date the person moves from their dwelling due to the emergency.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, an agency shall plan Federal and federally assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study, which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households permanently or temporarily displaced. When an adequate supply of comparable housing is not expected to be available, the agency should consider housing of last resort actions.

(3) An estimate of the number, type, and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing or temporarily moving the businesses should be considered and addressed. Planning for permanently and temporarily displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(5) Consideration of any special relocation advisory services that may be necessary from the agency displacing a person and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an agency elects to consider using the duplicative provision in section 4635 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the Lead Agency will establish criteria and procedures for such use upon the request of the Federal Agency funding the program or project.

(c) *Relocation assistance advisory services* —

(1) *General.* The agency shall carry out a relocation assistance advisory program which satisfies the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq., as amended.*), and Executive Order 11063 (3 CFR, 1959-1963 Comp., p. 652), and offer the services described in paragraph (c)(2) of this section. If the agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine, for nonresidential (businesses, farm, and nonprofit organizations) displacements, the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced or, when determined to be necessary by the funding agency, temporarily displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

(A) The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

(B) Determination of the need for outside specialists in accordance with § 24.301(g)(13) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

(C) For businesses, an identification and resolution of personalty and/or realty issues. Every effort must be made to identify and resolve personalty and/or realty issues prior to, or at the time of, the appraisal of the property.

(D) An estimate of the time required for the business to vacate the site.

(E) An estimate of the anticipated difficulty in locating a replacement property.

(F) An identification of any advance relocation payments required for the move, and the agency's legal capacity to provide them.

(ii) Determine, for residential displacements, the relocation needs and preferences of each person to be displaced, or temporarily displaced when the funding agency determines it to be necessary, and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person and, when the funding agency determines it to be necessary, each temporarily displaced person.

(A) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(B) As soon as feasible, the agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403(a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(C) Where feasible, comparable housing shall be inspected prior to being made available to assure that it meets applicable standards (see § 24.2(a).) If such an inspection is not made, the agency shall notify the person to be displaced in writing of the reason that an inspection of the comparable was not made and, that if the comparable is purchased or rented by the displaced person, a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. (See appendix A to this part, section 24.205(c)(2)(ii)(C).)

(D) Whenever possible, minority persons, including those temporarily displaced, shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This does not require an agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See appendix A to this part, section 24.205(c)(2)(ii)(D).)

(E) The agency shall offer all persons transportation to inspect housing to which they are referred.

(F) Any displaced person that may be eligible for Government housing assistance at the replacement dwelling shall be advised of any requirements of such Government housing assistance program that would limit the size of the replacement dwelling (see § 24.2(a)), as well as of the long-term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

(iii) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (*See* § 24.6.)

(e) *Subsequent occupants.* Any person who occupies property acquired by an agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the agency.

§ 24.206 Eviction for cause.

(a) Eviction for cause must conform to applicable Federal, State, and local law. Any person who occupies the real property and is in lawful occupancy on the date of the initiation of negotiations is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that:

(1) The person received an eviction notice prior to the initiation of negotiations and as a result of that notice is later evicted; or

(2) The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

(b) For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project. (*See* appendix A to this part, section 24.206.)

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person or person required to move temporarily must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advanced payments.* If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, the agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.*

(1) All claims for a relocation payment shall be filed with the agency no later than 18 months after:

(i) For tenants, the date of displacement or temporary move.

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) The agency shall waive this time period for good cause.

(e) *Notice of denial of claim.* If the agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

(f) *No waiver of relocation assistance.* An agency shall not propose or request that a person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this part. (See appendix A to this part, section 24.207(f).)

(g) *Expenditure of payments.* Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

(h) *Deductions from relocation payments.* An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a person to satisfy any other obligation.

§ 24.208 Aliens not lawfully present in the United States.

(a) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

(1) In the case of an individual, that they are a citizen, or an alien who is lawfully present in the United States.

(2) In the case of a family, that each family member is a citizen or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

(3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is a citizen or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

(4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

(b) The certification provided pursuant to paragraphs (a)(1) through (3) of this section shall specify the person's status as a citizen or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this section shall be within the discretion of the Federal funding agency and, within those parameters, that of the agency carrying out such displacements.

(c) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be lawfully present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners. (See appendix A to this part, section 24.208(c).)

(d) The agency shall consider the certification provided pursuant to paragraph (a) of this section to be valid, unless the agency determines in accordance with paragraph (f) of this section that it is invalid based on a review of documentation or other information that the agency considers reliable and appropriate.

(e) Any review by the agency of the certifications provided pursuant to paragraph (a) of this section shall be conducted in a nondiscriminatory fashion. Each agency will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.

(f) If, based on a review of a person's documentation or other credible evidence, an agency has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination:

(1) For a person who has certified that they are an alien lawfully present in the United States, the agency shall obtain verification of the person's status by using the Systematic Alien Verification for Entitlements (SAVE) program administered by USCIS to verify immigration status.

(2) For a person who has certified that they are a citizen or national, if the agency has reason to believe that the certification is invalid, the agency shall request evidence of United States citizenship or nationality and, if considered necessary, verify the accuracy of such evidence with the issuer or other appropriate source.

(g) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the agency's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

(h) For purposes of paragraph (g) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in (see appendix A to this part, section 24.208(h)):

(1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;

(2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or

(3) Any other impact that the agency determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

(i) The certification referred to in paragraph (a) of this section may be included as part of the claim for relocation payments described in § 24.207.

(Approved by the Office of Management and Budget under control number 2105-0508.)

§ 24.209 Relocation payments not considered as income.

No relocation payment received by a displaced person or person required to move temporarily under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated as the Internal Revenue Code of 1986 (title 26, U.S.C.), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U.S.C. 301 *et seq.*) or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses.

(a) *General.*

(1) Any owner-occupant or tenant who qualifies as a displaced person (defined at § 24.2(a)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm, or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the agency determines to be reasonable and necessary.

(2) A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under this section to relocate the mobile home. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.502(a)(3), the homeowner-occupant is not eligible for payment for moving the mobile home but may be eligible for a payment for moving personal property from the mobile home.

(b) *Moves from a dwelling.* A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the methods in paragraphs (b)(1) and (2) of this section (eligible expenses for moves from a dwelling include the expenses described in paragraphs (g)(1) through (7) of this section):

(1) *Commercial move.* Moves performed by a professional mover.

(2) *Self-move.* Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* The Fixed Residential Moving Cost Schedule described in § 24.302.

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved and documented costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(c) *Moves from a mobile home.* Eligible expenses for moves from a mobile home include those expenses described in paragraphs (g)(1) through (7) of this section. In addition to the items in paragraph (a) of this section, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in paragraphs (g)(8) through (10) of this section. A displaced person's actual, reasonable, and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods:

(1) *Commercial move.* Moves performed by a professional mover.

(2) *Self-move.* Moves that may be performed by the displaced person in one or a combination of the following methods:

(i) *Fixed Residential Moving Cost Schedule.* The Fixed Residential Moving Cost Schedule described in § 24.302.

(ii) *Actual cost move.* Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff necessary for moving the residential personal property. Costs for moving personal property that requires special handling should not exceed the hourly market rate for a commercial specialist. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

(iii) *A moving cost estimate.* Prepared by a qualified agency staff person, as developed from the agency's thorough review of the personal property to be moved, and documented estimated costs for materials, equipment, and labor. Hourly labor rates should not exceed the cost paid by a commercial mover for moving staff. Costs for moving residential personal property that requires special handling should not exceed the hourly rate for a commercial specialist.

Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover. The cost of materials should equal those readily available locally.

(iv) *Commercial mover estimate.* Based on the lower of two bids from a commercial mover. Federal funding agencies may establish policies and procedures which require its grantees to calculate and subtract an estimated amount of overhead and profit from the moving cost bids to establish a reimbursement eligibility.

(d) *Moves from a business, farm, or nonprofit organization.* Eligible expenses for moves from a business, farm, or nonprofit organization include those expenses described in paragraphs (g)(1) through (7) and (11) through (18) of this section and § 24.303. Personal property as determined by an inventory from a business, farm, or nonprofit organization may be moved by one or a combination of the following methods:

(1) *Commercial move.* Based on the lower of two bids or estimates prepared by a commercial mover. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(2) *Self-move.* A self-move payment may be based on one or a combination of the following:

(i) The lower of two bids or estimates prepared by a commercial mover or qualified agency staff person. At the agency's discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate; or

(ii) Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and, equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover.

(iii) A qualified agency staff person may develop a move cost finding by estimating and determining the cost of a small uncomplicated nonresidential personal property move of $5,000 or less, with the written consent of the person. This estimate may include only the cost of moving personal property which does not require disconnect and reconnect and/or specialty moving services necessary for activities including crating, lifting, transportation, and setting of the item in place.

(e) *Personal property only.* Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm, or nonprofit organization include those expenses described in paragraphs (g)(1) through (7) and (18) of this section. (*See* appendix A to this part, section 24.301(e).)

(f) *Advertising signs.* The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

(g) *Eligible actual moving expenses.*

(1) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms, or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State, or local law, code, or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

(4) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person or person required to move temporarily under this part. Agencies may approve a payment for storage when the process of relocating from the acquired site to the replacement site is delayed for reasons beyond the control of the displaced person. Storage may not be longer than 12 months, starting at the date of vacation from the acquired site and ending when the replacement site becomes available. Agencies may approve storage for more than 12 months in unusual instances as justified, documented, and approved by the agency.

(5) Insurance for the replacement value of the property in connection with the move and necessary storage.

(6) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(7) A displaced tenant is entitled to reasonable reimbursement, as determined by the agency, for actual expenses not to exceed $1,000, incurred for rental replacement dwelling application fees or credit reports required to lease a replacement dwelling.

(8) Other moving-related expenses that are not listed as ineligible under paragraph (h) of this section, as the agency determines to be reasonable and necessary.

(9) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hookup" charges.

(10) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

(11) The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced or temporarily moved from a mobile home park or the agency determines that payment of the fee is necessary to effect relocation.

(12) Any actual, reasonable, or necessary costs of a license, permit, fee, or certification required of the displaced person to operate a business, farm, or nonprofit at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees, or certification.

(13) Professional services as the agency determines to be actual, reasonable, and necessary for:

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(14) Relettering signs, replacing stationery on hand at the time of displacement or temporary move, and making reasonable and necessary updates to other media that are made obsolete as a result of the move. (See appendix A to this part, section 24.301(g)(14).)

(15) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of:

(i) If the item is currently in use, the lesser of:

(A) The estimated cost to move the item up to 50 miles and reinstall; or

(B) The fair market value in place of the item, as is for continued use, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the agency determines that such effort is not necessary.

(ii) If the item is not currently in use: The estimated cost of moving the item 50 miles, as is.

(iii) When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices. (See appendix A of this part, section 24.301(g)(15).)

(16) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(17) If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(18) Searching for a replacement location.

(i) A business or farm operation is entitled to reimbursement for actual expenses, not to exceed $5,000, as the agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(A) Transportation;

(B) Meals and lodging away from home;

(C) Time spent searching, based on reasonable salary or earnings;

(D) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such sites;

(E) Time spent in obtaining permits and attending zoning hearings; and

(F) Expenses negotiating the purchase of a replacement site based on a reasonable salary or fee, including actual, reasonable, and necessary attorney's fees.

(ii) The Federal funding agency may, on a program wide or project basis, allow a one-time payment of $1,000 for search expenses with minimal or no documentation as an alternative payment method to paragraph (g)(18)(i) of this section. (See appendix A to this part, section 24.301(g)(18).)

(19) When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the agency, the allowable moving cost payment shall not exceed the lesser of: the amount which would be received if the property were sold at the site; or the replacement cost of a comparable quantity delivered to the new business location. Examples of personal property covered by this paragraph (g)(19) include, but are not limited to, stockpiled sand, gravel, minerals, metals, and other similar items of personal property as determined by the agency.

(h) *Ineligible moving and related expenses.* The following is a nonexclusive listing of payments a displaced person is not entitled to:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. (However, this part does not preclude the computation under § 24.401(c)(2)(iii));

(2) Interest on a loan to cover moving expenses;

(3) Loss of goodwill;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.304(a)(6);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency;

(9) Expenses for searching for a temporary or replacement dwelling which include costs for mileage, meals, lodging, time and professional real estate broker or attorney's fees;

(10) Physical changes to the real property at the temporary or replacement location of a business or farm operation except as provided in paragraph (g)(3) of this section and § 24.304(a);

(11) Costs for storage of personal property on real property already owned or leased by the displaced person or person to be moved temporarily;

(12) Refundable security and utility deposits; and

(13) Cosmetic changes to a replacement or temporary dwelling, which are not required by State or local law, such as painting, draperies, or replacement carpet or flooring.

(i) *Notification and inspection (nonresidential).* The agency shall inform the displaced person and persons required to move temporarily, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the person as set forth in § 24.203. To be eligible for payments under this section the person must:

(1) Provide the agency reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, the agency may waive this notice requirement after documenting its file accordingly.

(2) Permit the agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(j) *Transfer of ownership (nonresidential).* Upon request and in accordance with applicable law, the claimant shall transfer to the agency ownership of any personal property that has not been moved, sold, or traded in.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence or a dormitory style room is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses under § 24.301. This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by FHWA and published in the FEDERAL REGISTER on a periodic basis. The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room or a person whose residential move is performed by an agency at no cost to the person shall be limited to the amount stated in the most recent edition of the Fixed Residential Moving Cost Schedule. In addition, an agency may approve storage for a displaced person's personal property for a period of up 12 months as a reasonable, actual and necessary moving expense under § 24.301(g)(4).

(a) An agency may determine that the storage of personal property is a reasonable and necessary moving expense for a displaced person under this part. The determination shall be based on the needs of the displaced person; the nature of the move; the plans for permanent relocation; the amount of time available for the relocation process; and, whether storage will facilitate relocation. If the agency determines that storage is reasonable and necessary in conjunction with a fixed cost moving payment made under this section, the agency shall pay the actual, reasonable, and necessary storage expenses in accordance with § 24.301(g)(4). However, regardless of whether storage is approved, the Fixed Residential Move Cost Schedule provides a one-time payment for one move from the displacement dwelling to the replacement dwelling, or storage facility. Consequently, displaced persons must be fully informed that reimbursement of costs to move the personal property to storage and the cost of approved storage, if applicable, represent a full reimbursement of their eligibility for moving costs under this part. (*See* appendix A to this part, section 24.302.)

(b) [Reserved]

(c) The Fixed Residential Moving Cost Schedule is available at the following URL: *www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm.*

§ 24.303 Related nonresidential eligible expenses.

The following expenses, in addition to those provided by § 24.301 for moving personal property, shall be provided if the agency determines that they are actual, reasonable, and necessary:

(a) Connection to available utilities from the replacement site's property line to improvements at the replacement site. (*See* appendix A to this part, *Section 24.303(a).*)

(b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing or feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the agency a reasonable pre-approved hourly rate may be established. (See appendix A to this part, section 24.303(b).)

(c) Impact fees and one-time assessments for anticipated heavy utility usage, as determined necessary by the agency. (See appendix A to this part, section 24.303(c).)

§ 24.304 Reestablishment expenses—nonresidential moves.

In addition to the payments available under §§ 24.301 and 24.303, a small business, farm, or nonprofit organization is entitled to receive a payment, not to exceed $33,200, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the agency. They include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs for exterior signing to advertise the business.

(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

(5) Advertisement of replacement location.

(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:

(i) Lease or rental charges;

(ii) Personal or real property taxes;

(iii) Insurance premiums; and

(iv) Utility charges, excluding impact fees.

(7) Other items that the agency considers essential to the reestablishment of the business.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(3) Interest on money borrowed to make the move or purchase the replacement property.

(4) Payment to a part-time business in the home which does not contribute materially, defined at § 24.2(a), to the household income.

(5) Construction costs for a new building at the business replacement site, or costs to construct, reconstruct or rehabilitate an existing building. (See appendix A to this part, section 24.304(b)(5).)

§ 24.305 Fixed payment for moving expenses—nonresidential moves.

(a) ***Business.*** A displaced business may be eligible to choose a fixed payment in lieu of the payments for both actual moving and related expenses, as well as actual reasonable reestablishment expenses provided by §§ 24.301, 24.303, and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. The displaced business is eligible for the payment if the agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move and the business vacates or relocates from its displacement site;

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the agency determines that it will not suffer a substantial loss of its existing patronage;

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the agency, and which are under the same ownership and engaged in the same or similar business activities;

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

(5) The business is not operated at the displacement site solely for the purpose of renting the site to others; and

(6) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement. (*See* § 24.2(a).)

(b) ***Determining the number of businesses.*** In determining whether two or more displaced legal entities constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) ***Farm operation.*** A displaced farm operation (defined at § 24.2(a)) may choose a fixed payment, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $53,200. In the case of a partial acquisition of land, which was a farm operation before the acquisition, the fixed payment shall be made only if the agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) ***Nonprofit organization.*** A displaced nonprofit organization may choose a fixed payment of $1,000 to $53,200, in lieu of the payments for both actual moving as well as related expenses and actual reasonable reestablishment expenses, if the agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test unless the agency demonstrates otherwise. Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. (*See* appendix A to this part, section 24.305(d).)

(e) ***Average annual net earnings of a business or farm operation.*** The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate (*see* appendix A to this part, section 24.305(e), for sample calculations). Average annual net earnings may be based upon a different period of time when the agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence, which the agency determines is satisfactory. (*See* appendix A to this part, section 24.305(e).)

§ 24.306 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by an agency causes the relocation of a utility facility (defined at § 24.2(a)) and the relocation of the facility creates extraordinary expenses for its owner, the agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way;

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement;

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the agency;

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a requirement for the payment of utility moving costs that is applicable to the agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the agency is in accordance with State law.

(b) For the purposes of this section, the term extraordinary expenses mean those expenses which, in the opinion of the agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See appendix A to this part, section 24.306.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 90-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates (except that the agency may extend such 1 year period for good cause):

(i) The date the displaced person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court; or

(ii) The date the agency's obligation under § 24.204 is met.

(b) *Amount of payment.* The replacement housing payment for an eligible 90-day homeowner-occupant may not exceed $41,200 (*see also* § 24.404). The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within 1 year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to such person, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section;

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) or (e) of this section, as applicable; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (f) of this section.

(c) *Price differential* —

(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling and site (*see* § 24.2(a)) to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the DSS replacement dwelling actually purchased and occupied by the displaced person.

(2) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;

(ii) The cost of making the unit a DSS replacement dwelling (*see* § 24.2(a));

(iii) The current fair market value for residential use of the replacement dwelling site (*see* appendix A to this part, section 24.401(c)(2)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section. Except as otherwise provided in paragraph (e) of this section, the payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d)(1) through (5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (See appendix A to this part, section 24.401(d).) In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

(e) *Reverse mortgages.* The payment for replacing a reverse mortgage shall be the difference between the existing reverse mortgage balance and the minimum dollar amount necessary to purchase a replacement reverse mortgage which will provide the same or similar terms as that for the reverse mortgage on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on reverse mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (e)(1) through (4) of this section shall apply to the computation of the mortgage interest differential payment required under paragraph (d) of this section, which payment shall be contingent upon a new reverse mortgage being purchased for the replacement dwelling.

(1) The payment shall be based on the difference between the reverse mortgage balance and the minimum amount needed to qualify for a reverse mortgage with the similar terms as the reverse mortgage on the displacement dwelling; however, in the event the displaced person obtains a reverse mortgage with a smaller principal balance than the reverse mortgage balance(s) computed in the buydown determination, the payment will be prorated and reduced accordingly. (*See* appendix A to this part, section 24.401(e).) The reverse mortgage balance shall be that balance which existed 180 days prior to the initiation of negotiations or the reverse mortgage balance on the date of acquisition, whichever is less.

(2) The interest rate on the new reverse mortgage used in determining the amount of the eligibility shall not exceed the prevailing rate for reverse mortgages currently charged by mortgage lending institutions for owners with similar amounts of equity in their units in the area in which the replacement dwelling is located.

(3) Purchaser's points and loan origination, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the reverse mortgage balance on the displacement dwelling plus any amount necessary to purchase the new reverse mortgage.

(4) The displaced person or their representative shall be advised of the approximate amount of this eligibility and the conditions that must be met to receive the reimbursement as soon as the facts relative to the person's current reverse mortgage are known; the payment shall be made available at or near the time of closing on the replacement dwelling in order to purchase the new reverse mortgage as intended.

(f) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Professional home inspection, certification of structural soundness, and termite inspection.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, *e.g.,* title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales, or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the agency determines to be incidental to the purchase.

(g) *Rental assistance payment for 90-day homeowner.* A 90-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with § 24.402(b)(1), except that the limit of $9,570 does not apply, and is disbursed in accordance with § 24.402(b)(3). Under no circumstances would the rental assistance payment exceed the amount that could have been received under paragraph (b)(1) of this section had the 90-day homeowner elected to purchase and occupy a comparable replacement dwelling. Payments allowed under § 24.402(c) are not applicable.

§ 24.402 Replacement housing payment for 90-day tenants and certain others.

(a) *Eligibility.* A tenant or homeowner displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, as computed in accordance with paragraph (b) of this section, or down payment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented or purchased and occupied a DSS replacement dwelling within 1 year (unless the agency extends this period for good cause) after the date he or she moves from the displacement dwelling.

(b) *Rental assistance payment* —

(1) *Amount of payment.* An eligible displaced person under paragraph (a) of this section who rents a replacement dwelling is entitled to a payment not to exceed $9,570 for rental assistance. (*See* § 24.404) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the agency (for an owner-occupant, use the fair market rent for the displacement dwelling; for a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances);

(ii) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development (HUD) in its most recently published Uniform Relocation Act Income Limits ("Survey"). The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the Survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(iii) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

Note 1 to paragraph (b)(2): The Survey's income limits are updated annually and are available on FHWA's website at *https://www.fhwa.dot.gov/real_estate/low_income_calculations/index.cfm*.

(3) *Manner of disbursement.* A rental assistance payment may, at the agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(f), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's replacement housing.

(c) *Down payment assistance payment* —

(1) *Amount of payment.* An eligible displaced person under paragraph (a) of this section who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the agency's discretion, a down payment assistance payment that is less than $9,570 may be increased to any amount not to exceed $9,570. However, the payment to a displaced person shall not exceed the amount the homeowner would receive under § 24.401(b) if he or she met the 90-day occupancy requirement. If the agency elects to provide the maximum payment of $9,570 as a down payment, the agency shall apply this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner-occupant under § 24.401(a) is not eligible for this payment. (*See* appendix A to this part, section 24.402(c) for payments to less than 90-day occupants and for a discussion of those who fail to meet the 90-day occupancy requirements.)

(2) *Application of payment.* The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling. (*See* § 24.2(a).)

(1) If available, at least three comparable replacement dwellings shall be considered and the payment computed on the basis of the dwelling most nearly representative of, and equal to or better than, the displacement dwelling. (*See* appendix A to this part, section 24.403(a)(1).)

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.*g.,* the site is significantly smaller or does not contain a swimming pool), the contributory value of such attribute as determined by the agency shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. (*See* appendix A to this part, section 24.403(a)(2).)

(3) If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the agency determines that the remainder has economic value to the owner, the agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. (*See* appendix A to this part, section 24.403(a)(3).)

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(5) When there are multiple occupants of one displacement dwelling and if two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(6) An agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(7) For mixed-use and multifamily properties, if the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered the acquisition cost when computing the replacement housing payment.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing the initial payment from escrow, the agency or its designated representative shall inspect the replacement dwelling and determine whether it is a DSS dwelling as defined at § 24.2(a).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling;

(2) Purchases and rehabilitates a substandard dwelling;

(3) Relocates a dwelling which he or she owns or purchases;

(4) Constructs a dwelling on a site he or she owns or purchases;

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military duty, or hospital stay, as determined by the agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(g) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (*See* § 24.3.)

§ 24.404 Replacement housing of last resort.

(a) *Determination to provide replacement housing of last resort.* Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the agency shall provide additional or alternative assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable replacement housing in the program or project area;

(ii) The resources available to provide comparable replacement housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole;

(ii) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total program or project costs.

(b) ***Basic rights of persons to be displaced.*** Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The agency shall not require any displaced person to accept a dwelling provided by the agency under the procedures in this part (unless the agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) ***Methods of providing comparable replacement housing.*** Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing replacement housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A replacement housing payment under this section may be provided in installments or in a lump sum at the agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation and, if necessary, rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers for persons with disabilities.

(2) Under special circumstances, consistent with the definition of a comparable replacement dwelling in § 24.2(a), modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling (*see* appendix A to this part, section 24.404(c)), including upgraded, but smaller replacement housing that is DSS and adequate to accommodate individuals or families

displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with § 24.2(a), comparable replacement housing.

(3) The agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§ 24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the displaced person's financial means. (See § 24.2(a).) Such assistance shall cover a period of 42 months.

Subpart F—Mobile Homes

§ 24.501 Applicability.

(a) *General.* This subpart describes the requirements governing the provision of replacement housing payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to:

(1) A moving expense payment in accordance with subpart D of this part; and

(2) A replacement housing payment in accordance with subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings. Moving cost payments to persons occupying mobile homes are covered in § 24.301(g)(1) through (11).

(b) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

§ 24.502 Replacement housing payment for a 90-day mobile homeowner displaced from a mobile home and/or from the acquired mobile home site.

(a) *Eligibility.* An owner-occupant displaced from a mobile home is entitled to a replacement housing payment, not to exceed $41,200, under § 24.401 if:

(1) The person occupied the mobile home on the displacement site for at least 90 days immediately before:

(i) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

(ii) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

(iii) The date of the agency's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs (a)(3)(i) through (iv) of this section;

(2) The person meets the other basic eligibility requirements at § 24.401(a)(2); and

(3) The agency acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property, but the owner is displaced from the mobile home because the agency determines that the mobile home:

(i) Is not, and cannot economically be made decent, safe, and sanitary;

(ii) Cannot be relocated without substantial damage or unreasonable cost;

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) *Replacement housing payment computation for a 90-day owner that is displaced from a mobile home.* The replacement housing payment for an eligible displaced 90-day owner is computed as described at § 24.401(b) incorporating the following, as applicable:

(1) If the agency acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.

(2) If the agency does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph (a)(1)(iii) of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner occupant's net cost to purchase a replacement mobile home (*i.e.,* purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the agency's selected comparable mobile home less the agency's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

(3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(c) *Replacement housing payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site.* If the displacement mobile homeowner-occupant's site is leased or rented, a 90-day owner-occupant is entitled to a rental assistance payment computed as described in § 24.402(b). This rental assistance replacement housing payment may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied, with any replacement housing payment attributable to the mobile home, toward the purchase of a replacement mobile home and the purchase or lease of a site or the purchase of a conventional decent, safe, and sanitary dwelling.

(d) *Owner-occupant not displaced from the mobile home.* If the agency determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described at § 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section as applicable.

§ 24.503 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home and/or site is eligible for a replacement housing payment, not to exceed $9,570, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the agency, but the agency determines that the occupant is displaced from the mobile home because of one of the circumstances described at § 24.502(a)(3).

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4.

§ 24.602 Certification application.

An agency wishing to proceed on the basis of a certification may request an application for certification from the Lead Agency Director, Office of Real Estate Services, HEPR-1, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. The completed application for certification must be approved by the governor of the State, or the governor's designee, and must be coordinated with the Federal funding agency, in accordance with application procedures.

§ 24.603 Monitoring and corrective action.

(a) The Federal Lead Agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) The Lead Agency may require periodic information or data from affected Federal or State agencies.

(c) A Federal agency may, after consultation with the Lead Agency, and notice to and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations. The Federal agency shall initiate consultation with the Lead Agency at least 30 days prior to any decision to rescind approval of a certification under this subpart. The Lead Agency will also inform other Federal agencies, which have accepted a certification under this subpart from the same State agency and will take whatever other action that may be appropriate.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the Lead Agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the Lead Agency may require periodic information or data from affected Federal or State agencies.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2 Definitions and acronyms.

Section 24.2(a) Comparable replacement dwelling, (ii). The requirement that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling, means that it must perform the same function and provide the same utility. The section states that it need not possess every feature of the displacement dwelling. However, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling. Another example is when a displaced person accepts an offer of Government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displacement dwelling.

Section 24.2(a) Comparable replacement dwelling, (vii). The definition of comparable replacement dwelling requires that a comparable replacement dwelling for a person, who is not receiving assistance under any Government housing program before displacement, must be currently available on the private market without any subsidy under a Government housing program.

Section 24.2(a) Comparable replacement dwelling, (ix). If a person accepts assistance under a Government housing assistance program, the rules of that program governing the size of the dwelling apply, and the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing and associated utilities after the applicable Government assistance has been applied.

Section 24.2(a) Decent, safe, and sanitary, (i)(A). Even where Federal or local law does not mandate adherence to standards requiring the abatement of deteriorating paint, including lead-based paint and lead-based paint dust, it is strongly recommended that they be considered as a matter of public policy.

Section 24.2(a) Decent, safe, and sanitary, (v). Some local code standards for occupancy do not require kitchens. However, selection of comparable dwellings that provide a kitchen is recommended. The FHWA believes this is good practice and in most cases should be easily achievable. If the displacement dwelling had a kitchen, the comparable dwelling must have a kitchen. If the displacement dwelling did not have a kitchen but local code standards for occupancy require one, the comparable dwelling must contain a kitchen. If the displacement dwelling did not have a kitchen and local code standards for occupancy do not require one, an agency does not have to provide a kitchen in the comparable dwelling. If a kitchen is provided in the comparable dwelling, at a minimum it must contain a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

Section 24.2(a) DSS—Persons with a disability, (vii). Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the agency is required to address comparability for persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs. Requirements include but are not limited to Fair Housing Act (FHA), 42 U.S.C. 3604 (f)(3)(A)-(C), and/or HUD's regulations for newly constructed assisted housing under section 504, 24 CFR 8.22.

Section 24.2(a) Displaced person—Occupants of a temporary, daily, or emergency shelter, (iii)(L). Shelters can serve many purposes, and each will have specific rules and requirements as to who can occupy or use the shelter and whether prolonged and continuous occupancy is allowed. Persons who are occupying a shelter that only allows overnight stays and requires the occupants to remove their personal property and themselves from the premises on a daily basis and that offers no guarantee of reentry in the evening typically would not meet the definition of displaced persons as used in this part, nor would the shelter meet the definition of dwelling as used in this part. Persons who live at the shelter on a continuous, prolonged, or permanent basis may be considered displaced. These determinations are fact-based determinations. Facts that might assist in the determination include whether the person is employed because they work to pay their rent or there may be a residential landlord-tenant relationship. The FHWA expects it would be unusual to displace a shelter occupant who meets the criteria for making a determination that he or she is a displaced person. Agencies should make reasonable effort to provide information about proposed vacation date or other plans for the shelter to relocate. Providing advisory assistance to shelter occupants may be a challenge due to the transient nature of shelter occupancy, but such assistance must be provided to the maximum extent practicable.

Section 24.2(a) Dwelling site. This definition ensures that the computations of replacement housing payments are accurate and realistic

(a) when the dwelling is located on a larger than normal site,

(b) when mixed-use properties are acquired,

(c) when more than one dwelling is located on the acquired property, or

(d) when the replacement dwelling is retained by an owner and moved to another site.

Section 24.2(a) Household income (exclusions). Household income for purposes of this part does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children program. For a more detailed list of income exclusions see FHWA, Office of Real Estate Services website.[1] Contact the Federal agency administering the program if there is a question on whether to include income from a specific program.

Section 24.2(a) Initiation of negotiations. This section provides a special definition for acquisition and displacements under Public Law 96-510 or Superfund. The order of activities under Superfund may differ slightly in that temporary relocation may precede acquisition. Superfund is a program designed to clean

[1] *http://www.fhwa.dot.gov/realestate/.*

up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert individual owners and tenants to potential health or safety threats and to offer to temporarily relocate them while additional information is gathered. If a decision is later made to permanently relocate such persons, those who had been temporarily relocated under Superfund authority would no longer be on site when a formal, written offer to acquire the property was made, and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, FHWA has provided a definition of initiation of negotiation, which is based on the date the Federal Government offers to temporarily relocate an owner or tenant from the subject property.

Section 24.2(a) Initiation of negotiations, Tenants, (iv). Tenants who occupy property that may be voluntarily acquired, without recourse to the use of the power of eminent domain, must be fully informed as to their potential eligibility for relocation assistance when negotiations are initiated. If negotiations fail to result in a binding agreement the agency should notify tenants that negotiations have failed to result in a binding agreement and that the agency has concluded its efforts to acquire the property. If a tenant is not readily accessible, as the result of a disaster or emergency, the agency must provide these notifications and document its efforts in writing. As used in this definition, agreements such as options to purchase and conditional purchase and sale agreements are not considered binding agreements until all conditions to the agency's obligation to purchase the real property have been satisfied. A right to purchase property is not binding agreement because it does not require the State to purchase the property necessary for the project unless they elect to do so. A binding agreement as used in this definition is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees, without further election, to make that purchase. If negotiations fail to result in a binding agreement the agency should notify tenants that negotiations have failed to result in a binding agreement and that the agency has concluded its efforts to acquire the property. If a tenant is not readily accessible, as the result of a disaster or emergency, the agency must make a good faith effort to provide these notifications and document its efforts in writing.

Applications for many Federal programs permit site control to be demonstrated by option contracts. Once the application for Federal financial assistance is approved, the acquiring agency must execute the purchase contract to receive the Federal financial assistance for the program or project. Therefore, if the purchase agreement satisfies the site control requirements of the Federal agency providing the Federal financial assistance, then the application date is the date of the initiation of negotiations for that program or project. Setting the initiation of negotiations at the earlier of the date of application or when all conditions to the obligation to purchase the real property have been satisfied, ensures that residents of a project are treated fairly, given that application approval and the ultimate sale of the property could be as long as six months to a year after the application date taking into account the application review and processing periods.

A binding agreement as used in this section is a legally enforceable document in which the property owner agrees to sell certain property rights necessary for a project and the agency agrees to that purchase for a specified consideration.

Section 24.2(a) Mobile home. In this part, the term "mobile home" will continue to be used to include those homes that are defined at 24 CFR part 3280 as a "manufactured home."

Regulations at 24 CFR 3280.2 defines "manufactured home." The term "mobile home" was changed to "manufactured home" in 24 CFR part 3280 in 1979.

The following examples provide additional guidance on the types of mobile homes that can be found acceptable as replacement dwellings for persons displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the

following criteria are met: the recreational vehicle is purchased and occupied as the "primary" place of residence; it is located on a purchased or leased site and connected to or has available all necessary utilities for functioning as a housing unit on the date of the agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe, and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as DSS dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

Section 24.3 No duplication of payments. This section prohibits an agency from making a payment to a person under this part that would duplicate another payment the person receives under Federal, State, or local law. The agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the agency's knowledge at the time a payment is computed.

Section 24.5 Manner of Notices and Electronic Signatures. Property owners or occupants must voluntarily elect to receive notices, offers, correspondence and information via electronic methods. Alternatively, property owners or occupants may request delivery of notices, offers, correspondence and information via certified or registered first class mail, return receipt requested, instead of electronic means. Agencies must accommodate the property owner's or occupant's preference. The FHWA continues to believe that providing notices, offers, correspondence and information by either first-class mail or electronic means should not be used as a substitute for face-to-face meetings, but rather as a supplemental means of communication that accommodates an owner's or occupant's preference.

An agency must be able to demonstrate to the Federal funding agency the ability to securely document the notice delivery and receipt confirmation in order to receive approval from the Federal funding agency for use of electronic delivery of notices, offers, correspondence, information, and electronic signature. Additional minimum safeguards that the agency must put in place prior to delivering notices, offers, correspondence, and information by electronic means and for the use of electronic signatures are included in the regulation at § 24.5. Prior to the use of electronic delivery or electronic signature, there must be an agency process or procedure outlined in writing and approved by the Federal funding agency that details the requirements and rules the agency will follow when using electronic means for delivery of notices, offers, correspondence, and information. Should an agency decide to allow electronic signature the agency must develop procedures to ensure that signatures can be verified and documented appropriately. The FHWA understands that certain documents that are essential to the conveyance of the real property interests may not allow for electronic signature(s).

Agencies must determine and document instances when electronic deliveries of notices or use of electronic signature are appropriate. An example of an appropriate use of electronic delivery of notices, offers, correspondence, and information might be to notify a property owner of his or her right to accompany an appraiser as required at § 24.102(c)(1). Other appropriate uses may be to secure a release of mortgage or to confirm a property owners' receipt of the acquisition and relocation brochures.

An example of when the use of electronic delivery or electronic signatures may not be appropriate is when the document being signed requires notarization or other similar verification. Electronic delivery of notices, offers, correspondence, and information may not always be a good option for relocation assistance where many actions are conducted in person at the displacement or replacement dwelling or business and require advisory services to be provided as part of the process. The FHWA notes that relocation assistance in part requires ongoing and continuous advisory services be provided (§ 24.205(c)). This may be best accomplished by face to face meetings during which the displaced person may more easily raise questions, request assistance, or indicate a need for additional advisory assistance.

These examples are not intended to be all-inclusive, nor are they exclusive of other opportunities to use this tool. For additional information, the specific Federal regulations that set out the format and examples for an electronic signature can be found at 37 CFR 1.4(d)(2). The regulations in 37 CFR 1.4(d)(2) fall under the purview of the United States Patent and Trademark Office, which provides examples of what is considered to be proper format in a variety of electronically signed documents.

Section 24.9(c) Reports. Moving Ahead for Progress in the 21st Century Act (MAP-21) amended 42 U.S.C. 4633(b)(4) to require that each Federal agency subject to the Uniform Act submit an annual report describing activities conducted by the Federal agency. The FHWA believes that such a report that details activity provides a good indication of program health and scope.

FHWA realizes that not all agencies subject to this reporting requirement currently have the ability to collect all information requested on the reporting form. However, Federal agencies may elect to provide a narrative report that focuses on their respective efforts to improve and enhance delivery of Uniform Act benefits and services. Narrative report information would include information on training offered, reviews conducted, or technical assistance provided to recipients.

Agencies are not required by the Uniform Act to keep records of their efforts to improve the housing conditions of economically disadvantaged persons. However, agencies must ensure that their relocations are carried out in a manner which is consistent with the requirements of section 4621 of the Uniform Act.

Section 24.11 Adjustment of Limits and Payments. FHWA will use the Consumer Price Index for All Urban Consumers (CPI-U) Seasonally Adjusted to determine if inflation, cost of living or other factors indicate that an adjustment to relocation benefits is warranted.

Sample calculation:

Assume CPI-U was 110.0 when the final rule was published. The fixed payment for nonresidential moving expenses has a ceiling of $53,200. During a subsequent evaluation after publication of the final rule, the CPI-U is calculated to be 115.5.

Divide the new index by the base year index = 115.5/110.0 = 1.050 or 5 percent. This means there has been a 5 percent increase in prices and the fixed payment for nonresidential moving expenses ceiling should be increased 5 percent.

Calculate fixed payment benefit ceiling = $53,200 × 1.05 = $55,860.

Subpart B—Real Property Acquisition

For Federal eminent domain purposes, the terms "fair market value" (as used throughout this subpart) and "market value," which may be the more typical term in private transactions, are synonymous.

Section 24.101(a) Direct Federal program or project. All the requirements in subpart B of this part (real property acquisition) apply to all direct acquisitions for Federal programs and projects by Federal agencies, except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service.

Section 24.101(b)(1)(i)(B). This section provides that, for programs and projects receiving Federal financial assistance described in § 24.101(b)(1), agencies are to inform the owner(s) or their designated representative(s) in writing of the agency's estimate of the fair market value for the property to be acquired.

Section 24.101(b)(1)(i)(B). While this part does not require an appraisal or waiver valuation for these transactions, agencies may still decide that an appraisal or waiver valuation is necessary to support their determination of the fair market value of these properties, and, in any event, persons developing a waiver valuation must have sufficient knowledge of the local market (§ 24.102(c)(2)(ii)(B)) in order to establish some reasonable basis for their determination of fair market value. In addition, some of the concepts inherent in Federal Program appraisal practice are appropriate for these determinations. It would be appropriate for agencies to adhere to project influence restrictions, as well as guard against discredited "public interest value" valuation concepts.

After an agency has established an amount it believes to be the fair market value of the property and has notified the owner of this amount in writing, an agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by this part, it would be entirely appropriate for agencies to ensure that estimates of fair market value are documented and shared with the property owner during negotiations, and to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of fair market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

There may be an extraordinary circumstance in which use of eminent domain may be necessary. In those instances, the Federal funding agency may consider granting a waiver of regulations in this part under authority of § 24.7. The Federal funding agency will make a fact based, case by case determination as to whether a waiver of this part's requirements may be allowed.

Section 24.101(b)(1)(ii). The term "general geographic area" is used to clarify that an agency carrying out a project or program can achieve the purpose of the project or program by purchasing any of several properties that are not necessarily contiguous or are not limited to a specific group of properties.

Section 24.101(b)(1)(ii) and (iii)—nexus. The funding agency should review the acquisition records and consider the relevant facts for the properties acquired to determine if the intent of the acquisition was to incorporate the real property into, or in some other way support or otherwise advance, a Federal or federally assisted program or project. If the property was acquired by other means (*e.g.,* local government acquisition via tax delinquency or exaction), documentation may be provided to show that the property was not acquired with the intent of including it in a Federal or federally assisted program or project. However, if at the time of acquisition, there is a nexus between the property's acquisition and a Federal or federally assisted program or project and if the intent was to acquire the property for a Federal or federally assisted program or project, the Uniform Act requirements must be followed to maintain Federal eligibility. If the agency is certain that eminent domain authority will not be used for the intended project or program, then the limited requirements of voluntary acquisition would apply. The agency must also consider that acquiring the property and applying only the voluntary acquisition requirements would in most cases preclude the agency from later using eminent domain authority to acquire the property should voluntary acquisitions not result in an agreement to sell the property to the agency. *(See also* discussion in 24.101(b)(1)(i)(B) of this appendix.)

Section 24.101(b)(1)(iii) Private entities who acquire property to create wetlands. Private entities who acquire property to create wetlands for wetland banking purposes cannot be required to comply with the Uniform Act if there is no planned or anticipated use by a Federal or federally assisted program or project. Establishment of such wetland banks, which may include a Federal or federally funded project or program among its future users, do not necessarily trigger application of the Uniform Act requirements.

There is not one answer that fits all third-party (private entities) environment mitigation scenarios. These determinations are fact-based by nature. However, the key issue is whether the acquisition of property for wetlands is specifically for mitigation of impacts on Federal or federally assisted programs or projects. When making a fact-based determination, the purpose of the wetland bank, the existence of any agency funding for the bank or commitment to use the bank, and whether the wetland bank restricts who may purchase mitigation credits from it, are among the factors to consider in determining applicability of Uniform Act requirements.

If an agency provides Federal financial assistance for creating a wetland bank or has a prior agreement that the banked wetlands will be used to mitigate impacts on a specific Federal or federally assisted programs or projects, then the property acquisitions for the wetland bank must conform to Uniform Act requirements. If an agency contracts with a private third-party provider which does not use the power of eminent domain, the acquisition may qualify for treatment as a voluntary acquisition and only the limited requirements as set forth in § 24.101(b)(1) would apply.

If the wetland bank proposal has received necessary permits and was established without any Federal funding participation prior to use of Federal funds for acquisition of wetland mitigation credits and was not planned to be used only for mitigation of impacts due to Federal and federally assisted projects and programs, the Uniform Act requirements do not apply. The actions which the wetland bank developer took in carrying out their private activity can be viewed with regard to the Uniform Act in the same manner as other actions taken by private parties without the anticipated or actual benefit of Federal financial assistance.

Section 24.101(c) Less-than-full-fee interest in real property. Section 24.101(c) provides a benchmark beyond which the requirements of the subpart clearly apply to leases.

Section 24.102(b) Notice to owner. In the case of condominiums and other types of housing with common or community areas, notification should be given to the appropriate parties. The appropriate parties could be a condominium or homeowner's board, a designated representative, or all individual owners when common or community property is being acquired for the project.

Section 24.102(c)(2) Appraisal, waiver thereof, and invitation to owner. The purpose of the appraisal waiver provision is to provide agencies a technique to avoid the costs and time delay associated with appraisal requirements for uncomplicated valuation problems within the low fair market value limits established in this part. In most cases, uncomplicated valuation problems are considered to be those involving unimproved strips of land. Acquisitions involving improvements, damages, changes of highest and best use, or significant costs to cure are considered to be complicated and, as such, are beyond the application of waiver valuations as contemplated in this part. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more complex work.

The agency representative making the determination to use the waiver valuation option must have enough understanding of appraisal principles, techniques, and use of appraisals to be able to determine whether the proposed acquisition is uncomplicated and within the low fair market value limits in this part.

Waiver valuations are not appraisals as defined by the Uniform Act and this part; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this part. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. Agencies should put procedures in place to ensure that waiver valuations are accurate and that they are consistent with the unit values on the project as determined by appraisals and appraisal reviews. The agency must have a reasonable basis for the waiver valuation and an agency official must still establish an amount believed to be just compensation to offer the property owner(s) (see § 24.102(d)).

The definition of "appraisal" in the Uniform Act and waiver valuation provisions of the Uniform Act and this part are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others.

Section 24.102(d) Establishment of offer of just compensation. The initial offer to the property owner may not be less than the amount of the agency's approved appraisal or waiver valuation of the fair market value of the property but may exceed that amount if the agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures. An offer should be adequately presented to an owner, and the owner should be properly informed. Personal, face-to-face contact should take place, if feasible, but this section does not require such contact in all cases.

This section also requires that the property owner be given a reasonable opportunity to consider the agency's offer and to present relevant material to the agency. In order to satisfy the requirement in § 24.102(f), agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but 30 days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity.

In some jurisdictions, there is pressure to initiate formal eminent domain procedures at the earliest opportunity because completing the eminent domain process, including gaining possession of the needed real property, is very time consuming. The provisions of § 24.102(f) are not intended to restrict this practice, so long as it does not interfere with the reasonable time that must be provided for negotiations, described in § 24.102(f), and the agencies adhere to the Uniform Act ban on coercive action Section 4651(7) of the Uniform Act and § 24.102(h)).

If the owner expresses intent to provide an appraisal report, agencies are encouraged to provide the owner and/or their appraiser a copy of agency appraisal requirements and inform them that their appraisal should be based on those requirements.

Section 24.102(i) Administrative settlement. This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an agency official delegated this authority. Appraisers, including review appraisers, shall not be unduly influenced or coerced to adjust an estimate of value for the purpose of justifying such settlements (see § 24.102(n)(2)). Such actions are contrary to the requirements of this part and to the overarching goal of providing just compensation.

Section 24.102(j) Payment before taking possession. It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental. Section 4651(6) of the Uniform Act limits what an agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the agency on short notice. Such rent may not exceed "the fair rental value of the property to a short-term occupier." Generally, the agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.102(n) Conflict of interest. The overall objective is to minimize the risk of fraud, waste, and abuse while allowing agencies to operate as efficiently as possible. There are three parts to the provision in § 24.102(n).

The first provision is the prohibition against having any interest in the real property being valued by the appraiser (for an appraisal), the valuer (for a waiver valuation), or the review appraiser (for an appraisal review).

The second provision is that no person functioning as a negotiator for a project or program can supervise or formally evaluate the performance of any appraiser, waiver valuation preparer, or review appraiser performing appraisal, waiver valuation, or appraisal review work for that project or program. The intent of this provision is to ensure appraisal and/or waiver valuation independence and to prevent inappropriate influence. It is not intended to prevent agencies or recipients from providing appraiser and/or waiver valuers with appropriate project information or participating in determining the scope of work for the appraisal or waiver valuation. For a program or project receiving Federal financial assistance, the Federal funding agency may waive this requirement if it would create a hardship for the agency or recipient. The intent is to accommodate Federal financial aid recipients that have a small staff where this provision would be unworkable.

The third provision is to minimize situations where administrative costs exceed acquisition costs. Section 24.102(n) provides that the same person may perform a waiver valuation or appraisal and negotiate that acquisition, if the waiver valuation or appraisal estimate amount is $15,000 or less. Agencies or recipients are not required to use those who perform a waiver valuation or appraisal of $15,000 or less to negotiate the acquisition. All appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $15,000, or less.

The third provision has been expanded to allow Federal funding agencies to permit use of a single agent for values of more than $15,000, but less than $35,000, but, as a safeguard, requires that an appraisal and appraisal review be done if the waiver valuation preparer or the appraiser will also act as the negotiator. Agencies or recipients desiring to exercise this option must request approval in writing from the Federal funding agency. The requesting agency shall have a separate and distinct quality control process for implementing this authority in place and set forth in the written procedures approved by the Federal funding agency. Agencies and recipients may delegate this authority to a subrecipient to use their approved authority if the subrecipient has an agency or recipient approved oversight mechanism to assure proper use and review of the authority.

Section 24.103 Criteria for Appraisals. The term "requirements" is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) "standards." Although this section discusses appraisal requirements, the definition of "appraisal" itself at § 24.2(a) includes appraisal performance requirements that are an inherent part of this section.

The term "Federal and federally assisted program or project" is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.

Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally assisted programs or projects are located in this part. These are the basic appraisal requirements for Federal and federally assisted programs or projects. However, agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

The appraisal requirements in § 24.103(a) are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with Standards Rules 1, 2, 3, and 4 of the USPAP. Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This "consistent" relationship was more formally recognized in Office of Management and Budget (OMB) Bulletin 92-06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable. Appraisals performed for Federal and federally assisted real property acquisition must follow the requirements in this part. Compliance with any other appraisal requirements is not within the purview of this part. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and the requirements in this part may be achieved by using the Scope of Work Rule and the Jurisdictional Exception Rule of USPAP, where applicable.

The term "scope of work" defines the general parameters of the appraisal. It reflects the needs of the agency and the requirements of Federal and federally assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an agency official who is competent to both represent the agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, whether it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in § 24.103(a)(2)(i) through (v) and address them as appropriate.

Section 24.103(a)(1). The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

Section 24.103(a)(2). All relevant and reliable approaches to value are to be used. However, where an agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.

Section 24.103(b) Influence of the project on just compensation. As used in this section, the term "project" means an undertaking which is planned, designed, and intended to operate as a unit.

When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(d)(1). The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Section 24.104 Review of appraisals. The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires additional skills. The review appraiser should possess both appraisal technical abilities and the ability to comprehend and communicate to the appraiser the agency's real property valuation needs, while recognizing and respecting the professional standards to which an appraiser is required to adhere.

Agency review appraisers typically perform a role in land acquisition project management in addition to technical appraisal review. They are often involved in early project development by assisting the agency with project cost estimates for alternative project scenarios, identifying particularly complicated valuation problems that may need additional valuation specialties. In addition, they often provide the acquiring agency preliminary determinations about valuation problems, scope of work considerations, and types of appraisal reports necessary to complete a project. Later they may be involved in devising the scope of work statements and participate in making appraisal assignments to fee and/or staff appraisers. They are also mentors and technical advisors, especially on agency policy and requirements, to appraisers, both staff and fee. In addition, review appraisers are frequently technical advisors to other agency officials.

Section 24.104(a). Section 24.104(a) states that the review appraiser is to review the appraiser's presentation and analysis of market information and that it is to be reviewed against § 24.103 and other applicable requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal review is to be a technical review by an appropriately qualified review appraiser. The qualifications of the review appraiser and the level of explanation of the basis for the review appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's performance of an acceptable appraisal.

In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself.

If the agency intends that the staff review appraiser approve the appraisal (as the basis for the establishment of the amount believed to be just compensation) or establish the amount the agency believes is just compensation, she/he must be specifically authorized by the agency to do so. If the review appraiser is not specifically authorized to approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), or establish the amount believed to be just compensation, that authority remains with another agency official.

Section 24.104(b). In performing and reporting an independent approved or recommended value, the review appraiser may reference any acceptable resource, including acceptable parts of any appraisal, including an otherwise unacceptable appraisal. When a review appraiser performs their review assignment and reports an independent value different from the conclusions in the appraisal being reviewed, while retaining the appraisal review, that independent value also becomes the approved appraisal of the fair market value for Uniform Act section 4651(3) purposes. It is within agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on the property.

*Section 24.104(*c*).* Before acceptance of an appraisal, the review appraiser must create a review report that documents the reviewer's determination that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal. See § 24.102(d).

At the agency's discretion, for a low value property requiring only a simple appraisal solution, the review appraiser's recommendation (or approval), endorsing the appraiser's report, may be determined to satisfy the requirement for the review appraiser's signed report and certification.

Section 24.106(a). Expenses incidental to transfer of title to the agency. Generally, the agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the agency's intent to make such arrangements. Such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.202 Applicability and Section 24.205(c) Relocation Advisory Services to be provided. In extraordinary circumstances, when a displaced person is not readily accessible, the agency must make a good faith effort to comply with §§ 24.202 and 24.205(c) and the Uniform Act and document its efforts in writing.

Section 24.204 Availability of comparable replacement dwelling before displacement.

Section 24.204(a) General. Section 24.204(a) requires that no one may be required to move from a dwelling without a comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, where possible, three or more comparable replacement dwellings shall be made available. Thus, the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (*e.g.,* when the local housing market does not contain three comparable dwellings) may the agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(a). As part of the relocation planning process agencies should, to the extent practical, identify relocations that may require additional time for advisory services and coordination for their relocations. Such relocations may include the elderly, those with medical needs, and those in public housing or other federally subsidized housing. In each of these examples, the nature of the relocation means that the unique needs of the relocated person should be determined early and that the relocation agent should make full use of available social services and other program support (examples include local transportation services that may be available in certain areas, financial support available from local, Federal, and State agencies, and community support services that may be available) in considering and developing a relocation plan.

Section 24.205(c)(2)(ii)(C). Where feasible, comparable replacement housing must be inspected. The comparable replacement dwellings should be inspected by a walk through and physical interior and exterior inspection before being offered to a displaced person. Reliance on an exterior visual inspection or examination of a multiple listing service (MLS) listing, in most cases, does not constitute a complete DSS inspection. If an inspection is not possible, the displaced person must be informed in writing that an inspection was not possible and be provided an explanation of why the inspection was not possible. They also must be informed in writing that if the uninspected comparable is selected as a replacement dwelling a replacement housing payment may not be made until the replacement dwelling is inspected and determined to be decent, safe, and sanitary. Should the selected comparable later be found to not be DSS then the agency's policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling,* are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Each agency should clearly inform displaced persons that a DSS inspection as required by this part is only a brief inspection to ensure that certain requirements as they relate to the definition of DSS in this part are being met. These DSS inspections are not the same as a full home inspection similar to that which a home inspector would be hired to do.

Agencies may develop more restrictive DSS inspection requirements which may include required DSS inspections for selected comparable dwellings, all comparable dwellings used to establish a displaced persons replacement housing payment eligibility, or other more stringent DSS inspection requirements for comparable dwellings.

Section 24.205(c)(2)(ii)(D) This section emphasizes that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas to improve their housing condition when they relocate.

The focus on those displaced from areas of minority concentration in this section has been consistently applied for almost 40 years. The FHWA believes that where practical and feasible, agencies carrying out relocations should provide those who live in areas of minority concentration opportunities to improve their living situations.

To the extent practical, agencies should maintain adequate written documentation of efforts made to locate such comparable replacement housing.

Section 24.206 Eviction for cause. An eviction necessitated by project related non-compliance (e.*g.,* failure to move or relocate when instructed, or to cooperate in the relocation process) does not negate a person's entitlement to relocation payments and other assistance set forth in this part.

Section 24.207 General Requirements—Claims for relocation payments. Section 24.207(a) allows an agency to make a payment for low cost or uncomplicated nonresidential moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate, as provided for in § 24.301(d)(1).

While § 24.207(f) prohibits an agency from proposing or requesting that a person waive his or her rights or entitlements to relocation assistance and payments, an agency may accept a written statement from the person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated and may not be coerced by the agency.

Section 24.208(c) Aliens not lawfully present in the United States—computing relocation payments if some members of a displaced family are present lawfully but others are present unlawfully.

If a person who is a member of a family being displaced is not eligible for and does not receive Uniform Act benefits because he or she is not lawfully in the United States, that person's income shall not be excluded from the computation of family income. The person's income is counted unless the agency is certain that the ineligible person will not continue to reside with the family. To exclude the ineligible person's income would result in a windfall by providing a higher relocation payment.

There are two different methods for computing relocation payments in situations where some members of a displaced family are present lawfully, but others are present unlawfully. For moving expenses, the payment is to be based on the proportion of lawfully present occupants to the total number of occupants. For example, if four out of five members of a family to be displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received. Similarly, unlawful occupants are not counted as a part of the family for RHP calculations. Thus, a family of five, one of whom is a person not lawfully

present in the U.S., would be counted as a family of four. The comparable replacement dwelling for the family would reflect the makeup of the remaining four persons, and the RHP would be computed accordingly.

A "pro rata" approach to an RHP calculation is not permitted unless use of the two permitted methods discussed in this section would create an exceptional and extremely unusual hardship (consistent with Pub. L. 105-117; codified at 42 U.S.C. 4605). Following such a calculation would require that the agency disregard alien status for comparability determination, select a comparable and then apply a percentage to the RHP amount. A "pro rata" calculation approach for RHP may result in a higher RHP eligibility than the displaced persons would otherwise be eligible to receive. The "pro rata" approach of providing a percentage of the calculated RHP eligibility is contrary to the requirements of the Uniform Act and this part. A correct example of a calculation would be:

Household of seven (including one alien not lawfully present individually occupying one bedroom.)

Displacement dwelling—4 BR unit, with rent/utilities of $1,200/month

Housing requirements for all lawful occupants (six) is a 3 BR unit

Comparable dwelling

3 BR unit with rent/utilities of $1,300/month

Calculation of RHP under § 24.208(c) (alien not lawfully present excluded)

$1,300 (comparable)−$1,200 (displacement unit) = $100 RHP × 42 months = $4,200 RHP

Section 24.208(h) The meaning of the term "exceptional and extremely unusual hardship" focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the agency and does not lend itself to an absolute standard applicable in all situations.

When considering whether a hardship exemption is appropriate, an agency may examine only the impact on an alien's spouse, parent, or child who is a citizen, or an alien lawfully admitted for permanent residence in the United States. In determining who is a spouse, agencies should use the definition of that term under State or other applicable law.

A standard of hardship involves more than the loss of relocation payments and/or assistance alone. Also, income alone (for example, measured as a percentage of income spent on housing) would not make the denial of benefits an "exceptional and extremely unusual hardship" and qualify for a hardship exemption. In keeping with the principle of allowing agencies maximum reasonable discretion, FHWA believes the decision regarding what documentation is required to support a claim of hardship is one best left to the Federal funding agency, as long as the decision is handled in a nondiscriminatory manner.

Subpart D—Payments for Moving and Related Expenses

Section 24.301 Payment for Actual Reasonable Moving and Related Expenses.

Section 24.301(e) Personal property only. Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business, farm, nonprofit or residence will not be acquired and the business can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; or, personal property that is stored on vacant land that is to be acquired. For such a residential personal property move, there may be situations in which the costs of obtaining moving bids may exceed the cost to move. In those situations, the agency may allow an eligibility determination and payment based upon the use of the "additional room" category of the Fixed Residential Move Cost Schedule at *www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm*.

For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the agency may obtain estimates from qualified movers to use as the standard in determining the payment.

Section 24.301(g)(3) Modifications to personal property or to utilities. Construction costs for a new building at the business replacement site, costs to substantially reconstruct a building, or rehabilitate a building are generally ineligible for reimbursement as are expenses for disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property.

Section 24.301(g)(14) Relettering signs and replacing stationery. This may include changes to the content of other media that need correcting due to the displacement, such as DVDs and CDs. This may also include modifications to websites that would modify and edit contact and new location information made necessary because of the move. Agencies will need to determine when these costs are actual, reasonable, and necessary.

Section 24.301(g)(15)(i) This section only applies when equipment is not being moved to replacement site and therefore it becomes an actual loss of tangible personal property. Under § 24.301(g)(15)(i), if the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists and shall not include the cost of code-required betterments or upgrades that may apply at the replacement site.

As prescribed in the part, the allowable in-place value estimate (§ 24.301(g)(15)(i)(B)) and moving cost estimate must reflect only the "as is" condition and installation of the item at the displacement site. The in-place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site.

The in-place value estimate may also not include installation costs for machinery or equipment that is not operable or not installed at the displacement site (§ 24.301(g)(15) (ii)). Value in place can be obtained by hiring a machinery and equipment (M&E) appraiser or value can be estimated via websites available for M&E valuations. An example of one resource is The Association of Machinery and Equipment Appraisers (AMEA) website.[2] The AMEA is a nonprofit professional association whose mission is to accredit certified equipment appraisers. Another example of available resources can be found on the website of The American Society of Appraisers, a multi-discipline, nonprofit, international organization of professional appraisers. They maintain a separate web page for machinery and equipment appraisers.[3] Should an agency find itself in need of a machinery and equipment appraisal, a web search for either "machinery and equipment appraisers" or "machinery and equipment appraiser's organizations" will provide a number of resources which can be used to find the necessary services and resources. It is important to note that FHWA does not endorse or recommend any organization, society, or professional group. The information provided in this appendix is strictly informational.

Section 24.301(g)(18) Searching expenses. In special cases where the agency determines it to be reasonable and necessary, certain additional categories of searching costs may be considered for reimbursement. These include those costs involved in investigating potential replacement sites and the time of the business owner, based on salary or earnings, required to apply for licenses or permits, zoning changes, and attendance at zoning hearings. Necessary attorney's fees required to obtain such licenses or permits are also reimbursable. Expenses negotiating the purchase of a replacement business site are also reimbursable based on a reasonable salary or earnings rate. In those instances when such additional costs to investigate and acquire the site exceed $5,000, the agency may consider requesting a waiver of the cost limitation under the § 24.7 waiver provision. Such a waiver should be subject to the approval of the Federal funding agency in accordance with existing delegation of authority. As an alternative to the preceding sentences in this section, Federal funding agencies may determine that it is appropriate to allow for payment of searching expenses of $1,000 with minimal or no documentation under this part. It is expected that each Federal funding agency will consider and address the potential for waste, fraud, or abuse and may develop additional requirements to implement this provision. Such requirements may include development of procedures or by requiring specific changes or inclusions in the written procedures approved by the Federal funding agency.

Search expenses may be incurred anytime the business anticipates it may be displaced, including prior to project authorization or the initiation of negotiations. However, such expenses cannot be reimbursed until the business has received the notice in § 24.203(b) and only after the agency has determined such costs to be actual, reasonable, and necessary as a result of the displacement.

Section 24.302 —The occupant of a seasonal residence could receive a payment based upon the Fixed Residential Move Cost Schedule or actual moving expenses in accordance with § 24.301. Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than personal property moving expenses.

Section 24.303(a). Actual, reasonable, and necessary reimbursement for connection to available utilities are for the necessary improvements to utility services currently available at the replacement property. Examples include

(a) a Laundromat business that requires a larger service tap than the typical business service tap already on the property, and

(b) a business that requires an upgrade or enhancement of the existing single phase electrical service to provide 3-phase electrical service.

Section 24.303(b) Professional services. If a question should arise as to what is a "reasonable hourly rate," the agency should compare the rates of other similar professional providers in that area.

Section 24.303(c) Impact fees and one-time assessments for anticipated heavy utility usage.

Section 24.303(c) limits impact fees or one-time assessments to those levied for anticipated heavy utility usage to utilities, e.*g.,* water, sewer, gas, and electric. Impact fees and one time assessments that may be levied on a nonresidential relocated person in their replacement location for other major infrastructure

[3] *http://www.appraisers.org/Disciplines/Machinery-Technical-Specialties*.

[2] *http://www.amea.org/*.

construction or use such as roads, fire stations, regional drainage improvements, and parks are not eligible. Providing information on the potential eligibility of impact fees for anticipated heavy utility usage is an important advisory service.

Section 24.304(b)(5) Ineligible expenses. The cost of constructing, reconstructing, or rehabilitating a replacement structure, is a capital expenditure, normally beyond the scope of § 24.304(a)(2) and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction, reconstruction, or rehabilitation of a replacement structure, an agency or recipient may request a waiver of § 24.304(b)(5) under the provisions of § 24.7. An example of such an instance would be in a rural area where there are no suitable buildings available and the new construction, reconstruction, or rehabilitation of a replacement structure is the only option that will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of new construction, reconstruction, or rehabilitation of a replacement structure will be considered an eligible reestablishment expense subject to the regulatory limit on such payment.

In markets where existing and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities such as heat, light, and water, and sewer available. These buildings or units are referred to as shells. The cost of constructing, reconstructing, or rehabilitating a shell is not an eligible reestablishment expense because the shell is considered a capital real estate improvement (a capital asset). However, this determination does not preclude the consideration by an agency of certain modifications to an existing replacement business building as reestablishment costs if the agency applies a waiver under § 24.7.

A certain degree of construction costs are generally expected by the market because shells are designed to be customized by the tenant. An agency using a waiver may determine costs for these types of improvements or modifications are eligible for reimbursement, up to the amount of $33,200. Such costs may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases, and similar items, if required by Federal, State, or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business. By contrast, a structure or shell which is dilapidated or is in disrepair and which requires construction, reconstruction, or rehabilitation would not be eligible for reimbursement under this part.

Section 24.305 Fixed payment for moving expenses—nonresidential moves.

Section 24.305(a) Business. If a business elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the business elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

Section 24.305(c) Farm operation. If a farm operation elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the farm elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, and reestablishment expenses.

Section 24.305(d) Nonprofit organization. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales, or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items, as well as fundraising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

If a nonprofit organization elects the fixed payment for moving expenses (in lieu of payment) option, the payment represents its full and final payment for all relocation expenses. Should the nonprofit organization elect to receive this payment, it would not be eligible for any other relocation assistance payments including actual moving or related expenses, or reestablishment expenses.

Section 24.305(e) Average annual net earnings of a business or farm operation. Section 24.305(a)(6) requires that the business contribute materially to the income of the displaced person during the 2 taxable years prior to displacement. This does not mean that the business needed to be in existence for a minimum of 2 years prior to displacement to be eligible for this payment.

If a business has been in operation for only a short period of time (*i.e.,* 6 months) prior to displacement, the fixed payment would be based on the net earnings of the business at the displacement site for the actual period of operation projected to an annual rate. If a business was not in operation for a full 2 years, the existing net earnings income data should be used to project what the net earnings could be if the business were in operation for a full 2 years. If the business is seasonal, the business' operating season net income represents the full annual income for the purposes of calculating this benefit.

For Example:

(1) Business in operation for only 6 months earned $ 10,000.

Computation: ($10,000/6) × 12 = $20,000 annual net earnings × 2 years = $40,000 divided by 2 = $20,000; Eligibility = $20,000. (Average annual net earnings.)

(2) Business in operation 18 months earned $20,000.

Computation: $20,000 divided by 18 months = $1,111 per month × 24 months = $26,664 divided by 2 years = $13,332; Eligibility = $13,332 (Average annual net earnings)

(3) Business is seasonal—open summer only for 4 months and earns $5,000.

Computation: $5,000 was the seasonal net earnings 1 year and $6,000 was the seasonal net earnings a second year. $11,000 divided by 2 = $5,500; Eligibility = $5,500. (Average annual net earnings)

If the average annual net earnings of the displaced business, farm, or nonprofit organization are determined to be less than $1,000, even $0 or a negative amount, the minimum payment of $1,000 shall be provided (49 CFR 24.305(a)).

Section 24.306 Discretionary utility relocation payments. Section 24.306(c) describes the issues that the agency and the utility facility owner must agree to in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in 23 CFR part 645, subpart A, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 90-day homeowner-occupants.

Section 24.401(a)(2). An extension of eligibility may be granted if some event beyond the control of the displaced person such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances causes a delay in occupying a decent, safe, and sanitary replacement dwelling.

Section 24.401(c)(2)(iii) Price differential. The provision in § 24.401(c)(2)(iii) to use the current fair market value for residential use does not mean the agency must have the property appraised. Any reasonable method for arriving at the fair market value may be used.

Section 24.401(d) Increased mortgage interest costs. The provision in § 24.401(d) sets forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the down payment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. This payment is commonly known as the "buydown."

The agency must know the remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points, and term for the new mortgage to compute the increased mortgage interest costs. If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons.

SAMPLE COMPUTATION

Old Mortgage:	
Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	$458.22
Interest rate (percent)	7
New Mortgage:	
Interest rate (percent)	10
Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee. However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

Amount to be financed to maintain monthly payments of $458.22 at 10% = $42,010.18.

Calculation:	
Remaining Principal Balance	$50,000.00
Minus Annual Monthly Payment (principal and interest)	−42,010.18
Increased mortgage interest costs	7,989.82
3 points on $42,010.18	1,260.31
Total buydown necessary to maintain payments at $458.22/month	9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buydown shall be prorated accordingly. If the actual mortgage obtained in our example were $35,000, the buydown payment would be $7,706.57 ($35,000 divided by $42,010.18 = .8331; $9,250.13 multiplied by .83 = $7,706.57).

The agency is obligated to inform the displaced person of the approximate amount of this payment and to advise the displaced person of the interest rate and points used to calculate the payment.

The FHWA has an online tool to calculate increased mortgage interest costs for fixed, and interest only loans at *https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcalcs/*.

Section 24.401(e) Reverse Mortgage. The provision in § 24.401(e) sets forth the factors to be considered to estimating an amount, after paying off the existing balance, sufficient to purchase a replacement reverse mortgage that provides a tenure or term payment, line of credit, or lump-sum disbursement. The agency must know the value of the acquired dwelling, existing balance of displacement reverse mortgage, remaining equity, and price of the selected comparable or actual replacement dwelling, to compute the estimated reverse mortgage supplement payment for a replacement reverse mortgage. In cases where there is a tenure or term payment additional information such as the age of the youngest borrower, amounts of the tenure payment, amount and remaining term of term payment and the current interest rate, is needed to calculate the payment and will require the assistance of a reverse mortgage broker.

Below are four scenarios for relocation payment eligibilities. As you will note, the eligibility is the same in each case; however, benefit amounts will vary depending on the individual's circumstance and existing reverse mortgage terms. This appendix also contains a list of other possible agency options, should a displaced person elect to use them; however, they are not recommended by FHWA because they do not place the person into a replacement reverse mortgage.

Situation 1—Owner has sufficient remaining equity to obtain a replacement reverse mortgage for purchase.

Situation 2—Owner's existing reverse mortgage has a tenure disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 3—Owner's existing reverse mortgage has a term disbursement payment and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

Situation 4—Owner's existing reverse mortgage is a line of credit and there is not sufficient remaining equity to obtain a replacement reverse mortgage.

The displaced homeowner may be eligible for the following relocation payments:

• *A price differential payment in accordance with § 24.401(c).*

The owner would be eligible for a price differential payment (the difference between the comparable replacement dwelling and the acquisition cost of the displacement dwelling).

• *The administrative costs and incidental expenses necessary to establish the new reverse mortgage.*

Incidental costs incurred with a replacement reverse mortgage are reimbursable and fall into three categories—Mortgage insurance premium (MIP), loan origination fee, and closing costs.

• *A mortgage interest differential payment if the homeowner incurs a higher interest rate on the new reverse mortgage.*

The payment would be based on the difference between the displacement adjustable-rate mortgage (ARM) cap rate at the initiation of negotiations and the available ARM cap rate and those rates would be used as the components to calculate the MIDP in accordance with the sample calculation provided at section 24.401(d) of this appendix. The agency must advise the displaced person of the interest rate used to calculate the payment. Note that most reverse mortgages are monthly adjustable rate mortgages, so any interest differential payment would be minimal.

• *If the displaced homeowner elects to relocate into rental housing rather than remain a homeowner, then the agency will calculate relocation assistance payments in accordance with § 24.401(g).*

For example, the agency computes a rental assistance payment of $10,000 for the owners based on a comparable replacement rental dwelling. When the owners settle with the agency, the owner will pay off the balance of the reverse mortgage and retain any remaining equity in the property. They are eligible for the rental assistance payment when they rent and occupy the DSS replacement dwelling.

Note: In all situations, if the displaced homeowner elects to relocate into rental housing rather than remain homeowner, then the agency will calculate relocation assistance payments in accordance with § 24.401(g).

Note: If the existing reverse mortgage was a lump-sum or line-of-credit which has been exhausted, then the agency is not under obligation to replace those amounts, but only to replace the reverse mortgage with a reverse mortgage with terms and equity similar to the displacement reverse mortgage.

Other agency options (not recommended unless elected by the displaced person, since they do not place the person into the same situation as the displacement reverse mortgage provided):

• A direct loan as set forth in § 24.404 under housing of last resort.

• A life estate interest in a comparable replacement dwelling under replacement housing of last resort.

• Agency purchases a comparable replacement dwelling and retains ownership and conveys a leasehold interest to the owner for his/her lifetime.

• Agency offers a comparable replacement rental dwelling to convert the homeowner-occupant to tenant status.

Section 24.402 Replacement Housing Payment for 90-day tenants and certain others.

Section 24.402(b)(2) Low income calculation example. The Uniform Act requires that an eligible displaced person who rents a replacement dwelling is entitled to a rental assistance payment calculated in accordance with § 24.402(b). One factor in this calculation is to determine if a displaced person is classified as having "low income," as defined by the U.S. Department of Housing and Urban Development's annual survey of income limits for the Public Housing and Section 8 Programs. To make such a determination, the agency must:

(1) Determine the total number of members in the household (including all adults and children);

(2) locate the appropriate table for income limits applicable to the Uniform Act for the State in which the displaced residence is located (found at: *https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm*);

(3) from the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA),* or Primary Metropolitan Statistical Area (PMSA)* in which the displacement property is located; and

(4) locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income (defined at § 24.2(a)) which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered "low income." For example:

Tom and Mary Smith and their three children are being displaced. The information obtained from the family and verified by the agency is as follows:

Tom Smith, employed, earns $21,000/yr.

Mary Smith, receives disability payments of $6,000/yr.

Tom Smith, Jr., 21, employed, earns $10,000/yr.

Mary Jane Smith, 17, student, has a paper route, earns $3,000/yr. (Income is not included because she is a dependent child and a full-time student under 18)

Sammie Smith, 10, full-time student, no income.

Total family income for five persons is: $35,000 + 12,000 + $18,000 = $65,000

The displacement residence is located in the State of Maryland, Caroline County. The low income limit for a five person household is: $77,950. (2022 Income Limits)

This household is considered "low income."

* A complete list of counties and towns included in the identified MSAs and PMSAs can be found under the bulleted item "Income Limit Area Definition" posted on the FHWA's website at: *https://www.fhwa.dot.gov/real_estate/*.

Section 24.402(c) Down payment assistance. The down payment assistance provisions in § 24.402(c) limit such assistance to the amount of the computed rental assistance payment for a tenant. It does, however, provide the latitude for agency discretion in offering down payment assistance that exceeds the computed rental assistance payment, up to the $9,570 statutory maximum. This does not mean, however, that such agency discretion may be exercised in a selective or discriminatory fashion. The agency should develop a policy or requirement that affords equal treatment for displaced persons in like circumstances and this or requirement should be applied uniformly throughout the agency's programs or projects.

For the purpose of this section, a displaced homeowner who elects to rent a replacement dwelling may not receive more than the eligibility the homeowner would have received as an eligible displaced homeowner purchasing a home.

Section 24.404(c)(3) requires the agency to provide assistance to a displaced owner or tenant occupant who fails to meet the 90-day requirement for length of occupancy of the displacement dwelling, prior to the initiation of negotiations, which is required for eligibility to receive a replacement housing payment under §§ 24.401 and 24.402.

Section 24.403(a)(1) Determining cost of comparable replacement dwelling. The requirement that if available at least 3 comparable dwellings should be considered when selecting a comparable dwelling when determining and calculating a replacement housing payment eligibility. Consideration, examination, or the viewing of an MLS listing does not equate to the inspection of the comparable dwelling required by § 24.205(c)(2)(ii)(C), which requires that at a minimum, the comparable dwelling should be physically inspected. When an inspection is not feasible, the displaced person must be informed in writing that a physical inspection of the interior or exterior was not performed, the reason that the inspection was not performed, and that if the comparable is selected as a replacement dwelling a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary. Should the selected comparable dwelling later be found to not be DSS then the agency's policies and procedures must ensure that the requirements of § 24.2(a), definition of *decent, safe and sanitary dwelling,* are met. If the agency does not recalculate the eligibility in these instances, FHWA does not believe that the requirement to ensure comparable housing is made available to the displaced person can be met.

Some Federal funding agency requirements, such as those of the Department of Housing and Urban Development, prohibit reliance on an exterior visual inspection when selecting a comparable replacement dwelling or as part of determining the cost of comparable replacement dwellings. This is because the physical condition standards for such governmental housing assistance programs could not be met without an in-person physical inspection.

Section 24.403(a)(2) Carve Out of a Major Exterior Attribute. When determining the cost of a replacement dwelling, this section requires that the contributory value of a major exterior attribute, as determined in the real property valuation, be subtracted from the acquisition price of the displacement dwelling for purposes of computing the replacement housing payment if the comparable replacement dwelling lacks the major exterior attribute. The adjustment to the value of the displacement dwelling for the purpose of computing a replacement housing payment eligibility when a major exterior attribute is not available in the comparable replacement housing on the open market is often referred to as a "carve out." Examples of such major exterior attributes may include land in excess of that typical in size for the neighborhood, a swimming pool, shed, or garage. Use of a carve out allows agencies to ensure comparable dwellings are available to the displaced person. The displaced person has received just compensation for the carved out attribute and may decide to use that compensation to replace the attribute. However, it should be noted that some carved out attributes, acreage as one example, cannot always be replaced in the

immediate market and a displaced person may then have to decide whether they want to expand their search area and reconsider their desired replacement home location. The following are examples of the calculation process.

(Example A)

RHP Computation for Carve Out of a Major Exterior Attribute of a Displacement Property's Land in Excess of a Typical Lot:

Value of residential displacement real property on a larger lot than typical site for the neighborhood	*$200,000*
Minus the value of displacement property's land in excess of a typical site & not in comparable housing	*15,000*
Adjusted value of the displacement real property less carve out of the excess land	*185,000*
List Price of the Selected Comparable Housing	*210,000*
Minus the adjusted value of the displacement real property resulting from carve out of the excess land	*185,000*
Replacement Housing Payment Price Differential Payment Eligibility	*25,000*

(Example B)

RHP Computation for Carve Out of a Major Exterior Attribute of Displacement Property's Inground Swimming Pool:

Value of residential displacement real property with an inground swimming pool	*$250,000*
Minus the contributory value of displacement property's inground swimming pool not in the comparable	*14,000*
Adjusted value of the displacement real property less carve out of the inground swimming pool	*236,000*
List Price of the Selected Comparable Housing	*245,000*
Minus the adjusted value of the displacement real property less the inground swimming pool carve out	*236,000*
Replacement Housing Payment Price Differential Payment Eligibility	*11,000*

Section 24.403(a)(3) Additional rules governing replacement housing payments. The economic value to the owner of a remainder may be as an actual buildable lot for sale to an adjoining property owner, or for some other purpose for which the agency attributes an economic value to the owner. When allowed for under applicable law, a single offer that includes the value of the remainder property should be made. The purpose of making an offer to purchase the remainder is to allow for an RHP calculation and benefit determination that includes the value of the remainder as part of the compensation offered to the owner

for acquisition, whether the property owner sells the remainder or choses to retain it. Should a property owner decide to retain a remainder then he would be responsible for the value of the remainder when he purchases his replacement property. Example B of this section shows the effect that a property owner's decision to retain a remainder or a State's inability to, or election not to, make an offer to purchase the remainder would have on the calculation of benefits.

The price differential portion of the replacement housing payment would be the difference between the comparable replacement dwelling and the agency's highest written acquisition offer. In the following examples, the before value of the typical residential dwelling and lot is $180,000; the remnant is valued at $15,000, and the part needed for the project (including the dwelling) is valued at $165,000, the comparable replacement dwelling is valued at $200,000. The price differential would be calculated as follows in the two scenarios:

(Example A) Agency Offers To Acquire Remainder

Comparable Replacement Dwelling		$200,000
Before value of parcel	180,000	
Minus: Remainder Value	15,000	
Acquisition of Part Needed	165,000	
Agency's highest written offer		180,000
Price Differential Payment Eligibility		20,000

(Example B) Agency Does Not Offer To Acquire Remainder

Comparable Replacement Dwelling		$200,000
Before value of parcel	180,000	
Minus: Remainder Value (owner retains)	15,000	
Acquisition of Part Needed	165,000	
Agency's highest written offer for part needed		165,000
Price Differential Payment Eligibility		35,000

Section 24.404 Replacement housing of last resort.

Section 24.404(b) Basic rights of persons to be displaced. Section 24.404(b) affirms the right of a 90-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(a). The agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a

replacement dwelling than the agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing comparable replacement housing. Section 24.404(c) emphasizes the use of cost effective means of providing comparable replacement housing. The term "reasonable cost" is used to highlight the fact that while innovative means to provide housing are encouraged, they should be cost-effective. Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may involve variations from the usual methods of obtaining comparability. However, such variation should never result in a lowering of housing standards, nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling, but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller, decent, safe, and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Federal agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Act. If the exact numbers are not easily available, an agency may provide what it believes to be a reasonable estimate.
2. *Report period.* Activities shall be reported on a Federal fiscal year basis, *i.e.,* October 1 through September 30.
3. *Where and when to submit report.* Submit a copy of this report to the Lead Agency as soon as possible after September 30, but not later than November 15. Lead Agency address: Federal Highway Administration, Office of Real Estate Services (HEPR), 1200 New Jersey Avenue SE, Washington, DC 20590.
4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.
5. *How to report dollar amounts.* Round off all money entries in parts of this section A, B, and C to the nearest dollar.
6. *Regulatory references.* The references in parts A, B, C, and D of this section indicate the subpart of this part pertaining to the requested information.

Part A. Real Property Acquisition Under the Uniform Act

Line 1. Report all parcels acquired during the report year where title or possession was vested in the agency during the reporting period. The parcel count reported should relate to ownerships and not to the number of parcels of different property interests (such as fee, perpetual easement, temporary easement, etc.) that may have been part of an acquisition from one owner. For example, an acquisition from a property that includes a fee simple parcel, a perpetual easement parcel, and a temporary easement parcel should be reported as 1 parcel not 3 parcels. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.)

Line

2. Report the number of parcels reported on Line 1 that were acquired by condemnation. Include those parcels where compensation for the property was paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the agency through condemnation authority.

Line 3. Report the number of parcels in Line 1 acquired through administrative settlement where the purchase price for the property exceeded the amount offered as just compensation and efforts to negotiate an agreement at that amount have failed.

Line 4. Report the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the agency in Line 1.

Part B. Residential Relocation Under the Uniform Act

Line 5. Report the number of households who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling. The term "households" includes all families and individuals. A family is reported as "one" household, *not* by the number of people in the family unit.

Line 6. Report the total amount paid for residential moving expenses (actual expense and fixed payment).

Line 7. Report the total amount paid for residential replacement housing payments including payments for replacement housing of last resort provided pursuant to § 24.404.

Line 8. Report the number of households in Line 5 who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling as part of last resort housing assistance.

Line 9. Report the number of tenant households in Line 5 who were permanently displaced during the fiscal year by project or program activities, and who purchased and moved to their replacement dwelling using a down payment assistance payment under this part.

Line 10. Report the total sum costs of residential relocation expenses and payments (excluding agency administrative expenses) in Lines 6 and 7.

Part C. Nonresidential Relocation Under the Uniform Act

Line 11. Report the number of businesses, nonprofit organizations, and farms who were permanently displaced during the fiscal year by project or program activities and moved to their replacement location. This includes businesses, nonprofit organizations, and farms, that upon displacement, discontinued operations.

Line 12. Report the total amount paid for nonresidential moving expenses (actual expense and fixed payment.)

Line 13. Report the total amount paid for nonresidential reestablishment expenses.

Line 14. Report the total sum costs of nonresidential relocation expenses and payments (excluding agency administrative expenses) in Lines 12 and 13.

Part D. Relocation Appeals

Line 15. Report the total number of relocation appeals filed during the fiscal year by aggrieved persons (residential and nonresidential).

CAL YEAR ENDING SEPT. 30, 20___
GENCY: _____
_____
(For Local Government Agencies): _____
DING AGENCY: _____

L PROPERTY ACQUISITION UNDER THE UNIFORM ACT

r of Parcels Acquired (Ownerships)	
arcels in Line 1 Acquired by Condemnation	
arcels in Line 1 Acquired by Administrative Settlement (Above initial offer –see 24.102(i))	
n – Total Costs (Including 24.106; Excluding appraisal costs, negotiator fees and other administrative expenses)	

DENTIAL RELOCATION UNDER THE UNIFORM ACT

r of Residential Displacements (Households)	
Moving Payments – Total Costs	
Housing Payments – Total Costs	
ast Resort Housing Displacements in Line 5 (Households)	
enants converted to Homeowners in Line 5 (Households using 24.402(c))	
or Residential Relocation Expenses and Payments (Sum of lines 6 and 7; excluding Agency Administrative Costs)	

RESIDENTIAL RELOCATION UNDER THE UNIFORM ACT

r of NonResidential Displacements	
ial Moving Payments – Total Costs (Including 24.305)	
ial Reestablishment Payments – Total Costs	
or Nonresidential Relocation Expenses and Payments (Sum of lines 12 and 13; excluding Agency Administrative Costs)	

OCATION APPEALS UNDER THE UNIFORM ACT

r of Relocation Appeals (Residential & NonResidential)	

§470f. Effect of Federal undertakings upon property listed in National Register; comment by Advisory Council on Historic Preservation

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking.

(Pub. L. 89–665, title I, §106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94–422, title II, §201(3), Sept. 28, 1976, 90 Stat. 1320.)

Amendments

1976—Pub. L. 94–422 inserted "or eligible for inclusion in" after "included in".

Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with historic preservation under sections 470 to 470a, 470b, and 470c to 470w–6 of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

Reporting Requirements of Advisory Council on Historic Preservation

Pub. L. 104–333, div. I, title V, §509(b), Nov. 12, 1996, 110 Stat. 4157, provided that: "Within 18 months after the date of enactment of this Act [Nov. 12, 1996], the Advisory Council on Historic Preservation shall submit a report to the appropriate congressional committees containing an analysis of alternatives for modifying the regulatory process for addressing impacts of Federal actions on nationally significant historic properties, as well as alternatives for future promulgation and oversight of regulations for implementation of section 106 of the National Historic Preservation Act [16 U.S.C. 470f]."

Endangered Species Act

16 U.S.C. Sections 1531-1544

TABLE OF CONTENTS

- Section 1531. [ESA Section 2] Congressional findings and declaration of purposes and policy
- Section 1532. [ESA Section 3] Definitions
- Section 1533. [ESA Section 4] Determination of endangered species and threatened species
- Section 1534. [ESA Section 5] Land Acquisition [omitted]
- Section 1535. [ESA Section 6] Cooperation with States
- Section 1536. [ESA Section 7] Interagency cooperation
- Section 1537. [ESA Section 8] International cooperation
- Section 1537A. [ESA Section 8A] Convention implementation
- Section 1538. [ESA Section 9] Prohibited acts
- Section 1539. [ESA Section 10] Exceptions
- Section 1540. [ESA Section 11] Penalties and enforcement

Section 1531. Congressional findings and declaration of purposes and policy [ESA Section 2]

(a) Findings

The Congress finds and declares that -

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to -

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

Section 1532. Definitions [ESA Section 3]

For the purposes of this chapter -

(1) The term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

(4) The term "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(5)(A) The term "critical habitat" for a threatened or endangered species means -

(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

(B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.

(C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) The term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.

(7) The term "Federal agency" means any department, agency, or instrumentality of the United States.

(8) The term "fish or wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

(9) The term "foreign commerce" includes, among other things, any transaction -

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

(10) The term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(11) Repealed. Pub.L. 97-304, Section 4(b), Oct. 13, 1982, 96 Stat. 1420.

(12) The term "permit or license applicant" means, when used with respect to an action of a Federal agency for which exemption is sought under section 1536 of this title, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 1536(a) of this title to such agency action.

(13) The term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term "State agency" means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term "United States", when used in a geographical context, includes all States.

Section 1533. Determination of endangered species and threatened species [ESA Section 4]

(a) Generally

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 -

(A) in any case in which the Secretary of Commerce determines that such species should -

(i) be listed as an endangered species or a threatened species, or

(ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should -

(i) be removed from any list published pursuant to subsection (c) of this section, or

(ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable -

(A) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(B) may, from time-to-time thereafter as appropriate, revise such designation.

(b) Basis for determinations

(1)(A) The Secretary shall make determinations required by subsection (a) (1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been -

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservati on of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a) (3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of Title 5 to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii)The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that -

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C) (i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B) (i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species.

(D) (i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of Title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of Title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a) (1) or (3) of this section, the Secretary shall -

(A) not less than 90 days before the effective date of the regulation -

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5) (A) (i) regarding a proposed regulation, the Secretary shall publish in the Federal Register -

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either -

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B) (i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B) (ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either -

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

(B) (i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A) (i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A) (i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that -

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of Title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if -

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) Lists

(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.

(2) The Secretary shall -

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should -

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

(d) Protective regulations

Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a) (1) of this title, in the case of fish or wildlife, or section 1538(a) (2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535(c) of this title only to the extent that such regulations have also been adopted by such State.

(e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that -

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Recovery plans

(1) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable -

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan -

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) Monitoring

(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.

(2) The Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments

The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to -

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) Submission to State agency of justification for regulations inconsistent with State agency's comments or petition

If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

Section 1534 Land Acquisition [ESA Section 5] [omitted]

Section 1535. Cooperation with States [ESA Section 6]

(a) Generally

In carrying out the program authorized by this chapter, the Secretary shall cooperate to the maximum extent practicable with the StatesSecretary shall cooperate to the maximum extent practicable with the States. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered species or threatened species.

Section 1536. Interagency cooperation [ESA Section 7]

(a) Federal agency actions and consultations

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 1533 of this title.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency ~~action") is n~~ot likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary onany agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 1533 of this title or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d) of this section.

(b) Opinion of Secretary

(1)(A) Consultation under subsection (a) (2) of this section with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.
(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A) -

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth -

(I) the reasons why a longer period is required,
(II) the information that is required to complete the consultation, and
(III) the estimated date on which consultation will be completed; or
(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a) (3) of this section shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.
(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a) of this section, the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a) (2) of this section and can be taken by the Federal agency or applicant in implementing the agency action.
(B) Consultation under subsection (a) (3) of this section, and an opinion issued by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a) (2) of this section, and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.
(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that -

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;
(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and
(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that -
(i) specifies the impact of such incidental taking on the species,
(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,
(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and
(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) Biological assessment

(1) To facilitate compliance with the requirements of subsection (a) (2) of this section, each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on November 10, 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction

is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).
(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) Limitation on commitment of resources

After initiation of consultation required under subsection (a) (2) of this section, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a) (2) of this section.

(e) Endangered Species Committee

(1) There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").
(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a) (2) of this section for the action set forth in such application.
(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.
(B) The Secretary of the Army.
(C) The Chairman of the Council of Economic Advisors.
(D) The Administrator of the Environmental Protection Agency.
(E) The Secretary of the Interior.
(F) The Administrator of the National Oceanic and Atmospheric Administration.
(G) The President, after consideration of any recommendations received pursuant to subsection (g) (2) (B) of this section shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.
(4)(A) Members of the Committee shall receive additional pay on account of their service on the Committee.
(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of Title 5.
(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.
(B) The Secretary of the Interior shall be the Chairman of the Committee.
(C) The Committee shall meet at the call of the Chairman or five of its members.
(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.
(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act [5 U.S.C.A. Section 552a], the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.
(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.
(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.
(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.
(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.
(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3) (G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) Promulgation of regulations; form and contents of exemption application

Not later than 90 days after November 10, 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include, but not be limited to -

(1) a description of the consultation process carried out pursuant to subsection (a) (2) of this section between the head of the Federal agency and the Secretary; and
(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a) (2) of this section.

(g) Application for exemption; report to Committee

(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a) (2) of this section, the Secretary's opinion under subsection (b) of this section indicates that the agency action would violate subsection (a) (2) of this section. An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) of this section after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.
(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f) of this section, not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" mean

(i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or
(ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly

(i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and

(ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary -

(A) determine that the Federal agency concerned and the exemption applicant have -

(i) carried out the consultation responsibilities described in subsection (a) of this section in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a) (2) of this section;

(ii) conducted any biological assessment required by subsection (c) of this section; and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A) (i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of Title 5.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3) (A) (i), (ii), and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b)

(1) and (2) thereof) of Title 5 and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing -

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section.

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b) (3) of section 556) of Title 5.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) Grant of exemption

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after) receiving the report of the Secretary pursuant to subsection (g) (5) of this section. The Committee shall grant an exemption from the requirements of subsection (a) (2) of this section for an agency action if, by a vote of not less than five of its members voting in person -

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g) (4) of this section and on such other testimony or evidence as it may receive, that -

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d) of this section; and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by the Committee under this subsection shall be considered final agency action for purposes of chapter 7 of Title 5.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action -

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) of this section with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless -

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a) (2) of this section or was not identified in any biological assessment conducted under subsection (c) of this section, and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) Review by Secretary of State; violation of international treaty or other international obligation of United States

Notwithstanding any other provision of this chapter, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Exemption for national security reasons

Notwithstanding any other provision of this chapter, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) Exemption decision not considered major Federal action; environmental impact statement

An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 [42 U.S.C.A. Section 4321 et seq.]: Provided, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) Committee order granting exemption; cost of mitigation and enhancement measures; report by applicant to Council on Environmental Quality

(1) If the Committee determines under subsection (h) of this section that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) of this section which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such a report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) Notice requirement for citizen suits not applicable

The 60-day notice requirement of section 1540(g) of this title shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a) (2) of this section.

(n) Judicial review

Any person, as defined by section 1532(13) of this title, may obtain judicial review, under chapter 7 of Title 5, of any decision of the Endangered Species Committee under subsection (h) of this section in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of Title 28. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) Exemption as providing exception on taking of endangered species

Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section -

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) Exemptions in Presidentially declared disaster areas

In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. Section 5121 et seq.], the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act [42 U.S.C.A. ss 5171 or 5172], and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

Section 1537. International cooperation [ESA Section 8]

(a) Financial assistance

As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1306 of Title 31, use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C.A. Section 1691 et seq.] or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 1533 of this title. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 1542 of this title.

(b) Encouragement of foreign programs

In order to carry out further the provisions of this chapter, the Secretary, through the Secretary of State, shall encourage -

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 1533 of this title;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such

assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

Section 1537A. Convention implementation [ESA Section 8A]

(a) Management Authority and Scientific Authority

The Secretary of the Interior (hereinafter in this section referred to as the "Secretary") is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) Management Authority functions

The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) Scientific Authority functions; determinations

(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) Reservations by the United States under Convention

If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) Wildlife Preservation in Western Hemisphere

(1) The Secretary of the Interior (hereinafter in this subsection referred to as the "Secretary"), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the "Western Convention"). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps

as are necessary to implement the Western Convention. Such steps shall include, but not be limited to -

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

Section 1538. Prohibited acts [ESA Section 9]

(a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any endangered species of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to -

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on

any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) Species held in captivity or controlled environment

(1) The provisions of subsections (a) (1) (A) and (a) (1) (G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a) (1) (A) and (a) (1) (G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a) (1) of this section shall not apply to -

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) Violation of Convention

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if -

(A) such fish or wildlife is not an endangered species listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity, be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports

(1) In general

It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business -

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Requirements

Any person required to obtain permission under paragraph (1) of this subsection shall -

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) Regulations

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) Restriction on consideration of value or amount of African elephant ivory imported or exported

In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) Reports

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

(f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc-4(d) of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) Violations

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

Section 1539. Exceptions [ESA Section 10]

(a) Permits

(1) The Secretary may permit, under such terms and conditions as he shall prescribe -

(A) any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j) of this section; or

(B) any taking otherwise prohibited by section 1538(a) (1) (B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1) (B) unless the applicant therefor submits to the Secretary a conservation plan that specifies -

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that -

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A) (iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) Hardship exemptions

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538(a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that

(A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary;

(B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973 shall expire in accordance with the terms of section 668cc-3 of this title; and

(C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and review

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and exemption policy

The Secretary may grant exceptions under subsections (a) (1) (A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 1531 of this title.

(e) Alaska natives [omitted]

(f) Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separabili ty of provisions; renewal of exemption; expiration of renewal certification [omitted]

(g) Burden of proof

In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) Certain antique articles; importation; port designation; application for return of articles [omitted]

(i) Noncommercial transshipments [omitted]

(j) Experimental populations

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this chapter, each member of an experimental population shall be treated as a threatened species; except that -

(i) solely for purposes of section 1536 of this title (other than subsection (a) (1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 1533 of this title; and

(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

Section 1540. Penalties and enforcement [ESA Section11]

(a) Civil penalties

(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this chapter, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d) (other than regulation relating to recordkeeping or filing of reports), (f) or (g) of section 1538 of this title, may be assessed a civil penalty by the Secretary of not more than $25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this chapter may be assessed a civil penalty by the Secretary of not more than $12,000 for each such violation. Any person who otherwise violates any provision of this chapter, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than $500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of Title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have

jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) Notwithstanding any other provision of this chapter, no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species.

(b) Criminal violations

(1) Any person who knowingly violates any provision of this chapter, of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D), (c), (d) (other than a regulation relating to recordkeeping, or filing of reports), (f), or (g) of section 1538 of this title shall, upon conviction, be fined not more than $50,000 or imprisoned for not more than one year, or both. Any person who knowingly violates any provision of any other regulation issued under this chapter shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than six months, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing a person to import or export fish, wildlife, or plants, or to operate a quarantine station for imported wildlife, or authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted of a criminal violation of this chapter or any regulation, permit, or certificate issued hereunder may immediately modify, suspend, or revoke each lease, license, permit, or other agreement. The Secretary shall also suspend for a period of up to one year, or cancel, any Federal hunting or fishing permits or stamps issued to any person who is convicted of a criminal violation of any provision of this chapter or any regulation, permit, or certificate issued hereunder. The United States shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any leases, licenses, permits, stamps, or other agreements pursuant to this section.

(3) Notwithstanding any other provision of this chapter, it shall be a defense to prosecution under this subsection if the defendant committed the offense based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual, from bodily harm from any endangered or threatened species.

(c) District court jurisdiction

The several district courts of the United States, including the courts enumerated in section 460 of Title 28, shall have jurisdiction over any actions arising under this chapter. For the purpose of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii.

(d) Rewards and certain incidental expenses

The Secretary or the Secretary of the Treasury shall pay, from sums received as penalties, fines, or forfeitures of property for any violation of this chapter or any regulation issued hereunder (1) a reward to any person who furnishes information which leads to an arrest, a criminal conviction, civil penalty assessment, or forfeiture of property for any violation of this chapter or any regulation issued hereunder, and (2) the reasonable and necessary costs incurred by any person in providing temporary care for any fish, wildlife, or plant pending the disposition of any civil or criminal proceeding alleging a violation of this chapter with respect to that fish, wildlife, or plant. The amount of the reward, if any, is to be designated by the Secretary or the Secretary of the Treasury, as appropriate. Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of his official duties is ineligible for payment under

this subsection. Whenever the balance of sums received under this section and section 3375(d) of this title, as penalties or fines, or from forfeitures of property, exceed $500,000, the Secretary of the Treasury shall deposit an amount equal to such excess balance in the cooperative endangered species conservation fund established under section 1535(i) of this title.

(e) Enforcement

(1) The provisions of this chapter and any regulations or permits issued pursuant thereto shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all such Secretaries. Each such Secretary may utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this chapter.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, to enforce this chapter may detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation or exportation. Such person may make arrests without a warrant for any violation of this chapter if he has reasonable grounds to believe that the person to be arrested is committing the violation in his presence or view, and may execute and serve any arrest warrant, search warrant, or other warrant or civil or criminal process issued by any officer or court of competent jurisdiction for enforcement of this chapter. Such person so authorized may search and seize, with or without a warrant, as authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection; except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary, but upon forfeiture of any such property to the United States, or the abandonment or waiver of any claim to any such property, it shall be disposed of (other than by sale to the general public) by the Secretary in such a manner, consistent with the purposes of this chapter, as the Secretary shall by regulation prescribe.

(4)(A) All fish or wildlife or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported, or imported contrary to the provisions of this chapter, any regulation made pursuant thereto, or any permit or certificate issued hereunder shall be subject to forfeiture to the United States.

(B) All guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting, or importing of any fish or wildlife or plants in violation of this chapter, any regulation made pursuant thereto, or any permit or certificate issued thereunder shall be subject to forfeiture to the United States upon conviction of a criminal violation pursuant to subsection (b)(1) of this section.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be exercised or performed by the Secretary or by such persons as he may designate.

(6) The Attorney General of the United States may seek to enjoin any person who is alleged to be in violation of any provision of this chapter or regulation issued under authority thereof.

(f) Regulations

The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this chapter, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this chapter including processing applications and reasonable inspections, and with the transfer, board, handling, or storage of fish or wildlife or plants and evidentiary items seized and forfeited under this chapter. All such fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) Citizen suits

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf -

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to section 1535(g) (2) (B) (ii) of this title, the prohibitions set forth in or authorized pursuant to section 1533(d) or 1538(a) (1) (B) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under section 1533 of this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence.

(2)(A) No action may be commenced under subparagraph (1)(A) of this section -

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section -

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under section 1535(g)(2)(B)(ii) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1) (C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) Coordination with other laws

The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this chapter with the administration of the animal quarantine laws (21 U.S.C. 101-105, 111-135b, and 612-614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this chapter or any amendment made by this Act shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles and no proceeding or determination under this chapter shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this chapter shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930 [19 U.S.C.A. Section 1202 et seq.], including, without limitation, section 527 of that Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

project approval through the completion of construction. In carrying out this section the Secretary shall utilize the knowledge and experience resulting from the demonstration project authorized by and carried out under section 141 of the Federal-Aid Highway Act of 1976 [Pub. L. 94–280, title I, §141, May 5, 1976, 90 Stat. 444, set out as a note under section 124 of this title].''

§ 106. Project approval and oversight

(a) IN GENERAL.—

(1) SUBMISSION OF PLANS, SPECIFICATIONS, AND ESTIMATES.—Except as otherwise provided in this section, each State transportation department shall submit to the Secretary for approval such plans, specifications, and estimates for each proposed project as the Secretary may require.

(2) PROJECT AGREEMENT.—The Secretary shall act on the plans, specifications, and estimates as soon as practicable after the date of their submission and shall enter into a formal project agreement with the State transportation department formalizing the conditions of the project approval.

(3) CONTRACTUAL OBLIGATION.—The execution of the project agreement shall be deemed a contractual obligation of the Federal Government for the payment of the Federal share of the cost of the project.

(4) GUIDANCE.—In taking action under this subsection, the Secretary shall be guided by section 109.

(b) PROJECT AGREEMENT.—

(1) PROVISION OF STATE FUNDS.—The project agreement shall make provision for State funds required to pay the State's non-Federal share of the cost of construction of the project and to pay for maintenance of the project after completion of construction.

(2) REPRESENTATIONS OF STATE.—If a part of the project is to be constructed at the expense of, or in cooperation with, political subdivisions of the State, the Secretary may rely on representations made by the State transportation department with respect to the arrangements or agreements made by the State transportation department and appropriate local officials for ensuring that the non-Federal contribution will be provided under paragraph (1).

(c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—

(1) NON-INTERSTATE NHS PROJECTS.—For projects under this title that are on the National Highway System but not on the Interstate System, the State may assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections of projects unless the State or the Secretary determines that such assumption is not appropriate.

(2) NON-NHS PROJECTS.—For projects under this title that are not on the National Highway System, the State shall assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspection of projects, unless the State determines that such assumption is not appropriate.

(3) AGREEMENT.—The Secretary and the State shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection.

(4) LIMITATION ON AUTHORITY OF SECRETARY.—The Secretary may not assume any greater responsibility than the Secretary is permitted under this title on September 30, 1997, except upon agreement by the Secretary and the State.

(d) RESPONSIBILITIES OF THE SECRETARY.—Nothing in this section, section 133, or section 149 shall affect or discharge any responsibility or obligation of the Secretary under—

(1) section 113 or 114; or

(2) any Federal law other than this title (including section 5333 of title 49).

(e) VALUE ENGINEERING ANALYSIS.—

(1) DEFINITION OF VALUE ENGINEERING ANALYSIS.—

(A) IN GENERAL.—In this subsection, the term ''value engineering analysis'' means a systematic process of review and analysis of a project, during the concept and design phases, by a multidisciplined team of persons not involved in the project, that is conducted to provide recommendations such as those described in subparagraph (B) for—

(i) providing the needed functions safely, reliably, and at the lowest overall cost;

(ii) improving the value and quality of the project; and

(iii) reducing the time to complete the project.

(B) INCLUSIONS.—The recommendations referred to in subparagraph (A) include, with respect to a project—

(i) combining or eliminating otherwise inefficient use of costly parts of the original proposed design for the project; and

(ii) completely redesigning the project using different technologies, materials, or methods so as to accomplish the original purpose of the project.

(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

(A) each project on the Federal-aid system with an estimated total cost of $25,000,000 or more;

(B) a bridge project with an estimated total cost of $20,000,000 or more; and

(C) any other project the Secretary determines to be appropriate.

(3) MAJOR PROJECTS.—The Secretary may require more than 1 analysis described in paragraph (2) for a major project described in subsection (h).

(4) REQUIREMENTS.—Analyses described in paragraph (1) for a bridge project shall—

(A) include bridge substructure requirements based on construction material; and

(B) be evaluated—

(i) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

(ii) using an analysis of life-cycle costs and duration of project construction.

(f) LIFE-CYCLE COST ANALYSIS.—

(1) USE OF LIFE-CYCLE COST ANALYSIS.—The Secretary shall develop recommendations for the States to conduct life-cycle cost analyses. The recommendations shall be based on the principles contained in section 2 of Executive Order No. 12893 and shall be developed in consultation with the American Association of State Highway and Transportation Officials. The Secretary shall not require a State to conduct a life-cycle cost analysis for any project as a result of the recommendations required under this subsection.

(2) LIFE-CYCLE COST ANALYSIS DEFINED.—In this subsection, the term ''life-cycle cost analysis'' means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, user costs, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.

(g) OVERSIGHT PROGRAM.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out this title.

(B) MINIMUM REQUIREMENT.—At a minimum, the program shall be responsive to all areas relating to financial integrity and project delivery.

(2) FINANCIAL INTEGRITY.—

(A) FINANCIAL MANAGEMENT SYSTEMS.—The Secretary shall perform annual reviews that address elements of the State transportation departments' financial management systems that affect projects approved under subsection (a).

(B) PROJECT COSTS.—The Secretary shall develop minimum standards for estimating project costs and shall periodically evaluate the practices of States for estimating project costs, awarding contracts, and reducing project costs.

(3) PROJECT DELIVERY.—The Secretary shall perform annual reviews that address elements of the project delivery system of a State, which elements include one or more activities that are involved in the life cycle of a project from conception to completion of the project.

(4) RESPONSIBILITY OF THE STATES.—

(A) IN GENERAL.—The States shall be responsible for determining that subrecipients of Federal funds under this title have—

(i) adequate project delivery systems for projects approved under this section; and

(ii) sufficient accounting controls to properly manage such Federal funds.

(B) PERIODIC REVIEW.—The Secretary shall periodically review the monitoring of subrecipients by the States.

(5) SPECIFIC OVERSIGHT RESPONSIBILITIES.—

(A) EFFECT OF SECTION.—Nothing in this section shall affect or discharge any oversight responsibility of the Secretary specifically provided for under this title or other Federal law.

(B) APPALACHIAN DEVELOPMENT HIGHWAYS.—The Secretary shall retain full oversight responsibilities for the design and construction of all Appalachian development highways under section 14501 of title 40.

(h) MAJOR PROJECTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of $500,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and

(B) an annual financial plan.

(2) PROJECT MANAGEMENT PLAN.—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) the role of the agency leadership and management team in the delivery of the project.

(3) FINANCIAL PLAN.—A financial plan shall—

(A) be based on detailed estimates of the cost to complete the project; and

(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(i) OTHER PROJECTS.—A recipient of Federal financial assistance for a project under this title with an estimated total cost of $100,000,000 or more that is not covered by subsection (h) shall prepare an annual financial plan. Annual financial plans prepared under this subsection shall be made available to the Secretary for review upon the request of the Secretary.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 88–157, § 7(a), Oct. 24, 1963, 77 Stat. 278; Pub. L. 91–605, title I, §§ 106(e), 142, Dec. 31, 1970, 84 Stat. 1717, 1737; Pub. L. 94–280, title I, § 114, May 5, 1976, 90 Stat. 436; Pub. L. 100–17, title I, § 133(b)(4), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102–240, title I, §§ 1016(b), 1018(a), Dec. 18, 1991, 105 Stat. 1945, 1948; Pub. L. 104–59, title III, § 303, Nov. 28, 1995, 109 Stat. 578; Pub. L. 105–178, title I, § 1305(a)–(c), June 9, 1998, 112 Stat. 227–229; Pub. L. 109–59, title I, § 1904(a), Aug. 10, 2005, 119 Stat. 1465.)

REFERENCES IN TEXT

Executive Order No. 12893, referred to in subsec. (f)(1), is set out as a note under section 501 of Title 31, Money and Finance.

AMENDMENTS

2005—Subsec. (e). Pub. L. 109–59, § 1904(a)(1), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows: ''For such projects as the Secretary determines advisable, plans, specifications, and estimates for proposed projects on any Federal-aid highway shall be accompanied by a value engineering analysis or other cost reduction analysis.''

Subsecs. (g) to (i). Pub. L. 109–59, § 1904(a)(2), added subsecs. (g) to (i) and struck out former subsecs. (g) and (h) which related to establishment of a value engineering analysis program for projects with an estimated

total cost of $25,000,000 or more and requirement that recipient of assistance for a project with an estimated total cost of $1,000,000,000 or more submit an annual financial plan for the project.

1998—Pub. L. 105–178, §1305(a)(1), substituted ''Project approval and oversight'' for ''Plans, specifications, and estimates'' in section catchline.

Subsecs. (a) to (d). Pub. L. 105–178, §1305(a)(3), added subsecs. (a) to (d) and struck out former subsecs. (a) to (d) which related to requirement for State highway departments to submit to Secretary for approval plans, specifications, and estimates for each proposed highway project, special rules relating to resurfacing, restoring, and rehabilitating projects on National Highway System, to low-cost National Highway System projects, and to non-National Highway System projects, limitation on estimates for construction engineering, and provisions relating to value engineering or other cost reduction analysis.

Subsec. (e). Pub. L. 105–178, §1305(a)(3), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–178, §1305(c), added subsec. (f) and struck out former subsec. (f) which read as follows:

''(f) LIFE-CYCLE COST ANALYSIS.—

''(1) ESTABLISHMENT.—The Secretary shall establish a program to require States to conduct an analysis of the life-cycle costs of each usable project segment on the National Highway System with a cost of $25,000,000 or more.

''(2) ANALYSIS OF THE LIFE-CYCLE COSTS DEFINED.—In this subsection, the term 'analysis of the life-cycle costs' means a process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs, such as maintenance, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment.''

Pub. L. 105–178, §1305(a)(2), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–178, §1305(a)(2), redesignated subsec. (f) as (g).

Subsec. (h). Pub. L. 105–178, §1305(b), added subsec. (h).

1995—Subsecs. (e), (f). Pub. L. 104–59 added subsecs. (e) and (f).

1991—Subsec. (a). Pub. L. 102–240, §1016(b)(1), inserted ''this section and'' before ''section 117''.

Subsec. (b). Pub. L. 102–240, §1016(b)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''In addition to the approval required under subsection (a) of this section, proposed specifications for projects for construction on (1) the Federal-aid secondary system, except in States where all public roads and highways are under the control and supervision of the State highway department, and (2) the Federal-aid urban system, shall be determined by the State highway department and the appropriate local road officials in cooperation with each other.''

Subsec. (c). Pub. L. 102–240, §1018(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Items included in any such estimate for construction engineering shall not exceed 15 percent of the total estimated cost of a project financed with Federal-aid highway funds, after excluding from such total estimate cost, the estimated costs of rights-of-way, preliminary engineering, and construction engineering.''

1987—Subsec. (c). Pub. L. 100–17 substituted ''15 percent'' for ''10 per centum'' and struck out at end ''However, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary.''

1976—Subsec. (c). Pub. L. 94–280 substituted ''Federal-aid highway funds'' for ''Federal-aid primary, secondary, or urban funds'' and ''such total estimate cost'' for ''such total estimated cost'' and struck out 10 per centum limitation for any project financed with interstate funds.

1970—Subsec. (b). Pub. L. 91–605, §106(e), inserted reference to the Federal-aid urban system.

Subsec. (d). Pub. L. 91–605, §142, added subsec. (d).

1963—Subsec. (c). Pub. L. 88–157 substituted ''a project financed with Federal-aid primary, secondary, or urban funds'' for ''the project'' and provided for limitation, on items included in estimates for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of total estimated cost of the project where found by the Secretary to be necessary and for 10-percent limitation on projects financed with interstate funds.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

STUDY OF VALUE ENGINEERING

Section 1091 of Pub. L. 102–240 provided that:

''(a) STUDY.—The Secretary shall study the effectiveness and benefits of value engineering review programs applied to Federal-aid highway projects. Such study shall include an analysis of and the results of specialized techniques utilized in all facets of highway construction for the purpose of reduction of costs and improvement of the overall quality of Federal-aid highway projects.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall report to Congress on the results of the study under subsection (a), including recommendations on how value engineering could be utilized and improved in Federal-aid highway projects.''

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Pub. L. 89–574, §5(b), Sept. 13, 1966, 80 Stat. 767, as amended by Pub. L. 97–449, §2(a), Jan. 12, 1983, 96 Stat. 2439, authorized Secretary to modify project agreements entered into prior to Sept. 13, 1966, pursuant to section 106 of this title for purpose of effectuating amendment made by this section (amending section 109(b) of this title to add a requirement of four lanes of traffic) with respect to as much of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] as may be possible.

§ 107. Acquisition of rights-of-way—Interstate System

(a) In any case in which the Secretary is requested by a State to acquire lands or interests in lands (including within the term ''interests in lands'', the control of access thereto from adjoining lands) required by such State for right-of-way or other purposes in connection with the prosecution of any project for the construction, reconstruction, or improvement of any section of the Interstate System, the Secretary is authorized, in the name of the United States and prior to the approval of title by the Attorney General, to acquire, enter upon, and take possession of such lands or interests in lands by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including sections 3114 to 3116 and 3118 of title 40), if—

(1) the Secretary has determined either that the State is unable to acquire necessary lands or interests in lands, or is unable to acquire such lands or interests in lands with sufficient promptness; and

(2) the State has agreed with the Secretary to pay, at such time as may be specified by the

and owned or held by railroads or other corporations.

(b) The costs incurred by the Secretary in acquiring any such lands or interests in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition. All costs incurred by the Secretary in connection with the acquisition of any such lands or interests in lands shall be paid from the funds for construction, reconstruction, or improvement of the Interstate System apportioned to the State upon the request of which such lands or interests in lands are acquired, and any sums paid to the Secretary by such State as its share of the costs of acquisition of such lands or interests in lands shall be deposited in the Treasury to the credit of the appropriation for Federal-aid highways and shall be credited to the amount apportioned to such State as its apportionment of funds for construction, reconstruction, or improvement of the Interstate System, or shall be deducted from other moneys due the State for reimbursement from funds authorized to be appropriated under section 108(b) of the Federal-Aid Highway Act of 1956.

(c) The Secretary is further authorized and directed by proper deed, executed in the name of the United States, to convey any such lands or interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State transportation department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State transportation department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 105–178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109–284, §3(1), Sept. 27, 2006, 120 Stat. 1211.)

Editorial Notes

REFERENCES IN TEXT

Subsection (c) of section 120 of this title, referred to in subsec. (a)(2), was struck out and a new subsec. (c) was added by Pub. L. 102–240, title I, §1021(a), Dec. 18, 1991, 105 Stat. 1950.

The Federal-Aid Highway Act of 1956, referred to in subsec. (b), is act June 29, 1956, ch. 462, 70 Stat. 374. For complete classification of this Act to the Code, see Tables. Section 108(b) of the Federal-Aid Highway Act of 1956 is set out as a note under section 101 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–284 substituted ''sections 3114 to 3116 and 3118 of title 40'' for ''the Act of February 26, 1931, 46 Stat. 1421''.

1998—Subsec. (c). Pub. L. 105–178 substituted ''State transportation department'' for ''State highway department'' in two places.

§ 108. Advance acquisition of real property

(a) IN GENERAL.—

(1) AVAILABILITY OF FUNDS.—For the purpose of facilitating the timely and economical acquisition of real property interests for a transportation improvement eligible for funding under this title, the Secretary, upon the request of a State, may make available, for the acquisition of real property interests, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) CONSTRUCTION.—The agreement between the Secretary and the State for the reimbursement of the cost of the real property interests shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

(b) Federal participation in the cost of real property interests acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

(c) STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—

(1) IN GENERAL.—A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency.

(2) ELIGIBILITY FOR REIMBURSEMENT.—Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of—

(A) costs incurred by the State for acquisition of real property interests, acquired in advance of any Federal approval or authorization, if the real property interests are subsequently incorporated into a project eligible for surface transportation block grant program funds; and

(B) costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values.

(3) TERMS AND CONDITIONS.—The Federal share payable of the costs described in paragraph (2) shall be eligible for reimbursement out of funds apportioned to a State under this title when the real property interests acquired are incorporated into a project eligible for surface transportation block grant program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) any land acquired, and relocation assistance provided, complied with the Uni-

form Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) the requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(C) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(D) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this title;

(E) the alternative for which the real property interest is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(F) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this title, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

(G) before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(d) FEDERALLY FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—

(1) DEFINITION OF ACQUISITION OF A REAL PROPERTY INTEREST.—In this subsection, the term ''acquisition of a real property interest'' includes the acquisition of—

(A) any interest in land;

(B) a contractual right to acquire any interest in land; or

(C) any other similar action to acquire or preserve rights-of-way for a transportation facility.

(2) AUTHORIZATION.—The Secretary may authorize the use of funds apportioned to a State under this title for the acquisition of a real property interest by a State.

(3) STATE CERTIFICATION.—A State requesting Federal funding for an acquisition of a real property interest shall certify in writing, with concurrence by the Secretary, that—

(A) the State has authority to acquire the real property interest under State law; and

(B) the acquisition of the real property interest—

(i) is for a transportation purpose;

(ii) will not cause any significant adverse environmental impact;

(iii) will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;

(iv) does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;

(v) is consistent with the State transportation planning process under section 135;

(vi) complies with other applicable Federal laws (including regulations);

(vii) will be acquired through negotiation, without the threat of condemnation; and

(viii) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) ENVIRONMENTAL COMPLIANCE.—

(A) IN GENERAL.—Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the acquisition of the real property interest.

(B) INDEPENDENT UTILITY.—The acquisition of a real property interest—

(i) shall be treated as having independent utility for purposes of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(ii) shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest.

(5) PROGRAMMING.—

(A) IN GENERAL.—The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 134 and 135 and sections 5303 and 5304 of title 49.

(B) ACQUISITION PROJECT.—The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

(6) DEVELOPMENT.—Real property interests acquired under this subsection may not be developed in anticipation of a project until all required environmental reviews for the project have been completed.

(7) REIMBURSEMENT.—If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by subsection (a)(2), the Secretary shall offset the amount reimbursed against funds apportioned to the State.

(8) OTHER REQUIREMENTS AND CONDITIONS.—

(A) APPLICABLE LAW.—The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.

(B) ADDITIONAL CONDITIONS.—The Secretary may establish such other conditions or restrictions on acquisitions under this subsection as the Secretary determines to be appropriate.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 893; Pub. L. 86–35, §1, May 29, 1959, 73 Stat. 62; Pub. L. 90–495, §7(a), (b), Aug. 23, 1968, 82 Stat. 818; Pub. L. 93–87, title I, §113, Aug. 13, 1973, 87 Stat. 257; Pub. L. 94–280, title I, §115, May 5, 1976, 90 Stat. 436; Pub. L. 102–240, title I, §1017(a), (b), Dec. 18, 1991, 105 Stat. 1947; Pub. L. 102–388, title III, §346, Oct. 6, 1992, 106 Stat. 1553; Pub. L. 103–429, §3(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 105–178, title I, §§1211(e)(1), 1301(a), June 9, 1998, 112 Stat. 188, 225; Pub. L. 112–141, div. A, title I, §1302, July 6, 2012, 126 Stat. 528; Pub. L. 114–94, div. A, title I, §1109(c)(5), Dec. 4, 2015, 129 Stat. 1343; Pub. L. 117–58, div. A, title I, §11525(c), Nov. 15, 2021, 135 Stat. 607.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (c)(1), (3)(F) and (d)(4)(A), (B)(i), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsecs. (c)(3)(A) and (d)(3)(B)(viii), is act Jan. 2, 1971, Pub. L. 91–646, 84 Stat. 1894, and which is classified principally to chapter 61 (§4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (c)(3)(B) and (d)(3)(B)(viii), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Section 7 of the Endangered Species Act, referred to in subsec. (c)(3)(F), probably means section 7 of the Endangered Species Act of 1973, which is classified to section 1536 of Title 16, Conservation.

AMENDMENTS

2021—Subsec. (c)(3)(F). Pub. L. 117–58 inserted ''of 1969 (42 U.S.C. 4321 et seq.)'' after ''Policy Act'' and substituted ''this title'' for ''this Act''.

2015—Subsec. (c)(2)(A), (3). Pub. L. 114–94 substituted ''surface transportation block grant program'' for ''surface transportation program'' in par. (2)(A) and in introductory provisions of par. (3).

2012—Subsec. (a). Pub. L. 112–141, §1302(a)(1), substituted ''real property interests'' for ''real property'' wherever appearing.

Subsec. (b). Pub. L. 112–141, §1302(a)(3), substituted ''real property interests'' for ''rights-of-way''.

Subsec. (c). Pub. L. 112–141, §1302(b)(1), substituted ''STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS'' for ''EARLY ACQUISITION OF RIGHTS-OF-WAY'' in heading.

Pub. L. 112–141, §1302(a)(2), (3), substituted ''real property interest'' for ''right-of-way'' and ''real property interests'' for ''rights-of-way'' wherever appearing.

Subsec. (c)(1) to (3). Pub. L. 112–141, §1302(b)(2)–(5)(A), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively; in par. (2), substituted ''ELIGIBILITY FOR REIMBURSEMENT'' for ''GENERAL RULE'' in heading and ''Subject to paragraph (3)'' for ''Subject to paragraph (2)'' in introductory provisions; and, in par. (3), substituted ''in paragraph (2)'' for ''in paragraph (1)'' in introductory provisions.

Subsec. (c)(3)(G). Pub. L. 112–141, §1302(b)(5)(B), substituted ''the Secretary has determined'' for ''both the Secretary and the Administrator of the Environmental Protection Agency have concurred''.

Subsec. (d). Pub. L. 112–141, §1302(c), added subsec. (d).

1998—Pub. L. 105–178, §1301(a), substituted ''Advance acquisition of real property'' for ''Advance acquisition of rights-of-way'' in section catchline.

Subsec. (a). Pub. L. 105–178, §1301(a), added subsec. (a) and struck out former subsec. (a) which read as follows: ''For the purpose of facilitating the acquisition of rights-of-way on any Federal-aid highway in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State which may be expended on such highway for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the actual construction of a road on such rights-of-way within a period not exceeding 20 years following the fiscal year in which such request is made unless a longer period is determined to be reasonable by the Secretary.''

Subsecs. (c), (d). Pub. L. 105–178, §1211(e)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to establishment and administration of right-of-way revolving fund.

1994—Subsec. (d)(2)(F). Pub. L. 103–429 substituted ''section 303 of title 49'' for ''section 4(f) of the Department of Transportation Act''.

1992—Subsec. (a). Pub. L. 102–388, §346(1), (2), substituted ''Federal-aid highway'' for ''of the Federal-aid highway systems, including the Interstate System,'' and ''which may be expended on such highway'' for ''for expenditure on any of the Federal-aid highway systems, including the Interstate System,''.

Subsec. (c)(2). Pub. L. 102–388, §346(3), inserted ''and passenger transit facilities''.

Subsec. (c)(3). Pub. L. 102–388, §346(5), which directed the substitution of ''of the type funded'' for ''on the federal-aid system of which such project is to be part,'' was executed by making the substitution for ''on the Federal-aid system of which such project is to be a part,'' to reflect the probable intent of Congress.

Pub. L. 102–388, §346(4), substituted ''project'' for ''highway'' after ''construction of a'' in first and second sentences.

1991—Subsecs. (a), (c)(3). Pub. L. 102–240, §1017(a), substituted ''20'' for ''ten''.

Subsec. (d). Pub. L. 102–240, §1017(b), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–280, §115(b), inserted ''unless a longer period is determined to be reasonable by the Secretary'' after ''request is made'' in last sentence.

Subsec. (c)(2). Pub. L. 94–280, §115(a), struck out ''made pursuant to section 133 or chapter 5 of this title'' after ''relocation payments'' in last sentence.

Subsec. (c)(3). Pub. L. 94–280, §115(c), inserted ''or later'' after ''earlier'' in first sentence.

1973—Subsec. (a). Pub. L. 93–87, §113(a), substituted ''ten'' for ''seven'' years in last sentence.

Subsec. (c)(3). Pub. L. 93–87, §113(b), substituted ''ten'' for ''seven'' years in first sentence.

1968—Subsec. (b). Pub. L. 90–495, §7(a), substituted ''subsection (a) of this section'' for ''this section''.

Subsec. (c). Pub. L. 90–495, §7(b), added subsec. (c).

1959—Subsec. (a). Pub. L. 86–35 increased from five to seven years the period in which actual construction shall commence on rights-of-way acquired in anticipation of such construction.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of this title.

TRANSITION PROVISIONS

Pub. L. 105–178, title I, §1211(e)(2), June 9, 1998, 112 Stat. 188, provided that:

''(A) IN GENERAL.—Funds advanced to a State by the Secretary from the right-of-way revolving fund established by section 108(c) of title 23, United States Code, prior to the date of enactment of this Act [June 9, 1998] shall remain available to the State for use on the projects for which the funds were advanced for a period of 20 years from the date on which the funds were advanced.

''(B) CREDIT TO HIGHWAY TRUST FUND.—With respect to a project for which funds have been advanced from the right-of-way revolving fund, upon the termination of the 20-year period referred to in subparagraph (A), when actual construction is commenced, or upon approval by the Secretary of the plans, specifications, and estimates for the actual construction of the project on the right-of-way, whichever occurs first—

''(i) the Highway Trust Fund (other than the Mass Transit Account) shall be credited with an amount equal to the Federal share of the funds advanced, as provided in section 120 of title 23, United States Code, out of any Federal-aid highway funds apportioned to the State in which the project is located and available for obligation for projects of the type funded; and

''(ii) the State shall reimburse the Secretary in an amount equal to the non-Federal share of the funds advanced for deposit in, and credit to, the Highway Trust Fund (other than the Mass Transit Account).''

PRESERVATION OF TRANSPORTATION CORRIDORS REPORT

Pub. L. 102–240, title I, §1017(c), Dec. 18, 1991, 105 Stat. 1948, provided that: ''The Secretary, in consultation with the States, shall report to Congress within 2 years after the date of the enactment of this Act [Dec. 18, 1991], a national list of the rights-of-way identified by the metropolitan planning organizations and the States (under sections 134 and 135 of title 23, United States Code), including the total mileage involved, an estimate of the total costs, and a strategy for preventing further loss of rights-of-way including the desirability of creating a transportation right-of-way land bank to preserve vital corridors.''

AUTHORIZATION OF APPROPRIATIONS TO RIGHT-OF-WAY REVOLVING FUND; APPORTIONMENT; REVERSION OF AMOUNTS NOT ADVANCED OR OBLIGATED

Pub. L. 90–495, §7(c)–(e), Aug. 23, 1968, 82 Stat. 819, provided that $100,000,000 for the fiscal year ending June 30, 1970, $100,000,000 for the fiscal year ending June 30, 1971, and $100,000,000 for the fiscal year ending June 30, 1972, be transferred from the highway trust fund to the right-of-way revolving fund established by subsec. (c) of this section, authorized the Secretary to apportion these funds and required that funds apportioned to a State remain available for obligation for advances until Oct. 1 of the fiscal year in which the apportionment was made and any funds not advanced or obligated by such date revert to the right-of-way revolving fund for distribution to other States.

STUDY OF ADVANCE ACQUISITION OF RIGHTS-OF-WAY

Pub. L. 89–574, §10, Sept. 13, 1966, 80 Stat. 769, as amended by Pub. L. 97–449, §2(a), Jan. 12, 1983, 96 Stat. 2439, directed the Secretary to make a full and complete investigation and study of the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems, with particular reference to the provision of adequate time for the removal and disposal of improvements located on rights-of-way and the relocation of affected individuals, businesses, institutions, and organizations, the tax status of such property after acquisition and before its use for highway purposes, and the methods for financing advance right-of-way acquisition by both the State governments and the Federal Government, including the possible creation of revolving funds for such purpose. The Secretary was required to submit a report of results of such study to Congress not later than July 1, 1967, together with his recommendations.

INCREASED LIMITATION PERIOD APPLICABLE TO CERTAIN CONTRACTS

Pub. L. 86–35, §2, May 29, 1959, 73 Stat. 63, provided that agreements entered into before May 29, 1959 by the Secretary of Commerce and a State highway department under authority of section 110(a) of the Federal-Aid Highway Act of 1956, or section 108(a) of title 23 of the United States Code shall be deemed to provide for actual construction of a road on such rights-of-way within a period of seven years following the fiscal year in which such request was made.

§ 109. Standards

(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and vol-

umes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.—

(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) shall consider, in addition to the criteria described in subsection (a)—

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

(C) cost savings by utilizing flexibility that exists in current design guidance and regulations; and

(D) access for other modes of transportation.

(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall consider—

(A) the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing ''A Policy on Geometric Design of Highways and Streets'', including comments submitted by interested parties as part of such process;

(B) the publication entitled ''Flexibility in Highway Design'' of the Federal Highway Administration;

(C) ''Eight Characteristics of Process to Yield Excellence and the Seven Qualities of Excellence in Transportation Design'' developed by the conference held during 1998 entitled ''Thinking Beyond the Pavement National Workshop on Integrating Highway Development with Communities and the Environment while Maintaining Safety and Performance'';

(D) the publication entitled ''Highway Safety Manual'' of the American Association of State Highway and Transportation Officials;

(E) the publication entitled ''Urban Street Design Guide'' of the National Association of City Transportation Officials;

(F) the publication of the Federal Highway Administration entitled ''Wildlife Crossing Structure Handbook: Design and Evaluation in North America'' and dated March 2011; and

(G) any other material that the Secretary determines to be appropriate.

(d) MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.—

(1) IN GENERAL.—On any highway project in which Federal funds hereafter participate, or on any such project constructed since December 20, 1944, the location, form and character of informational, regulatory and warning signs, curb and pavement or other markings, and traffic signals installed or placed by any public authority or other agency, shall be subject to the approval of the State transportation department with the concurrence of the Secretary, who is directed to concur only in such installations as will promote the safety, inclusion, and mobility of all users and efficient utilization of the highways.

(2) UPDATES.—Not later than 18 months after the date of enactment of the Surface Transportation Reauthorization Act of 2021 and not less frequently than every 4 years thereafter, the Secretary shall update the Manual on Uniform Traffic Control Devices.

(e) INSTALLATION OF SAFETY DEVICES.—

(1) HIGHWAY AND RAILROAD GRADE CROSSINGS AND DRAWBRIDGES.—No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2 of this title, unless proper safety protective devices complying with safety standards determined by the Secretary at that time as being adequate shall be installed or be in operation at any highway and railroad grade crossing or drawbridge on that portion of the highway with respect to which such expenditures are to be made.

(2) TEMPORARY TRAFFIC CONTROL DEVICES.—No funds shall be approved for expenditure on any Federal-aid highway, or highway affected under chapter 2, unless proper temporary traffic control devices to improve safety in work zones will be installed and maintained during construction, utility, and maintenance operations on that portion of the highway with respect to which such expenditures are to be made. Installation and maintenance of the devices shall be in accordance with the Manual on Uniform Traffic Control Devices.

(f) The Secretary shall not, as a condition precedent to his approval under section 106 of this title, require any State to acquire title to, or control of, any marginal land along the proposed highway in addition to that reasonably necessary for road surfaces, median strips, bikeways, pedestrian walkways, gutters, ditches, and side slopes, and of sufficient width to provide service roads for adjacent property to permit safe access at controlled locations in order to expedite traffic, promote safety, and minimize roadside parking.

(g) Not later than January 30, 1971, the Secretary shall issue guidelines for minimizing possible soil erosion from highway construction. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(h) Not later than July 1, 1972, the Secretary, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than 90 days after such submission,

promulgate guidelines designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

(1) air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects, and tax and property value losses;

(4) injurious displacement of people, businesses and farms; and

(5) disruption of desirable community and regional growth.

Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines.

(i) The Secretary, after consultation with appropriate Federal, State, and local officials, shall develop and promulgate standards for highway noise levels compatible with different land uses and after July 1, 1972, shall not approve plans and specifications for any proposed project on any Federal-aid system for which location approval has not yet been secured unless he determines that such plans and specifications include adequate measures to implement the appropriate noise level standards. The Secretary, after consultation with the Administrator of the Environmental Protection Agency and appropriate Federal, State, and local officials, may promulgate standards for the control of highway noise levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

(j) The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall develop and promulgate guidelines to assure that highways constructed pursuant to this title are consistent with any approved plan for—

(1) the implementation of a national ambient air quality standard for each pollutant for which an area is designated as a nonattainment area under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(2) the maintenance of a national ambient air quality standard in an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area for the standard and that is required to develop a maintenance plan under section 175A of the Clean Air Act (42 U.S.C. 7505a).

(k) The Secretary shall not approve any project involving approaches to a bridge under this title, if such project and bridge will significantly affect the traffic volume and the highway system of a contiguous State without first taking into full consideration the views of that State.

(*l*)(1) In determining whether any right-of-way on any Federal-aid highway should be used for accommodating any utility facility, the Secretary shall—

(A) first ascertain the effect such use will have on highway and traffic safety, since in no case shall any use be authorized or otherwise permitted, under this or any other provision of law, which would adversely affect safety;

(B) evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for the accommodation of such utility facility; and

(C) consider such environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility.

(2) For the purpose of this subsection—

(A) the term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public; and

(B) the term ''right-of-way'' means any real property, or interest therein, acquired, dedicated, or reserved for the construction, operation, and maintenance of a highway.

(m) PROTECTION OF NONMOTORIZED TRANSPORTATION TRAFFIC.—The Secretary shall not approve any project or take any regulatory action under this title that will result in the severance of an existing major route or have significant adverse impact on the safety for nonmotorized transportation traffic and light motorcycles, unless such project or regulatory action provides for a reasonable alternate route or such a route exists.

(n) It is the intent of Congress that any project for resurfacing, restoring, or rehabilitating any highway, other than a highway access to which is fully controlled, in which Federal funds participate shall be constructed in accordance with standards to preserve and extend the service life of highways and enhance highway safety.

(*o*) COMPLIANCE WITH STATE LAWS FOR NON-NHS PROJECTS.—

(A)[1] IN GENERAL.—Projects (other than highway projects on the National Highway System) shall be designed, constructed, operated, and maintained in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

(B)[1] LOCAL JURISDICTIONS.—Notwithstanding subparagraph (A), a local jurisdiction may use a roadway design guide recognized by the Federal Highway Administration and adopted by the local jurisdiction that is different from the roadway design guide used by the State in which the local jurisdiction is located for the design of projects on all roadways under the ownership of the local jurisdiction (other than a highway on the National Highway System) for which the local jurisdiction is the project sponsor, provided that the design complies with all other applicable Federal laws.

(p) SCENIC AND HISTORIC VALUES.—Notwithstanding subsections (b) and (c), the Secretary may approve a project for the National Highway System if the project is designed to—

(1) allow for the preservation of environmental, scenic, or historic values;

(2) ensure safe use of the facility; and

(3) comply with subsection (a).

(q) PHASE CONSTRUCTION.—Safety considerations for a project under this title may be met by phase construction consistent with the operative safety management system established in accordance with a statewide transportation improvement program approved by the Secretary.

(r) PAVEMENT MARKINGS.—The Secretary shall not approve any pavement markings project that includes the use of glass beads containing more than 200 parts per million of arsenic or lead, as determined in accordance with Environmental Protection Agency testing methods 3052, 6010B, or 6010C.

(s) ELECTRIC VEHICLE CHARGING STATIONS.—

(1) STANDARDS.—Electric vehicle charging infrastructure installed using funds provided under this title shall provide, at a minimum—

(A) non-proprietary charging connectors that meet applicable industry safety standards; and

(B) open access to payment methods that are available to all members of the public to ensure secure, convenient, and equal access to the electric vehicle charging infrastructure that shall not be limited by membership to a particular payment provider.

(2) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, a project to install electric vehicle charging infrastructure using funds provided under this title shall be treated as if the project is located on a Federal-aid highway.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894; Pub. L. 88–157, §4, Oct. 24, 1963, 77 Stat. 277; Pub. L. 89–574, §§5(a), 14, Sept. 13, 1966, 80 Stat. 767, 771; Pub. L. 91–605, title I, §136(a), (b), Dec. 31, 1970, 84 Stat. 1734; Pub. L. 93–87, title I, §§114, 152(2), 156, Aug. 13, 1973, 87 Stat. 257, 276, 277; Pub. L. 95–599, title I, §§113, 116(d), 141(f), (g), Nov. 6, 1978, 92 Stat. 2696, 2699, 2711; Pub. L. 96–106, §3, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97–424, title I, §110(a), Jan. 6, 1983, 96 Stat. 2105; Pub. L. 102–240, title I, §1016(c)–(f)(1), Dec. 18, 1991, 105 Stat. 1946; Pub. L. 104–59, title III, §§304, 305(a), Nov. 28, 1995, 109 Stat. 579, 580; Pub. L. 105–178, title I, §§1202(c), 1212(a)(2)(A), 1306, June 9, 1998, 112 Stat. 169, 193, 229; Pub. L. 109–59, title I, §1110(a), (c), title VI, §6008, Aug. 10, 2005, 119 Stat. 1170, 1171, 1874; Pub. L. 112–141, div. A, title I, §§1504, 1519(c)(3), formerly §1519(c)(4), July 6, 2012, 126 Stat. 564, 575, renumbered §1519(c)(3), Pub. L. 114–94, div. A, title I, §1446(d)(5)(B), Dec. 4, 2015, 129 Stat. 1438; Pub. L. 114–94, div. A, title I, §1404(a), Dec. 4, 2015, 129 Stat. 1409; Pub. L. 117–58, div. A, title I, §§11123(d), 11129, Nov. 15, 2021, 135 Stat. 506, 508.)

[1] Designations so in original.

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Surface Transportation Reauthorization Act of 2021, referred to in subsec. (d)(2), is the date of enactment of div. A of Pub. L. 117–58, which was approved Nov. 15, 2021.

AMENDMENTS

2021—Subsec. (c)(2)(F), (G). Pub. L. 117–58, §11123(d), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d). Pub. L. 117–58, §11129(1), inserted subsec. heading, designated existing provisions as par. (1) and inserted par. heading, substituted ''promote the safety, inclusion, and mobility of all users'' for ''promote the safe'', and added par. (2).

Subsec. (*o*). Pub. L. 117–58, §11129(2), designated existing provisions as par. (A), inserted heading, and added par. (B).

Subsec. (s). Pub. L. 117–58, §11129(3), added subsec. (s).

2015—Subsec. (c)(1). Pub. L. 114–94, §1404(a)(1)(A)(i), substituted ''shall consider'' for ''may take into account'' in introductory provisions.

Subsec. (c)(1)(C), (D). Pub. L. 114–94, §1404(a)(1)(A)(ii)–(iv), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(2)(D) to (F). Pub. L. 114–94, §1404(a)(1)(B), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

Subsec. (f). Pub. L. 114–94, §1404(a)(2), inserted ''pedestrian walkways,'' after ''bikeways,''.

Subsec. (q). Pub. L. 114–94, §1446(d)(5)(B), amended Pub. L. 112–141, §1519(c). See 2012 Amendment note below.

2012—Subsec. (q). Pub. L. 112–141, §1519(c)(3), formerly §1519(c)(4), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), struck out ''in accordance with section 303 or'' after ''system established''.

Subsec. (r). Pub. L. 112–141, §1504, added subsec. (r).

2005—Subsec. (c)(2). Pub. L. 109–59, §6008, inserted dash after ''Secretary shall consider'' and subpar. (A) designation before ''the results'', substituted semicolon for period, and added subpars. (B) to (D).

Subsec. (e). Pub. L. 109–59, §1110(a), inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (g). Pub. L. 109–59, §1110(c), substituted ''Not later than January 30, 1971, the Secretary shall issue'' for ''The Secretary shall issue within 30 days after the day of enactment of the Federal-Aid Highway Act of 1970''.

1998—Subsecs. (b), (c)(2). Pub. L. 105–178, §1212(a)(2)(A)(ii), substituted ''State transportation departments'' for ''State highway departments''.

Subsec. (d). Pub. L. 105–178, §1212(a)(2)(A)(i), substituted ''State transportation department'' for ''State highway department''.

Subsec. (m). Pub. L. 105–178, §1306(a), redesignated subsec. (n) as (m) and struck out former subsec. (m)

which read as follows: ''The Secretary shall issue guidelines describing the criteria applicable to the Interstate System in order to insure that the condition of these routes is maintained at the level required by the purposes for which they were designed. The initial guidelines shall be issued no later than October 1, 1979.''

Subsec. (n). Pub. L. 105–178, § 1306(a)(2), redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m).

Pub. L. 105–178, § 1202(c), inserted heading and amended text of subsec. (n) generally. Prior to amendment, text read as follows: ''The Secretary shall not approve any project under this title that will result in the severance or destruction of an existing major route for nonmotorized transportation traffic and light motorcycles, unless such project provides a reasonably alternate route or such a route exists.''

Subsecs. (*o*) to (q). Pub. L. 105–178, § 1306(a)(2), (b), added subsec. (q) and redesignated former subsecs. (p) and (q) as (*o*) and (p), respectively. Former subsec. (*o*) redesignated (n).

1995—Subsec. (a). Pub. L. 104–59, § 304(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary shall not approve plans and specifications for proposed highway projects under this chapter if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality.''

Subsec. (c). Pub. L. 104–59, § 304(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''(c) DESIGN AND CONSTRUCTION STANDARDS FOR NHS.—Design and construction standards to be adopted for new construction on the National Highway System, for reconstruction on the National Highway System, and for resurfacing, restoring, and rehabilitating multilane limited access highways on the National Highway System shall be those approved by the Secretary in cooperation with the State highway departments. All eligible work for such projects shall meet or exceed such standards.''

Subsec. (j). Pub. L. 104–59, § 305(a), substituted ''plan for—'' and pars. (1) and (2) for ''plan for the implementation of any ambient air quality standard for any air quality control region designated pursuant to the Clean Air Act, as amended.''

Subsec. (q). Pub. L. 104–59, § 304(3), added subsec. (q) and struck out former subsec. (q) which read as follows: ''(q) HISTORIC AND SCENIC VALUES.—If a proposed project under sections 103(e)(4), 133, or 144 involves a historic facility or is located in an area of historic or scenic value, the Secretary may approve such project notwithstanding the requirements of subsections (a) and (b) of this section and section 133(c) if such project is designed to standards that allow for the preservation of such historic or scenic value and such project is designed with mitigation measures to allow preservation of such value and ensure safe use of the facility.''

1991—Subsec. (a). Pub. L. 102–240, § 1016(f)(1)(A), substituted ''highway projects under this chapter'' for ''projects on any Federal-aid system''.

Subsec. (c). Pub. L. 102–240, § 1016(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Projects on the Federal-aid secondary system in which Federal funds participate shall be constructed according to specifications that will provide all-weather service and permit maintenance at a reasonable cost.''

Subsec. (*l*)(1). Pub. L. 102–240, § 1016(f)(1)(B), substituted ''highway'' for ''system'' in introductory provisions.

Subsecs. (p), (q). Pub. L. 102–240, § 1016(d), (e), added subsecs. (p) and (q).

1983—Subsec. (*o*). Pub. L. 97–424 added subsec. (*o*).

1979—Subsec. (*l*)(1)(A). Pub. L. 96–106 struck out ''any aspect of'' after ''adversely affect''.

1978—Subsec. (f). Pub. L. 95–599, § 141(f), inserted ''bikeways'' after ''surfaces, median strips,''.

Subsec. (*l*). Pub. L. 95–599, § 113, added subsec. (*l*).

Subsec. (m). Pub. L. 95–599, § 116(d), added subsec. (m).

Subsec. (n). Pub. L. 95–599, § 141(g), added subsec. (n).

1973—Subsec. (g). Pub. L. 93–87, § 152(2), substituted ''Act'' for ''Rct'', thus correcting the popular name to read ''Federal-Aid Highway Act of 1970''.

Subsec. (i). Pub. L. 93–87, § 114, authorized promulgation of noise-level standards for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972, and approval of any project on a Federal-aid system to which noise-level standards are made applicable, described the range of the projects, made money available for financing Federal share of the project, and deemed such project a highway project for all purposes of this title.

Subsec. (k). Pub. L. 93–87, § 156, added subsec. (k).

1970—Subsec. (g). Pub. L. 91–605, § 136(a), substituted provisions ordering the Secretary to issue within 30 days after Dec. 31, 1970, guidelines, which will apply to all proposed projects approved by the Secretary after their issuance, for minimizing soil erosion from highway construction for provisions authorizing the Secretary to consult with the Secretary of Agriculture respecting guidelines for minimizing soil erosion from highway construction and report such guidelines to Congress not later than July 1, 1967.

Subsecs. (h) to (j). Pub. L. 91–605, § 136(b), added subsecs. (h) to (j).

1966—Subsec. (b). Pub. L. 89–574, § 5(a), required that in all cases the standards provide for at least four lanes of traffic.

Subsec. (g). Pub. L. 89–574, § 14, added subsec. (g).

1963—Subsec. (b). Pub. L. 88–157 substituted ''Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project'' for ''Such standards shall be adequate to accommodate the types and volumes of traffic forecast for the year 1975'', struck out ''up'' before ''to such standards'' and inserted ''all'' in phrase ''throughout all the States''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

Pub. L. 114–94, div. A, title I, § 1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B) is effective as of July 6, 2012, and as if included in Pub. L. 112–141 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

UPDATES TO MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Pub. L. 117–58, div. A, title I, §11135, Nov. 15, 2021, 135 Stat. 516, provided that: ''In carrying out the first update to the Manual on Uniform Traffic Control Devices under section 109(d)(2) of title 23, United States Code, to the greatest extent practicable, the Secretary [of Transportation] shall include updates necessary to provide for—

''(1) the protection of vulnerable road users (as defined in section 148(a) of title 23, United States Code);

''(2) supporting the safe testing of automated vehicle technology and any preparation necessary for the safe integration of automated vehicles onto public streets;

''(3) appropriate use of variable message signs to enhance public safety;

''(4) the minimum retroreflectivity of traffic control devices and pavement markings; and

''(5) any additional recommendations made by the National Committee on Uniform Traffic Control Devices that have not been incorporated into the Manual on Uniform Traffic Control Devices.''

ROADSIDE HIGHWAY SAFETY HARDWARE

Pub. L. 117–58, div. A, title I, §11517, Nov. 15, 2021, 135 Stat. 601, provided that:

''(a) IN GENERAL.—To the maximum extent practicable, the Secretary [of Transportation] shall develop a process for third party verification of full-scale crash testing results from crash test labs, including a method for formally verifying the testing outcomes and providing for an independent pass/fail determination. In establishing such a process, the Secretary shall seek to ensure the independence of crash test labs by ensuring that those labs have a clear separation between device development and testing in cases in which lab employees test devices that were developed within the parent organization of the employee.

''(b) CONTINUED ISSUANCE OF ELIGIBILITY LETTERS.—Until the implementation of the process described in subsection (a) is complete, the Secretary may, and is encouraged to, ensure that the Administrator of the Federal Highway Administration continues to issue Federal-aid reimbursement eligibility letters for roadside safety hardware as a service to States.

''(c) REPORT TO CONGRESS.—

''(1) IN GENERAL.—If the Secretary seeks to discontinue issuing the letters described in subsection (b), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report at least 1 year before discontinuing the letters.

''(2) INCLUSIONS.—The report described in paragraph (1) shall include a summary of the third-party verification process described in subsection (a) that will replace the Federal Highway Administration issuance of eligibility letters and any other relevant information that the Secretary deems necessary.''

STORMWATER BEST MANAGEMENT PRACTICES REPORTS

Pub. L. 117–58, div. A, title I, §11521, Nov. 15, 2021, 135 Stat. 603, provided that:

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Highway Administration.

''(2) BEST MANAGEMENT PRACTICES REPORT.—The term 'best management practices report' means—

''(A) the 2014 report sponsored by the Administrator entitled 'Determining the State of the Practice in Data Collection and Performance Measurement of Stormwater Best Management Practices'; and

''(B) the 1997 report sponsored by the Administrator entitled 'Stormwater Best Management Practices in an Ultra-Urban Setting: Selection and Monitoring'.

''(b) REISSUANCE.—Not later than 1 year after the date of enactment of this Act [Nov. 15, 2021], the Administrator shall update and reissue each best management practices report to reflect new information and advancements in stormwater management.

''(c) UPDATES.—Not less frequently than once every 5 years after the date on which the Administrator reissues a best management practices report described in subsection (b), the Administrator shall update and reissue the best management practices report until the earlier of the date on which—

''(1) the best management practices report is withdrawn; or

''(2) the contents of the best management practices report are incorporated (including by reference) into applicable regulations of the Administrator.''

RETROACTIVE APPLICATION OF ADJUSTMENT TO CRITERIA FOR CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE

Pub. L. 114–94, div. A, title I, §1314(b), Dec. 4, 2015, 129 Stat. 1403, provided that: ''The first adjustment made pursuant to the amendments made by subsection (a) [amending section 1317 of Pub. L. 112–141, set out under this section] shall—

''(1) be carried out not later than 60 days after the date of enactment of this Act [Dec. 4, 2015]; and

''(2) reflect the increase in the Consumer Price Index since July 1, 2012.''

CATEGORICAL EXCLUSION DETERMINATIONS

Pub. L. 114–94, div. A, title I, §1315(b), Dec. 4, 2015, 129 Stat. 1403, provided that: ''Not later than 30 days after the date of enactment of this Act [Dec. 4, 2015], the Secretary [of Transportation] shall revise section 771.117(g) of title 23, Code of Federal Regulations, to allow a programmatic agreement under this section [see section 1318(e) of Pub. L. 112–141, set out under this section] to include responsibility for making categorical exclusion determinations—

''(1) for actions described in subsections (c) and (d) of section 771.117 of title 23, Code of Federal Regulations; and

''(2) that meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act), and are identified in the programmatic agreement.''

ROADWAY DESIGN STANDARD FLEXIBILITY

Pub. L. 114–94, div. A, title I, §1404(b), Dec. 4, 2015, 129 Stat. 1409, provided that: ''Notwithstanding section 109(*o*) of title 23, United States Code, a State may allow a local jurisdiction to use a roadway design publication that is different from the roadway design publication used by the State in which the local jurisdiction is located for the design of a project on a roadway under the ownership of the local jurisdiction (other than a highway on the Interstate System) if—

''(1) the local jurisdiction is a direct recipient of Federal funds for the project;

''(2) the roadway design publication—

''(A) is recognized by the Federal Highway Administration; and

''(B) is adopted by the local jurisdiction; and

''(3) the design complies with all other applicable Federal laws.''

EMERGENCY EXEMPTIONS

Pub. L. 114–94, div. A, title I, §1432, Dec. 4, 2015, 129 Stat. 1429, provided that:

''(a) IN GENERAL.—Any road, highway, railway, bridge, or transit facility that is damaged by an emergency that is declared by the Governor of the State, with the concurrence of the Secretary of Homeland Security, or declared as an emergency by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), and that is in operation or under construction on the date

on which the emergency occurs may be reconstructed in the same location with the same capacity, dimensions, and design as before the emergency subject to the exemptions and expedited procedures under subsection (b).

''(b) EXEMPTIONS AND EXPEDITED PROCEDURES.—

''(1) ALTERNATIVE ARRANGEMENTS.—Alternative arrangements for an emergency under section 1506.11 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act [Dec. 4, 2015]) shall apply to reconstruction under subsection (a), and the reconstruction shall be considered necessary to control the immediate impacts of the emergency.

''(2) STORMWATER DISCHARGE PERMITS.—A general permit for stormwater discharges from construction activities, if available, issued by the Administrator of the Environmental Protection Agency or the director of a State program under section 402(p) of the Federal Water Pollution Control Act (33 U.S.C. 1342(p)), as applicable, shall apply to reconstruction under subsection (a), on submission of a notice of intent to be subject to the permit.

''(3) EMERGENCY PROCEDURES.—The emergency procedures for issuing permits in accordance with section 325.2(e)(4) of title 33, Code of Federal Regulations (as in effect on the date of enactment of this Act) shall apply to reconstruction under subsection (a), and the reconstruction shall be considered an emergency under that regulation.

''(4) NATIONAL HISTORIC PRESERVATION ACT EXEMPTION.—Reconstruction under subsection (a) is eligible for an exemption from the requirements of the National Historic Preservation Act of 1966 [Pub. L. 89–665, see Tables for classification] pursuant to part 78 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act).

''(5) ENDANGERED SPECIES ACT EXEMPTION.—An exemption from the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) pursuant to section 7(p) of that Act (16 U.S.C. 1536(p)) shall apply to reconstruction under subsection (a) and, if the President makes the determination required under section 7(p) of that Act, the determinations required under subsections (g) and (h) of that section shall be deemed to be made.

''(6) EXPEDITED CONSULTATION UNDER ENDANGERED SPECIES ACT.—Expedited consultation pursuant to section 402.05 of title 50, Code of Federal Regulations (as in effect on the date of enactment of this Act) shall apply to reconstruction under subsection (a).

''(7) OTHER EXEMPTIONS.—Any reconstruction that is exempt under paragraph (5) shall also be exempt from requirements under—

''(A) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

''(B) the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); and

''(C) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).''

SAFETY FOR USERS

Pub. L. 114–94, div. A, title I, §1442, Dec. 4, 2015, 129 Stat. 1436, provided that:

''(a) IN GENERAL.—The Secretary [of Transportation] shall encourage each State and metropolitan planning organization to adopt standards for the design of Federal surface transportation projects that provide for the safe and adequate accommodation (as determined by the State) of all users of the surface transportation network, including motorized and nonmotorized users, in all phases of project planning, development, and operation.

''(b) REPORT.—Not later than 2 years after the date of enactment of this Act [Dec. 4, 2015], the Secretary shall make available to the public a report cataloging examples of State law or State transportation policy that provide for the safe and adequate accommodation of all users of the surface transportation network, in all phases of project planning, development, and operation.

''(c) BEST PRACTICES.—Based on the report under subsection (b), the Secretary shall identify and disseminate examples of best practices where States have adopted measures that have successfully provided for the safe and adequate accommodation of all users of the surface transportation network in all phases of project planning, development, and operation.''

CATEGORICAL EXCLUSIONS IN EMERGENCIES

Pub. L. 112–141, div. A, title I, §1315, July 6, 2012, 126 Stat. 549, provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title], for the repair or reconstruction of any road, highway, or bridge that is in operation or under construction when damaged by an emergency declared by the Governor of the State and concurred in by the Secretary [of Transportation], or for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Secretary shall publish a notice of proposed rulemaking to treat any such repair or reconstruction activity as a class of action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act) if such repair or reconstruction activity is—

''(1) in the same location with the same capacity, dimensions, and design as the original road, highway, or bridge as before the declaration described in this section; and

''(2) commenced within a 2-year period beginning on the date of a declaration described in this section.

''(b) RULEMAKING.—

''(1) IN GENERAL.—The Secretary [of Transportation] shall ensure that the rulemaking helps to conserve Federal resources and protects public safety and health by providing for periodic evaluations to determine if reasonable alternatives exist to roads, highways, or bridges that repeatedly require repair and reconstruction activities.

''(2) REASONABLE ALTERNATIVES.—The reasonable alternatives described in paragraph (1) include actions that could reduce the need for Federal funds to be expended on such repair and reconstruction activities, better protect public safety and health and the environment, and meet transportation needs as described in relevant and applicable Federal, State, local and tribal plans.''

CATEGORICAL EXCLUSIONS FOR PROJECTS WITHIN THE RIGHT-OF-WAY

Pub. L. 112–141, div. A, title I, §1316, July 6, 2012, 126 Stat. 549, provided that:

''(a) IN GENERAL.—The Secretary [of Transportation] shall—

''(1) not later than 180 days after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title], designate any project (as defined in section 101(a) of title 23, United States Code) within an existing operational right-of-way as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations; and

''(2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).

''(b) DEFINITION OF AN OPERATIONAL RIGHT-OF-WAY.—In this section, the term 'operational right-of-way' means all real property interests acquired for the construction, operation, or mitigation of a project (as defined in section 101(a) of title 23, United States Code),

including the locations of the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway.''

CATEGORICAL EXCLUSION FOR PROJECTS OF LIMITED FEDERAL ASSISTANCE

Pub. L. 112–141, div. A, title I, §1317, July 6, 2012, 126 Stat. 550, as amended by Pub. L. 114–94, div. A, title I, §1314(a), Dec. 4, 2015, 129 Stat. 1402; Pub. L. 117–58, div. A, title I, §11317, Nov. 15, 2021, 135 Stat. 543, provided that: ''Not later than 180 days after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title], the Secretary [of Transportation] shall—

''(1) designate as an action categorically excluded from the requirements relating to environmental assessments or environmental impact statements under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(c) of title 23, Code of Federal Regulations, any project—

''(A) that receives less than $6,000,000 (as adjusted annually by the Secretary [of Transportation] to reflect any increases in the Consumer Price Index prepared by the Department of Labor) of Federal funds; or

''(B) with a total estimated cost of not more than $35,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor) and Federal funds comprising less than 15 percent of the total estimated project cost; and

''(2) not later than 150 days after the date of enactment of this Act, promulgate regulations to carry out paragraph (1).''

PROGRAMMATIC AGREEMENTS AND ADDITIONAL CATEGORICAL EXCLUSIONS

Pub. L. 112–141, div. A, title I, §1318, July 6, 2012, 126 Stat. 550, as amended by Pub. L. 114–94, div. A, title I, §1315(a), Dec. 4, 2015, 129 Stat. 1403, provided that:

''(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title], the Secretary [of Transportation] shall—

''(1) survey the use by the Department [of Transportation] of categorical exclusions in transportation projects since 2005;

''(2) publish a review of the survey that includes a description of—

''(A) the types of actions categorically excluded; and

''(B) any requests previously received by the Secretary for new categorical exclusions; and

''(3) solicit requests from State departments of transportation, transit authorities, metropolitan planning organizations, or other government agencies for new categorical exclusions.

''(b) NEW CATEGORICAL EXCLUSIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to propose new categorical exclusions received by the Secretary under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations, and section 771.117(a) of title 23, Code of Federal Regulations (as those regulations are in effect on the date of the notice).

''(c) ADDITIONAL ACTIONS.—The Secretary shall issue a proposed rulemaking to move the following types of actions from subsection (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act), to subsection (c) of that section, to the extent that such movement complies with the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this Act):

''(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing).

''(2) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting.

''(3) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

''(d) PROGRAMMATIC AGREEMENTS.—

''(1) IN GENERAL.—The Secretary shall seek opportunities to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out environmental and other required project reviews.

''(2) INCLUSIONS.—Programmatic agreements authorized under paragraph (1) may include agreements that allow a State to determine on behalf of the Federal Highway Administration whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(3) DETERMINATIONS.—An agreement described in paragraph (2) may include determinations by the Secretary [of Transportation] of the types of projects categorically excluded (consistent with section 1508.4 of title 40, Code of Federal Regulations) in the State in addition to the types listed in subsections (c) and (d) of section 771.117 of title 23, Code of Federal Regulations (as in effect on the date of enactment of this Act).

''(e) PROGRAMMATIC AGREEMENT TEMPLATE.—

''(1) IN GENERAL.—The Secretary [of Transportation] shall develop a template programmatic agreement described in subsection (d) that provides for efficient and adequate procedures for evaluating Federal actions described in section 771.117(c) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this subsection [Dec. 4, 2015]).

''(2) USE OF TEMPLATE.—The Secretary—

''(A) on receipt of a request from a State, shall use the template programmatic agreement developed under paragraph (1) in carrying out this section; and

''(B) on consent of the applicable State, may modify the template as necessary to address the unique needs and characteristics of the State.

''(3) OUTCOME MEASUREMENTS.—The Secretary shall establish a method to verify that actions described in section 771.117(c) of title 23, Code of Federal Regulations (as in effect on the date of enactment of this subsection), are evaluated and documented in a consistent manner by the State that uses the template programmatic agreement under this subsection.''

ENGINEERING JUDGMENT

Pub. L. 112–141, div. A, title I, §1529, July 6, 2012, 126 Stat. 583, provided that: ''Not later than 90 days after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title], the Secretary [of Transportation] shall issue guidance to State transportation departments clarifying that the standards, guidance, and options for design and application of traffic control devices provided in the Manual on Uniform Traffic Control Devices should not be considered a substitute for engineering judgment.''

HIGHWAY SIGNS RELATING TO VETERANS CEMETERIES

Pub. L. 108–29, §3, May 29, 2003, 117 Stat. 772, provided that:

''(a) IN GENERAL.—Notwithstanding the terms of any agreement entered into by the Secretary of Transportation and a State under section 109(d) or 402(a) of title 23, United States Code, a veterans cemetery shall be treated as a site for which a supplemental guide sign may be placed on any Federal-aid highway.

''(b) APPLICABILITY.—Subsection (a) shall apply to an agreement entered into before, on, or after the date of the enactment of this Act [May 29, 2003].''

INTERNATIONAL ROUGHNESS INDEX

Pub. L. 105–178, title I, §1213(b), June 9, 1998, 112 Stat. 200, provided that:

''(1) STUDY.—The Comptroller General of the United States shall conduct a study on the international roughness index that is used as an indicator of pavement quality on the Federal-aid highway system.

''(2) REQUIRED ELEMENTS.—The study shall specify the extent of usage of the index and the extent to which the international roughness index measurement is reliable across different manufacturers and types of pavement.

''(3) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Comptroller General shall submit to Congress a report on the results of the study.''

ENVIRONMENTAL STREAMLINING

Pub. L. 105–178, title I, §1309, June 9, 1998, 112 Stat. 232, as amended by Pub. L. 105–206, title IX, §9004(c), July 22, 1998, 112 Stat. 843, which directed the Secretary of Transportation to develop and implement a coordinated environmental review process for highway construction and mass transit projects, was repealed by Pub. L. 109–59, title VI, §6002(d), Aug. 10, 2005, 119 Stat. 1865.

ROADSIDE SAFETY TECHNOLOGIES

Pub. L. 105–178, title I, §1402, June 9, 1998, 112 Stat. 236, as amended by Pub. L. 105–206, title IX, §9005(c), July 22, 1998, 112 Stat. 848, provided that:

''(a) CRASH CUSHIONS.—

''(1) GUIDANCE.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary shall issue guidance regarding the benefits and safety performance of redirective and nonredirective crash cushions in different road applications, taking into consideration roadway conditions, operating speed limits, the location of the crash cushion in the right-of-way, and any other relevant factors. The guidance shall include recommendations on the most appropriate circumstances for utilization of redirective and nonredirective crash cushions.

''(2) USE OF GUIDANCE.—States shall use the guidance issued under this subsection in evaluating the safety and cost-effectiveness of utilizing different crash cushion designs and determining whether redirective or nonredirective crash cushions or other safety appurtenances should be installed at specific highway locations.

''(b) TRAFFIC FLOW AND SAFETY APPLICATIONS OF ROAD BARRIERS.—

''(1) STUDY.—The Secretary shall conduct a study on the technologies and methods to enhance safety, streamline construction, and improve capacity by providing positive separation at all times between traffic, equipment, and workers on highway construction projects. The study shall also address how such technologies can be used to improve capacity and safety at those specific highway, bridge, and other appropriate locations where reversible lane, contraflow, and high occupancy vehicle lane operations are implemented during peak traffic periods.

''(2) USES TO CONSIDER.—In conducting the study, the Secretary shall consider, at a minimum, uses of positive separation technologies related to—

''(A) separating workers from traffic flow when work is in progress;

''(B) providing additional safe work space by utilizing adjacent and available traffic lanes during off-peak hours;

''(C) rapid deployment to allow for daily or periodic restoration of lanes for use by traffic during peak hours as needed;

''(D) mitigating congestion caused by construction by—

''(i) opening all adjacent and available lanes to traffic during peak traffic hours; or

''(ii) using reversible lanes to optimize capacity of the highway by adjusting to directional traffic flow; and

''(E) permanent use of positive separation technologies to create contraflow or reversible lanes to increase the capacity of congested highways, bridges, and tunnels.

''(3) REPORT.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the results of the study. The report shall include findings and recommendations for the use of the technologies referred to in paragraph (2) to provide positive separation on appropriate projects.''

METRIC REQUIREMENTS

Pub. L. 104–59, title II, §205(c), Nov. 28, 1995, 109 Stat. 577, as amended by Pub. L. 105–178, title I, §1211(d), June 9, 1998, 112 Stat. 188, provided that:

''(1) PLACEMENT AND MODIFICATION OF SIGNS.—The Secretary shall not require the States to expend any Federal or State funds to construct, erect, or otherwise place or to modify any sign relating to a speed limit, distance, or other measurement on a highway for the purpose of having such sign establish such speed limit, distance, or other measurement using the metric system.

''(2) OTHER ACTIONS.—The Secretary shall not require that any State use or plan to use the metric system with respect to designing or advertising, or preparing plans, specifications, estimates, or other documents, for a Federal-aid highway project eligible for assistance under title 23, United States Code.

''(3) DEFINITIONS.—In this subsection, the following definitions apply:

''(A) HIGHWAY.—The term 'highway' has the meaning such term has under section 101 of title 23, United States Code.

''(B) METRIC SYSTEM.—The term 'metric system' has the meaning the term 'metric system of measurement' has under section 4 of the Metric Conversion Act of 1975 (15 U.S.C. 205c).''

TYPE II NOISE BARRIERS

Pub. L. 104–59, title III, §339(b), Nov. 28, 1995, 109 Stat. 605, provided that:

''(1) GENERAL RULE.—No funds made available out of the Highway Trust Fund may be used to construct Type II noise barriers (as defined by section 772.5(i) of title 23, Code of Federal Regulations) pursuant to subsections (h) and (i) of section 109 of title 23, United States Code, if such barriers were not part of a project approved by the Secretary before the date of the enactment of this Act [Nov. 28, 1995].

''(2) EXCEPTIONS.—Paragraph (1) shall not apply to construction of Type II noise barriers along lands that were developed or were under substantial construction before approval of the acquisition of the rights-of-ways for, or construction of, the existing highway.''

HIGHWAY SIGNS FOR NATIONAL HIGHWAY SYSTEM

Pub. L. 104–59, title III, §359(b), Nov. 28, 1995, 109 Stat. 626, provided that:

''(1) STUDY.—The Secretary shall conduct a study to determine the cost, need, and efficacy of establishing a highway sign for identifying routes on the National Highway System. In conducting the study, the Secretary shall make a determination concerning whether to identify National Highway System route numbers.

''(2) REPORT.—Not later than March 1, 1997, the Secretary shall transmit to Congress a report on the results of the study.''

USE OF RECYCLED PAVING MATERIAL

Pub. L. 102–240, title I, §1038, Dec. 18, 1991, 105 Stat. 1987, as amended by Pub. L. 104–59, title II, §205(b), title III, §327, Nov. 28, 1995, 109 Stat. 577, 592, provided that:

''(a) ASPHALT PAVEMENT CONTAINING RECYCLED RUBBER DEMONSTRATION PROGRAM.—Notwithstanding any other provision of title 23, United States Code, or regulation or policy of the Department of Transportation, the Secretary (or a State acting as the Department's agent) may not disapprove a highway project under chapter 1 of title 23, United States Code, on the ground that the project includes the use of asphalt pavement containing recycled rubber. Under this subsection, a patented application process for recycled rubber shall be eligible for approval under the same conditions that an unpatented process is eligible for approval.

''(b) STUDIES.—

''(1) IN GENERAL.—The Secretary and the Administrator of the Environmental Protection Agency shall coordinate and conduct, in cooperation with the States, a study to determine—

''(A) the threat to human health and the environment associated with the production and use of asphalt pavement containing recycled rubber;

''(B) the degree to which asphalt pavement containing recycled rubber can be recycled; and

''(C) the performance of the asphalt pavement containing recycled rubber under various climate and use conditions.

''(2) DIVISION OF RESPONSIBILITIES.—The Administrator shall conduct the part of the study relating to paragraph (1)(A) and the Secretary shall conduct the part of the study relating to paragraph (1)(C). The Administrator and the Secretary shall jointly conduct the study relating to paragraph (1)(B).

''(3) ADDITIONAL STUDY.—The Secretary and the Administrator, in cooperation with the States, shall jointly conduct a study to determine the economic savings, technical performance qualities, threats to human health and the environment, and environmental benefits of using recycled materials in highway devices and appurtenances and highway projects, including asphalt containing over 80 percent reclaimed asphalt, asphalt containing recycled glass, and asphalt containing recycled plastic.

''(4) ADDITIONAL ELEMENTS.—In conducting the study under paragraph (3), the Secretary and the Administrator shall examine utilization of various technologies by States and shall examine the current practices of all States relating to the reuse and disposal of materials used in federally assisted highway projects.

''(5) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary and the Administrator shall transmit to Congress a report on the results of the studies conducted under this subsection, including a detailed analysis of the economic savings and technical performance qualities of using such recycled materials in federally assisted highway projects and the environmental benefits of using such recycled materials in such highway projects in terms of reducing air emissions, conserving natural resources, and reducing disposal of the materials in landfills.

''(c) DOT GUIDANCE.—

''(1) INFORMATION GATHERING AND DISTRIBUTION.—The Secretary shall gather information and recommendations concerning the use of asphalt containing recycled rubber in highway projects from those States that have extensively evaluated and experimented with the use of such asphalt and implemented such projects and shall make available such information and recommendations on the use of such asphalt to those States which indicate an interest in the use of such asphalt.

''(2) ENCOURAGEMENT OF USE.—The Secretary should encourage the use of recycled materials determined to be appropriate by the studies pursuant to subsection (b) in federally assisted highway projects. Procuring agencies shall comply with all applicable guidelines or regulations issued by the Administrator of the Environmental Protection Agency.

''(d) ASPHALT PAVEMENT CONTAINING RECYCLED RUBBER.—

''(1) CRUMB RUBBER MODIFIER RESEARCH.—Not later than 180 days after the date of the enactment of the National Highway System Designation Act of 1995 [Nov. 28, 1995], the Secretary shall develop testing procedures and conduct research to develop performance grade classifications, in accordance with the strategic highway research program carried out under section 307(d) of title 23, United States Code, for crumb rubber modifier binders. The testing procedures and performance grade classifications should be developed in consultation with representatives of the crumb rubber modifier industry and other interested parties (including the asphalt paving industry) with experience in the development of the procedures and classifications.

''(2) CRUMB RUBBER MODIFIER PROGRAM DEVELOPMENT.—

''(A) IN GENERAL.—The Secretary may make grants to States to develop programs to use crumb rubber from scrap tires to modify asphalt pavements.

''(B) USE OF GRANT FUNDS.—Grant funds made available to States under this paragraph shall be used—

''(i) to develop mix designs for crumb rubber modified asphalt pavements;

''(ii) for the placement and evaluation of crumb rubber modified asphalt pavement field tests; and

''(iii) for the expansion of State crumb rubber modifier programs in existence on the date the grant is made available.

''(e) DEFINITIONS.—For purpose of this section—

''(1) the term 'asphalt pavement containing recycled rubber' means any mixture of asphalt and crumb rubber derived from whole scrap tires, such that the physical properties of the asphalt are modified through the mixture, for use in pavement maintenance, rehabilitation, or construction applications; and

''(2) the term 'recycled rubber' is any crumb rubber derived from processing whole scrap tires or shredded tire material taken from automobiles, trucks, or other equipment owned and operated in the United States.''

SURVEY AND REPORT ON UPGRADING OF DESIGN STANDARDS

Pub. L. 102–240, title I, §1049, Dec. 18, 1991, 105 Stat. 2000, directed Secretary to conduct a survey to identify current State standards relating to geometric design, traffic control devices, roadside safety, safety appurtenance design, uniform traffic control devices, and sign legibility and directional clarity for all Federal-aid highways and, not later than 2 years after Dec. 18, 1991, to transmit to Congress a report on the results of the survey and the crashworthiness of traffic lights, traffic signs, guardrails, impact attenuators, concrete barrier treatments, and breakaway utility poles for bridges and roadways currently used by States.

EROSION CONTROL GUIDELINES

Pub. L. 102–240, title I, §1057, Dec. 18, 1991, 105 Stat. 2002, provided that:

''(a) DEVELOPMENT.—The Secretary shall develop erosion control guidelines for States to follow in carrying out construction projects funded in whole or in part under this title [see Tables for classification].

''(b) MORE STRINGENT STATE REQUIREMENTS.—Guidelines developed under subsection (a) shall not preempt any requirement made by or under State law if such requirement is more stringent than the guidelines.

''(c) CONSISTENCY WITH OTHER PROGRAMS.—Guidelines developed under subsection (a) shall be consistent with nonpoint source management programs under section 319 of the Federal Water Pollution Control Act [33 U.S.C. 1329] and coastal nonpoint pollution control guidance under section 6217(g) of the Omnibus Budget Reconciliation Act of 1990 [16 U.S.C. 1455b(g)].''

ROADSIDE BARRIER TECHNOLOGY

Pub. L. 102–240, title I, §1058, Dec. 18, 1991, 105 Stat. 2003, as amended by Pub. L. 104–59, title III, §328, Nov. 28, 1995, 109 Stat. 593, provided that:

''(a) REQUIREMENT FOR INNOVATIVE BARRIERS.—Not less than 2½ percent of the mileage of new or replacement permanent or temporary crashworthy barriers included in awarded contracts along Federal-aid highways within the boundaries of a State in each calendar year shall be innovative crashworthy safety barriers.

''(b) CERTIFICATION.—Each State shall annually certify to the Secretary its compliance with the requirements of this section.

''(c) DEFINITION OF INNOVATIVE CRASHWORTHY SAFETY BARRIER.—For purposes of this section, the term 'innovative crashworthy safety barrier' means a barrier, other than a guardrail or guiderail, classified by the Federal Highway Administration as 'experimental' or that was classified as 'operational' after January 1, 1985, and that meets or surpasses the requirements of the National Cooperative Highway Research Program 350 for longitudinal barriers.''

ROADSIDE BARRIERS AND SAFETY APPURTENANCES

Pub. L. 102–240, title I, §1073, Dec. 18, 1991, 105 Stat. 2012, provided that:

''(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in the National Cooperative Highway Research Program Report 230, relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

''(b) FINAL RULE.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall complete the rulemaking proceeding initiated under subsection (a), and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, minivans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.''

STUDIES RELATING TO ESTABLISHMENT OF STANDARDS FOR RESURFACING, RESTORATION, AND REHABILITATION OF HIGHWAYS AND TO ESTABLISHMENT OF UNIFORM STANDARDS AND CRITERIA FOR TESTING AND INSPECTING HIGHWAYS AND BRIDGES

Pub. L. 97–424, title I, §110(b), (c), Jan. 6, 1983, 96 Stat. 2105, provided that:

''(b) The Secretary of Transportation shall enter into appropriate arrangements with the National Academy of Sciences (1) to conduct a study of the safety cost-effectiveness of geometric design criteria of standards currently in effect for construction and reconstruction of highways, other than highways access to which is fully controlled, to determine the most appropriate minimum standards to apply to resurfacing, restoration, and rehabilitation projects on such highways, which study shall include a study of the cost effectiveness of the hot dip galvanizing process for the installation, repair, or replacement of exposed structural and miscellaneous steel, and (2) to propose standards to preserve and extend the service life of such highways and enhance highway safety. The National Academy of Sciences shall conduct such study in cooperation with the National Transportation Safety Board, the Congressional Budget Office, and the American Association of State Highway and Transportation Officials. Upon completion of such study, the National Academy of Sciences shall submit such study and its proposed standards to the Secretary of Transportation for review. Within ninety days after submission of such standards to the Secretary of Transportation, the Secretary shall submit such study and the proposed standards of the National Academy of Sciences, together with the recommendations of the Secretary, to Congress for approval.

''(c)(1) The Secretary of Transportation is directed to coordinate a study with the National Bureau of Standards, the American Society for Testing and Materials, and other organizations as deemed appropriate, (A) to determine the existing quality of design, construction, products, use, and systems for highways and bridges; (B) to determine the need for uniform standards and criteria for design, processing, products, and applications, including personnel training and implementation of enforcement techniques; and (C) to determine the manpower needs and costs of developing a national system for the evaluation and accreditation of testing and inspection agencies.

''(2) The Secretary shall submit such study to the Congress not later than one year after the date of enactment of this section [Jan. 6, 1983].''

EXPENDITURE OF FEDERAL FUNDS FOR HIGHWAY SIGNS USING METRIC SYSTEM

Pub. L. 95–599, title I, §144, Nov. 6, 1978, 92 Stat. 2713, as amended by Pub. L. 96–106, §14, Nov. 9, 1979, 93 Stat. 798, which prohibited use of Federal funds for signing solely in the metric system, was repealed by Pub. L. 102–240, title I, §1053, Dec. 18, 1991, 105 Stat. 2001.

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Authorization to modify projects agreements entered into prior to September 13, 1966, to effectuate the amendment of this section by Pub. L. 89–574 which added the requirement of four-lanes of traffic, see section 5(b) of Pub. L. 89–574, set out as a note under section 106 of this title.

[§ 110. Repealed. Pub. L. 112–141, div. A, title I, §1519(b)(1)(A), July 6, 2012, 126 Stat. 575]

Section, added and amended Pub. L. 105–178, title I, §1105(a), (c), June 9, 1998, 112 Stat. 130; Pub. L. 105–206, title IX, §9002(e), July 22, 1998, 112 Stat. 835; Pub. L. 106–113, div. B, §1000(a)(5) [title III, §304], Nov. 29, 1999, 113 Stat. 1536, 1501A–306; Pub. L. 106–159, title I, §102(a)(2), Dec. 9, 1999, 113 Stat. 1752; Pub. L. 109–59, title I, §1105(a)–(e), Aug. 10, 2005, 119 Stat. 1165, 1166, related to revenue aligned budget authority.

Another section 110 was renumbered section 126 of this title.

A prior section 110, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894, related to project agreements, prior to repeal by Pub. L. 105–178, title I, §1105(a), June 9, 1998, 112 Stat. 130.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to

ROADSIDE BARRIER TECHNOLOGY

Pub. L. 102–240, title I, §1058, Dec. 18, 1991, 105 Stat. 2003, as amended by Pub. L. 104–59, title III, §328, Nov. 28, 1995, 109 Stat. 593, provided that:

''(a) REQUIREMENT FOR INNOVATIVE BARRIERS.—Not less than 2½ percent of the mileage of new or replacement permanent or temporary crashworthy barriers included in awarded contracts along Federal-aid highways within the boundaries of a State in each calendar year shall be innovative crashworthy safety barriers.

''(b) CERTIFICATION.—Each State shall annually certify to the Secretary its compliance with the requirements of this section.

''(c) DEFINITION OF INNOVATIVE CRASHWORTHY SAFETY BARRIER.—For purposes of this section, the term 'innovative crashworthy safety barrier' means a barrier, other than a guardrail or guiderail, classified by the Federal Highway Administration as 'experimental' or that was classified as 'operational' after January 1, 1985, and that meets or surpasses the requirements of the National Cooperative Highway Research Program 350 for longitudinal barriers.''

ROADSIDE BARRIERS AND SAFETY APPURTENANCES

Pub. L. 102–240, title I, §1073, Dec. 18, 1991, 105 Stat. 2012, provided that:

''(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in the National Cooperative Highway Research Program Report 230, relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

''(b) FINAL RULE.—Not later than 1 year after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall complete the rulemaking proceeding initiated under subsection (a), and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, minivans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.''

STUDIES RELATING TO ESTABLISHMENT OF STANDARDS FOR RESURFACING, RESTORATION, AND REHABILITATION OF HIGHWAYS AND TO ESTABLISHMENT OF UNIFORM STANDARDS AND CRITERIA FOR TESTING AND INSPECTING HIGHWAYS AND BRIDGES

Pub. L. 97–424, title I, §110(b), (c), Jan. 6, 1983, 96 Stat. 2105, provided that:

''(b) The Secretary of Transportation shall enter into appropriate arrangements with the National Academy of Sciences (1) to conduct a study of the safety cost-effectiveness of geometric design criteria of standards currently in effect for construction and reconstruction of highways, other than highways access to which is fully controlled, to determine the most appropriate minimum standards to apply to resurfacing, restoration, and rehabilitation projects on such highways, which study shall include a study of the cost effectiveness of the hot dip galvanizing process for the installation, repair, or replacement of exposed structural and miscellaneous steel, and (2) to propose standards to preserve and extend the service life of such highways and enhance highway safety. The National Academy of Sciences shall conduct such study in cooperation with the National Transportation Safety Board, the Congressional Budget Office, and the American Association of State Highway and Transportation Officials. Upon completion of such study, the National Academy of Sciences shall submit such study and its proposed standards to the Secretary of Transportation for review. Within ninety days after submission of such standards to the Secretary of Transportation, the Secretary shall submit such study and the proposed standards of the National Academy of Sciences, together with the recommendations of the Secretary, to Congress for approval.

''(c)(1) The Secretary of Transportation is directed to coordinate a study with the National Bureau of Standards, the American Society for Testing and Materials, and other organizations as deemed appropriate, (A) to determine the existing quality of design, construction, products, use, and systems for highways and bridges; (B) to determine the need for uniform standards and criteria for design, processing, products, and applications, including personnel training and implementation of enforcement techniques; and (C) to determine the manpower needs and costs of developing a national system for the evaluation and accreditation of testing and inspection agencies.

''(2) The Secretary shall submit such study to the Congress not later than one year after the date of enactment of this section [Jan. 6, 1983].''

EXPENDITURE OF FEDERAL FUNDS FOR HIGHWAY SIGNS USING METRIC SYSTEM

Pub. L. 95–599, title I, §144, Nov. 6, 1978, 92 Stat. 2713, as amended by Pub. L. 96–106, §14, Nov. 9, 1979, 93 Stat. 798, which prohibited use of Federal funds for signing solely in the metric system, was repealed by Pub. L. 102–240, title I, §1053, Dec. 18, 1991, 105 Stat. 2001.

MODIFICATION OF PROJECT AGREEMENTS TO EFFECTUATE REQUIREMENT OF FOUR-LANES OF TRAFFIC

Authorization to modify projects agreements entered into prior to September 13, 1966, to effectuate the amendment of this section by Pub. L. 89–574 which added the requirement of four-lanes of traffic, see section 5(b) of Pub. L. 89–574, set out as a note under section 106 of this title.

[§ 110. Repealed. Pub. L. 112–141, div. A, title I, § 1519(b)(1)(A), July 6, 2012, 126 Stat. 575]

Section, added and amended Pub. L. 105–178, title I, §1105(a), (c), June 9, 1998, 112 Stat. 130; Pub. L. 105–206, title IX, §9002(e), July 22, 1998, 112 Stat. 835; Pub. L. 106–113, div. B, §1000(a)(5) [title III, §304], Nov. 29, 1999, 113 Stat. 1536, 1501A–306; Pub. L. 106–159, title I, §102(a)(2), Dec. 9, 1999, 113 Stat. 1752; Pub. L. 109–59, title I, §1105(a)–(e), Aug. 10, 2005, 119 Stat. 1165, 1166, related to revenue aligned budget authority.

Another section 110 was renumbered section 126 of this title.

A prior section 110, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 894, related to project agreements, prior to repeal by Pub. L. 105–178, title I, §1105(a), June 9, 1998, 112 Stat. 130.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to

those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) REST AREAS.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary shall permit a State to acquire, construct, operate, and maintain a rest area along a highway on the Interstate System in such State.

(2) LIMITED ACTIVITIES.—The Secretary shall permit limited commercial activities within a rest area under paragraph (1), if the activities are available only to customers using the rest area and are limited to—

(A) commercial advertising and media displays if such advertising and displays are—

(i) exhibited solely within any facility constructed in the rest area; and

(ii) not legible from the main traveled way;

(B) items designed to promote tourism in the State, limited to books, DVDs, and other media;

(C) tickets for events or attractions in the State of a historical or tourism-related nature;

(D) travel-related information, including maps, travel booklets, and hotel coupon booklets; and

(E) lottery machines, provided that the priority afforded to blind vendors under subsection (c) applies to this subparagraph.

(3) PRIVATE OPERATORS.—A State may permit a private party to operate such commercial activities.

(4) LIMITATION ON USE OF REVENUES.—A State shall use any revenues received from the commercial activities in a rest area under this section to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the State.

(c) VENDING MACHINES.—Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the ''Randolph-Sheppard Act'' (20 U.S.C. 107a(a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

(d) MOTORIST CALL BOXES.—

(1) IN GENERAL.—Notwithstanding subsection (a), a State may permit the placement of motorist call boxes on rights-of-way of the National Highway System. Such motorist call boxes may include the identification and sponsorship logos of such call boxes.

(2) SPONSORSHIP LOGOS.—

(A) APPROVAL BY STATE AND LOCAL AGENCIES.—All call box installations displaying sponsorship logos under this subsection shall be approved by the highway agencies having jurisdiction of the highway on which they are located.

(B) SIZE ON BOX.—A sponsorship logo may be placed on the call box in a dimension not to exceed the size of the call box or a total dimension in excess of 12 inches by 18 inches.

(C) SIZE ON IDENTIFICATION SIGN.—Sponsorship logos in a dimension not to exceed 12 inches by 30 inches may be displayed on a call box identification sign affixed to the call box post.

(D) SPACING OF SIGNS.—Sponsorship logos affixed to an identification sign on a call box post may be located on the rights-of-way at intervals not more frequently than 1 per every 5 miles.

(E) DISTRIBUTION THROUGHOUT STATE.—Within a State, at least 20 percent of the call boxes displaying sponsorship logos shall be located on highways outside of urbanized areas with a population greater than 50,000.

(3) NONSAFETY HAZARDS.—The call boxes and their location, posts, foundations, and mountings shall be consistent with requirements of the Manual on Uniform Traffic Control Devices or any requirements deemed necessary by the Secretary to assure that the call boxes shall not be a safety hazard to motorists.

(e) JUSTIFICATION REPORTS.—If the Secretary requests or requires a justification report for a project that would add a point of access to, or exit from, the Interstate System (including new or modified freeway-to-crossroad interchanges inside a transportation management area), the Secretary may permit a State transportation department to approve the report.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 87–61, title I, §104(a), June 29, 1961, 75 Stat. 122; Pub. L. 95–599, title I, §114, Nov. 6, 1978, 92 Stat. 2697; Pub. L. 100–17, title I, §110(a), Apr. 2, 1987, 101 Stat. 146; Pub. L. 104–59, title III, §306, Nov. 28, 1995, 109 Stat. 580; Pub. L. 105–178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109–59, title I, §1412, Aug. 10, 2005, 119 Stat. 1234; Pub. L. 110–244, title I, §104, June 6, 2008, 122 Stat. 1578; Pub. L. 112–141, div. A, title I, §§1505, 1539(a), July 6, 2012, 126 Stat. 564, 587; Pub. L. 114–94, div. A, title I, §1405, Dec. 4, 2015, 129 Stat. 1410.)

Editorial Notes

AMENDMENTS

2015—Subsec. (e). Pub. L. 114–94 inserted ''(including new or modified freeway-to-crossroad interchanges inside a transportation management area)'' after ''the Interstate System''.

2012—Subsec. (a). Pub. L. 112–141, §1539(a)(1), inserted ''and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment'' before period at end of second sentence.

Subsecs. (b) to (d). Pub. L. 112–141, §1539(a)(2), (3), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 112–141, §1505, added subsec. (e).

2008—Subsec. (d). Pub. L. 110–244 struck out subsec. (d) which related to idling reduction facilities in rights-of-way of Interstate System.

2005—Subsec. (d). Pub. L. 109–59 added subsec. (d).

1998—Subsecs. (a), (b). Pub. L. 105–178 substituted ''State transportation department'' for ''State highway department''.

1995—Subsec. (c). Pub. L. 104–59 added subsec. (c).

1987—Pub. L. 100–17 designated existing provision as subsec. (a), inserted heading for subsec. (a), and added subsec. (b).

1978—Pub. L. 95–599 inserted provision listing situations which would not require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users.

1961—Pub. L. 87–61 substituted ''to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere'' for ''to use the airspace above and below the established grade line of the highway pavement for the parking of motor vehicles provided such use does not interfere''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

INTERSTATE OASIS PROGRAM

Pub. L. 109–59, title I, §1310, Aug. 10, 2005, 119 Stat. 1219, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section [Aug. 10, 2005], in consultation with the States and other interested parties, the Secretary [of Transportation] shall—

''(1) establish an interstate oasis program; and

''(2) after providing an opportunity for public comment, develop standards for designating, as an interstate oasis, a facility that—

''(A) offers—

''(i) products and services to the public;

''(ii) 24-hour access to restrooms; and

''(iii) parking for automobiles and heavy trucks; and

''(B) meets other standards established by the Secretary.

''(b) STANDARDS FOR DESIGNATION.—The standards for designation under subsection (a) shall include standards relating to—

''(1) the appearance of a facility; and

''(2) the proximity of the facility to the Dwight D. Eisenhower National System of Interstate and Defense Highways.

''(c) ELIGIBILITY FOR DESIGNATION.—If a State (as defined in section 101(a) of title 23, United States Code) elects to participate in the interstate oasis program, any facility meeting the standards established by the Secretary [of Transportation] shall be eligible for designation under this section.

''(d) LOGO.—The Secretary [of Transportation] shall design a logo to be displayed by a facility designated under this section.''

VENDING MACHINES; PLACEMENT IN REST, RECREATION, AND SAFETY REST AREAS; STATE OPERATION OF MACHINES

Pub. L. 97–424, title I, §111, Jan. 6, 1983, 96 Stat. 2106, provided that notwithstanding section 111 of this title before Oct. 1, 1983, any State could permit placement of vending machines in rest and recreation areas and in safety rest areas constructed or located on rights-of-way of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] in such State. Such vending machines could only dispense such food, drink, and other articles as the State highway department determined were appropriate and desirable. Such vending machines could only be operated by the State. In permitting the placement of vending machines under this section, the State had to give priority to vending machines which were operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, known as the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

DEMONSTRATION PROJECT FOR VENDING MACHINES IN REST AND RECREATION AREAS

Pub. L. 95–599, title I, §153, Nov. 6, 1978, 92 Stat. 2716, authorized Secretary of Transportation to implement a demonstration project respecting placement of vending machines in rest and recreation areas and to report not later than two years after Nov. 6, 1978, on results of such project.

REVISION OF AGREEMENTS RELATING TO UTILIZATION OF SPACE ON RIGHTS-OF-WAY

Pub. L. 87–61, title I, §104(b), June 29, 1961, 75 Stat. 123, authorized Secretary of Commerce [now Transportation], on application, to revise any agreement made prior to June 29, 1961, to extent that such agreement relates to utilization of space on rights-of-way on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] to conform to section 111 of this title as amended by subsection (a).

§ 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such

original contained the word ''extensions'' rather than ''extension'', to reflect the probable intent of Congress.

1987—Subsec. (a). Pub. L. 100–17 substituted ''March 3, 1931'' for ''August 30, 1935'' and ''276a'' for ''267a''.

1983—Subsec. (a). Pub. L. 97–424 struck out ''initial'' after ''subcontractors on the''.

1968—Subsec. (a). Pub. L. 90–495 extended wage rate provisions to the construction of all Federal-aid highway projects by amending provisions limiting them only to the Interstate System.

Subsec. (b). Pub. L. 90–495 substituted ''any of the Federal-aid systems'' for ''the Interstate System''.

Subsec. (c). Pub. L. 90–495 added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of this title.

§ 114. Construction

(a) CONSTRUCTION WORK IN GENERAL.—The construction of any Federal-aid highway or a portion of a Federal-aid highway shall be undertaken by the respective State transportation departments or under their direct supervision. The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate. The construction work and labor in each State shall be performed under the direct supervision of the State transportation department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State transportation department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) CONVICT LABOR AND CONVICT PRODUCED MATERIALS.—

(1) LIMITATION ON CONVICT LABOR.—Convict labor shall not be used in construction of Federal-aid highways or portions of Federal-aid highways unless the labor is performed by convicts who are on parole, supervised release, or probation.

(2) LIMITATION ON CONVICT PRODUCED MATERIALS.—Materials produced after July 1, 1991, by convict labor may only be used in such construction—

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) QUALIFIED PRISON FACILITY DEFINED.—As used in this subsection, ''qualified prison facility'' means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system in existence during that period.

(c) CONSTRUCTION WORK IN ALASKA.—

(1) IN GENERAL.—The Secretary shall ensure that a worker who is employed on a remote project for the construction of a highway or portion of a highway located on a Federal-aid system in the State of Alaska and who is not a domiciled resident of the locality shall receive meals and lodging.

(2) LODGING.—The lodging under paragraph (1) shall be in accordance with section 1910.142 of title 29, Code of Federal Regulations (relating to temporary labor camp requirements).

(3) PER DIEM.—

(A) IN GENERAL.—Contractors are encouraged to use commercial facilities and lodges on remote projects, however, when such facilities are not available, per diem in lieu of room and lodging may be paid on remote Federal highway projects at a basic rate of $75.00 per day or part of a day the worker is employed on the project. Where the contractor provides or furnishes room and lodging or pays a per diem, the cost of the amount shall not be considered a part of wages and shall be excluded from the calculation of wages.

(B) SECRETARY OF LABOR.—Such per diem rate shall be adopted by the Secretary of Labor for all applicable remote Federal highway projects in Alaska.

(C) EXCEPTION.—Per diem shall not be allowed on any of the following remote projects for the construction of a highway or portion of a highway located on a Federal-aid system:

(i) West of Livengood on the Elliot Highway.

(ii) Mile 0 on the Dalton Highway to the North Slope of Alaska; north of Mile 20 on the Taylor Highway.

(iii) East of Chicken on the Top of the World Highway and south of Tetlin Junction to the Alaska Canadian border.

(4) DEFINITIONS.—In this subsection, the following definitions apply:

(A) REMOTE.—The term ''remote'', as used with respect to a project, means that the project is 65 road miles or more from the international airport in Fairbanks, Anchorage, or Juneau, Alaska, as the case may be, or is inaccessible by road in a 2-wheel drive vehicle.

(B) RESIDENT.—The term ''resident'', as used with respect to a project, means a per-

son living within 65 road miles of the midpoint of the project for at least 12 consecutive months prior to the award of the project.

(d) VETERANS EMPLOYMENT.—

(1) IN GENERAL.—Subject to paragraph (2), a recipient of Federal financial assistance under this chapter shall, to the extent practicable, encourage contractors working on a highway project funded using the assistance to make a best faith effort in the hiring or referral of laborers on any project for the construction of a highway to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract.

(2) ADMINISTRATION.—This subsection shall not—

(A) apply to projects subject to section 140(d); or

(B) be administered or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, a female, or any equally qualified former employee.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86–657, §8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93–87, title I, §115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97–424, title I, §148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98–473, title II, §226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100–17, title I, §112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102–240, title I, §1019, Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105–178, title I, §1212(a)(2)(A), June 9, 1998, 112 Stat. 193; Pub. L. 109–59, title I, §§1409(d), 1904(b), Aug. 10, 2005, 119 Stat. 1232, 1467; Pub. L. 112–141, div. A, title I, §1506, July 6, 2012, 126 Stat. 564.)

Editorial Notes

AMENDMENTS

2012—Subsec. (b)(1). Pub. L. 112–141, §1506(1)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''Convict labor shall not be used in construction of highways or portions of highways located on a Federal-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.''

Subsec. (b)(3). Pub. L. 112–141, §1506(1)(B), inserted ''in existence during that period'' after ''located on a Federal-aid system''.

Subsec. (d). Pub. L. 112–141, §1506(2), added subsec. (d).

2005—Subsec. (a). Pub. L. 109–59, §1904(b), substituted ''Federal-aid highway or a portion of a Federal-aid highway'' for ''highways or portions of highways located on a Federal-aid system'' and ''The Secretary shall have the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.'' for ''Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary.''

Subsec. (c). Pub. L. 109–59, §1409(d), added subsec. (c).

1998—Subsec. (a). Pub. L. 105–178 substituted ''State transportation department'' for ''State highway department'' in two places and ''State transportation departments'' for ''State highway departments''.

1991—Subsec. (b)(2). Pub. L. 102–240, inserted ''after July 1, 1991,'' after ''Materials produced'' in introductory provisions.

1987—Subsec. (a). Pub. L. 100–17, §112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100–17, §112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Convict labor or materials produced by convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.''

1984—Subsec. (b). Pub. L. 98–473 which directed the insertion of '', supervised release,'' after ''parole'' effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100–17, §112(a), which contained '', supervised release,'' after ''parole'' wherever appearing.

1983—Subsec. (b). Pub. L. 97–424 inserted ''or materials produced by convict labor'' after ''Convict labor''.

1973—Subsec. (a). Pub. L. 93–87 amended last sentence generally. Prior to amendment, last sentence read as follows: ''On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.''

1960—Subsec. (a). Pub. L. 86–657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

LOCAL HIRING PREFERENCE FOR CONSTRUCTION JOBS

Pub. L. 117–58, div. B, title V, §25019, Nov. 15, 2021, 135 Stat. 875, provided that:

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—A recipient or subrecipient of a grant provided by the Secretary [of Transportation] under title 23 or 49, United States Code, may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant, including prehire agreements, subject to any applicable State and local laws, policies, and procedures.

''(2) TREATMENT.—The use of a local or other geographical or economic hiring preference pursuant to paragraph (1) in any bid for a contract for the construction of a project funded by a grant described in paragraph (1) shall not be considered to unduly limit competition.

''(b) WORKFORCE DIVERSITY REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 15, 2021], the Secretary shall submit to Congress a report describing methods—

''(1) to ensure preapprenticeship programs are established and implemented to meet the needs of employers in transportation and transportation infrastructure construction industries, including with respect to the formal connection of the

preapprenticeship programs to registered apprenticeship programs;

''(2) to address barriers to employment (within the meaning of the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.)) in transportation and transportation infrastructure construction industries for—

''(A) individuals who are former offenders (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102));

''(B) individuals with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)); and

''(C) individuals that represent populations that are traditionally underrepresented in the workforce; and

''(3) to encourage a recipient or subrecipient implementing a local or other geographical or economic hiring preference pursuant to subsection (a)(1) to establish, in coordination with nonprofit organizations that represent employees, outreach and support programs that increase diversity within the workforce, including expanded participation from individuals described in subparagraphs (A) through (C) of paragraph (2).

''(c) MODEL PLAN.—Not later than 1 year after the date of submission of the report under subsection (b), the Secretary shall establish, and publish on the website of the Department [of Transportation], a model plan for use by States, units of local government, and private sector entities to address the issues described in that subsection.''

HIGHWAYS FOR LIFE PILOT PROGRAM

Pub. L. 109–59, title I, §1502, Aug. 10, 2005, 119 Stat. 1236, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary [of Transportation] shall establish and implement a pilot program to be known as the 'Highways for LIFE Pilot Program'.

''(2) PURPOSE.—The purpose of the pilot program shall be to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges.

''(3) OBJECTIVES.—Under the pilot program, the Secretary shall provide leadership and incentives to demonstrate and promote state-of-the-art technologies, elevated performance standards, and new business practices in the highway construction process that result in improved safety, faster construction, reduced congestion from construction, and improved quality and user satisfaction.

''(b) PROJECTS.—

''(1) APPLICATIONS.—To be eligible to participate in the pilot program, a State shall submit to the Secretary [of Transportation] an application that is in such form and contains such information as the Secretary requires. Each application shall contain a description of proposed projects to be carried by the State under the pilot program.

''(2) ELIGIBILITY.—A proposed project shall be eligible for assistance under the pilot program if the project—

''(A) constructs, reconstructs, or rehabilitates a route or connection on a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code;

''(B) uses innovative technologies, manufacturing processes, financing, or contracting methods that improve safety, reduce congestion due to construction, and improve quality; and

''(C) meets additional criteria as determined by the Secretary.

''(3) PROJECT PROPOSAL.—A project proposal submitted under paragraph (1) shall contain—

''(A) an identification and description of the projects to be delivered;

''(B) a description of how the projects will result in improved safety, faster construction, reduced congestion due to construction, user satisfaction, and improved quality;

''(C) a description of the innovative technologies, manufacturing processes, financing, and contracting methods that will be used for the proposed projects; and

''(D) such other information as the Secretary may require.

''(4) SELECTION CRITERIA.—In selecting projects for approval under this section, the Secretary shall ensure that the projects provide an evaluation of a broad range of technologies in a wide variety of project types and shall give priority to the projects that—

''(A) address achieving the Highways for LIFE performance standards for quality, safety, and speed of construction;

''(B) deliver and deploy innovative technologies, manufacturing processes, financing, contracting practices, and performance measures that will demonstrate substantial improvements in safety, congestion, quality, and cost-effectiveness;

''(C) include innovation that will lead to change in the administration of the State's transportation program to more quickly construct long-lasting, high-quality, cost-effective projects that improve safety and reduce congestion;

''(D) are or will be ready for construction within 1 year of approval of the project proposal; and

''(E) meet such other criteria as the Secretary determines appropriate.

''(5) FINANCIAL ASSISTANCE.—

''(A) FUNDS FOR HIGHWAYS FOR LIFE PROJECTS.—Out of amounts made available to carry out this section for a fiscal year, the Secretary may allocate to a State up to 20 percent, but not more than $5,000,000, of the total cost of a project approved under this section. Notwithstanding any other provision of law, funds allocated to a State under this subparagraph may be applied to the non-Federal share of the cost of construction of a project under title 23, United States Code.

''(B) USE OF APPORTIONED FUNDS.—A State may obligate not more than 10 percent of the amount apportioned to the State under one or more of [former] paragraphs (1), (2), (3), and (4) of section 104(b) of title 23, United States Code, for a fiscal year for projects approved under this section.

''(C) INCREASED FEDERAL SHARE.—Notwithstanding sections 120 and 129 of title 23, United States Code, the Federal share payable on account of any project constructed with Federal funds allocated under this section, or apportioned under [former] section 104(b) of such title, to a State under such title and approved under this section may amount to 100 percent of the cost of construction of such project.

''(D) LIMITATION ON STATUTORY CONSTRUCTION.—Except as provided in subparagraph (C), nothing in this subsection shall be construed as altering or otherwise affecting the applicability of the requirements of chapter 1 of title 23, United States Code (including requirements relating to the eligibility of a project for assistance under the program and the location of the project), to amounts apportioned to a State for a program under [former] section 104(b) that are obligated by the State for projects approved under this subsection.

''(6) PROJECT SELECTIONS.—In the period of fiscal years 2005 through 2009, the Secretary, to the maximum extent possible, shall approve at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if the State submits an application and the project meets the eligibility requirements and selection criteria under this subsection.

''(7) MAXIMUM NUMBER OF PROJECTS.—The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is 15.

''(c) TECHNOLOGY PARTNERSHIPS.—

''(1) IN GENERAL.—The Secretary [of Transportation] may make grants or enter into cooperative agreements or other transactions to foster the development, improvement, and creation of innovative technologies and facilities to improve safety, enhance the speed of highway construction, and improve the quality and durability of highways.

''(2) FEDERAL SHARE.—The Federal share of the cost of an activity carried out under this subsection shall not exceed 80 percent.

''(d) TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION.—

''(1) IN GENERAL.—The Secretary [of Transportation] shall conduct a highways for life technology transfer program.

''(2) AVAILABILITY OF INFORMATION.—The Secretary shall ensure that the information and technology used, developed, or deployed under this subsection is made available to the transportation community and the public.

''(e) STAKEHOLDER INPUT AND INVOLVEMENT.—The Secretary [of Transportation] shall establish a process for stakeholder input and involvement in the development, implementation, and evaluation of the Highways for LIFE Pilot Program. The process may include participation by representatives of State departments of transportation and other interested persons.

''(f) PROJECT MONITORING AND EVALUATION.—The Secretary [of Transportation] shall monitor and evaluate the effectiveness of any activity carried out under this section.

''(g) CONTRACT AUTHORITY.—Except as otherwise provided in this section, funds authorized to be appropriated to carry out this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.

''(h) STATE DEFINED.—In this section, the term 'State' has the meaning such term has in section 101(a) of title 23, United States Code.''

MATERIALS PRODUCED BY CONVICT LABOR

Pub. L. 101–162, title II, §202, Nov. 21, 1989, 103 Stat. 1002, provided that: ''During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.''

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100–459, title II, §202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100–202, §101(a) [title II, §202], Dec. 22, 1987, 101 Stat. 1329, 1329–15.

Pub. L. 99–500, §101(b) [title II, §202], Oct. 18, 1986, 100 Stat. 1783–39, 1783–51, and Pub. L. 99–591, §101(b) [title II, §202], Oct. 30, 1986, 100 Stat. 3341–39, 3341–51.

Pub. L. 99–180, title II, §202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98–411, title II, §202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100–17, title I, §112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98–166, title II, §202, Nov. 28, 1983, 97 Stat. 1085.

ACCELERATION OF PROJECTS

Pub. L. 97–424, title I, §129, Jan. 6, 1983, 96 Stat. 2118, provided that: ''The Secretary of Transportation shall by rule or regulation establish, as soon as practicable, alternative methods for processing projects under title 23, United States Code, so as to reduce the time required from the request for project approval through the completion of construction. In carrying out this section the Secretary shall utilize the knowledge and experience resulting from the demonstration project authorized by and carried out under section 141 of the Federal-Aid Highway Act of 1976 [Pub. L. 94–280, title I, §141, May 5, 1976, 90 Stat. 444, formerly set out as a note under former section 124 of this title].''

§ 115. Advance construction

(a) IN GENERAL.—The Secretary may authorize a State to proceed with a project authorized under this title—

(1) without the use of Federal funds; and

(2) in accordance with all procedures and requirements applicable to the project other than those procedures and requirements that limit the State to implementation of a project—

(A) with the aid of Federal funds previously apportioned or allocated to the State; or

(B) with obligation authority previously allocated to the State.

(b) OBLIGATION OF FEDERAL SHARE.—The Secretary, on the request of a State and execution of a project agreement, may obligate all or a portion of the Federal share of a project authorized to proceed under this section from any category of funds for which the project is eligible.

(c) INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(g).

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 90–495, §25(a), (b), Aug. 23, 1968, 82 Stat. 828, 829; Pub. L. 93–643, §111, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 96–106, §4, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97–424, title I, §113, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100–17, title I, §113(a)–(d)(1), Apr. 2, 1987, 101 Stat. 149, 150; Pub. L. 102–302, §103, June 22, 1992, 106 Stat. 252; Pub. L. 104–59, title III, §308, Nov. 28, 1995, 109 Stat. 582; Pub. L. 105–178, title I, §§1103(*l*)(3)(A), 1106(c)(1)(A), 1226(a), title V, §5119(d), June 9, 1998, 112 Stat. 126, 136, 452; Pub. L. 105–206, title IX, §9003(a), July 22, 1998, 112 Stat. 837; Pub. L. 109–59, title I, §1501(a), Aug. 10, 2005, 119 Stat. 1235; Pub. L. 110–244, title I, §101(j), June 6, 2008, 122 Stat. 1574; Pub. L. 117–58, div. A, title I, §11525(e), Nov. 15, 2021, 135 Stat. 607.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 117–58 substituted ''section 135(g)'' for ''section 135(f)''.

2008—Subsecs. (c), (d). Pub. L. 110–244 redesignated subsec. (d) as (c).

2005—Subsecs. (a), (b). Pub. L. 109–59, §1501(a)(2), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which related to payment of the Federal share of the cost of congestion mitigation and air quality improvement, surface transportation, bridge, planning, and research projects and Interstate and National Highway System projects which have been subject to advance construction by a State.

Subsecs. (c), (d). Pub. L. 109–59, §1501(a)(1), redesignated subsec. (c) as (d).

1998—Subsec. (a). Pub. L. 105–178, §1106(c)(1)(A)(i), struck out ''Substitute,'' before ''Congestion'' in heading.

Subsec. (a)(1)(A)(i). Pub. L. 105–178, §§1106(c)(1)(A)(ii), 5119(d), struck out ''103(e)(4)(H),'' after ''under section'' and substituted ''or 505'' for ''or 307''.

Subsec. (b). Pub. L. 105–178, §1226(a)(1), as added by Pub. L. 105–206, §9003(a), struck out designation and heading of par. (1), redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, realigned margins, and

REVIEW AND ANALYSIS OF EXCISE TAXES DEDICATED TO HIGHWAY TRUST FUND

Pub. L. 95–599, title V, §507, Nov. 6, 1978, 92 Stat. 2761, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall—

''(1) review and analyze each excise tax now dedicated to the Highway Trust Fund with respect to such factors as ease or difficulty of administration of such tax and the compliance burdens imposed on taxpayers by such tax, and

''(2) on or before April 15, 1982, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate as to the matters set forth in paragraph (1) and other findings, as well as recommendations on—

''(A) improvements in excise taxation which would enhance tax administration, equity, and compliance, or

''(B) a new system of raising revenues to fund the Highway Trust Fund which would meet the objectives set forth in subparagraph (A).

The recommendations described in paragraph (2) shall be formulated in conjunction with the recommendations of the cost allocation study under section 506 set out as note under section 307 of this title of the equitable distribution of the highway excise taxes.

''(b) INTERIM REPORTS.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and the staff of the Joint Committee on Taxation, shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before April 15, 1980, and a second interim report on or before April 15, 1981.''

HIGHWAY TRUST FUND

Act June 29, 1956, ch. 462, title II, §209, 70 Stat. 397, as amended by Pub. L. 86–342, title II, §202, Sept. 21, 1959, 73 Stat. 615; Pub. L. 86–346, title I, §104(5), Sept. 22, 1959, 73 Stat. 622; Pub. L. 86–440, §1(c), Apr. 22, 1960, 74 Stat. 81; Pub. L. 87–61, title II, §207, June 29, 1961, 75 Stat. 128; Pub. L. 88–578, title II, §202, Sept. 3, 1964, 78 Stat. 904; Pub. L. 89–44, title II, §210, title VIII, §809(e), June 21, 1965, 79 Stat. 144, 168; Pub. L. 91–258, title II, §§207(e), 208(g), May 21, 1970, 84 Stat. 249, 252; Pub. L. 91–605, title III, §301, Dec. 31, 1970, 84 Stat. 1743; Pub. L. 94–273, §18, Apr. 21, 1976, 90 Stat. 379; Pub. L. 94–280, title III, §301, May 5, 1976, 90 Stat. 456; Pub. L. 95–599, title V, §§503(a), 504(a), Nov. 6, 1978, 92 Stat. 2757; Pub. L. 95–618, title II, §233(b)(2)(E), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96–451, title II, §203(a), Oct. 14, 1980, 94 Stat. 1988; Pub. L. 97–424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191; Pub. L. 97–449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that:

''(a) [Repealed. Pub. L. 97–424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191. Subsec. (a) provided for the creation of a Highway Trust Fund.]

''(b) DECLARATION OF POLICY.—It is hereby declared to be the policy of the Congress that if it hereafter appears—

''(1) that the total receipts of the Trust Fund (exclusive of advances under subsection (d) will be less than the total expenditures from such Fund (exclusive of repayments of such advances); or

''(2) that the distribution of the tax burden among the various classes of persons using the Federal-aid highways, or otherwise deriving benefits from such highways, is not equitable, the Congress shall enact legislation in order to bring about a balance of total receipts and total expenditures, or such equitable distribution, as the case may be.

''(c) to (g) [Repealed. Pub. L. 97–424, title V, §531(b), Jan. 6, 1983, 96 Stat. 2191. Subsecs. (c) to (g) provided generally for the transfer of the equivalent of the receipts of certain taxes to the Fund, for additional appropriations to the Fund, for its management, methods and purposes of expenditures, and for adjustment of apportionments regarding the Fund.]''

Pub. L. 96–451, title II, §203(b), Oct. 14, 1980, 94 Stat. 1988, provided that: ''The amendment made by subsection (a) [amending former subsec. (f)(5) of section 209 of Act June 29, 1956] shall apply to taxes received on or after October 1, 1980.''

Pub. L. 95–599, title V, §504(b), Nov. 6, 1978, 92 Stat. 2758, provided that: ''The amendment made by subsection (a) [amending former subsec. (g) of section 209 of Act June 29, 1956] shall apply to fiscal years beginning after September 30, 1978.''

Pub. L. 91–258, title II, §208(g), May 21, 1970, 84 Stat. 252, which added subsec. (c)(5) of section 209 of the Act of June 29, 1956, ch. 462, title II, 70 Stat. 397, was repealed by Pub. L. 97–248, title II, §281(b), Sept. 3, 1982, 96 Stat. 566.

PERCENTAGE OF FUNDS CONTRIBUTED BY ALASKA

Pub. L. 86–70, §21(d)(4), June 25, 1959, 73 Stat. 145, which repealed subsec. (h) of this section, provided in part that the provisions of subsec. (h) relating to the percentage of funds to be contributed by Alaska shall continue to apply to funds apportioned to Alaska for fiscal year 1960 and prior fiscal years.

§121. Payment to States for construction

(a) IN GENERAL.—The Secretary, from time to time as the work progresses, may make payments to a State for costs of construction incurred by the State on a project (including payments made pursuant to a long-term concession agreement, such as availability payments). Such payments may also be made for the value of the materials—

(1) that have been stockpiled in the vicinity of the construction in conformity to plans and specifications for the projects; and

(2) that are not in the vicinity of the construction if the Secretary determines that because of required fabrication at an off-site location the material cannot be stockpiled in such vicinity.

(b) PROJECT AGREEMENT.—No payment shall be made under this chapter except for a project covered by a project agreement. After completion of the project in accordance with the project agreement, a State shall be entitled to payment out of the appropriate sums apportioned or allocated to the State of the unpaid balance of the Federal share payable for such project.

(c) Such payments shall be made to such official or officials or depository as may be designated by the State transportation department and authorized under the laws of the State to receive public funds of the State.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 899; Pub. L. 88–157, §7(b), Oct. 24, 1963, 77 Stat. 278; Pub. L. 93–87, title I, §117, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94–280, title I, §118(a), May 5, 1976, 90 Stat. 437; Pub. L. 100–17, title I, §133(b)(6), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102–240, title I, §1018(b), Dec. 18, 1991, 105 Stat. 1948; Pub. L. 105–178, title I, §§1212(a)(2)(A)(i), 1302, June 9, 1998, 112 Stat. 193, 226; Pub. L. 114–94, div. A, title II, §2002(a), Dec. 4, 2015, 129 Stat. 1446.)

Editorial Notes

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–94 inserted ''(including payments made pursuant to a long-term concession agreement, such as availability payments)'' after ''a project'' in introductory provisions.

1998—Subsec. (a). Pub. L. 105–178, §1302(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary may, in his discretion, from time to time as the work progresses, make payments to a State for costs of construction incurred by it on a project. These payments shall at no time exceed the Federal share of the costs of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project. Such payments may also be made in the case of any such materials not in the vicinity of such construction if the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.''

Subsec. (b). Pub. L. 105–178, §1302(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''After completion of a project in accordance with the plans and specifications, and approval of the final voucher by the Secretary, a State shall be entitled to payment out of the appropriate sums apportioned to it of the unpaid balance of the Federal share payable on account of such project.''

Subsec. (c). Pub. L. 105–178, §1302(2), (3), redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: ''No payment shall be made under this chapter, except for a project located on a Federal-aid system and covered by a project agreement. No final payment shall be made to a State for its costs of construction of a project until the completion of the construction has been approved by the Secretary following inspections pursuant to section 114(a) of this title.''

Subsec. (d). Pub. L. 105–178, §1302(2), struck out subsec. (d) which read as follows: ''In making payments pursuant to this section, the Secretary shall be bound by the limitations with respect to the permissible amounts of such payments continued in sections 106(c), 120, and 130 of this title.''

Subsec. (e). Pub. L. 105–178, §1302(3), redesignated subsec. (e) as (c).

Pub. L. 105–178, §1212(a)(2)(A)(i), substituted ''State transportation department'' for ''State highway department''.

1991—Subsec. (d). Pub. L. 102–240 substituted ''106(c), 120,'' for ''120'' and struck out at end ''Payments for construction engineering on any project financed with Federal-aid highway funds shall not exceed 15 percent of the Federal share of the cost of construction of such project after excluding from the cost of construction the costs of rights-of-way, preliminary engineering, and construction engineering.''

1987—Subsec. (d). Pub. L. 100–17 substituted ''15 percent'' for ''10 per centum'' and struck out at end ''However, this limitation shall be 15 per centum in any State with respect to which the Secretary finds such higher limitation to be necessary.''

1976—Subsec. (d). Pub. L. 94–280 substituted ''Federal-aid highway funds'' for ''Federal-aid primary, secondary, or urban funds'' and struck out 10 per centum limitation provision for any project financed with interstate funds.

1973—Subsec. (a). Pub. L. 93–87 authorized payments to be made for materials not in the construction vicinity where the Secretary determines that because of required fabrication at an off-site location the materials cannot be stockpiled in such vicinity.

1963—Subsec. (d). Pub. L. 88–157 substituted ''any project financed with Federal-aid primary, secondary, or urban funds'' for ''any one project'' and provided for limitation, on payments for construction engineering on projects financed with Federal-aid primary, secondary, or urban funds, of 15 percent of Federal share of cost of construction of the project where found by the Secretary to be necessary and for 10–percent limitation on projects financed with interstate funds.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

AT-RISK PROJECT PREAGREEMENT AUTHORITY

Pub. L. 114–94, div. A, title I, §1440, Dec. 4, 2015, 129 Stat. 1434, provided that:

''(a) DEFINITION OF PRELIMINARY ENGINEERING.—In this section, the term 'preliminary engineering' means allowable preconstruction project development and engineering costs.

''(b) AT-RISK PROJECT PREAGREEMENT AUTHORITY.—A recipient or subrecipient of Federal-aid funds under title 23, United States Code, may—

''(1) incur preliminary engineering costs for an eligible project under title 23, United States Code, before receiving project authorization from the State, in the case of a subrecipient, and the Secretary [of Transportation] to proceed with the project; and

''(2) request reimbursement of applicable Federal funds after the project authorization is received.

''(c) ELIGIBILITY.—The Secretary may reimburse preliminary engineering costs incurred by a recipient or subrecipient under subsection (b)—

''(1) if the costs meet all applicable requirements under title 23, United States Code, at the time the costs are incurred and the Secretary concurs that the requirements have been met;

''(2) in the case of a project located within a designated nonattainment or maintenance area for air quality, if the conformity requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) have been met; and

''(3) if the costs would have been allowable if incurred after the date of the project authorization by the Department.

''(d) AT-RISK.—A recipient or subrecipient that elects to use the authority provided under this section shall—

''(1) assume all risk for preliminary engineering costs incurred prior to project authorization; and

''(2) be responsible for ensuring and demonstrating to the Secretary that all applicable cost eligibility conditions are met after the authorization is received.

''(e) RESTRICTIONS.—Nothing in this section—

''(1) allows a recipient or subrecipient to use the authority under this section to advance a project beyond preliminary engineering prior to the completion of the environmental review process;

''(2) waives the applicability of Federal requirements to a project other than the reimbursement of preliminary engineering costs incurred prior to an authorization to proceed in accordance with this section; or

''(3) guarantees Federal funding of the project or the eligibility of the project for future Federal-aid highway funding.''

SUBMISSION OF RECOMMENDATIONS TO CONGRESS FOR REIMBURSEMENT OF STATES FOR CERTAIN HIGHWAYS

Pub. L. 85–845, Aug. 28, 1958, 72 Stat. 1083, required Secretary of Commerce, within ten days after first day of first session of Eighty-sixth Congress, to submit to Congress recommendations for legislation for purpose of assisting Congress to determine whether or not to reimburse each State of any portion of a toll or free highway (1) which was on National System of Inter-

state and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways], (2) which met standards required by Federal-Aid Highway Act of 1956 for such System of Interstate and Defense Highways, and (3) construction of which had been completed since Aug. 2, 1947, or which had been in actual use or under construction by contract, for completion, awarded not later than June 30, 1957.

§ 122. Payments to States for bond and other debt instrument financing

(a) DEFINITION OF ELIGIBLE DEBT FINANCING INSTRUMENT.—In this section, the term ''eligible debt financing instrument'' means a bond or other debt financing instrument, including a note, certificate, mortgage, or lease agreement, issued by a State or political subdivision of a State or a public authority, the proceeds of which are used for an eligible project under this title.

(b) FEDERAL REIMBURSEMENT.—Subject to subsections (c) and (d), the Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for—

(1) interest payments under an eligible debt financing instrument;

(2) the retirement of principal of an eligible debt financing instrument;

(3) the cost of the issuance of an eligible debt financing instrument;

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(c) CONDITIONS ON PAYMENT.—The Secretary may reimburse a State or public authority under subsection (b) with respect to a project funded by an eligible debt financing instrument after the State or public authority has complied with this title with respect to the project to the extent and in the manner that would be required if payment were to be made under section 121.

(d) FEDERAL SHARE.—The Federal share of the cost of a project payable under this section shall not exceed the Federal share of the cost of the project as determined under section 120.

(e) STATUTORY CONSTRUCTION.—Notwithstanding any other provision of law, the eligibility of an eligible debt financing instrument for reimbursement under subsection (b) shall not—

(1) constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the eligible debt financing instrument; or

(2) create any right of a third party against the United States for payment under the eligible debt financing instrument.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 900; Pub. L. 95–599, title I, §115(b), Nov. 6, 1978, 92 Stat. 2698; Pub. L. 97–424, title I, §107(f), Jan. 6, 1983, 96 Stat. 2103; Pub. L. 100–17, title I, §133(b)(7), Apr. 2, 1987, 101 Stat. 171; Pub. L. 104–59, title III, §311(a), Nov. 28, 1995, 109 Stat. 583.)

Editorial Notes

AMENDMENTS

1995—Pub. L. 104–59 amended section generally, substituting present provisions for provisions which authorized States to use portion of Federal highway payments to retire principal of bonds proceeds of which were used for certain Federal highway projects.

1987—Pub. L. 100–17 inserted ''or for substitute highway projects approved under section 103(e)(4) of this title'' before ''and the retirement'' in first sentence.

1983—Pub. L. 97–424 inserted ''or for substitute highway projects approved under section 103(e)(4) of this title,'' after ''highway systems in urban areas,'' and ''or on highway projects approved under section 103(e)(4) of this title'' after ''expenditure on such system''.

1978—Pub. L. 95–599 inserted provisions relating to the retirement of bonds the proceeds of which were used for program projects, provisions that section was not to be construed as a commitment on the part of the United States to pay the principal of any such bonds, and provisions prohibiting inclusion of interest and incidental costs of bonds in estimated cost of completion.

Statutory Notes and Related Subsidiaries

PAYMENT OF INTEREST ON BONDS ISSUED PRIOR TO AND AFTER NOVEMBER 6, 1978

Pub. L. 95–599, title I, §115(c), Nov. 6, 1978, 92 Stat. 2698, provided that: ''No interest shall be paid under authority of section 122 of title 23, United States Code, on any bonds issued prior to the date of enactment of this Act [Nov. 6, 1978], unless such bonds were issued for projects which were under construction on January 1, 1978. Interest on bonds issued in any fiscal year by a State after the date of enactment of this Act may be paid under authority of section 122 of title 23, United States Code, only if (1) such State was eligible to obligate funds of another State under subsection (a) of this section during such fiscal year and (2) the Secretary of Transportation certifies that such eligible State utilized, or will utilize, to the fullest extent possible during such fiscal year its authority to obligate funds under such subsection (a) of this section [amending section 118(b) of this title]. No interest shall be paid under section 122 of title 23, United States Code, on that part of the proceeds of bonds issued after the date of enactment of this Act used to retire or otherwise refinance bonds issued prior to such date.''

§ 123. Relocation of utility facilities

(a) DEFINITIONS.—In this section:

(1) COST OF RELOCATION.—The term ''cost of relocation'' includes the entire amount paid by a utility properly attributable to the relocation of a utility facility, minus any increase in the value of the new facility and any salvage value derived from the old facility.

(2) EARLY UTILITY RELOCATION PROJECT.—The term ''early utility relocation project'' means utility relocation activities identified by the State for performance before completion of the environmental review process for the transportation project.

(3) ENVIRONMENTAL REVIEW PROCESS.—The term ''environmental review process'' has the meaning given the term in section 139(a).

(4) TRANSPORTATION PROJECT.—The term ''transportation project'' means a project.

(5) UTILITY FACILITY.—The term ''utility facility'' means any privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, that directly or indirectly serves the public.

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (k)(1)(B), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of the Surface Transportation Reauthorization Act of 2021, referred to in subsec. (*o*)(2), is the date of enactment of div. A of Pub. L. 117–58, which was approved Nov. 15, 2021.

PRIOR PROVISIONS

A prior section 124, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 95–599, title I, §118, Nov. 6, 1978, 92 Stat. 2699; Pub. L. 105–178, title I, §§1212(a)(2)(A)(i), 1226(c), June 9, 1998, 112 Stat. 193; Pub. L. 105–206, title IX, §9003(a), July 22, 1998, 112 Stat. 837, related to advances to States, prior to repeal by Pub. L. 112–141, §3(a), div. A, title I, §1519(b)(1)(A), July 6, 2012, 126 Stat. 413, 575, effective Oct. 1, 2012.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as an Effective Date of 2021 Amendment note under section 101 of this title.

§ 125. Emergency relief

(a) IN GENERAL.—Subject to this section and section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of—

(1) a natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, wildfire, or landslide; or

(2) catastrophic failure from any external cause.

(b) RESTRICTION ON ELIGIBILITY.—Funds under this section shall not be used for the repair or reconstruction of a bridge that has been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

(c) FUNDING.—

(1) IN GENERAL.—Subject to the limitations described in paragraph (2), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to establish the fund authorized by this section and to replenish that fund on an annual basis.

(2) LIMITATIONS.—The limitations referred to in paragraph (1) are that—

(A) not more than $100,000,000 is authorized to be obligated in any 1 fiscal year commencing after September 30, 1980, to carry out this section, except that, if for any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated for the fiscal year, the unobligated balance of that amount shall—

(i) remain available until expended; and

(ii) be in addition to amounts otherwise available to carry out this section for each year; and

(B)(i) pending such appropriation or replenishment, the Secretary may obligate from any funds appropriated at any time for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as are necessary for the immediate prosecution of the work herein authorized; and

(ii) funds obligated under this subparagraph shall be reimbursed from the appropriation or replenishment.

(d) ELIGIBILITY.—

(1) IN GENERAL.—The Secretary may expend funds from the emergency fund authorized by this section only for the repair or reconstruction of highways on Federal-aid highways in accordance with this chapter, except that—

(A) no funds shall be so expended unless an emergency has been declared by the Governor of the State with concurrence by the Secretary, unless the President has declared the emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) for which concurrence of the Secretary is not required; and

(B) the Secretary has received an application from the State transportation department that includes a comprehensive list of all eligible project sites and repair costs by not later than 2 years after the natural disaster or catastrophic failure.

(2) COST LIMITATION.—

(A) DEFINITION OF COMPARABLE FACILITY.—In this paragraph, the term ''comparable facility'' means a facility that—

(i) meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life; and

(ii) incorporates economically justifiable improvements that will mitigate the risk of recurring damage from extreme weather, flooding, and other natural disasters.

(B) LIMITATION.—The total cost of a project funded under this section may not exceed the cost of repair or reconstruction of a comparable facility.

(3) PROTECTIVE FEATURES.—

(A) IN GENERAL.—The cost of an improvement that is part of a project under this section shall be an eligible expense under this section if the improvement is a protective feature that will mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters.

(B) PROTECTIVE FEATURES DESCRIBED.—A protective feature referred to in subparagraph (A) includes—

(i) raising roadway grades;

(ii) relocating roadways in a floodplain to higher ground above projected flood elevation levels or away from slide prone areas;

(iii) stabilizing slide areas;

(iv) stabilizing slopes;

(v) lengthening or raising bridges to increase waterway openings;

(vi) increasing the size or number of drainage structures;

(vii) replacing culverts with bridges or upsizing culverts;

(viii) installing seismic retrofits on bridges;

(ix) adding scour protection at bridges, installing riprap, or adding other scour, stream stability, coastal, or other hydraulic countermeasures, including spur dikes; and

(x) the use of natural infrastructure to mitigate the risk of recurring damage or the cost of future repair from extreme weather, flooding, and other natural disasters.

(4) DEBRIS REMOVAL.—The costs of debris removal shall be an eligible expense under this section only for—

(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);

(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance under section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192); or

(C) projects eligible for assistance under this section located on tribal transportation facilities, Federal lands transportation facilities, or other federally owned roads that are open to public travel (as defined in subsection (e)(1)).

(5) SUBSTITUTE TRAFFIC.—Notwithstanding any other provision of this section, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged for comparable service, may be expended from the emergency fund authorized by this section for Federal-aid highways.

(e) TRIBAL TRANSPORTATION FACILITIES, FEDERAL LANDS TRANSPORTATION FACILITIES, AND PUBLIC ROADS ON FEDERAL LANDS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) OPEN TO PUBLIC TRAVEL.—The term ''open to public travel'' means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road—

(i) is maintained;

(ii) is open to the general public; and

(iii) can accommodate travel by a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

(B) STANDARD PASSENGER VEHICLE.—The term ''standard passenger vehicle'' means a vehicle with 6 inches of clearance from the lowest point of the frame, body, suspension, or differential to the ground.

(2) EXPENDITURE OF FUNDS.—Notwithstanding subsection (d)(1), the Secretary may expend funds from the emergency fund authorized by this section, independently or in cooperation with any other branch of the Federal Government, a State agency, a tribal government, an organization, or a person, for the repair or reconstruction of tribal transportation facilities, Federal lands transportation facilities, and other federally owned roads that are open to public travel, whether or not those facilities are Federal-aid highways.

(3) REIMBURSEMENT.—

(A) IN GENERAL.—The Secretary may reimburse Federal and State agencies (including political subdivisions) for expenditures made for projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility.

(B) TRANSFERS.—With respect to reimbursements described in subparagraph (A)—

(i) those reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation; and

(ii) the budget authority associated with the expenditure shall be restored to the agency from which the authority was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

(f) TREATMENT OF TERRITORIES.—For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each such territory shall be considered to be a Governor of a State.

(g) PROTECTING PUBLIC SAFETY AND MAINTAINING ROADWAYS.—The Secretary may use not more than 5 percent of amounts from the emergency fund authorized by this section to carry out projects that the Secretary determines are necessary to protect the public safety or to maintain or protect roadways that are included within the scope of an emergency declaration by the Governor of the State or by the President, in accordance with this section, and the Governor deems to be an ongoing concern in order to maintain vehicular traffic on the roadway.

(Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 86–342, title I, § 107(a), Sept. 21, 1959, 73 Stat. 612; Pub. L. 89–574, § 9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub. L. 90–495, § 27(a), Aug. 23, 1968, 82 Stat. 829; Pub. L. 91–605, title I, § 109(a), Dec. 31, 1970, 84 Stat. 1718; Pub. L. 92–361, Aug. 3, 1972, 86 Stat. 503; Pub. L. 94–280, title I, § 119, May 5, 1976, 90 Stat. 437; Pub. L. 95–599, title I, § 119, Nov. 6, 1978, 92 Stat. 2700; Pub. L. 96–106, § 19, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97–424, title I, § 153(a), (c), (d), (h), Jan. 6, 1983, 96 Stat. 2132, 2133; Pub. L. 99–190, § 101(e) [title III, § 334], Dec. 19, 1985, 99 Stat. 1267, 1290; Pub. L. 99–272, title IV, § 4103, Apr. 7, 1986, 100 Stat. 114; Pub. L. 100–17, title I, §§ 118(a)(1), (b)(1), (2), 133(b)(9), Apr. 2, 1987, 101 Stat. 156, 171; Pub. L. 100–707, § 109(k), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 102–240, title I, § 1022(b), Dec. 18, 1991, 105 Stat. 1951; Pub. L. 102–302, § 101, June 22, 1992, 106 Stat. 252; Pub. L. 105–178, title I, §§ 1113(b), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat.

151, 193; Pub. L. 112–141, div. A, title I, §1107, July 6, 2012, 126 Stat. 437; Pub. L. 114–94, div. A, title I, §1107, Dec. 4, 2015, 129 Stat. 1337; Pub. L. 116–94, div. H, title I, §127, Dec. 20, 2019, 133 Stat. 2953; Pub. L. 117–58, div. A, title I, §11106, Nov. 15, 2021, 135 Stat. 458.)

Editorial Notes

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (d)(1)(A), (4)(A), (B), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117–58, §11106(1), inserted ''wildfire,'' after ''severe storm,''.

Subsec. (b). Pub. L. 117–58, §11106(2), added subsec. (b) and struck out former subsec. (b) which restricted eligibility of funds for bridge repair or reconstruction in certain cases.

Subsec. (d)(2)(A). Pub. L. 117–58, §11106(3)(A), inserted dash after ''a facility that'' and cl. (i) designation before ''meets the current'' and added cl. (ii).

Subsec. (d)(3), (4). Pub. L. 117–58, §11106(3)(B), (C), added par. (3) and redesignated former par. (3) as (4).

2019—Subsec. (d)(4). Pub. L. 116–94 struck out par. (4). Text read as follows: ''The total obligations for projects under this section for any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed $20,000,000.''

2015—Subsec. (d)(3)(C). Pub. L. 114–94, §1107(a), added subpar. (C).

Subsec. (e)(1). Pub. L. 114–94, §1107(b), amended par. (1) generally. Prior to amendment, text read as follows: ''In this subsection, the term 'open to public travel' means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.''

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to emergency relief and consisted of subsecs. (a) to (f).

1998—Subsec. (a). Pub. L. 105–178, §1113(b)(2), added subsec. (a) and struck out former subsec. (a) which authorized expenditures by Secretary from emergency fund for repair or reconstruction of highways, roads, or trails which have suffered serious damage from natural disasters or catastrophic failures from external sources, including provisions relating to restrictions on eligibility and funding.

Subsecs. (b), (c). Pub. L. 105–178, §1113(b)(1), (2), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively.

Subsec. (d). Pub. L. 105–178, §1212(a)(2)(A)(i), substituted ''State transportation department'' for ''State highway department''.

Pub. L. 105–178, §1113(b)(3), substituted ''reconstruction of highways on Federal-aid highways in accordance'' for ''reconstruction of highways on the Federal-aid highway systems, including the Interstate System, in accordance'' in first sentence, ''subsection (e) of this section'' for ''subsection (c) of this section'' in two places, ''authorized on Federal-aid highways'' for ''authorized on the Federal-aid highway systems, including the Interstate System'' before period at end of second sentence, and ''Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)'' for ''Disaster Relief and Emergency Assistance Act (Public Law 93–288)'' in third sentence.

Pub. L. 105–178, §1113(b)(1), redesignated subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 105–178, §1113(b)(4), substituted ''Federal-aid highways'' for ''on any of the Federal-aid highway systems'' before period at end.

Pub. L. 105–178, §1113(b)(1), redesignated subsec. (c) as (e).

Subsec. (f). Pub. L. 105–178, §1113(b)(1), redesignated subsec. (d) as (f).

1992—Subsec. (b). Pub. L. 102–302, which directed the substitution of ''on Federal-aid highways'' for ''on the Federal-aid highway systems including the Interstate System'' in two places, could not be executed because phrase ''on the Federal-aid highway systems including the Interstate System'' did not appear in text.

1991—Subsec. (b)(2). Pub. L. 102–240 substituted ''$20,000,000'' for ''$5,000,000''.

1988—Subsec. (b). Pub. L. 100–707 substituted ''and Emergency Assistance Act'' for ''Act of 1974''.

1987—Subsec. (b). Pub. L. 100–17, §133(b)(9)(A), substituted ''the Federal-aid highway systems, including the Interstate System'' for ''the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors'' in two places.

Pub. L. 100–17, §118(a)(1), substituted ''in a State shall not exceed $100,000,000.'' for ''shall not exceed $30,000,000 ($55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985) in any State.''

Pub. L. 100–17, §118(b)(2), designated existing provisions related to limitations placed upon obligations for projects under this section as cl. (1) and added cl. (2).

Subsec. (c). Pub. L. 100–17, §133(b)(9)(B), substituted ''on any of the Federal-aid highway systems'' for ''routes functionally classified as arterials or major collectors''.

Subsec. (d). Pub. L. 100–17, §118(b)(1), added subsec. (d).

1986—Subsec. (b). Pub. L. 99–272 inserted parenthetical provision allowing obligations not exceeding $55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985.

1985—Pub. L. 99–190 amended section in manner substantially identical to amendment by Pub. L. 99–272.

1983—Subsec. (a). Pub. L. 97–424, §153(a)(1), inserted ''(1)'' before ''the repair or reconstruction of highways'', and substituted ''Secretary'' for ''he'' before ''shall find have suffered''; (A) and (B) for (1) and (2), respectively; ''In no event shall funds be used pursuant to this section for the'' for ''and (2)''; and ''or responsible local official'' for ''after December 31, 1967, and prior to December 31, 1970,''.

Pub. L. 97–424, §153(a)(2), inserted ''from the Highway Trust Fund'' after ''appropriated''.

Pub. L. 97–424, §153(c), inserted ''and not more than $100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1980,'' after ''after September 30, 1976,''.

Subsec. (b). Pub. L. 97–424, §153(d), inserted proviso establishing a $30,000,000 limit for obligations relating to a single natural disaster in any one State.

Pub. L. 97–424, §153(h)(1), substituted ''the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors,'' for ''the Federal-aid highway systems, including the Interstate System'', wherever appearing.

Subsec. (c). Pub. L. 97–424, §153(h)(2), substituted ''routes functionally classified as arterials or major collectors'' for ''on any of the Federal-aid highway systems''.

1979—Subsec. (b). Pub. L. 96–106 inserted provision that notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Federal-aid highway systems, including the Interstate System.

1978—Subsec. (a). Pub. L. 95–599 inserted ''prior to the fiscal year ending September 30, 1978'' after ''such years, and (2)'', and inserted provision authorizing ap-

propriations of 100 percent of expenditures out of the Highway Trust Fund.

1976—Subsec. (a). Pub. L. 94–280, §119(a)(1)–(3), inserted '', and ending before June 1, 1976,'' after ''June 30, 1972,'', authorized expenditure of not more than $25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, and not more than $100,000,000 in any one fiscal year commencing after September 30, 1976, and inserted provision that for the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977.

Subsec. (b). Pub. L. 94–280, §119(b), excepted from the requirement of a concurrence by the Secretary an emergency declared by the President to be a major disaster for purposes of the Disaster Relief Act of 1974.

1972—Subsec. (a). Pub. L. 92–361 substituted provisions setting forth maximum expendable amounts for fiscal years ending July 1, 1972 and for fiscal years commencing after June 30, 1972 and an additional amount for fiscal year ending June 30, 1973 for provisions setting forth maximum expendable amount for any fiscal year.

1970—Subsec. (a). Pub. L. 91–605 provided emergency relief for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State after December 31, 1967, and prior to December 31, 1970, because of imminent danger of collapse due to structural deficiencies or physical deterioration.

1968—Subsec. (a). Pub. L. 90–495 permitted the use of the emergency fund for repair or construction caused by other than natural catastrophes.

1966—Subsec. (a). Pub. L. 89–574, §9(c), raised from $30,000,000 to $50,000,000 the upper limit on allowable annual appropriations to establish and replenish the fund, provided that, if, in any fiscal year the total of all expenditures under this section is less than $50,000,000, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amount otherwise available, and provided that 60 per centum of the expenditures under this section are authorized to be appropriated from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any monies in the Treasury not otherwise appropriated.

Subsec. (c). Pub. L. 89–574, §9(b), added parkways, public lands highways, public lands development roads, and trails to the list of types of roads the repair or reconstruction of which may be paid for out of the emergency fund.

1959—Pub. L. 86–342, among other changes, made expenditures from the emergency fund subject to the provisions of section 120 of this title, and permitted the Secretary to expend funds from the emergency fund, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highway systems.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 applicable only to natural disasters and catastrophic failures occurring after Dec. 18, 1991, see section 1022(c) of Pub. L. 102–240, set out as a note under section 120 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–17, title I, §118(a)(2), Apr. 2, 1987, 101 Stat. 156, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to natural disasters and catastrophic failures occurring after December 31, 1985.''

Pub. L. 100–17, title I, §118(b)(3), Apr. 2, 1987, 101 Stat. 156, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 2, 1987].''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title I, §153(e), Jan. 6, 1983, 96 Stat. 2133, provided that: ''The amendments made by subsection (d) of this section [amending this section] shall apply to natural disasters or catastrophic failures which the Secretary finds eligible for emergency relief subsequent to the date of enactment of this section [Jan. 6, 1983].''

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90–495, §27(c), Aug. 23, 1968, 82 Stat. 829, provided that: ''The amendments made by this section [amending this section and section 120 of this title] shall be applicable to repair or reconstruction with respect to which project agreements have been entered into on or after January 1, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89–574, §9(d), Sept. 13, 1966, 80 Stat. 769, provided that: ''The amendments made by this section [amending this section] shall take effect July 1, 1966.''

EMERGENCY RELIEF PROJECTS

Pub. L. 117–58, div. A, title I, §11519, Nov. 15, 2021, 135 Stat. 602, provided that:

''(a) DEFINITION OF EMERGENCY RELIEF PROJECT.—In this section, the term 'emergency relief project' means a project carried out under the emergency relief program under section 125 of title 23, United States Code.

''(b) IMPROVING THE EMERGENCY RELIEF PROGRAM.—Not later than 90 days after the date of enactment of this Act [Nov. 15, 2021], the Secretary shall—

''(1) revise the emergency relief manual of the Federal Highway Administration—

''(A) to include and reflect the definition of the term 'resilience' (as defined in section 101(a) of title 23, United States Code);

''(B) to identify procedures that States may use to incorporate resilience into emergency relief projects; and

''(C) to encourage the use of Complete Streets design principles and consideration of access for moderate- and low-income families impacted by a declared disaster;

''(2) develop best practices for improving the use of resilience in—

''(A) the emergency relief program under section 125 of title 23, United States Code; and

''(B) emergency relief efforts;

''(3) provide to division offices of the Federal Highway Administration and State departments of transportation information on the best practices developed under paragraph (2); and

''(4) develop and implement a process to track—

''(A) the consideration of resilience as part of the emergency relief program under section 125 of title 23, United States Code; and

''(B) the costs of emergency relief projects.''

EXPENDITURES MADE PRIOR TO FISCAL YEAR ENDING SEPTEMBER 30, 1978; APPROPRIATION FROM HIGHWAY TRUST FUND

Pub. L. 97–424, title I, §153(b), Jan. 6, 1983, 96 Stat. 2133, provided that all expenditures made under this section prior to the fiscal year ending Sept. 30, 1978, were authorized to have been appropriated from the Highway Trust Fund.

§ 126. Transferability of Federal-aid highway funds

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to subsection (b), a State may transfer from an apportionment under section 104(b) not to exceed 50 percent of the amount apportioned for the fiscal year to any other apportionment of the State under that section.

(b) APPLICATION TO CERTAIN SET-ASIDES.—

(1) IN GENERAL.—Funds that are subject to sections 104(d) and 133(d)(1)(A) shall not be transferred under this section.

(2) FUNDS TRANSFERRED BY STATES.—Funds transferred by a State under this section of the funding set aside for a State under section 133(h) for a fiscal year—

(A) may only come from the portion of those funds that are available for obligation in any area of the State under section 133(h); and

(B) may only be transferred if the Secretary certifies that the State—

(i) held a competition in compliance with the guidance issued to carry out section 133(h) and provided sufficient time for applicants to apply;

(ii) offered to each eligible entity, and provided on request of an eligible entity, technical assistance; and

(iii) demonstrates that there were not sufficiently suitable applications from eligible entities to use the funds to be transferred.

(Added Pub. L. 105–178, title I, §1310(a), June 9, 1998, 112 Stat. 234, §110; renumbered §126, Pub. L. 106–159, title I, §102(a)(1), Dec. 9, 1999, 113 Stat. 1752; amended Pub. L. 109–59, title I, §1401(a)(3)(B), Aug. 10, 2005, 119 Stat. 1225; Pub. L. 112–141, div. A, title I, §1509(a), July 6, 2012, 126 Stat. 567; Pub. L. 114–94, div. A, title I, §§1109(c)(1), 1446(a)(2), Dec. 4, 2015, 129 Stat. 1343, 1437; Pub. L. 117–58, div. A, title I, §11109(b)(2), Nov. 15, 2021, 135 Stat. 468.)

Editorial Notes

PRIOR PROVISIONS

A prior section 126, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 901; Pub. L. 93–87, title I, §152(3), Aug. 13, 1973, 87 Stat. 276, related to providing Federal aid for highway construction only to States that used at least amounts provided by law on June 18, 1934, for such purposes, prior to repeal by Pub. L. 105–178, title I, §1226(d), as added by Pub. L. 105–206, title IX, §9003(a), July 22, 1998, 112 Stat. 837.

AMENDMENTS

2021—Subsec. (b)(2). Pub. L. 117–58, §11109(b)(2)(A), (B), which directed substitution of ''set aside for a State under section 133(h) for a fiscal year—

''(A) may''

for ''reserved for a State under section 133(h) for a fiscal year may'', was executed by making the substitution for ''reserved for the State under section 133(h) for a fiscal year may'' to reflect the probable intent of Congress.

Subsec. (b)(2)(B). Pub. L. 117–58, §11109(b)(2)(A), (C), added subpar. (B).

2015—Subsec. (b)(1). Pub. L. 114–94, §1446(a)(2), substituted ''133(d)(1)(A)'' for ''133(d)''.

Subsec. (b)(2). Pub. L. 114–94, §1109(c)(1), substituted ''for the State under section 133(h)'' for ''for the State under section 213'' and ''of the State under section 133(h)'' for ''of the State under section 213(c)(1)(B)''.

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to uniform transferability of Federal-aid highway funds.

2005—Subsec. (a). Pub. L. 109–59, which directed insertion of ''under'' after ''State's apportionment'', was executed by making the insertion after ''State's apportionment'' the second place it appeared, to reflect the probable intent of Congress.

1999—Pub. L. 106–159 renumbered section 110 of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 127. Vehicle weight limitations—Interstate System

(a) IN GENERAL.—

(1) The Secretary shall withhold 50 percent of the apportionment of a State under section 104(b)(1) in any fiscal year in which the State does not permit the use of The Dwight D. Eisenhower System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more.

(2) However, the maximum gross weight to be allowed by any State for vehicles using The Dwight D. Eisenhower System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

Subsec. (f). Pub. L. 105–178, §1108(e), as amended by Pub. L. 109–59, §1113(e), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''A State which is required to obligate in an urbanized area with an urbanized area population of over 200,000 under subsection (d) funds apportioned to it under section 104(b)(3) shall allocate during the 6-fiscal year period 1992 through 1997 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction for use in such area determined by multiplying—

''(1) the aggregate amount of funds which the State is required to obligate in such area under subsection (d) during such period; by

''(2) the ratio of the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction during such period to the total sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to an obligation limitation) during such period.''

1995—Subsec. (d)(5). Pub. L. 104–59, §315, added par. (5).

Subsec. (e)(3). Pub. L. 104–59, §316(1), designated existing provisions as subpar. (A), inserted subpar. (A) heading, realigned margins, substituted ''Except as provided in subparagraph (B), the'' for ''The'', and added subpar. (B).

Subsec. (e)(5). Pub. L. 104–59, §316(2), added par. (5).

1994—Subsec. (b)(2). Pub. L. 103–429 substituted ''chapter 53 of title 49'' for ''the Federal Transit Act''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title I, §1113(b)(3), Aug. 10, 2005, 119 Stat. 1172, provided that: ''Paragraph (1) and paragraph (2)(A)(ii) of this subsection [amending this section] shall take effect October 1, 2005.''

Pub. L. 109–59, title I, §1113(c), Aug. 10, 2005, 119 Stat. 1172, provided that the amendment made by section 1113(c) is effective Oct. 1, 2005.

Pub. L. 109–59, title I, §1113(e), Aug. 10, 2005, 119 Stat. 1172, provided that the amendment made by section 1113(e) is effective June 9, 1998.

EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as an Effective Date of 1991 Amendment note under section 104 of this title.

DIVISION OF STP FUNDS FOR AREAS OF LESS THAN 5,000 POPULATION

Pub. L. 105–178, title I, §1108(f), June 9, 1998, 112 Stat. 141, as amended by Pub. L. 110–244, title I, §113(a), June 6, 2008, 122 Stat. 1606, provided that:

''(1) SPECIAL RULE.—Notwithstanding section 133(c) of title 23, United States Code, and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated under section 133(d)(3)(B) of such title for each of fiscal years 1998 through 2009 may be obligated on roads functionally classified as minor collectors.

''(2) SUSPENSION.—The Secretary may suspend the application of paragraph (1) if the Secretary determines that paragraph (1) is being used excessively.''

ENCOURAGEMENT OF USE OF YOUTH CONSERVATION OR SERVICE CORPS

Pub. L. 105–178, title I, §1108(g), June 9, 1998, 112 Stat. 141, provided that: ''The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform appropriate transportation enhancement activities under chapter 1 of title 23, United States Code.''

§ 134. Metropolitan transportation planning

(a) POLICY.—It is in the national interest to—

(1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

(b) DEFINITIONS.—In this section and section 135, the following definitions apply:

(1) METROPOLITAN PLANNING AREA.—The term ''metropolitan planning area'' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

(2) METROPOLITAN PLANNING ORGANIZATION.—The term ''metropolitan planning organization'' means the policy board of an organization created as a result of the designation process in subsection (d).

(3) NONMETROPOLITAN AREA.—The term ''nonmetropolitan area'' means a geographic area outside designated metropolitan planning areas.

(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term ''nonmetropolitan local official'' means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) TIP.—The term ''TIP'' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

(6) URBANIZED AREA.—The term ''urbanized area'' means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

(c) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

(C) appropriate State officials.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

(A) develop the plans and TIPs for adoption by a metropolitan planning organization; and

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA–LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA–LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (d)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(f) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any two or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual

assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) LAKE TAHOE REGION.—

(A) DEFINITION.—In this paragraph, the term ''Lake Tahoe region'' has the meaning given the term ''region'' in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 135.

(C) INTERSTATE COMPACT.—

(i) IN GENERAL.—Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) FUNDING.—For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, prior to any allocation under section 202 of this title and notwithstanding the allocation provisions of section 202, the Secretary shall set aside ½ of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96–551 (94 Stat. 3233) and this paragraph.

(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

(ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

(4) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

(A) recipients of assistance under chapter 53 of title 49;

(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

(C) recipients of assistance under section 204.

(h) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and for freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(G) promote efficient system management and operation; and

(H) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

(1) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(A) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(B) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

(B) MITIGATION ACTIVITIES.—

(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(C) FINANCIAL PLAN.—A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(D) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(E) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

(F) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) CONSULTATION.—

(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve, as appropriate—

(i) comparison of transportation plans with State conservation plans or maps, if available; or

(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(5) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

(i) shall be developed in consultation with all interested parties; and

(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(6) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

(j) METROPOLITAN TIP.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—

(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

(i) demonstrates how the TIP can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

(B) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant

shall be grouped in one line item or identified individually in the transportation improvement program.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

(i) by—

(I) in the case of projects under this title, the State; and

(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and

(ii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

(7) PUBLICATION.—

(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

(k) TRANSPORTATION MANAGEMENT AREAS.—

(1) IDENTIFICATION AND DESIGNATION.—

(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

(3) CONGESTION MANAGEMENT PROCESS.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

(4) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by

the State in cooperation with the metropolitan planning organization designated for the area.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(*l*) ABBREVIATED PLANS FOR CERTAIN AREAS.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

(*o*) FUNDING.—Funds set aside under section 104(f) of this title or section 5305(g) of title 49 shall be available to carry out this section.

(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.

(Added Pub. L. 87–866, § 9(a), Oct. 23, 1962, 76 Stat. 1148; amended Pub. L. 91–605, title I, § 143, Dec. 31, 1970, 84 Stat. 1737; Pub. L. 95–599, title I, § 169, Nov. 6, 1978, 92 Stat. 2723; Pub. L. 102–240, title I, § 1024(a), Dec. 18, 1991, 105 Stat. 1955; Pub. L. 102–388, title V, § 502(b), Oct. 6, 1992, 106 Stat. 1566; Pub. L. 103–429, § 3(5), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 104–59, title III, § 317, Nov. 28, 1995, 109 Stat. 588; Pub. L. 105–178, title I, § 1203(a)–(m), (*o*), June 9, 1998, 112 Stat. 170–179; Pub. L. 105–206, title IX, § 9003(c), July 22, 1998, 112 Stat. 839; Pub. L. 109–59, title VI, § 6001(a), Aug. 10, 2005, 119 Stat. 1839; Pub. L. 110–244, title I, § 101(n), June 6, 2008, 122 Stat. 1576.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (e)(4), (5)(D), (g)(1), (i)(3), (*l*)(2), and (m)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of the SAFETEA–LU, referred to in subsec. (e)(4), (5), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

Public Law 96–551, referred to in subsec. (f)(3)(A), (C)(ii)(II), is Pub. L. 96–551, Dec. 19, 1980, 94 Stat. 3233, which is not classified to the Code.

The National Environmental Policy Act of 1969, referred to in subsec. (p), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (f)(3)(C)(ii)(II). Pub. L. 110–244, §101(n)(1), added subcl. (II) and struck out former subcl. (II). Prior to amendment, text read as follows: ''In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this title and under chapter 53 of title 49, 1 percent of the funds allocated under section 202 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.''

Subsec. (j)(3)(D). Pub. L. 110–244, §101(n)(2), inserted ''or the identified phase'' after ''the project'' in two places.

Subsec. (k)(2). Pub. L. 110–244, §101(n)(3), struck out ''a metropolitan planning area serving'' before ''a transportation management area,''.

2005—Pub. L. 109–59 amended section catchline and text generally, substituting provisions relating to metropolitan transportation planning for provisions relating to, in subsec. (a), general requirements for development of transportation plans and programs for urbanized areas, in subsec. (b), designation of metropolitan planning organizations, in subsec. (c), determination of metropolitan planning area boundaries, in subsec. (d), coordination of transportation planning in multistate metropolitan areas, in subsec. (e), coordination of metropolitan planning organizations, in subsec. (f), scope of the planning process, in subsec. (g), development of a long-range transportation plan, in subsec. (h), development of a metropolitan area transportation improvement program, in subsec. (i), designation of transportation management areas, in subsec. (j), abbreviated plans and programs for areas not designated as transportation management areas, in subsec. (k), transfer of funds, in subsec. (*l*), additional requirements for nonattainment areas under the Clean Air Act,in subsec. (m), limitation on statutory construction, in subsec. (n), funding, and in subsec. (*o*), review of plans and programs under the National Environmental Policy Act of 1969.

1998—Subsec. (a). Pub. L. 105–178, §1203(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner which will efficiently maximize mobility of people and goods within and through urbanized areas and minimize transportation-related fuel consumption and air pollution. To accomplish this objective, metropolitan planning organizations, in cooperation with the State, shall develop transportation plans and programs for urbanized areas of the State. Such plans and programs shall provide for the development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal transportation system for the State, the metropolitan areas, and the Nation. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.''

Subsec. (b)(1), (2). Pub. L. 105–178, §1203(b)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area of more than 50,000 population by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population (including the central city or cities as defined by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

''(2) MEMBERSHIP OF CERTAIN MPO'S.—In a metropolitan area designated as a transportation management area, the metropolitan planning organization designated for such area shall include local elected officials, officials of agencies which administer or operate major modes of transportation in the metropolitan area (including all transportation agencies included in the metropolitan planning organization on June 1, 1991) and appropriate State officials. This paragraph shall only apply to a metropolitan planning organization which is redesignated after the date of the enactment of this section.''

Subsec. (b)(4). Pub. L. 105–178, §1203(b)(2), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Designations of metropolitan planning organizations, whether made under this section or other provisions of law, shall remain in effect until redesignated under paragraph (5) or revoked by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population or as otherwise provided under State or local procedures.''

Subsec. (b)(5)(A). Pub. L. 105–178, §1203(b)(3), substituted ''agreement between the Governor'' for ''agreement among the Governor'' and ''government that together represent'' for ''government which together represent''.

Subsec. (b)(6). Pub. L. 105–178, §1203(b)(4), amended heading and text of par. (6) generally. Prior to amendment, text read as follows: ''More than 1 metropolitan planning organization may be designated within an urbanized area as defined by the Bureau of the Census only if the Governor determines that the size and complexity of the urbanized area make designation of more than 1 metropolitan planning organization for such area appropriate.''

Subsec. (c). Pub. L. 105–178, §1203(c), inserted ''Planning'' before ''Area'' in subsec. heading, designated first sentence as par. (1), inserted par. heading, and inserted ''planning'' before ''area'', added pars. (2) to (4), realigned margins, and struck out at end ''Each metropolitan area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census. For areas designated as nonattainment areas for ozone or carbon monoxide under the Clean Air Act, the boundaries of the metropolitan area shall at least include the boundaries of the nonattainment area, except as otherwise provided by agreement between the metropolitan planning organization and the Governor.''

Subsec. (d). Pub. L. 105–178, §1203(d), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—The Secretary shall establish such requirements as the Secretary considers appropriate to encourage Governors and metropolitan planning organizations with responsibility for a portion of a multi-State metropolitan area to provide coordinated transportation planning for the entire metropolitan area.

''(2) COMPACTS.—The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as such activities pertain to interstate areas and localities within such States and to establish such agencies, joint or otherwise, as such States may deem desirable for making such agreements and compacts effective.''

Subsec. (e). Pub. L. 105–178, §1203(e), substituted ''MPOs'' for ''MPO's'' in subsec. heading, designated existing provisions as par. (1) and inserted par. heading, added par. (2), and realigned margins.

Subsec. (f). Pub. L. 105–178, §1203(f), amended heading and text of subsec. (f) generally, substituting provisions relating to scope of planning process for provisions relating to factors to be considered in developing transportation plans and programs.

Subsec. (g). Pub. L. 105–178, §1203(g)(6), substituted ''Long-Range Transportation Plan'' for ''Long Range Plan'' in heading.

Subsec. (g)(1). Pub. L. 105–178, §1203(g)(8), substituted ''long-range transportation plan'' for ''long range plan''.

Subsec. (g)(2). Pub. L. 105–178, §1203(g)(1), (7), (8), substituted ''Long-range transportation plan'' for ''Long range plan'' in heading and substituted ''long-range transportation plan'' for ''long range plan'' and ''contain, at a minimum, the following'' for '', at a minimum'' in introductory provisions.

Subsec. (g)(2)(A). Pub. L. 105–178, §1203(g)(2), (8), substituted ''An identification of'' for ''Identify'' and ''long-range transportation plan'' for ''long range plan''.

Subsec. (g)(2)(B). Pub. L. 105–178, §1203(g)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Include a financial plan that demonstrates how the long-range plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any innovative financing techniques to finance needed projects and programs, including such techniques as value capture, tolls and congestion pricing.''

Subsec. (g)(3). Pub. L. 105–178, §1203(g)(8), substituted ''long-range transportation plan'' for ''long range plan''.

Subsec. (g)(4). Pub. L. 105–178, §1203(g)(4), (8), substituted ''long-range transportation plan'' for ''long range plan'' in two places and inserted ''freight shippers, providers of freight transportation services,'' after ''transportation agency employees,'' and ''representatives of users of public transit,'' after ''private providers of transportation,''.

Subsec. (g)(5). Pub. L. 105–178, §1203(g)(7), (8), substituted ''long-range transportation plan'' for ''long range plan'' in heading and in introductory provisions.

Subsec. (g)(6). Pub. L. 105–178, §1203(g)(5), added par. (6).

Subsec. (h). Pub. L. 105–178, §1203(h), amended heading and text of subsec. (h) generally. Prior to amendment, text related to transportation improvement program, providing for development of program, priority and selection of projects, major capital investments, requirement of inclusion of projects within area proposed for funding, and provision of reasonable notice and opportunity to comment for interested citizens.

Subsec. (h)(5)(A). Pub. L. 105–178, §1203(*o*), as added by Pub. L. 105–206, §9003(c), struck out ''for implementation'' after ''federally funded projects'' in introductory provisions.

Subsec. (i)(1). Pub. L. 105–178, §1203(i)(1), reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: ''The Secretary shall designate as transportation management areas all urbanized areas over 200,000 population. The Secretary shall designate any additional area as a transportation management area upon the request of the Governor and the metropolitan planning organization designated for such area or the affected local officials. Such additional areas shall include upon such a request the Lake Tahoe Basin as defined by Public Law 96–551.''

Subsec. (i)(4). Pub. L. 105–178, §1203(i)(2), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''All projects carried out within the boundaries of a transportation management area with Federal participation pursuant to this title (excluding projects undertaken on the National Highway System and pursuant to the bridge and Interstate maintenance programs) or pursuant to chapter 53 of title 49 shall be selected by the metropolitan planning organization designated for such area in consultation with the State and in conformance with the transportation improvement program for such area and priorities established therein. Projects undertaken within the boundaries of a transportation management area on the National Highway System or pursuant to the bridge and Interstate maintenance programs shall be selected by the State in cooperation with the metropolitan planning organization designated for such area and shall be in conformance with the transportation improvement program for such area.''

Subsec. (i)(5). Pub. L. 105–178, §1203(i)(3), reenacted heading without change and amended text of par. (5) generally. Prior to amendment, text read as follows: ''The Secretary shall assure that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable provisions of Federal law, and shall so certify at least once every 3 years. The Secretary may make such certification only if (1) a metropolitan planning organization is complying with the requirements of this section and other applicable requirements of Federal law, and (2) there is a transportation improvement program for the area that has been approved by the metropolitan planning organization and the Governor. If after September 30, 1993, a metropolitan planning organization is not certified by the Secretary, the Secretary may withhold, in whole or in part, the apportionment under section 104(b)(3) attributed to the relevant metropolitan area pursuant to section 133(d)(3) and capital funds apportioned under the formula program under section 5336 of title 49. If a metropolitan planning organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of the apportionment attributed to that metropolitan area under section 133(d)(3) and capital funds apportioned under the formula program under section 5336 of title 49 shall be withheld. The withheld apportionments shall be restored to the metropolitan area at such time as the metropolitan planning organization is certified by the Secretary. The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 5306(a) of title 49.''

Subsec. (j). Pub. L. 105–178, §1203(j), reenacted heading without change and amended text of subsec. (j) generally. Prior to amendment, text read as follows: ''For metropolitan areas not designated as transportation management areas under this section, the Secretary may provide for the development of abbreviated metropolitan transportation plans and programs that the Secretary determines to be appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems, including transportation related air quality problems, in such areas. In no event shall the Secretary provide abbreviated plans or programs for metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act.''

Subsec. (*l*). Pub. L. 105–178, §1203(k), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (n). Pub. L. 105–178, §1203(*l*), amended heading and text of subsec. (n) generally. Prior to amendment, text read as follows: ''Any funds set aside pursuant to section 104(f) of this title that are not used for the purpose of carrying out this section may be made available by the metropolitan planning organization to the State for the purpose of funding activities under section 135.''

Subsec. (*o*). Pub. L. 105–178, §1203(m), added subsec. (*o*).

1995—Subsec. (f)(16). Pub. L. 104–59 added par. (16).

1994—Subsecs. (h)(5), (i)(3), (4). Pub. L. 103–429, §3(5)(A), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act''.

Subsec. (i)(5). Pub. L. 103–429, §3(5)(B), substituted ''section 5336 of title 49'' for ''section 9 of the Federal Transit Act'' in two places and ''section 5306(a) of title 49'' for ''section 8(*o*) of the Federal Transit Act''.

Subsec. (k). Pub. L. 103–429, §3(5)(C), (D), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act'' wherever appearing and ''chapter 53 funds'' for ''Federal Transit Act funds''.

Subsecs. (*l*), (m). Pub. L. 103–429, §3(5)(C), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act''.

1992—Subsec. (k). Pub. L. 102–388 inserted at end ''The provisions of title 23, United States Code, regarding the

non-Federal share shall apply to title 23 funds used for transit projects and the provisions of the Federal Transit Act regarding non-Federal share shall apply to Federal Transit Act funds used for highway projects.''

1991—Pub. L. 102–240 substituted section catchline for one which read: ''Transportation planning in certain urban areas'' and amended text generally, substituting present provisions for provisions relating to transportation planning in certain urban areas, including provisions stating transportation objectives, requiring continuing comprehensive planning process by States and local communities, and relating to redesignation of metropolitan planning organizations, designation of contiguous interstate areas as critical transportation regions and corridors, establishment of planning bodies for such regions and corridors, and authorization of appropriations.

1978—Subsec. (a). Pub. L. 95–599, §169(a), inserted provisions related to cooperation with local officials and specific considerations in the planning process.

Subsecs. (b), (c). Pub. L. 95–599, §169(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1970—Pub. L. 91–605 designated existing provisions as subsec. (a), inserted provision prohibiting a highway construction project in any urban area of 50,000 or more population unless responsible public officials of such area have been consulted and their views considered with respect to the corridor, the location, and the design of the project, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

SCHEDULE FOR IMPLEMENTATION

Pub. L. 109–59, title VI, §6001(b), Aug. 10, 2005, 119 Stat. 1857, provided that: ''The Secretary [of Transportation] shall issue guidance on a schedule for implementation of the changes made by this section [amending this section and section 135 of this title], taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.''

DEMONSTRATION PROJECT FOR RESTRICTED ACCESS TO CENTRAL BUSINESS DISTRICT OF METROPOLITAN AREAS

Section 155 of Pub. L. 95–599 authorized Secretary of Transportation to carry out a demonstration project in a metropolitan area respecting the restriction of access of motor vehicles to the central business district during peak hours of traffic, authorized the necessary appropriations, and required progress reports and a final report and recommendations not later than three years after Nov. 6, 1978.

REDUCTION OF URBAN BLIGHT ADJACENT TO FEDERAL-AID PRIMARY AND INTERSTATE HIGHWAYS LOCATED IN CENTRAL BUSINESS DISTRICTS

Section 159 of Pub. L. 95–599 directed Secretary to conduct a study and submit a report to Congress not later than two years after Nov. 6, 1978, respecting the potential for reducing urban blight adjacent to Federal-aid primary and interstate highways located in central business districts.

URBAN SYSTEM STUDY

Pub. L. 94–280, title I, §149, May 5, 1976, 90 Stat. 447, directed Secretary of Transportation to conduct a study of the factors involved in planning, selection, etc., of Federal-aid urban system routes including an analysis of organizations carrying out the planning process, the status of jurisdiction over roads, programing responsibilities under local and State laws, and authority of local units, such study to be submitted to Congress within six months of May 5, 1976.

FRINGE PARKING DEMONSTRATION PROJECTS

Pub. L. 90–495, §11, Aug. 23, 1968, 82 Stat. 820, authorized Secretary to approve construction of publicly owned parking facilities under this title until June 30, 1971, as a demonstration project, authorized the Federal share of any project under this section to be 50%, prevented approval of projects by the Secretary unless the State or political subdivision thereof where the project is located can construct, maintain, and operate the facility, unless the Secretary has entered into an agreement with the State or political subdivision governing the financing, maintenance, and operation of the facility, and unless the Secretary has approved design standards for construction of the facility, defined ''parking facilities'', permitted a State or political subdivision to contract for the operation of such facility, prohibited approval of the project by the Secretary unless it is carried on in accordance with section 134 of this title (this section), and required annual reports to Congress on the demonstration projects approved under this section, prior to repeal by Pub. L. 91–605, title I, §134(c), Dec. 31, 1970, 84 Stat. 1734. See section 137 of this title.

§ 135. Statewide transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 134.

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for

metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) INTERSTATE AGREEMENTS.—

(1) IN GENERAL.—The consent of Congress is granted to two or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(G) promote efficient system management and operation; and

(H) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider, at a minimum—

(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(3) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan.

(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(4) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(5) FINANCIAL PLAN.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

(7) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

(B) NONMETROPOLITAN AREAS.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

(4) INCLUDED PROJECTS.—

(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

(B) LISTING OF PROJECTS.—An annual listing of projects for which funds have been obligated in the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(C) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

(i) consistent with the statewide transportation plan developed under this section for the State;

(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under such Act.

(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(F) FINANCIAL PLAN.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this title and chapter 53 of title 49.

(5) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under this title or under sections 5310, 5311, 5316, and 5317 of title 49 shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(6) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

(7) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 134.

(8) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(h) FUNDING.—Funds set aside pursuant to section 104(f) of this title and section 5305(g) of title 49, shall be available to carry out this section.

(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 134, and sections 5303 and 5304 of title 49, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 134, and sections 5303 and 5304 of title 49, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 134 and sections 5303 and 5304 of title 49, as appropriate.

(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under such Act.

(Added Pub. L. 90–495, § 10(a), Aug. 23, 1968, 82 Stat. 820; amended Pub. L. 91–605, title I, §§ 106(g), 125, Dec. 31, 1970, 84 Stat. 1718, 1729; Pub. L. 93–87, title I, § 119, Aug. 13, 1973, 87 Stat. 259; Pub. L. 94–280, title I, § 123(a), May 5, 1976, 90 Stat. 439; Pub. L. 102–240, title I, § 1025(a), Dec. 18, 1991, 105 Stat. 1962; Pub. L. 103–429, § 3(6), Oct. 31, 1994, 108 Stat. 4378; Pub. L. 105–178, title I, § 1204(a)–(h), June 9, 1998, 112 Stat. 180–184; Pub. L. 109–59, title VI, § 6001(a), Aug. 10, 2005, 119 Stat. 1851.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(2) and (g)(4)(D)(iii), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (j), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 135, Pub. L. 89–139, § 4(a), Aug. 28, 1965, 79 Stat. 578, called for a highway safety program in each State approved by the Secretary, prior to repeal by Pub. L. 89–564, title I, § 102(a), Sept. 9, 1966, 80 Stat. 734. See section 402 of this title.

AMENDMENTS

2005—Pub. L. 109–59 amended section catchline and text generally, substituting provisions relating to statewide transportation planning for provisions relating to, in subsec. (a), development of plans and programs by each State, in subsec. (b), coordination of State with Federal planning, in subsec. (c), scope of planning process, in subsec. (d), additional minimum requirements for each State to consider, in subsec. (e), development of a long-range transportation plan, in subsec. (f), development of a State transportation improvement program, in subsec. (g), funding, in subsec. (h), treatment of certain State laws as congestion management systems, and, in subsec. (i), review of plans and programs under the National Environmental Policy Act of 1969.

1998—Subsec. (a). Pub. L. 105–178, § 1204(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''It is in the national interest to encourage and promote the development of transportation systems embracing various modes of transportation in a manner that will serve all areas of the State efficiently and effectively. Subject to section 134 of this title, the State shall develop transportation plans and programs for all areas of the State. Such plans and programs shall provide for development of transportation facilities (including pedestrian walkways and bicycle transportation facilities) which will function as an intermodal State transportation system. The process for developing such plans and programs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.''

Subsec. (b). Pub. L. 105–178, § 1204(b), inserted ''and sections 5303 through 5305 of title 49'' after ''section 134 of this title''.

Subsec. (c). Pub. L. 105–178, § 1204(c), amended heading and text of subsec. (c) generally, substituting provisions relating to scope of planning process for provisions relating to considerations to be involved in State's continuous transportation planning process.

Subsec. (d). Pub. L. 105–178, § 1204(d), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Each State in carrying out planning under this section shall, at a minimum, consider the following:

''(1) The coordination of transportation plans and programs developed for metropolitan areas of the State under section 134 with the State transportation plans and programs developed under this section and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems.

''(2) Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development.

''(3) The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.''

Subsec. (e). Pub. L. 105–178, § 1204(e), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The State shall develop a long-range transportation plan for all areas of the State. With respect to metropolitan areas of the State, the plan shall be developed in cooperation with metropolitan planning organizations designated for metropolitan areas in the State under section 134. With respect to areas of the State under the jurisdiction of an Indian tribal government, the plan shall be developed in cooperation with such government and the Secretary of the Interior. In developing the plan, the State shall provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed plan. In addition, the State shall develop a long-range plan for bicycle transportation and pedestrian walkways for appropriate areas of the State which shall be incorporated into the long-range transportation plan.''

Subsec. (f). Pub. L. 105–178, § 1204(f), amended heading and text of subsec. (f) generally. Prior to amendment, text related to transportation improvement programs, including program development, requirement for inclusion of certain projects for State transportation improvement program, project selection for areas less than 50,000 population, and requirement of biennial review and approval.

Subsec. (g). Pub. L. 105–178, § 1204(g), which directed substitution of ''section 505(a)'' for ''section 307(c)(1)'' in section 134(g), was executed by making the substitution in subsec. (g) of this section to reflect the probable intent of Congress.

Subsec. (i). Pub. L. 105–178, § 1204(h), added subsec. (i).

1994—Subsec. (f)(2). Pub. L. 103–429, § 3(6)(A), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act''.

Subsec. (h). Pub. L. 103–429, § 3(6)(B), substituted ''sections 5303–5306 and 5323(k) of title 49'' for ''section 8 of the Federal Transit Act, United States Code'' and ''section 8 of such Act''.

1991—Pub. L. 102–240 substituted section catchline for one which read: ''Traffic operations improvement programs'', and amended text generally. Prior to amendment, text read as follows:

''(a) The Congress hereby finds and declares it to be in the national interest that each State shall have a continuing program designed to reduce traffic congestion and facilitate the flow of traffic.

''(b) The Secretary may approve under this section any project for improvements on any public road which project will directly facilitate and control traffic flow on any of the Federal-aid systems.''

1976—Pub. L. 94–280 struck out introductory words ''Urban area'' in section catchline.

Subsec. (a). Pub. L. 94–280 struck out ''within the designated boundaries of urban areas of the State'' and ''in the urban areas'' after ''continuing program'' and ''flow of traffic'', respectively.

Subsec. (b). Pub. L. 94–280 substituted ''any project for improvements on any public road which project will directly facilitate and control traffic flow on any of the Federal-aid systems'' for ''any project on an extension of the Federal-aid primary or secondary system in urban areas and on the Federal-aid urban system for improvements which directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and loading and unloading ramps. If such project is located in an urban area of more than fifty thousand population, such project shall be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title''.

Subsec. (c). Pub. L. 94–280 struck out subsec. (c) which provided for an annual report by the Secretary on projects approved under this section with recommendations for further improvement of traffic operations in accordance with this section.

1973—Subsecs. (c), (d). Pub. L. 93–87 struck out subsec. (c) which provided for apportionment of sums authorized to carry out this section in accordance with section 104(b)(3) of this title, and redesignated subsec. (d) as (c).

1970—Subsec. (b). Pub. L. 91–605 inserted reference to the Federal-aid urban system and required that projects under this section be based on a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title only in urban areas of more than fifty thousand population.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE

Section effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

PARTICIPATION OF LOCAL ELECTED OFFICIALS

Pub. L. 105–178, title I, § 1204(i), June 9, 1998, 112 Stat. 184, provided that:

''(1) STUDY.—The Secretary shall conduct a study on the effectiveness of the participation of local elected officials in transportation planning and programming. In conducting the study, the Secretary shall consider the degree of cooperation between each State, local officials in rural areas in the State, and regional planning and development organizations in the State.

''(2) REPORT.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report containing the results of the study with any recommendations the Secretary determines appropriate as a result of the study.''

ADVANCED TRAVEL FORECASTING PROCEDURES PROGRAM

Pub. L. 109–59, title V, § 5512, Aug. 10, 2005, 119 Stat. 1828, as amended by Pub. L. 110–244, title I, § 111(g)(2), June 6, 2008, 122 Stat. 1605, provided that:

''(a) CONTINUATION AND ACCELERATION OF TRANSIMS DEPLOYMENT.—

''(1) IN GENERAL.—The Secretary [of Transportation] shall accelerate the deployment of the advanced transportation model known as the 'Transportation Analysis Simulation System' (in this section referred to as 'TRANSIMS'), developed by the Los Alamos National Laboratory.

''(2) PROGRAM APPLICATION.—The purpose of the program is to assist State departments of transportation and metropolitan planning organizations—

''(A) to implement TRANSIMS;

''(B) to develop methods for TRANSIMS applications to transportation planning, air quality analysis, regulatory compliance, and response to natural disasters and other transportation disruptions; and

''(C) to provide training and technical assistance for the implementation of TRANSIMS.

''(b) REQUIRED ACTIVITIES.—The Secretary [of Transportation] shall use funds made available to carry out this section to—

''(1) provide funding to State departments of transportation and metropolitan planning organizations serving transportation management areas designated under chapter 52 [53] of title 49, United States Code, representing a diversity of populations, geographic regions, and analytic needs to implement TRANSIMS;

''(2) develop methods to demonstrate a wide spectrum of TRANSIMS applications to support local, metropolitan, statewide transportation planning, including integrating highway and transit operational considerations into the transportation Planning process, and estimating the effects of induced travel demand and transit ridership in making transportation conformity determinations where applicable;

''(3) provide training and technical assistance with respect to the implementation and application of TRANSIMS to States, local governments, and metropolitan planning organizations with responsibility for travel modeling;

''(4) to further develop TRANSIMS for additional applications, including—

''(A) congestion analyses;

''(B) major investment studies;

''(C) economic impact analyses;

''(D) alternative analyses;

''(E) freight movement studies;

''(F) emergency evacuation studies;

''(G) port studies;

''(H) airport access studies;

''(I) induced demand studies; and

''(J) transit ridership analysis.

''(c) ELIGIBLE ACTIVITIES.—The program may support the development of methods to plan for the transportation response to chemical and biological terrorism and other security concerns.

''(d) ALLOCATION OF FUNDS.—Not more than 75 percent of the funds made available to carry out this section may be allocated to activities described in subsection (b)(1).

''(e) FUNDING.—Of the amounts made available by section 5101(a)(1) of this Act [119 Stat. 1779], $2,625,000 for each of fiscal years 2006 through 2009 shall be available to carry out this section.''

Pub. L. 105–178, title I, § 1210, June 9, 1998, 112 Stat. 187, provided that:

''(a) ESTABLISHMENT.—The Secretary shall establish an advanced travel forecasting procedures program—

''(1) to provide for completion of the advanced transportation model developed under the Transportation Analysis Simulation System (referred to in this section as 'TRANSIMS'); and

''(2) to provide support for early deployment of the advanced transportation modeling computer software and graphics package developed under TRANSIMS and the program established under this section to States, local governments, and metropolitan planning organizations with responsibility for travel modeling.

''(b) ELIGIBLE ACTIVITIES.—The Secretary shall use funds made available under this section to—

''(1) provide funding for completion of core development of the advanced transportation model;

''(2) develop user-friendly advanced transportation modeling computer software and graphics packages;

''(3) provide training and technical assistance with respect to the implementation and application of the advanced transportation model to States, local governments, and metropolitan planning organizations with responsibility for travel modeling; and

''(4) allocate funds to not more than 12 entities described in paragraph (3), representing a diversity of populations and geographic regions, for a pilot program to enable transportation management areas designated under section 134(i) of title 23, United States Code, to convert from the use of travel forecasting procedures in use by the areas as of the date of enactment of this Act [June 9, 1998] to the use of the advanced transportation model.

''(c) FUNDING.—

''(1) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $4,000,000 for fiscal year 1998, $3,000,000 for fiscal year 1999, $6,500,000 for fiscal year 2000, $5,000,000 for fiscal year 2001, $4,000,000 for fiscal year 2002, and $2,500,000 for fiscal year 2003.

''(2) ALLOCATION OF FUNDS.—

''(A) FISCAL YEARS 1998 AND 1999.—For each of fiscal years 1998 and 1999, 100 percent of the funds made available under paragraph (1) shall be allocated to

activities as described in paragraphs (1), (2), and (3) of subsection (b).

''(B) FISCAL YEARS 2000 THROUGH 2003.—For each of fiscal years 2000 through 2003, not more than 50 percent of the funds made available under paragraph (1) may be allocated to activities described in subsection (b)(4).

''(3) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of—

''(A) any activity described in paragraph (1), (2), or (3) of subsection (b) shall not exceed 100 percent; and

''(B) any activity described in subsection (b)(4) shall not exceed 80 percent.''

DEMONSTRATION PROJECT FOR AUTOMATED ROADWAY MANAGEMENT SYSTEM

Pub. L. 95–599, title I, §154, Nov. 6, 1978, 92 Stat. 2716, provided that:

''(a) The Secretary of Transportation is authorized to carry out a demonstration project of the use of a sophisticated automated roadway management system to increase the capacity and safety of automobile travel in high density travel corridors without providing additional lanes of pavement. The management system shall coordinate the traffic flow in major freeways and arterials servicing the travel corridor by use of an integrated system of vehicle sensors to monitor traffic, computers to assess traffic conditions throughout the corridor, and devices to communicate with drivers, police, and emergency equipment.

''(b) There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund, not to exceed $1,500,000 for the fiscal year ending September 30, 1979, not to exceed $2,500,000 for the fiscal year ending September 30, 1980, and not to exceed $26,000,000 for the fiscal year ending September 30, 1981.

''(c) The Federal share payable on account of any project authorized under this section shall not exceed 90 per centum of the total cost thereof.

''(d) Funds authorized by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of any project under this section shall not exceed 90 per centum.''

TRAFFIC CONTROL SIGNALIZATION DEMONSTRATION PROJECTS; REPORTS TO SECRETARY OF TRANSPORTATION; REPORT TO CONGRESS

Section 146 of Pub. L. 94–280 provided that:

''(a) The Secretary of Transportation is authorized to carry out traffic control signalization demonstration projects designed to demonstrate through the use of technology not now in general use the increased capacity of existing highways, the conservation of fuel, the decrease in traffic congestion, the improvement in air and noise quality, and the furtherance of highway safety, giving priority to those projects providing coordinated signalization of two or more intersections. Such projects can be carried out on any highway whether on or off a Federal-aid system.

''(b) There is authorized to be appropriated to carry out this section of the Highway Trust Fund, not to exceed $40,000,000 for the fiscal year ending September 30, 1977, and $40,000,000 for the fiscal year ending September 30, 1978.

''(c) Each participating State shall report to the Secretary of Transportation not later than September 30, 1977, and not later than September 30 of each year thereafter, on the progress being made in implementing this section and the effectiveness of the improvements made under it. Each report shall include an analysis and evaluation of the benefits resulting from such projects comparing an adequate time period before and after treatment in order to properly assess the benefits occurring from such traffic control signalization. The Secretary of Transportation shall submit a report to the Congress not later than January 1, 1978, on the progress being made in implementing this section and an evaluation of the benefits resulting therefrom.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 89–285, title III, §304, Oct. 22, 1965, 79 Stat. 1033, as amended by Pub. L. 97–449, §2(a), Jan. 12, 1983, 96 Stat. 2439, provided that: ''There is authorized to be appropriated the sum of $500,000 to enable the Secretary to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.''

§ 136. Control of junkyards

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term ''junk'' shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term ''automobile graveyard'' shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term ''junkyard'' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated

''(G) Improving the geometric design of interchanges on the National Highway System to improve access to commercial motor vehicle parking facilities.

''(4) PRIORITY.—In allocating funds made available to carry out this section, the Secretary shall give priority to applicants that—

''(A) demonstrate a severe shortage of commercial motor vehicle parking capacity in the corridor to be addressed;

''(B) have consulted with affected State and local governments, community groups, private providers of commercial motor vehicle parking, and motorist and trucking organizations; and

''(C) demonstrate that their proposed projects are likely to have positive effects on highway safety, traffic congestion, or air quality.

''(c) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall submit to Congress a report on the results of the pilot program.

''(d) FUNDING.—

''(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $6,250,000 for each of fiscal years 2006 through 2009.

''(2) CONTRACT AUTHORITY.—Funds authorized under this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable and shall remain available until expended, and the Federal share of the cost of a project under this section shall be determined in accordance with sections 120(b) and 120(c) of such title.

''(e) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects funded under this section shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.''

§ 138. Preservation of parklands

(a) DECLARATION OF POLICY.—It is declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a park road or parkway under section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

(b) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(Added Pub. L. 89–574, §15(a), Sept. 13, 1966, 80 Stat. 771; amended Pub. L. 90–495, §18(a), Aug. 23, 1968, 82 Stat. 823; Pub. L. 94–280, title I, §124, May 5, 1976, 90 Stat. 440; Pub. L. 100–17, title I, §133(b)(10), Apr. 2, 1987, 101 Stat. 171; Pub. L. 109–59, title VI, §6009(a)(1), Aug. 10, 2005, 119 Stat. 1874.)

REFERENCES IN TEXT

For the effective date of the Federal-Aid Highway Act of 1968, referred to in subsec. (a), see section 37 of Pub. L. 90–495, as amended, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

AMENDMENTS

2005—Pub. L. 109–59, §6009(a)(1)(A), which directed substitution of ''(a) DECLARATION OF POLICY.—It is'' for ''it is hereby'', was executed by making the substitution for ''It is hereby'' to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 109–59, §6009(a)(1)(B), added subsec. (b).

1987—Pub. L. 100–17 inserted ''(other than any project for a park road or parkway under section 204 of this title)'' before ''which requires'' in third sentence.

1976—Pub. L. 94–280 authorized the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

1968—Pub. L. 90–495 amended section generally so as to render it identical to section 1653(f) of Title 49, Transportation, governing all programs and projects subject to the jurisdiction of the Secretary of Transportation.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of this title.

CLARIFICATION OF EXISTING STANDARDS

Pub. L. 109–59, title VI, §6009(b), Aug. 10, 2005, 119 Stat. 1876, provided that:

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

''(2) REQUIREMENTS.—The regulations—

''(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

''(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.''

STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS

Pub. L. 105–178, title III, §3039, June 9, 1998, 112 Stat. 393, as amended by Pub. L. 105–206, title IX, §9009(y), July 22, 1998, 112 Stat. 862, provided that:

''(a) PURPOSES.—The purposes of this section are to encourage and promote the development of transportation systems for the betterment of the national parks and other units of the National Park System, national wildlife refuges, recreational areas, and other public lands in order to conserve natural, historical, and cultural resources and prevent adverse impact, relieve congestion, minimize transportation fuel consumption, reduce pollution (including noise and visual pollution), and enhance visitor mobility and accessibility and the visitor experience.

''(b) STUDY.—

''(1) IN GENERAL.—The Secretary, in coordination with the Secretary of the Interior, shall undertake a comprehensive study of alternative transportation needs in national parks and related public lands managed by Federal land management agencies [to] assist in carrying out the purposes described in subsection (a). The study shall be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than January 1, 2000.

''(2) STUDY ELEMENTS.—The study required by paragraph (1) shall—

''(A) identify transportation strategies that improve the management of the national parks and related public lands;

''(B) identify national parks and related public lands with existing and potential problems of adverse impact, high congestion, and pollution, or which can benefit from alternative transportation modes;

''(C) assess the feasibility of alternative transportation modes; and

''(D) identify and estimate the costs of alternative transportation modes for each of the national parks and related public lands referred to in paragraph (1).

''(3) DEFINITION.—For purposes of this subsection, the term 'Federal land management agencies' means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.''

STUDY OF ALTERNATIVE TRANSPORTATION MODES IN NATIONAL PARK SYSTEM

Pub. L. 102–240, title I, §1050, Dec. 18, 1991, 105 Stat. 2000, provided that:

''(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary, in consultation with the Secretary of the Interior, shall conduct and transmit to Congress a study of alternative transportation modes for use in the National Park System. In conducting such study, the Secretary shall consider (1) the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands; and (2) methods to obtain private capital for the construction of such transportation modes and related infrastructure.

''(b) FUNDING.—From sums authorized to be appropriated for park roads and parkways for fiscal year 1992, $300,000 shall be available to carry out this section.''

§ 139. Efficient environmental reviews for project decisionmaking

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AGENCY.—The term ''agency'' means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) ENVIRONMENTAL IMPACT STATEMENT.—The term ''environmental impact statement'' means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

ferred to as the 'Secretary', in consultation with each State shall inventory the existing system of penalties for violations of vehicle weight laws, rules, and regulations on any portion of any Federal-aid system in such State. Each State shall annually thereafter report to the Secretary its current inventory.

''(b)(1) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary, in consultation with each State, shall inventory the existing system in such State for the issuance of special permits. Each State shall annually thereafter report to the Secretary its current inventory.

''(2) For purposes of this subsection, the term 'special permit' means a license or permit issued pursuant to State law, rule, or regulation which authorizes a vehicle to exceed the weight limitation for such vehicle established under State law, rule, or regulation.

''(c) Not later than January 1 of the second calendar year which begins after the date of enactment of this section [Nov. 6, 1978] and each calendar year thereafter the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives an annual report together with such recommendations as the Secretary deems necessary on (1) the latest annual inventory of State systems of penalties required by subsection (a) of this section; (2) the latest annual inventory of State systems for the issuance of special permits required by subsection (b) of this section; (3) the annual certification submitted by each State required by section 141(b) of title 23, United States Code.''

[For termination, effective May 15, 2000, of reporting provisions in section 123(c) of Pub. L. 95–599, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 135 of House Document No. 103–7.]

§ 142. Public transportation

(a)(1) To encourage the development, improvement, and use of public mass transportation systems operating buses on Federal-aid highways for the transportation of passengers, so as to increase the traffic capacity of the Federal-aid highways for the movement of persons, the Secretary may approve as a project on any Federal-aid highway the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities, which may include electric vehicle charging stations or natural gas vehicle refueling stations, to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may approve payment from sums apportioned under section 104(b)(2) for carrying out any capital transit project eligible for assistance under chapter 53 of title 49, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.

(3) BUS CORRIDORS.—In addition to the projects described in paragraphs (1) and (2), the Secretary may approve payment from sums apportioned under paragraph (2) or (7) of section 104(b) for carrying out a capital project for the construction of a bus rapid transit corridor or dedicated bus lanes, including the construction or installation of—

(A) traffic signaling and prioritization systems;

(B) redesigned intersections that are necessary for the establishment of a bus rapid transit corridor;

(C) on-street stations;

(D) fare collection systems;

(E) information and wayfinding systems; and

(F) depots.

(b) Sums apportioned in accordance with section 104(b)(1) shall be available to finance the Federal share of projects for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

(c) ACCOMMODATION OF OTHER MODES OF TRANSPORTATION.—The Secretary may approve as a project on any Federal-aid highway for payment from sums apportioned under section 104(b) modifications to existing highways eligible under the program that is the source of the funds on such highway necessary to accommodate other modes of transportation if such modifications will not adversely affect automotive safety.

(d) METROPOLITAN PLANNING.—Any project carried out under this section in an urbanized area shall be subject to the metropolitan planning requirements of section 134.

(e)(1) For all purposes of this title, a project authorized by subsection (a)(1) of this section shall be deemed to be a highway project.

(2) Projects authorized by subsection (a)(2) shall be subject to, and governed in accordance with, all provisions of this title applicable to projects on the surface transportation block grant program, except to the extent determined inconsistent by the Secretary.

(3) The Federal share payable on account of projects authorized by subsection (a) of this section shall be that provided in section 120 of this title.

(f) AVAILABILITY OF RIGHTS-OF-WAY.—In any case where sufficient land or air space exists within the publicly acquired rights-of-way of any highway, constructed in whole or in part with Federal-aid highway funds, to accommodate needed passenger, commuter, or high speed rail, magnetic levitation systems, and highway and nonhighway public mass transit facilities, the Secretary shall authorize a State to make such lands, air space, and rights-of-way available with or without charge to a publicly or privately owned authority or company or any other person for such purposes if such accommodation will not adversely affect automotive safety.

(g) The provision of assistance under subsection (a)(2) shall not be construed as bringing

within the application of chapter 15 of title 5, United States Code, any non-supervisory employee of an urban mass transportation system (or of any other agency or entity performing related functions) to whom such chapter is otherwise inapplicable.

(h) Funds available for expenditure to carry out the purposes of subsection (a)(2) of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to chapter 53 of title 49.

(Added Pub. L. 91–605, title I, §111(a), Dec. 31, 1970, 84 Stat. 1719; amended Pub. L. 93–87, title I, §121(a), Aug. 13, 1973, 87 Stat. 259; Pub. L. 94–280, title I, §127, May 5, 1976, 90 Stat. 440; Pub. L. 97–424, title I, §120, Jan. 6, 1983, 96 Stat. 2111; Pub. L. 102–240, title I, §1027(a)–(e), title III, §3003(b), Dec. 18, 1991, 105 Stat. 1966, 2088; Pub. L. 103–272, §5(f)(2), July 5, 1994, 108 Stat. 1374; Pub. L. 103–429, §7(a)(4)(C), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 105–178, title I, §1103(*l*)(3)(D), (4), June 9, 1998, 112 Stat. 126; Pub. L. 112–141, div. A, title I, §§1513(b), 1519(c)(8), formerly §1519(c)(9), July 6, 2012, 126 Stat. 572, 576, renumbered §1519(c)(8), Pub. L. 114–94, div. A, title I, §1446(d)(5)(B), Dec. 4, 2015, 129 Stat. 1438; Pub. L. 114–94, div. A, title I, §§1109(c)(5), 1446(d)(5)(D), Dec. 4, 2015, 129 Stat. 1343, 1438; Pub. L. 117–58, div. A, title I, §11130, Nov. 15, 2021, 135 Stat. 509.)

Editorial Notes

AMENDMENTS

2021—Subsec. (a)(3). Pub. L. 117–58, §11130(a), added par. (3).

Subsec. (i). Pub. L. 117–58, §11130(b), struck out subsec. (i) which read as follows: ''The provisions of section 5323(a)(1)(D) of title 49 shall apply in carrying out subsection (a)(2) of this section.''

2015—Pub. L. 114–94, §1446(d)(5)(B), (D), amended Pub. L. 112–141, §1519(c). See 2012 Amendment notes below.

Subsec. (e)(2). Pub. L. 114–94, §1109(c)(5), substituted ''surface transportation block grant program'' for ''surface transportation program''.

2012—Subsec. (a)(1). Pub. L. 112–141, §§1513(b), 1519(c)(8)(A)(i), formerly §1519(c)(9)(A)(i), as renumbered and amended by Pub. L. 114–94, §1446(d)(5)(B), (D), substituted ''buses'' for ''motor vehicles (other than on rail)'', struck out ''(hereafter in this section referred to as 'buses')'' after ''transportation of passengers'', substituted ''of the Federal-aid highways'' for ''of the Federal-aid systems'' and ''Federal-aid highway'' for ''Federal-aid system'', and inserted '', which may include electric vehicle charging stations or natural gas vehicle refueling stations,'' after ''parking facilities''..

Subsec. (a)(2). Pub. L. 112–141, §1519(c)(8)(A)(ii), formerly 1519(c)(9)(A)(ii), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), struck out ''as a project on the the surface transportation program for'' after ''Secretary may approve'' and substituted ''section 104(b)(2)'' for ''section 104(b)(3)''.

Subsec. (b). Pub. L. 112–141, §1519(c)(8)(B), formerly 1519(c)(9)(B), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), substituted ''104(b)(1)'' for ''104(b)(4)''.

Subsec. (c). Pub. L. 112–141, §1519(c)(8)(C), formerly 1519(c)(9)(C), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), substituted ''highway'' for ''system'' in two places and substituted ''highways eligible under the program that is the source of the funds'' for ''highway facilities''.

Subsec. (e)(2). Pub. L. 112–141, §1519(c)(8)(D), formerly 1519(c)(9)(D), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), substituted ''Projects authorized by subsection (a)(2)'' for ''Notwithstanding section 209(f)(1) of the Highway Revenue Act of 1956, the Highway Trust Fund shall be available for making expenditures to meet obligations resulting from projects authorized by subsection (a)(2) of this section and such projects''.

Subsec. (f). Pub. L. 112–141, §1519(c)(8)(E), formerly 1519(c)(9)(E), as renumbered by Pub. L. 114–94, §1446(d)(5)(B), substituted ''exists'' for ''exits''.

1998—Subsec. (b). Pub. L. 105–178, §1103(*l*)(4), substituted ''section 104(b)(4)'' for ''paragraph (5) of subsection (b) of section 104 of this title''.

Subsec. (c). Pub. L. 105–178, §1103(*l*)(3)(D), struck out ''(other than section 104(b)(5)(A))'' after ''section 104(b)''.

1994—Subsec. (a)(2). Pub. L. 103–272, §5(f)(2)(A), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act''.

Subsec. (h). Pub. L. 103–272, §5(f)(2)(B), as amended by Pub. L. 103–429, §7(a)(4)(C), substituted ''chapter 53 of title 49'' for ''the Federal Transit Act, as amended''.

Subsec. (i). Pub. L. 103–272, §5(f)(2)(C), as amended by Pub. L. 103–429, §7(a)(4)(C), substituted ''section 5323(a)(1)(D) of title 49'' for ''section 3(e)(4) of the Federal Transit Act, as amended,''.

1991—Subsec. (a)(2). Pub. L. 102–240, §1027(a), struck out '', beginning with the fiscal year ending June 30, 1975,'' after ''the Secretary may'', substituted ''the surface transportation program'' for ''Federal-aid urban system,'' and substituted ''104(b)(3) for carrying out any capital transit project eligible for assistance under the Federal Transit Act, capital improvement to provide access and coordination between intercity and rural bus service, and construction of facilities to provide connections between highway transportation and other modes of transportation.'' for ''104(b)(6) of this title, the purchase of buses, and, beginning with the fiscal year ending June 30, 1976, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the construction, reconstruction, and improvement of fixed rail facilities, including the purchase of rolling stock for fixed rail, except that not more than $200,000,000 of all sums apportioned for the fiscal year ending June 30, 1975, under section 104(b)(6) shall be available for the payment of the Federal share of projects for the purchase of buses.''

Subsec. (c). Pub. L. 102–240, §1027(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Whenever responsible local officials of an urbanized area notify the State highway department that, in lieu of a highway project the Federal share of which is to be paid from funds apportioned under section 104(b)(6) of this title for the fiscal years ending June 30, 1974, and June 30, 1975, their needs require a nonhighway public mass transit project involving the construction of fixed rail facilities, or the purchase of passenger equipment, including rolling stock for any mode of mass transit, or both, and the State highway department determines that such public mass transit project is in accordance with the planning process under section 134 of this title and is entitled to priority under such planning process, such public mass transit project shall be submitted for approval to the Secretary. Approval of the plans, specifications, and estimates for such project by the Secretary shall be deemed a contractual obligation of the United States for payment out of the general funds of its proportional share of the cost of such project in an amount equal to the Federal share which would have been paid if such project were a highway project under section 120(a) of this title. Funds previously apportioned to such State under section 104(b)(6) of this title shall be reduced by an amount equal to such Federal share.''

Subsec. (d). Pub. L. 102–240, §1027(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of this title.''

Subsec. (e)(2). Pub. L. 102–240, §1027(e)(1), substituted ''surface transportation program'' for ''Federal-aid urban system''.

Subsec. (f). Pub. L. 102–240, § 1027(e)(2), (3), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''No project authorized by this section shall be approved unless the Secretary of Transportation has received assurances satisfactory to him from the State that high occupancy vehicles will fully utilize the proposed project.''

Subsec. (g). Pub. L. 102–240, § 1027(e)(3), (4), redesignated subsec. (h) as (g) and struck out ''or subsection (c) of this section'' after ''(a)(2)''. Former subsec. (g) redesignated (f).

Pub. L. 102–240, § 1027(d), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway to accommodate needed rail or non-highway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the Administrator may authorize a State to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes wherever he may deem that the public interest will be served thereby.''

Subsec. (h). Pub. L. 102–240, § 3003(b), substituted ''Federal Transit Act'' for ''Urban Mass Transportation Act of 1964''.

Pub. L. 102–240, § 1027(e)(3), (5), redesignated subsec. (i) as (h) and struck out ''and subsection (c)'' after ''(a)(2)''. Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 102–240, § 3003(b), substituted ''Federal Transit Act'' for ''Urban Mass Transportation Act of 1964''.

Pub. L. 102–240, § 1027(e)(3), (5), redesignated subsec. (j) as (i) and struck out ''and subsection (c)'' after ''(a)(2)''. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 102–240, § 1027(e)(3), redesignated subsec. (j) as (i).

Subsec. (k). Pub. L. 102–240, § 1027(e)(2), struck out subsec. (k) which read as follows: ''The Secretary shall not approve any project under subsection (a)(2) of this section in any fiscal year when there has been enacted an Urban Transportation Trust Fund or similar assured funding for both highway and public transportation.''

1983—Subsec. (a)(1). Pub. L. 97–424, § 120(a), inserted ''and the cost of providing shuttle service to and from the facility'' after ''of the facility'', and ''and for providing such shuttle service'' after ''operating the facility''.

Pub. L. 97–424, § 120(b)(1), substituted ''high occupancy vehicle lanes'' for ''bus lanes'' after ''preferential'', and ''high occupancy vehicle and'' for ''bus and other'' after ''facilities to serve''.

Subsec. (b). Pub. L. 97–424, § 120(b)(2), substituted ''high occupancy vehicle'' for ''bus'' after ''preferential''.

Subsec. (f). Pub. L. 97–424, § 120(b)(3), substituted ''high occupancy vehicles'' for ''public mass transportation systems''.

1976—Subsec. (a)(1). Pub. L. 94–280, § 127(a), inserted provision that if fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility (including compensation to any person for operating the facility).

Subsec. (e)(3). Pub. L. 94–280, § 127(b), substituted ''section 120 of this title'' for ''section 120 of this section''.

1973—Subsec. (a). Pub. L. 93–87 designated existing provisions as par. (1), substituted ''operating motor vehicles (other than on rail) on Federal-aid highways'' for ''operating motor vehicles on highways, other than on rails'', struck out ''within urbanized areas'' after '' 'buses')'', inserted ''for the movement of persons'' after ''Federal-aid systems'', and substituted provisions respecting availability of sums apportioned under section 104(b) of this title for prior provisions for such sums apportioned in accordance with pars. (3), (5), and (6) of section 104(b) of this title, and added par. (2).

Subsec. (b). Pub. L. 93–87 added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 93–87 added subsec. (c). Former subsec. (c) incorporated in subsec. (e)(1), (3) of this section.

Subsec. (d). Pub. L. 93–87 redesignated former subsec. (b) as (d), inserted ''in urbanized areas'' after ''transportation systems'', and struck out former subsec. (d) provisions which prohibited any project authorized by this section, other than a project for fringe or transportation parking facilities, from being approved unless the project would avoid the construction of a highway project which increases automobile traffic capacity, would provide a capacity for the movement of persons at least equal to that which would be provided by the avoided highway project, and would not exceed in the amount of the Federal share, the Federal share of the cost of the avoided highway project; or no other feasible or prudent highway project could provide the additional capacity for the movement of persons by motor vehicles on highways (other than on rails) provided by this project.

Subsec. (e). Pub. L. 93–87 incorporated provisions of former subsec. (c) in pars. (1) and (3) and added par. (2). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 93–87 redesignated former subsec. (e) as (f) and substituted ''will fully utilize'' for ''will have adequate capability to fully utilize''.

Subsecs. (g) to (k). Pub. L. 93–87 added subsecs. (g) to (k).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

Pub. L. 114–94, div. A, title I, § 1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B), (D) is effective as of July 6, 2012, and as if included in Pub. L. 112–141 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–429, § 7(a), Oct. 31, 1994, 108 Stat. 4388, provided in part that the amendment made by section 7(a)(4)(C) is effective July 5, 1994.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1027 of Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

RURAL HIGHWAY TRANSPORTATION DEMONSTRATION PROGRAM; APPROPRIATIONS AUTHORIZATION; PUBLIC NOTICE AND HEARING

Pub. L. 93–87, title I, § 147, Aug. 13, 1973, 87 Stat. 274, as amended by Pub. L. 93–643, § 103, Jan. 4, 1975, 88 Stat. 2282; Pub. L. 94–280, title I, § 129, May 5, 1976, 90 Stat. 440; Pub. L. 95–599, title I, § 132, Nov. 6, 1978, 92 Stat. 2708, provided for authorization of appropriations of $15,000,000 for the fiscal year ending June 30, 1975, and $60,000,000 for the fiscal year ending June 30, 1976, to carry out demonstration projects for public mass transportation projects in rural and small urban areas, au-

thorized availability of such sums for a period of two years after the close of the fiscal year for which authorized, and required public notice and hearing for such projects.

TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

Pub. L. 93–643, §105(a), Jan. 4, 1975, 88 Stat. 2282, provided that: ''It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance for mass transportation (including the programs under title 23, United States Code, the Federal-Aid Highway Act of 1973, and this Act [see Short Title of 1973 Amendment note under 101 of this title]) effectively implement this policy.''

BUS AND OTHER PROJECT STANDARDS

Pub. L. 93–87, title I, §165, Aug. 13, 1973, 87 Stat. 282, as amended by Pub. L. 93–643, §105(b), Jan. 4, 1975, 88 Stat. 2283, provided that:

''(a) The Secretary of Transportation shall require that buses acquired with Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of [former] subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-aid [Federal-Aid] Highway Act of 1973 [set out as a note above] meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act [42 U.S.C. 7521], and under section 6 of the Noise Control Act of 1972 [42 U.S.C. 4905], and shall authorize the acquisition, wherever practicable, of buses which meet the special criteria for low-emission vehicles set forth in section 212 of the Clean Air Act [42 U.S.C. 7546], and for low-noise-emission products set forth in section 15 of the Noise Control Act of 1972 [42 U.S.C. 4914].

''(b) The Secretary of Transportation shall require that projects receiving Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of [former] subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-Aid Highway Act of 1973 shall be planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are nonambulatory wheelchair-bound and those with semiambulatory capabilities, are unable without special facilities or special planning or design to utilize such facilities and services effectively. The Secretary shall not approve any program or project to which this section applies which does not comply with the provisions of this subsection requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped persons.''

§ 143. Highway use tax evasion projects

(a) STATE DEFINED.—In this section, the term ''State'' means the 50 States and the District of Columbia.

(b) PROJECTS.—

(1) IN GENERAL.—The Secretary shall carry out highway use tax evasion projects in accordance with this subsection.

(2) FUNDING.—

(A) IN GENERAL.—From administrative funds made available under section 104(a), the Secretary may deduct such sums as are necessary, not to exceed $4,000,000 for each of fiscal years 2022 through 2026, to carry out this section.

(B) ALLOCATION OF FUNDS.—Funds made available to carry out this section may be allocated to the Internal Revenue Service and the States at the discretion of the Secretary, except that of funds so made available for each fiscal year, $2,000,000 shall be available only to carry out intergovernmental enforcement efforts, including research and training.

(3) CONDITIONS ON FUNDS ALLOCATED TO INTERNAL REVENUE SERVICE.—Except as otherwise provided in this section, the Secretary shall not impose any condition on the use of funds allocated to the Internal Revenue Service under this subsection.

(4) LIMITATION ON USE OF FUNDS.—Funds made available to carry out this section shall be used only—

(A) to expand efforts to enhance motor fuel tax enforcement;

(B) to fund additional Internal Revenue Service staff, but only to carry out functions described in this paragraph;

(C) to supplement motor fuel tax examinations and criminal investigations;

(D) to develop automated data processing tools to monitor motor fuel production and sales;

(E) to evaluate and implement registration and reporting requirements for motor fuel taxpayers;

(F) to reimburse State expenses that supplement existing fuel tax compliance efforts;

(G) to analyze and implement programs to reduce tax evasion associated with other highway use taxes;

(H) to support efforts between States and Indian tribes to address issues relating to State motor fuel taxes; and

(I) to analyze and implement programs to reduce tax evasion associated with foreign imported fuel.

(5) MAINTENANCE OF EFFORT.—The Secretary may not make an allocation to a State under this subsection for a fiscal year unless the State certifies that the aggregate expenditure of funds of the State, exclusive of Federal funds, for motor fuel tax enforcement activities will be maintained at a level that does not fall below the average level of such expenditure for the preceding 2 fiscal years of the State.

(6) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be 100 percent.

(7) PERIOD OF AVAILABILITY.—Funds authorized to carry out this section shall remain available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized.

(8) USE OF SURFACE TRANSPORTATION BLOCK GRANT PROGRAM FUNDING.—In addition to funds made available to carry out this section, a State may expend up to ¼ of 1 percent of the funds apportioned to the State for a fiscal year under section 104(b)(2) on initiatives to halt the evasion of payment of motor fuel taxes.

Subsec. (b)(9). Pub. L. 109–59, §1115(a)(4), added par. (9).

Subsec. (c). Pub. L. 109–59, §1115(b), amended heading and text of subsec. (c) generally, substituting provisions relating to memorandum of understanding to be entered into by the Secretary with the Commissioner of the Internal Revenue Service not later than 90 days after the date of enactment of the SAFETEA–LU for provisions relating to memorandum of understanding to be entered into by the Secretary with the Commissioner of the Internal Revenue Service not later than August 1, 1998.

1998—Pub. L. 105–178 amended section catchline and text generally, substituting provisions relating to highway use tax evasion projects for provisions relating to economic growth center development highways.

Subsec. (c)(1). Pub. L. 105–178, §1114(c)(1), as added by Pub. L. 105–206, §9002(h), substituted ''August 1'' for ''April 1''.

Subsec. (c)(3). Pub. L. 105–178, §1114(c)(2), (3), as added by Pub. L. 105–206, §9002(h), in heading inserted ''priority'' after ''Funding'' and in text inserted ''and prior to funding any other activity under this section,'' after ''2003,''.

1973—Subsec. (a). Pub. L. 93–87, §122(a), (c), substituted ''projects'' for ''demonstration projects'' and ''a Federal-aid system (other than the Interstate System)'' for ''the Federal-aid primary system'' and deleted ''to demonstrate the role that highways can play'' before ''to promote''.

Subsec. (b). Pub. L. 93–87, §122(a), substituted ''projects'' for ''demonstration projects'' and ''a Federal-aid system (other than the Interstate System)'' for ''the Federal-aid primary system''.

Subsec. (c). Pub. L. 93–87, §122(a), substituted ''project'' for ''demonstration project'' and ''a Federal-aid system (other than the Interstate System)'' for ''the Federal-aid primary system''.

Subsec. (d). Pub. L. 93–87, §122(a), substituted ''highways on the Federal-aid system on which such development highway is located'' for ''Federal-aid primary highways''.

Subsec. (e). Pub. L. 93–87, §122(b), inserted introductory text ''Except as otherwise provided in subsection (c) of this section,'' and substituted ''the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be the same as that provided under this title for any other project on the Federal-aid system on which such development highway is located'' for ''the Federal share of the cost of any project for construction, reconstruction, or improvement of a development highway under this section shall be increased by not to exceed an additional 20 per centum of the cost of such project, except that in no case shall the Federal share exceed 95 per centum of the cost of such project''.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of this title.

HIGHWAY USE TAX EVASION PROJECTS

Pub. L. 102–240, title VIII, §8002(g), (h), Dec. 18, 1991, 105 Stat. 2204, 2205, as amended by Pub. L. 105–178, title I, §1114(b)(3), June 9, 1998, 112 Stat. 154, provided that:

''(g) USE OF REVENUES FOR ENFORCEMENT OF HIGHWAY TRUST FUND TAXES.—The Secretary of Transportation shall not impose any condition on the use of funds transferred under section 143 of title 23, United States Code, to the Internal Revenue Service. The Secretary of the Treasury shall, at least 60 days before the beginning of each fiscal year (after fiscal year 1992) for which such funds are to be transferred, submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate detailing the increased enforcement activities to be financed with such funds with respect to taxes referred to in section 9503(b)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 9503(b)(1)].

''[(h) Repealed. Pub. L. 105–178, title I, §1114(b)(3)(B), June 9, 1998, 112 Stat. 154.]''

§ 144. National bridge and tunnel inventory and inspection standards

(a) FINDINGS AND DECLARATIONS.—

(1) FINDINGS.—Congress finds that—

(A) the condition of the bridges of the United States has improved since the date of enactment of the Transportation Equity Act for the 21st Century (Public Law 105–178; 112 Stat. 107), yet continued improvement to bridge conditions is essential to protect the safety of the traveling public and allow for the efficient movement of people and goods on which the economy of the United States relies; and

(B) the systematic preventative maintenance of bridges, and replacement and rehabilitation of deficient bridges, should be undertaken through an overall asset management approach to transportation investment.

(2) DECLARATIONS.—Congress declares that it is in the vital interest of the United States—

(A) to inventory, inspect, and improve the condition of the highway bridges and tunnels of the United States;

(B) to use a data-driven, risk-based approach and cost-effective strategy for systematic preventative maintenance, replacement, and rehabilitation of highway bridges and tunnels to ensure safety and extended service life;

(C) to use performance-based bridge management systems to assist States in making timely investments;

(D) to ensure accountability and link performance outcomes to investment decisions; and

(E) to ensure connectivity and access for residents of rural areas of the United States through strategic investments in National Highway System bridges and bridges on all public roads.

(b) NATIONAL BRIDGE AND TUNNEL INVENTORIES.—The Secretary, in consultation with the States and Federal agencies with jurisdiction over highway bridges and tunnels, shall—

(1) inventory all highway bridges on public roads, on and off Federal-aid highways, including tribally owned and Federally owned bridges, that are bridges over waterways, other topographical barriers, other highways, and railroads;

(2) inventory all tunnels on public roads, on and off Federal-aid highways, including tribally owned and Federally owned tunnels;

(3) classify the bridges according to serviceability, safety, and essentiality for public use, including the potential impacts to emergency evacuation routes and to regional and national freight and passenger mobility if the serviceability of the bridge is restricted or diminished;

(4) based on that classification, assign each a risk-based priority for systematic preventative maintenance, replacement, or rehabilitation; and

(5) determine the cost of replacing each structurally deficient bridge identified under this subsection with a comparable facility or the cost of rehabilitating the bridge.

(c) GENERAL BRIDGE AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision of law, the General Bridge Act of 1946 (33 U.S.C. 525 et seq.) shall apply to bridges authorized to be replaced, in whole or in part, by this title.

(2) EXCEPTION.—Section 502(b) of the General Bridge Act of 1946 (33 U.S.C. 525(b)) and section 9 of the Act of March 3, 1899 (33 U.S.C. 401), shall not apply to any bridge constructed, reconstructed, rehabilitated, or replaced with assistance under this title, if the bridge is over waters that—

(A) are not used and are not susceptible to use in the natural condition of the water or by reasonable improvement as a means to transport interstate or foreign commerce; and

(B) are—

(i) not tidal; or

(ii) if tidal, used only by recreational boating, fishing, and other small vessels that are less than 21 feet in length.

(d) INVENTORY UPDATES AND REPORTS.—

(1) IN GENERAL.—The Secretary shall—

(A) annually revise the inventories authorized by subsection (b); and

(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the inventories.

(2) INSPECTION REPORT.—Not later than 2 years after the date of enactment of the MAP–21, each State and appropriate Federal agency shall report element level data to the Secretary, as each bridge is inspected pursuant to this section, for all highway bridges on the National Highway System.

(3) GUIDANCE.—The Secretary shall provide guidance to States and Federal agencies for implementation of this subsection, while respecting the existing inspection schedule of each State.

(4) BRIDGES NOT ON NATIONAL HIGHWAY SYSTEM.—The Secretary shall—

(A) conduct a study on the benefits, cost-effectiveness, and feasibility of requiring element-level data collection for bridges not on the National Highway System; and

(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study.

(e) BRIDGES WITHOUT TAXING POWERS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any bridge that is owned and operated by an agency that does not have taxing powers and whose functions include operating a federally assisted public transit system subsidized by toll revenues shall be eligible for assistance under this title, but the amount of such assistance shall in no event exceed the cumulative amount which such agency has expended for capital and operating costs to subsidize such transit system.

(2) INSUFFICIENT ASSETS.—Before authorizing an expenditure of funds under this subsection, the Secretary shall determine that the applicant agency has insufficient reserves, surpluses, and projected revenues (over and above those required for bridge and transit capital and operating costs) to fund the bridge project or activity eligible for assistance under this title.

(3) CREDITING OF NON-FEDERAL FUNDS.—Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.

(f) REPLACEMENT OF DESTROYED BRIDGES AND FERRY BOAT SERVICE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a State may use the funds apportioned under section 104(b)(2) to construct any bridge that replaces—

(A) any low water crossing (regardless of the length of the low water crossing);

(B) any bridge that was destroyed prior to January 1, 1965;

(C) any ferry that was in existence on January 1, 1984; or

(D) any road bridge that is rendered obsolete as a result of a Corps of Engineers flood control or channelization project and is not rebuilt with funds from the Corps of Engineers.

(2) FEDERAL SHARE.—The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of the construction.

(g) HISTORIC BRIDGES.—

(1) DEFINITION OF HISTORIC BRIDGE.—In this subsection, the term ''historic bridge'' means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(2) COORDINATION.—The Secretary shall, in cooperation with the States, encourage the retention, rehabilitation, adaptive reuse, and future study of historic bridges.

(3) STATE INVENTORY.—The Secretary shall require each State to complete an inventory of all bridges on and off Federal-aid highways to determine the historic significance of the bridges.

(4) ELIGIBILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), reasonable costs associated with actions

to preserve, or reduce the impact of a project under this chapter on, the historic integrity of a historic bridge shall be eligible as reimbursable project costs under section 133 if the load capacity and safety features of the historic bridge are adequate to serve the intended use for the life of the historic bridge.

(B) BRIDGES NOT USED FOR VEHICLE TRAFFIC.—In the case of a historic bridge that is no longer used for motorized vehicular traffic, the costs eligible as reimbursable project costs pursuant to this chapter shall not exceed the estimated cost of demolition of the historic bridge.

(5) PRESERVATION.—Any State that proposes to demolish a historic bridge for a replacement project with funds made available to carry out this section shall first make the historic bridge available for donation to a State, locality, or responsible private entity if the State, locality, or responsible entity enters into an agreement—

(A) to maintain the bridge and the features that give the historic bridge its historic significance; and

(B) to assume all future legal and financial responsibility for the historic bridge, which may include an agreement to hold the State transportation department harmless in any liability action.

(6) COSTS INCURRED.—

(A) IN GENERAL.—Costs incurred by the State to preserve a historic bridge (including funds made available to the State, locality, or private entity to enable it to accept the bridge) shall be eligible as reimbursable project costs under this chapter in an amount not to exceed the cost of demolition.

(B) ADDITIONAL FUNDING.—Any bridge preserved pursuant to this paragraph shall not be eligible for any other funds authorized pursuant to this title.

(h) NATIONAL BRIDGE AND TUNNEL INSPECTION STANDARDS.—

(1) REQUIREMENT.—

(A) IN GENERAL.—The Secretary shall establish and maintain inspection standards for the proper inspection and evaluation of all highway bridges and tunnels for safety and serviceability.

(B) UNIFORMITY.—The standards under this subsection shall be designed to ensure uniformity of the inspections and evaluations.

(2) MINIMUM REQUIREMENTS OF INSPECTION STANDARDS.—The standards established under paragraph (1) shall, at a minimum—

(A) specify, in detail, the method by which the inspections shall be carried out by the States, Federal agencies, and tribal governments;

(B) establish the maximum time period between inspections;

(C) establish the qualifications for those charged with carrying out the inspections;

(D) require each State, Federal agency, and tribal government to maintain and make available to the Secretary on request—

(i) written reports on the results of highway bridge and tunnel inspections and notations of any action taken pursuant to the findings of the inspections; and

(ii) current inventory data for all highway bridges and tunnels reflecting the findings of the most recent highway bridge and tunnel inspections conducted; and

(E) establish a procedure for national certification of highway bridge inspectors and tunnel inspectors.

(3) STATE COMPLIANCE WITH INSPECTION STANDARDS.—The Secretary shall, at a minimum—

(A) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures to conduct reviews of State compliance with—

(i) the standards established under this subsection; and

(ii) the calculation or reevaluation of bridge load ratings; and

(B) establish, in consultation with the States, Federal agencies, and interested and knowledgeable private organizations and individuals, procedures for States to follow in reporting to the Secretary—

(i) critical findings relating to structural or safety-related deficiencies of highway bridges and tunnels; and

(ii) monitoring activities and corrective actions taken in response to a critical finding described in clause (i).

(4) REVIEWS OF STATE COMPLIANCE.—

(A) IN GENERAL.—The Secretary shall annually review State compliance with the standards established under this section.

(B) NONCOMPLIANCE.—If an annual review in accordance with subparagraph (A) identifies noncompliance by a State, the Secretary shall—

(i) issue a report detailing the issues of the noncompliance by December 31 of the calendar year in which the review was made; and

(ii) provide the State an opportunity to address the noncompliance by—

(I) developing a corrective action plan to remedy the noncompliance; or

(II) resolving the issues of noncompliance not later than 45 days after the date of notification.

(5) PENALTY FOR NONCOMPLIANCE.—

(A) IN GENERAL.—If a State fails to satisfy the requirements of paragraph (4)(B) by August 1 of the calendar year following the year of a finding of noncompliance, the Secretary shall, on October 1 of that year, and each year thereafter as may be necessary, require the State to dedicate funds apportioned to the State under sections 119 and 133 after the date of enactment of the MAP–21 to correct the noncompliance with the minimum inspection standards established under this subsection.

(B) AMOUNT.—The amount of the funds to be directed to correcting noncompliance in accordance with subparagraph (A) shall—

(i) be determined by the State based on an analysis of the actions needed to address the noncompliance; and

(ii) require approval by the Secretary.

(6) UPDATE OF STANDARDS.—Not later than 3 years after the date of enactment of the MAP–21, the Secretary shall update inspection standards to cover—

(A) the methodology, training, and qualifications for inspectors; and

(B) the frequency of inspection.

(7) RISK-BASED APPROACH.—In carrying out the revisions required by paragraph (6), the Secretary shall consider a risk-based approach to determining the frequency of bridge inspections.

(i) TRAINING PROGRAM FOR BRIDGE AND TUNNEL INSPECTORS.—

(1) IN GENERAL.—The Secretary, in cooperation with the State transportation departments, shall maintain a program designed to train appropriate personnel to carry out highway bridge and tunnel inspections.

(2) REVISIONS.—The training program shall be revised from time to time to take into account new and improved techniques.

(j) BUNDLING OF BRIDGE PROJECTS.—

(1) PURPOSE.—The purpose of this subsection is to save costs and time by encouraging States to bundle multiple bridge projects as 1 project.

(2) ELIGIBLE ENTITY DEFINED.—In this subsection, the term ''eligible entity'' means an entity eligible to carry out a bridge project under section 119 or 133.

(3) BUNDLING OF BRIDGE PROJECTS.—An eligible entity may bundle 2 or more similar bridge projects that are—

(A) eligible projects under section 119 or 133;

(B) included as a bundled project in a transportation improvement program under section 134(j) or a statewide transportation improvement program under section 135, as applicable; and

(C) awarded to a single contractor or consultant pursuant to a contract for engineering and design or construction between the contractor and an eligible entity.

(4) ITEMIZATION.—Notwithstanding any other provision of law (including regulations), a bundling of bridge projects under this subsection may be listed as—

(A) 1 project for purposes of sections 134 and 135; and

(B) a single project.

(5) FINANCIAL CHARACTERISTICS.—Projects bundled under this subsection shall have the same financial characteristics, including—

(A) the same funding category or subcategory; and

(B) the same Federal share.

(6) ENGINEERING COST REIMBURSEMENT.—The provisions of section 102(b) do not apply to projects carried out under this subsection.

(k) AVAILABILITY OF FUNDS.—In carrying out this section—

(1) the Secretary may use funds made available to the Secretary under sections 104(a) and 503;

(2) a State may use amounts apportioned to the State under section 104(b)(1) and 104(b)(2);

(3) an Indian tribe may use funds made available to the Indian tribe under section 202; and

(4) a Federal agency may use funds made available to the agency under section 503.

(Added Pub. L. 91–605, title II, §204(a), Dec. 31, 1970, 84 Stat. 1741; amended Pub. L. 93–87, title II, §204, Aug. 13, 1973, 87 Stat. 284; Pub. L. 93–643, §113, Jan. 4, 1975, 88 Stat. 2286; Pub. L. 95–599, title I, §124(a), Nov. 6, 1978, 92 Stat. 2702; Pub. L. 96–106, §§7, 8(a), Nov. 9, 1979, 93 Stat. 797; Pub. L. 97–327, §5(c), Oct. 15, 1982, 96 Stat. 1612; Pub. L. 97–424, title I, §§121(a), 122(a), Jan. 6, 1983, 96 Stat. 2111, 2112; Pub. L. 100–17, title I, §§123(a)–(d)(1), (3), (e), (f)(2), 128, 133(b)(11), Apr. 2, 1987, 101 Stat. 161–163, 167, 172; Pub. L. 102–240, title I, §1028(a)–(f), Dec. 18, 1991, 105 Stat. 1967, 1968; Pub. L. 103–220, §1, Mar. 17, 1994, 108 Stat. 100; Pub. L. 104–59, title III, §§318, 325(b), Nov. 28, 1995, 109 Stat. 588, 592; Pub. L. 105–178, title I, §§1109, 1115(f)(3); June 9, 1998, 112 Stat. 141; Pub. L. 105–206, title IX, §9002(i), July 22, 1998, 112 Stat. 836; Pub. L. 108–88, §2(b)(5), Sept. 30, 2003, 117 Stat. 1111; Pub. L. 108–202, §2(b)(3), Feb. 29, 2004, 118 Stat. 478; Pub. L. 108–224, §2(b)(2), Apr. 30, 2004, 118 Stat. 627; Pub. L. 108–263, §2(b)(2), June 30, 2004, 118 Stat. 698; Pub. L. 108–280, §2(b)(2), July 30, 2004, 118 Stat. 876; Pub. L. 108–310, §2(b)(5), Sept. 30, 2004, 118 Stat. 1145; Pub. L. 109–14, §2(b)(3), May 31, 2005, 119 Stat. 324; Pub. L. 109–20, §2(b)(2), July 1, 2005, 119 Stat. 346; Pub. L. 109–35, §2(b)(2), July 20, 2005, 119 Stat. 379; Pub. L. 109–37, §2(b)(2), July 22, 2005, 119 Stat. 394; Pub. L. 109–40, §2(b)(2), July 28, 2005, 119 Stat. 410; Pub. L. 109–59, title I, §1114, Aug. 10, 2005, 119 Stat. 1172; Pub. L. 110–244, title I, §101(m)(1), June 6, 2008, 122 Stat. 1575; Pub. L. 112–141, div. A, title I, §1111(a), July 6, 2012, 126 Stat. 445; Pub. L. 114–94, div. A, title I, §1111, Dec. 4, 2015, 129 Stat. 1344.)

REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(1)(A), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

The General Bridge Act of 1946, referred to in subsec. (c)(1), is title V of act Aug. 2, 1946, ch. 753, 60 Stat. 847, which is classified generally to subchapter III (§525 et seq.) of chapter 11 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 525 of Title 33 and Tables.

The date of enactment of the MAP–21, referred to in subsecs. (d)(2) and (h)(5)(A), (6), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title.

AMENDMENTS

2015—Subsec. (c)(2)(A). Pub. L. 114–94, §1111(1), substituted ''the natural condition of the water'' for ''the natural condition of the bridge''.

Subsecs. (j), (k). Pub. L. 114–94, §1111(2), (3), added subsec. (j) and redesignated former subsec. (j) as (k).

Subsec. (k)(2). Pub. L. 114–94, §1111(4), substituted ''104(b)(2)'' for ''104(b)(3)''.

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to highway bridge program.

2008—Pub. L. 110–244, §101(m)(1)(A), struck out ''replacement and rehabilitation'' after ''Highway bridge'' in section catchline.

Subsecs. (b)(1), (c)(1)(1). Pub. L. 110–244, §101(m)(1)(B), substituted ''Federal-aid highway'' for ''Federal-aid system''.

Subsec. (c)(2). Pub. L. 110–244, §101(m)(1)(C), substituted ''Federal-aid highways'' for ''the Federal-aid system''.

Subsec. (d)(4). Pub. L. 110–244, §101(m)(1)(D), inserted ''systematic'' before ''preventive'' in heading.

Subsec. (e)(1), (2). Pub. L. 110–244, §101(m)(1)(B), substituted ''Federal-aid highway'' for ''Federal-aid system''.

Subsec. (e)(3), (4). Pub. L. 110–244, §101(m)(1)(E), substituted ''bridges not on Federal-aid highways'' for ''off-system bridges''.

Subsec. (f). Pub. L. 110–244, §101(m)(1)(F), (G), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''The Federal share payable on account of any project under this section shall be 80 per centum of the cost thereof.''

Subsec. (f)(1)(A)(vi). Pub. L. 110–244, §101(m)(1)(H), inserted ''and the removal of the Missisquoi Bay causeway'' after ''Bridge''.

Subsec. (f)(2). Pub. L. 110–244, §101(m)(1)(I), inserted heading and struck out former heading ''Off-system bridges''.

Subsecs. (g) to (*l*). Pub. L. 110–244, §101(m)(1)(G), redesignated subsecs. (h) to (m) as (g) to (*l*), respectively. Former subsec. (g) redesignated (f).

Subsec. (m). Pub. L. 110–244, §101(m)(1)(G), (J), redesignated subsec. (n) as (m), inserted heading, and struck out former heading ''Off-System Bridge Program''. Former subsec. (m) redesignated (*l*).

Subsec. (n). Pub. L. 110–244, §101(m)(1)(G), redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m).

Subsec. (n)(4)(B). Pub. L. 110–244, §101(m)(1)(K), substituted ''State transportation department'' for ''State highway agency''.

Subsec. (*o*). Pub. L. 110–244, §101(m)(1)(G), redesignated subsec. (p) as (*o*). Former subsec. (*o*) redesignated (n).

Subsec. (*o*)(2). Pub. L. 110–244, §101(m)(1)(C), substituted ''Federal-aid highways'' for ''the Federal-aid system''.

Subsecs. (p) to (s). Pub. L. 110–244, §101(m)(1)(G), redesignated subsecs. (p) to (s) as (*o*) to (r), respectively.

2005—Subsec. (a). Pub. L. 109–59, §1114(a), inserted heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: ''Congress hereby finds and declares it to be in the vital interest of the Nation that a highway bridge replacement and rehabilitation program be established to enable the several States to replace or rehabilitate highway bridges over waterways, other topographical barriers, other highways, or railroads when the States and the Secretary finds that a bridge is significantly important and is unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.''

Subsec. (d). Pub. L. 109–59, §1114(b), inserted heading and amended text of subsec. (d) generally. Prior to amendment, text related to approval of Federal participation in replacement or rehabilitation of bridges.

Subsec. (e). Pub. L. 109–59, §1114(c), in third sentence, substituted ''deck area'' for ''square footage'', in fourth sentence, struck out ''the total cost of deficient bridges in a State and in all States shall be reduced by the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services, and,'' after ''For purposes of the preceding sentence,'', and, in seventh sentence, substituted ''for the period specified in section 118(b)(2)'' for ''for the same period as funds apportioned for projects on the Federal-aid primary system under this title''.

Subsec. (g). Pub. L. 109–59, §1114(e)(2)(A), substituted ''BRIDGE SET-ASIDES'' for ''SET ASIDES'' in heading.

Subsec. (g)(1). Pub. L. 109–59, §1114(e)(2)(A), added par. (1) and struck out heading and text of former par. (1), which related to apportionments for the discretionary bridge program for fiscal years 1992 through 2005.

Subsec. (g)(1)(C). Pub. L. 109–59, §1114(e)(1), substituted ''2005'' for ''2003'' in heading and text.

Subsec. (g)(2). Pub. L. 109–59, §1114(e)(2)(C), redesignated par. (3) as (2).

Pub. L. 109–59, §1114(e)(2)(A), (B), both amended subsec. (g) by striking out heading and text of par. (2). Text read as follows: ''Subject to section 149(d) of the Federal-Aid Highway Act of 1987, amounts made available by paragraph (1) for obligation at the discretion of the Secretary may be obligated only—

''(A) for a project for a highway bridge the replacement or rehabilitation cost of which is more than $10,000,000, and

''(B) for a project for a highway bridge the replacement or rehabilitation cost of which is less than $10,000,000 if such cost is at least twice the amount apportioned to the State in which such bridge is located under subsection (e) for the fiscal year in which application is made for a grant for such bridge.''

Subsec. (g)(3). Pub. L. 109–59, §1114(e)(2)(C), redesignated par. (3) as (2).

Pub. L. 109–59, §1114(d), reenacted heading without change and amended text of par. (3) generally. Prior to amendment, text read as follows: ''Not less than 15 percent nor more than 35 percent of the amount apportioned to each State in each of fiscal years 1987 through 2004 and in the period of October 1, 2004, through July 30, 2005, shall be expended for projects to replace, rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures to highway bridges located on public roads, other than those on a Federal-aid highway. The Secretary, after consultation with State and local officials, may, with respect to such State, reduce the requirement for expenditure for bridges not on a Federal-aid highway when the Secretary determines that such State has inadequate needs to justify such expenditure.''

Pub. L. 109–40 substituted ''July 30'' for ''July 27''.

Pub. L. 109–37 substituted ''July 27'' for ''July 21''.

Pub. L. 109–35 substituted ''July 21'' for ''July 19''.

Pub. L. 109–20 substituted ''July 19'' for ''June 30''.

Pub. L. 109–14 substituted ''June 30'' for ''May 31''.

Subsec. (i). Pub. L. 109–59, §1114(g), struck out ''at the same time as the report required by section 307(f) of this title is submitted to Congress'' after ''biennially'' in concluding provisions.

Subsecs. (r), (s). Pub. L. 109–59, §1114(f), added subsecs. (r) and (s).

2004—Subsec. (g)(3). Pub. L. 108–310 inserted ''and in the period of October 1, 2004, through May 31, 2005,'' after ''2004''.

Pub. L. 108–280 substituted ''2004'' for ''2003 and in the period of October 1, 2003, through July 31, 2004,''.

Pub. L. 108–263 substituted ''July 31'' for ''June 30''.

Pub. L. 108–224 substituted ''June 30'' for ''April 30''.

Pub. L. 108–202 substituted ''April 30'' for ''February 29''.

2003—Subsec. (g)(3). Pub. L. 108–88 inserted ''and in the period of October 1, 2003, through February 29, 2004,'' after ''2003''.

1998—Subsec. (d). Pub. L. 105–178, §1109(d)(1), (2), inserted '', sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or installing scour countermeasures'' after ''magnesium acetate'' and inserted ''or sodium acetate/formate or such anti-icing or de-icing composition or installation of such countermeasures'' after ''such acetate'' in two places.

Subsec. (e). Pub. L. 105–178, §1109(a), inserted '', and, if a State transfers funds apportioned to the State under this section in a fiscal year beginning after September 30, 1997, to any other apportionment of funds to such State under this title, the total cost of deficient bridges in such State and in all States to be determined for the succeeding fiscal year shall be reduced by the

amount of such transferred funds'' after ''destroyed bridges and ferryboat services''.

Subsec. (g)(1). Pub. L. 105–178, §1109(b), designated existing provisions as subpar. (A), inserted heading, realigned margins, and added subpars. (B) and (C).

Subsec. (g)(3). Pub. L. 105–178, §1109(c), (d)(3), substituted ''through 2003'' for ''1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, and 1997,'', substituted ''Federal-aid highway'' for ''Federal-aid system'' in two places, and inserted '', sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures'' after ''magnesium acetate''.

Subsec. (g)(4). Pub. L. 105–178, §1115(f)(3), as added by Pub. L. 105–206, §9002(i), struck out heading and text of par. (4). Text read as follows: ''Not less than 1 percent of the amount apportioned to each State which has an Indian reservation within its boundaries for each fiscal year shall be expended for projects to replace, rehabilitate, paint, or apply calcium magnesium acetate to highway bridges located on Indian reservation roads. Upon determining a State bridge apportionment and before transferring funds to the States, the Secretary shall transfer the Indian reservation bridge allocation under this paragraph to the Secretary of the Interior for expenditure pursuant to this paragraph. The Secretary, after consultation with State and Indian tribal government officials and with the concurrence of the Secretary of the Interior, may, with respect to such State, reduce the requirement for expenditure for bridges under this paragraph when the Secretary determines that there are inadequate needs to justify such expenditure. The non-Federal share payable on account of such a project may be provided from funds made available for Indian reservation roads under chapter 2 of this title.''

Subsec. (n). Pub. L. 105–178, §1109(e), substituted ''Federal-aid highway'' for ''Federal-aid system''.

1995—Subsec. (i)(1). Pub. L. 104–59, §325(b), substituted ''Committee on Transportation and Infrastructure'' for ''Committee on Public Works and Transportation''.

Subsec. (*l*). Pub. L. 104–59, §318, inserted at end ''Any non-Federal funds expended for the seismic retrofit of the bridge may be credited toward the non-Federal share required as a condition of receipt of any Federal funds for seismic retrofit of the bridge made available after the date of the expenditure.''

1994—Subsec. (d). Pub. L. 103–220, §1(1), inserted before period at end of third sentence '', except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section''.

Subsec. (e). Pub. L. 103–220, §1(2), inserted at end ''The use of funds authorized under this section to carry out a project for the seismic retrofit of a bridge shall not affect the apportionment of funds under this section.''

1991—Subsec. (c)(3). Pub. L. 102–240, §1028(a), added par. (3).

Subsec. (d). Pub. L. 102–240, §1028(b), inserted ''Whenever any State makes application to the Secretary for assistance in painting and seismic retrofit, or applying calcium magnesium acetate to, the structure of a highway bridge, the Secretary may approve Federal participation in the painting or seismic retrofit of, or application of such acetate to, such structure.'' after first sentence and ''(other than projects for bridge structure painting or seismic retrofit or application of such acetate)'' after ''projects'' in last sentence.

Subsec. (f). Pub. L. 102–240, §1028(c), substituted ''project'' for ''highway bridge replaced or rehabilitated''.

Subsec. (g)(1). Pub. L. 102–240, §1028(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Of the amount authorized per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 by section 106(a)(5) of the Federal-Aid Highway Act of 1987, all but $225,000,000 per fiscal year shall be apportioned as provided in subsection (e) of this section. $225,000,000 per fiscal year of the amount authorized for each of such fiscal years shall be available for obligation on the date of each such apportionment in the same manner and to the same extent as the sums apportioned on such date, except that the obligation of such $225,000,000 shall, subject to section 149(d) of the Federal-Aid Highway Act of 1987, be at the discretion of the Secretary.''

Subsec. (g)(3). Pub. L. 102–240, §1028(e)(1), substituted ''1991, 1992, 1993, 1994, 1995, 1996, and 1997'' for ''and 1991'' and '', rehabilitate, paint or seismic retrofit, or apply calcium magnesium acetate to'' for ''or rehabilitate''.

Subsec. (g)(4). Pub. L. 102–240, §1028(f), added par. (4).

Subsecs. (p), (q). Pub. L. 102–240, §1028(e)(2), added subsec. (p) and redesignated former subsec. (p) as (q).

1987—Subsec. (e). Pub. L. 100–17, §133(b)(11), inserted at end ''Funds apportioned under this section shall be available for expenditure for the same period as funds apportioned for projects on the Federal-aid primary system under this title. Any funds not obligated at the expiration of such period shall be reapportioned by the Secretary to the other States in accordance with this subsection.''

Pub. L. 100–17, §123(d)(3), inserted after third sentence ''For purposes of the preceding sentence, the total cost of deficient bridges in a State and in all States shall be reduced by the total cost of any highway bridges constructed under subsection (m) in such State, relating to replacement of destroyed bridges and ferryboat services.''

Subsec. (g). Pub. L. 100–17, §123(a), amended subsec. (g) generally, revising and restating as pars. (1) to (3) provisions formerly contained in pars. (1) and (2).

Subsec. (h). Pub. L. 100–17, §123(b), substituted ''(1)'' for ''which are not subject to the ebb and flow of the tide, and'' and added cl. (2).

Subsec. (i). Pub. L. 100–17, §128, substituted ''307(f)'' for ''307(e)'' in last sentence.

Pub. L. 100–17, §123(c), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The Secretary shall report annually on projects approved under this section, shall annually revise and report the current inventories authorized by subsections (b) and (c) of this section, and shall report such recommendations as he may have for improvement of the program authorized by this section.''

Subsec. (m). Pub. L. 100–17, §123(d)(1), added subsec. (m). Former subsec. (m) redesignated (p).

Subsec. (n). Pub. L. 100–17, §123(e), which directed that this section be amended by adding subsec. (n) after subsec. (*l*), was executed by adding subsec. (n) after subsec. (m), to reflect the probable intent of Congress.

Subsec. (*o*). Pub. L. 100–17, §123(f)(2), which directed that this section be amended by adding subsec. (*o*) after subsec. (*l*), was executed by adding subsec. (*o*) after subsec. (n), to reflect the probable intent of Congress.

Subsec. (p). Pub. L. 100–17, §123(d)(1), redesignated former subsec. (m) as (p).

1983—Subsec. (e). Pub. L. 97–424, §121(a), substituted provisions setting forth categorization, formula for apportionment factors, and limitations respecting deficient bridges for provisions relating to apportionment of funds for fiscal years ending Sept. 30, 1979, through Sept. 30, 1983, availability for expenditure of such funds, and reapportionment by the Secretary.

Pub. L. 97–327, §5(c)(1), substituted ''September 30, 1982, and September 30, 1983'' for ''and September 30, 1982''.

Subsec. (g). Pub. L. 97–424, §122(a), designated existing provisions as par. (1), struck out provisions added by section 5(c)(2) of Pub. L. 97–327 relating to apportionment of amounts for fiscal year ending Sept. 30, 1983, and added par. (2).

Pub. L. 97–327, §5(c)(2), inserted provision that, of the amount authorized for the fiscal year ending September 30, 1983, by paragraph (1) of section 5(a) of the Federal-Aid Highway Act of 1982, all but $200,000,000 (multiplied by the factor determined under section 4(a) of such Act) be apportioned, and that $200,000,000 (multiplied by such factor) of the amount authorized for such fiscal year be available for obligation on the date of

each such apportionment in the same manner and to the same extent as the sums apportioned on such date with specific limitations applicable to the obligation of such $200,000,000.

1979—Subsec. (d). Pub. L. 96–106, §7(a), substituted ''such bridge with a comparable facility or in rehabilitating such bridge'' for ''or rehabilitating such bridge with a comparable facility''.

Subsec. (g). Pub. L. 96–106, §8(a), inserted '', and for any project for a highway bridge the replacement or rehabilitation costs of which is less than $10,000,000 if such costs is at least twice the amount apportioned to the State in which such bridge is located under subsection (e) of this section for the fiscal year in which application is made for a grant for such bridge''.

Subsec. (m). Pub. L. 96–106, §7(b), substituted ''major work'' for ''major repairs''.

1978—Subsec. (a). Pub. L. 95–599 substituted provisions relating to Congressional findings as to highway bridge replacement and rehabilitation for provisions relating to Congressional findings as to special bridge replacement.

Subsec. (b). Pub. L. 95–599 added cl. (4).

Subsec. (c). Pub. L. 95–599 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–599 redesignated former subsec. (c) as (d) and among other amendments struck out provisions requiring Secretary to consider economy of area and approval of projects without regard to allocation formulas under this title.

Subsec. (e). Pub. L. 95–599 added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 95–599 redesignated former subsec. (d) as (f), substituted ''80'' for ''75'', and inserted ''highway'' after ''account of any''. Former subsec. (f) was struck out.

Subsec. (g). Pub. L. 95–599 redesignated former subsec. (e) as (g) and inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979 through Sept. 30, 1982. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95–599 redesignated former subsec. (g) as (h) and inserted provisions relating to exceptions to applications of the General Bridge Act of 1946. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–599 redesignated former subsec. (h) as (i) and inserted provisions relating to revision and report of current inventories.

Subsecs. (j) to (m). Pub. L. 95–599 added subsecs. (j) to (m).

1975—Subsec. (e). Pub. L. 93–643 increased appropriations authorization to $125,000,000 from $75,000,000 for fiscal year ending June 30, 1976.

1973—Subsec. (e). Pub. L. 93–87, §204(a), provided for appropriations authorization of $25,000,000, $75,000,000, and $75,000,000 for fiscal years ending June 30, 1974, 1975, and 1976.

Subsecs. (f) to (h). Pub. L. 93–87, §204(b), (c), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–59, title I, §1114(e)(2), Aug. 10, 2005, 119 Stat. 1174, provided that the amendment made by section 1114(e)(2) is effective Oct. 1, 2005.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–17, title I, §123(d)(2), Apr. 2, 1987, 101 Stat. 162, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to funds apportioned to the States under [former] section 144 of title 23, United States Code, after September 30, 1986.''

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97–424, title I, §121(b), Jan. 6, 1983, 96 Stat. 2112, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect October 1, 1982, and shall apply with respect to each fiscal year beginning on or after such date. Notwithstanding subsection (e) of [former] section 144 of title 23, United States Code, as soon as practical after the date of enactment of this Act [Jan. 6, 1983], the Secretary of Transportation shall apportion under such subsection (e), as amended by subsection (a) of this section, sums authorized to be appropriated to carry out such section 144 for the fiscal year ending September 30, 1983.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (h)(1), (3), and (4) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 135 of House Document No. 103–7.

NATIONAL HISTORIC COVERED BRIDGE PRESERVATION

Pub. L. 109–59, title I, §1804, Aug. 10, 2005, 119 Stat. 1458, which directed the Secretary of Transportation to make grants to States that submitted applications to the Secretary that demonstrated a need for assistance in carrying out one or more historic covered bridge projects, was repealed by Pub. L. 112–141, div. A, title I, §1519(b)(2), July 6, 2012, 126 Stat. 575.

Pub. L. 105–178, title I, §1224, as added by Pub. L. 105–206, title IX, §9003(a), July 22, 1998, 112 Stat. 837, directed the Secretary of Transportation to make grants to States that submitted applications to the Secretary that demonstrated a need for assistance in carrying out one or more historic covered bridge projects and authorized appropriations for fiscal years 1999 through 2003.

USE OF DEBRIS FROM DEMOLISHED BRIDGES AND OVERPASSES

Pub. L. 109–59, title I, §1805, Aug. 10, 2005, 119 Stat. 1459, as amended by Pub. L. 112–141, div. A, title I, §1523, July 6, 2012, 126 Stat. 580, provided that:

''(a) IN GENERAL.—Any State that demolishes a bridge or an overpass that is eligible for Federal assistance under the national highway performance program under section 119 of title 23, United States Code, is directed to first make the debris from the demolition of such bridge or overpass available for beneficial use by a Federal, State, or local government, unless such use obstructs navigation.

''(b) RECIPIENT RESPONSIBILITIES.—A recipient of the debris described in subsection (a) shall—

''(1) bear the additional cost associated with having the debris made available;

''(2) ensure that placement of the debris complies with applicable law; and

''(3) assume all future legal responsibility arising from the placement of the debris, which may include entering into an agreement to hold the owner of the demolished bridge or overpass harmless in any liability action.

''(c) DEFINITION.—In this section, the term 'beneficial use' means the application of the debris for purposes of shore erosion control or stabilization, ecosystem restoration, and marine habitat creation.''

HIGHWAY TIMBER BRIDGE RESEARCH AND DEMONSTRATION PROGRAM

Pub. L. 102–240, title I, §1039, Dec. 18, 1991, 105 Stat. 1990, as amended by Pub. L. 102–388, title IV, §408, Oct. 6, 1992, 106 Stat. 1564, authorized the Secretary to make grants to entities for research and construction of timber bridges and other timber highway structures and authorized appropriations for fiscal years 1992 to 1997.

FEASIBILITY OF INTERNATIONAL BORDER HIGHWAY INFRASTRUCTURE DISCRETIONARY PROGRAM

Pub. L. 102–240, title I, §1089, Dec. 18, 1991, 105 Stat. 2023, directed Secretary of Transportation to conduct a study of advisability and feasibility of establishing an international border highway infrastructure discretionary program and, not later than Sept. 30, 1993, transmit to Congress a report on results of the study, together with any recommendations.

HISTORIC BRIDGES; CONGRESSIONAL FINDINGS AND DECLARATIONS

Pub. L. 100–17, title I, §123(f)(1), Apr. 2, 1987, 101 Stat. 163, provided that: ''Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.''

STUDY AND RECOMMENDATIONS BY TRANSPORTATION RESEARCH BOARD ON EFFECTS OF BRIDGE PROGRAM ON PRESERVATION AND REHABILITATION OF HISTORIC BRIDGES

Pub. L. 100–17, title I, §123(f)(3), Apr. 2, 1987, 101 Stat. 163, provided for a study and recommendations by the Transportation Research Board on the preservation and rehabilitation of historic bridges and required the Board to submit a report on the study and recommendations.

STUDY OF HIGHWAY BRIDGES WHICH CROSS RAIL LINES; REPORT

Pub. L. 100–17, title I, §160, Apr. 2, 1987, 101 Stat. 212, directed Secretary to conduct a comprehensive study and investigation of improvement and maintenance needs for highway bridges which cross rail lines and whose ownership has been disputed and, not later than 30 months after Apr. 2, 1987, submit to Congress a report on the study and investigation along with recommendations on how the bridge needs could best be addressed on a long term basis in a cost-effective manner.

FOUR-LANE BRIDGES

Pub. L. 97–424, title I, §130, Jan. 6, 1983, 96 Stat. 2118, authorized funds to complete construction of a four-lane bridge in certain cases where funds to construct a two-lane bridge had been authorized by a law enacted between Jan. 1, 1970, and Jan. 6, 1983.

DISCRETIONARY BRIDGE CRITERIA

Pub. L. 97–424, title I, §161, Jan. 6, 1983, 96 Stat. 2135, as amended by Pub. L. 100–17, title I, §123(h), Apr. 2, 1987, 101 Stat. 164, required the Secretary to develop a selection process and issue a final regulation no later than 6 months after Jan. 6, 1983, regarding funding priority of discretionary bridges.

TRANSFER OF DISCRETIONARY BRIDGE FUNDS

Pub. L. 96–106, §8(b), Nov. 9, 1979, 93 Stat. 797, provided for the transfer of discretionary bridge funds authorized under subsec. (g) of this section for fiscal year 1980 to a State's apportionment under former section 104(b)(6) of this title to repay funds obligated under section 104(b)(6) between June 1 and July 31, 1979, for bridge projects which are eligible for funding by virtue of the amendment of subsec. (g) of this section by section 8(a) of Pub. L. 96–106.

TIME FOR COMPLETION OF INVENTORY AND CLASSIFICATION OF HIGHWAY BRIDGES

Pub. L. 95–599, title I, §124(c), Nov. 6, 1978, 92 Stat. 2705, directed Secretary of Transportation to complete the requirements of subsec. (c) of this section, as amended by subsec. (a) of section 124 of Pub. L. 95–599, not later than the last day of the second full calendar year which begins after Nov. 6, 1978.

ACCELERATION OF BRIDGE PROJECTS; OHIO RIVER BRIDGE FUND REPROGRAMMING; REPORTS TO CONGRESS

Pub. L. 95–599, title I, §147, Nov. 6, 1978, 92 Stat. 2714, as amended by Pub. L. 96–106, §15, Nov. 19, 1979, 93 Stat. 798; Pub. L. 99–272, title IV, §4105, Apr. 7, 1986, 100 Stat. 116, directed Secretary of Transportation to conduct two projects to construct or replace high-traffic-volume bridges on the Federal-aid highway system which span major bodies of water in order to demonstrate the feasibility of reducing the time required to replace unsafe bridges; authorized funds for the projects; directed Secretary to report to Congress within six months after the completion of each project; redirected certain funds in excess of amounts needed to complete the projects for use in further projects for construction of three state-of-the-art Ohio River bridges linking designated cities in Kentucky and Ohio; and directed Secretary to report to Congress within a year after the completion of these bridges.

§ 145. Federal-State relationship

(a) PROTECTION OF STATE SOVEREIGNTY.—The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.

(b) PURPOSE OF PROJECTS.—The projects described in section 1702 of the SAFETEA–LU, section 1602 of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027 et seq.), and section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 181 et seq.) are intended to establish eligibility for Federal-aid highway funds made available for such projects by section 1101(a)(16) of the SAFETEA–LU, section 1101(a)(13) of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, and subsections (b), (c), and (d) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, respectively, and are not intended to define the scope or limits of Federal action in a manner inconsistent with subsection (a).

(Added Pub. L. 93–87, title I, §123(a), Aug. 13, 1973, 87 Stat. 261; amended Pub. L. 105–178, title

Subsec. (c)(5)(A). Pub. L. 114–94, §1446(a)(8)(C)(ii), substituted ''under section 104(b)(1)'' for ''under section 104(b)(1)''.

2012—Subsec. (c)(2). Pub. L. 112–141, §1402(1), added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: ''On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing an open container law described in subsection (b), the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).''

Subsec. (c)(3). Pub. L. 112–141, §1402(2), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: ''A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 148.''

Subsec. (c)(5). Pub. L. 112–141, §1402(3), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: ''The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

''(A) The apportionment of the State under section 104(b)(1).

''(B) The apportionment of the State under section 104(b)(3).

''(C) The apportionment of the State under section 104(b)(4).''

2005—Subsec. (c)(3). Pub. L. 109–59 substituted ''148'' for ''152''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by section 11131(a) of Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

EFFECTIVE DATE

Section effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, see section 9016 of Pub. L. 105–206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

[§ 155. Repealed. Pub. L. 112–141, div. A, title I, § 1519(b)(1)(A), July 6, 2012, 126 Stat. 575]

Section, added Pub. L. 93–643, §115(a), Jan. 4, 1975, 88 Stat. 2287; amended Pub. L. 95–599, title I, §129(e), Nov. 6, 1978, 92 Stat. 2708, related to access highways to public recreation areas on certain lakes.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 156. Proceeds from the sale or lease of real property

(a) MINIMUM CHARGE.—Subject to section 142(f), a State shall charge, at a minimum, fair market value for the sale, use, lease, or lease renewal (other than for utility use and occupancy or for a transportation project eligible for assistance under this title) of real property acquired with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account).

(b) EXCEPTIONS.—The Secretary may grant an exception to the requirement of subsection (a) for a social, environmental, or economic purpose.

(c) USE OF FEDERAL SHARE OF INCOME.—The Federal share of net income from the revenues obtained by a State under subsection (a) shall be used by the State for projects eligible under this title.

(Added Pub. L. 100–17, title I, §126(a), Apr. 2, 1987, 101 Stat. 167; amended Pub. L. 102–240, title I, §1027(f), Dec. 18, 1991, 105 Stat. 1967; Pub. L. 105–178, title I, §1303(a), June 9, 1998, 112 Stat. 227.)

Editorial Notes

PRIOR PROVISIONS

A prior section 156, added Pub. L. 94–280, title I, §132(a), May 5, 1976, 90 Stat. 441, authorized the Secretary to construct or reconstruct any public highway or highway bridge across any Federal public works project, specified conditions under which such work may be done, and authorized appropriations for such work of $100,000,000 to be available in the fiscal year in which appropriated and for the two succeeding fiscal years, prior to repeal by Pub. L. 100–17, title I, §126(a), Apr. 2, 1987, 101 Stat. 167.

AMENDMENTS

1998—Pub. L. 105–178 amended section catchline and text generally. Prior to amendment, text read as follows: ''Subject to section 142(f), States shall charge, as a minimum, fair market value, with exceptions granted at the discretion of the Secretary for social, environmental, and economic mitigation purposes, for the sale, use, lease, or lease renewals (other than for utility use and occupancy or for transportation projects eligible for assistance under this title) of right-of-way airspace acquired as a result of a project funded in whole or in part with Federal assistance made available from the Highway Trust Fund (other than the Mass Transit Account). This section applies to new airspace usage proposals, renewals of prior agreements, arrangements, or leases entered into by the State after the date of the enactment of the Federal-Aid Highway Act of 1987. The Federal share of net income from the revenues obtained by the State for sales, uses, or leases (including lease renewals) under this section shall be used by the State for projects eligible under this title.''

1991—Pub. L. 102–240 substituted ''Subject to section 142(f), States shall'' for ''States shall''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of this title.

§ 157. National Environmental Policy Act of 1969 reporting program

(a) DEFINITIONS.—In this section:

(1) CATEGORICAL EXCLUSION.—The term ''categorical exclusion'' has the meaning given the

ADVANCED TECHNOLOGY PILOT PROJECT

Pub. L. 105–178, title III, §3015(c), June 9, 1998, 112 Stat. 361, as amended by Pub. L. 105–206, title IX, §9009(k)(1), July 22, 1998, 112 Stat. 857; Pub. L. 108–88, §8(q), Sept. 30, 2003, 117 Stat. 1125; Pub. L. 108–202, §9(q), Feb. 29, 2004, 118 Stat. 489; Pub. L. 108–224, §7(q), Apr. 30, 2004, 118 Stat. 637; Pub. L. 108–263, §7(q), June 30, 2004, 118 Stat. 708; Pub. L. 108–280, §7(q), July 30, 2004, 118 Stat. 885; Pub. L. 108–310, §8(q), Sept. 30, 2004, 118 Stat. 1158; Pub. L. 109–14, §7(p), May 31, 2005, 119 Stat. 334; Pub. L. 109–20, §7(p), July 1, 2005, 119 Stat. 356; Pub. L. 109–35, §7(p), July 20, 2005, 119 Stat. 389; Pub. L. 109–37, §7(p), July 22, 2005, 119 Stat. 404; Pub. L. 109–40, §7(p), July 28, 2005, 119 Stat. 420, provided that:

''(1) IN GENERAL.—The Secretary shall make grants for the development of low speed magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

''(2) FUNDING.—Of the amounts made available under section 5001(a)(2) of this Act [112 Stat. 419] for each of fiscal years 1998 through 2004, and for the period of October 1, 2004, through July 30, 2005,, [sic] $5,000,000 per fiscal year and $4,150,685 for such period shall be available to carry out this subsection. Financial assistance made available under this subsection and projects assisted with the assistance shall be subject to section 5333(a) of title 49, United States Code.

''(3) FEDERAL SHARE.—The Federal share payable on account of activities carried out using a grant made under this subsection shall be 80 percent of the cost of such activities.''

[Pub. L. 109–35, §7(p)(1), which directed amendment of Pub. L. 105–178, §3015(c)(2), set out above, by substituting ''July 21, 2005'' for ''July 19, 2005,'' was executed by making the substitution for ''July 19, 2005'', to reflect the probable intent of Congress.]

[Pub. L. 109–20, §7(p)(1), which directed amendment of Pub. L. 105–178, §3015(c)(2), set out above, by substituting ''July 19, 2005'' for ''June 30, 2005,'' was executed by making the substitution for ''June 30, 2005'', to reflect the probable intent of Congress.]

[Pub. L. 108–280, §7(q), which directed amendment of Pub. L. 105–178, §3015(c)(2), set out above, by substituting ''2004, $5,000,000 per fiscal year'' for ''2003, and for the period of October 1, 2003, through July 31, 2004 $5,000,000 per fiscal year and $4,142,083 for such period'', was executed by making the substitution for ''2003, and for the period of October 1, 2003, through July 31, 2004, $5,000,000 per fiscal year and $4,142,083 for such period'', to reflect the probable intent of Congress.]

[Pub. L. 108–224, §7(q)(1), which directed amendment of Pub. L. 105–178, §3015(c)(2), set out above, by substituting ''June 30, 2004'' for ''April 30, 2004,'' was executed by making the substitution for ''April 30, 2004'', to reflect the probable intent of Congress.]

§ 323. Donations and credits

(a) DONATIONS OF PROPERTY BEING ACQUIRED.—Nothing in this title, or in any other provision of law, shall be construed to prevent a person whose real property is being acquired in connection with a project under this title, after he has been fully informed of his right to receive just compensation for the acquisition of his property, from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, to a Federal agency, a State or a State agency, or a political subdivision of a State, as said person shall determine.

(b) CREDIT FOR ACQUIRED LANDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the State share of the cost of a project with respect to which Federal assistance is provided from the Highway Trust Fund (other than the Mass Transit Account) may be credited in an amount equal to the fair market value of any land that—

(A) is lawfully obtained by the State or a unit of local government in the State;

(B) is incorporated into the project;

(C) is not land described in section 138; and

(D) the Secretary determines will not influence the environmental assessment of the project, including—

(i) the decision as to the need to construct the project;

(ii) the consideration of alternatives; and

(iii) the selection of a specific location.

(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of land incorporated into a project and credited under paragraph (1) shall be established in the manner determined by the Secretary, except that—

(A) the fair market value shall not include any increase or decrease in the value of donated property caused by the project; and

(B) the fair market value of donated land shall be established as of the earlier of—

(i) the date on which the donation becomes effective; or

(ii) the date on which equitable title to the land vests in the State.

(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply to donations made by an agency of the Federal Government.

(4) LIMITATION ON AMOUNT OF CREDIT.—The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project.

(c) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES.—Nothing in this title or any other law shall prevent a person from offering to donate funds, materials, or services, or a local government from offering to donate funds, materials, or services performed by local government employees, in connection with a project eligible for assistance under this title. In the case of such a project with respect to which the Federal Government and the State share in paying the cost, any donated funds, or the fair market value of any donated materials or services, that are accepted and incorporated into the project by the State transportation department shall be credited against the State share.

(d) PROCEDURES.—A gift or donation in accordance with subsection (a) may be made at any time during the development of a project. Any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall clearly indicate that—

(1) all alternatives to a proposed alignment will be studied and considered pursuant to such Act;

(2) acquisition of property under this section shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

(3) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings, if

required, and completion of the environmental document.

(Added Pub. L. 93–87, title I, §145(a), Aug. 13, 1973, 87 Stat. 273; amended Pub. L. 93–643, §112, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 100–17, title I, §146(a), Apr. 2, 1987, 101 Stat. 179; Pub. L. 104–59, title III, §322, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105–178, title I, §§1212(a)(2)(A)(i), 1301(b)–(d)(1), June 9, 1998, 112 Stat. 193, 225, 226; Pub. L. 109–59, title I, §1902, Aug. 10, 2005, 119 Stat. 1464; Pub. L. 117–58, div. A, title I, §11525(q), Nov. 15, 2021, 135 Stat. 608.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (d). Pub. L. 117–58 inserted ''(42 U.S.C. 4321 et seq.)'' after ''National Environmental Policy Act of 1969'' in introductory provisions.

2005—Subsec. (c). Pub. L. 109–59, §1902(1), inserted '', or a local government from offering to donate funds, materials, or services performed by local government employees,'' before ''in connection with a project''.

Subsec. (e). Pub. L. 109–59, §1902(2), struck out heading and text of subsec. (e). Text read as follows: ''A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.''

1998—Pub. L. 105–178, §1301(d)(1), substituted ''Donations and credits'' for ''Donations'' in section catchline.

Subsec. (b). Pub. L. 105–178, §1301(b)(1), substituted ''Acquired'' for ''Donated'' in heading.

Subsec. (b)(1), (2). Pub. L. 105–178, §1301(b)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) GENERAL RULE.—Notwithstanding any provision of this title, the State matching share for a project with respect to which Federal assistance is provided out of the Highway Trust Fund (other than the Mass Transit Account) may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the date of the enactment of this subsection.

''(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection, the fair market value of donated land shall be established as of the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier.''

Subsec. (b)(3). Pub. L. 105–178, §1301(b)(3), substituted ''agency of the Federal Government'' for ''agency of a Federal, State, or local government''.

Subsec. (b)(4). Pub. L. 105–178, §1301(b)(4), struck out ''to which the donation is applied'' before period at end.

Subsec. (c). Pub. L. 105–178, §1212(a)(2)(A)(i), substituted ''State transportation department'' for ''State highway department''.

Subsec. (e). Pub. L. 105–178, §1301(c), added subsec. (e).

1995—Subsecs. (c), (d). Pub. L. 104–59 added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Pub. L. 100–17 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 93–643 substituted ''after he has been fully informed of his right to receive just compensation for the acquisition of his property'' for ''after he has been tendered the full amount of the estimated just compensation as established by an approved appraisal of the fair market value of the subject real property''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

§324. Prohibition of discrimination on the basis of sex

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Added Pub. L. 93–87, title I, §162(a), Aug. 13, 1973, 87 Stat. 280.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000d of Title 42 and Tables.

[§325. Repealed. Pub. L. 117–58, div. A, title I, §11525(r), Nov. 15, 2021, 135 Stat. 608]

Section, added Pub. L. 109–59, title VI, §6003(a), Aug. 10, 2005, 119 Stat. 1865, related to State assumption of responsibilities for certain programs and projects.

A prior section 325, added Pub. L. 102–240, title VI, §6003[(a)], Dec. 18, 1991, 105 Stat. 2168, related to international highway transportation outreach program, prior to repeal by Pub. L. 105–178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as an Effective Date of 2021 Amendment note under section 101 of this title.

§326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations

required, and completion of the environmental document.

(Added Pub. L. 93–87, title I, §145(a), Aug. 13, 1973, 87 Stat. 273; amended Pub. L. 93–643, §112, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 100–17, title I, §146(a), Apr. 2, 1987, 101 Stat. 179; Pub. L. 104–59, title III, §322, Nov. 28, 1995, 109 Stat. 591; Pub. L. 105–178, title I, §§1212(a)(2)(A)(i), 1301(b)–(d)(1), June 9, 1998, 112 Stat. 193, 225, 226; Pub. L. 109–59, title I, §1902, Aug. 10, 2005, 119 Stat. 1464; Pub. L. 117–58, div. A, title I, §11525(q), Nov. 15, 2021, 135 Stat. 608.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (d). Pub. L. 117–58 inserted ''(42 U.S.C. 4321 et seq.)'' after ''National Environmental Policy Act of 1969'' in introductory provisions.

2005—Subsec. (c). Pub. L. 109–59, §1902(1), inserted '', or a local government from offering to donate funds, materials, or services performed by local government employees,'' before ''in connection with a project''.

Subsec. (e). Pub. L. 109–59, §1902(2), struck out heading and text of subsec. (e). Text read as follows: ''A contribution by a unit of local government of real property, funds, or material in connection with a project eligible for assistance under this title shall be credited against the State share of the project at the fair market value of the real property, funds, or material.''

1998—Pub. L. 105–178, §1301(d)(1), substituted ''Donations and credits'' for ''Donations'' in section catchline.

Subsec. (b). Pub. L. 105–178, §1301(b)(1), substituted ''Acquired'' for ''Donated'' in heading.

Subsec. (b)(1), (2). Pub. L. 105–178, §1301(b)(2), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) GENERAL RULE.—Notwithstanding any provision of this title, the State matching share for a project with respect to which Federal assistance is provided out of the Highway Trust Fund (other than the Mass Transit Account) may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the date of the enactment of this subsection.

''(2) ESTABLISHMENT OF FAIR MARKET VALUE.—The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection, the fair market value of donated land shall be established as of the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier.''

Subsec. (b)(3). Pub. L. 105–178, §1301(b)(3), substituted ''agency of the Federal Government'' for ''agency of a Federal, State, or local government''.

Subsec. (b)(4). Pub. L. 105–178, §1301(b)(4), struck out ''to which the donation is applied'' before period at end.

Subsec. (c). Pub. L. 105–178, §1212(a)(2)(A)(i), substituted ''State transportation department'' for ''State highway department''.

Subsec. (e). Pub. L. 105–178, §1301(c), added subsec. (e).

1995—Subsecs. (c), (d). Pub. L. 104–59 added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Pub. L. 100–17 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

1975—Pub. L. 93–643 substituted ''after he has been fully informed of his right to receive just compensation for the acquisition of his property'' for ''after he has been tendered the full amount of the estimated just compensation as established by an approved appraisal of the fair market value of the subject real property''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

§ 324. Prohibition of discrimination on the basis of sex

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

(Added Pub. L. 93–87, title I, §162(a), Aug. 13, 1973, 87 Stat. 280.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000d of Title 42 and Tables.

[§ 325. Repealed. Pub. L. 117–58, div. A, title I, §11525(r), Nov. 15, 2021, 135 Stat. 608]

Section, added Pub. L. 109–59, title VI, §6003(a), Aug. 10, 2005, 119 Stat. 1865, related to State assumption of responsibilities for certain programs and projects.

A prior section 325, added Pub. L. 102–240, title VI, §6003[(a)], Dec. 18, 1991, 105 Stat. 2168, related to international highway transportation outreach program, prior to repeal by Pub. L. 105–178, title V, §5119(b), June 9, 1998, 112 Stat. 452.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as an Effective Date of 2021 Amendment note under section 101 of this title.

§ 326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations

promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a State, as a condition of assuming responsibility under this section, to forego project delivery methods that are otherwise permissible for highway projects.

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) ASSISTANCE TO STATES.—On request of a Governor of a State, the Secretary shall provide to the State technical assistance, training, or other support relating to—

(A) assuming responsibility under subsection (a);

(B) developing a memorandum of understanding under this subsection; or

(C) addressing a responsibility in need of corrective action under subsection (d)(1)(B).

(3) TERM.—A memorandum of understanding—

(A) except as provided under subparagraph (C), shall have a term of not more than 3 years;

(B) shall be renewable; and

(C) shall have a term of 5 years, in the case of a State that has assumed the responsibility for categorical exclusions under this section for not fewer than 10 years.

(4) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(5) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) a notification of the determination of noncompliance;

(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

(C) the State, after the notification and period described in clauses (i) and (ii) of subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(f) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorney's fees directly attributable to eligible activities associated with the project.

(Added Pub. L. 109–59, title VI, § 6004(a), Aug. 10, 2005, 119 Stat. 1867; amended Pub. L. 112–141, div. A, title I, § 1312, July 6, 2012, 126 Stat. 545; Pub. L. 114–94, div. A, title I, § 1307, Dec. 4, 2015, 129 Stat. 1390; Pub. L. 117–58, div. A, title I, § 11314, Nov. 15, 2021, 135 Stat. 540.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3), is Pub. L. 91–190, Jan. 1, 1970,

83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 326, added Pub. L. 102–240, title VI, § 6004(a), Dec. 18, 1991, 105 Stat. 2169; amended Pub. L. 105–130, § 5(e)(4), Dec. 1, 1997, 111 Stat. 2558, related to education and training program, prior to repeal by Pub. L. 105–178, title V, § 5119(b), June 9, 1998, 112 Stat. 452.

AMENDMENTS

2021—Subsec. (c)(3)(A). Pub. L. 117–58, § 11314(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''shall have a term of not more than 3 years; and''.

Subsec. (c)(3)(C). Pub. L. 117–58, § 11314(2), (3), added subpar. (C).

2015—Subsec. (c)(2) to (5). Pub. L. 114–94, § 1307(1), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (d)(1). Pub. L. 114–94, § 1307(2), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.''

2012—Subsec. (a)(4). Pub. L. 112–141, § 1312(1), added par. (4).

Subsec. (d). Pub. L. 112–141, § 1312(2), added subsec. (d) and struck out former subsec. (d). Prior to amendment, text read as follows: ''The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.''

Subsec. (f). Pub. L. 112–141, § 1312(3), added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

§ 327. Surface transportation project delivery program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery program (referred to in this section as the ''program'').

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or part of the responsibilities of the Secretary for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of a specific project;

(ii) at the request of the State, the Secretary may also assign to the State, and the State may assume, the responsibilities of the Secretary with respect to 1 or more railroad, public transportation, or multimodal projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) in a State that has assumed the responsibilities of the Secretary under clause (ii), a recipient of assistance under chapter 53 of title 49 may request that the Secretary maintain the responsibilities of the Secretary with respect to 1 or more public transportation projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); but

(iv) the Secretary may not assign—

(I) any responsibility imposed on the Secretary by section 134 or 135 or section 5303 or 5304 of title 49; or

(II) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506).

(C) PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.—A State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if that responsibility were carried out by the Secretary.

(D) FEDERAL RESPONSIBILITY.—Any responsibility of the Secretary not explicitly assumed by the State by written agreement under this section shall remain the responsibility of the Secretary.

(E) NO EFFECT ON AUTHORITY.—Nothing in this section preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency, other than the Department of Transportation, under applicable law (including regulations) with respect to a project.

(F) PRESERVATION OF FLEXIBILITY.—The Secretary may not require a State, as a condition of participation in the program, to forego project delivery methods that are otherwise permissible for projects.

(G) LEGAL FEES.—A State assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the State under section 104(b)(2) for attorneys' fees directly attributable to eligible activities associated with the project, including the payment of fees awarded under section 2412 of title 28.

(b) STATE PARTICIPATION.—

(1) PARTICIPATING STATES.—All States are eligible to participate in the program.

(2) APPLICATION.—Not later than 270 days after the date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate, regulations that establish requirements relating to information required to be contained in any application of a State to participate in the program, including, at a minimum—

(A) the projects or classes of projects for which the State anticipates exercising the authority that may be granted under the program;

(B) verification of the financial resources necessary to carry out the authority that may be granted under the program; and

(C) evidence of the notice and solicitation of public comment by the State relating to participation of the State in the program, including copies of comments received from that solicitation.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—Each State that submits an application under this subsection shall give notice of the intent of the State to participate in the program not later than 30 days before the date of submission of the application.

(B) METHOD OF NOTICE AND SOLICITATION.—The State shall provide notice and solicit public comment under this paragraph by publishing the complete application of the State in accordance with the appropriate public notice law of the State.

(4) SELECTION CRITERIA.—The Secretary may approve the application of a State under this section only if—

(A) the regulatory requirements under paragraph (2) have been met;

(B) the Secretary determines that the State has the capability, including financial and personnel, to assume the responsibility; and

(C) the head of the State agency having primary jurisdiction over highway matters enters into a written agreement with the Secretary described in subsection (c).

(5) OTHER FEDERAL AGENCY VIEWS.—If a State applies to assume a responsibility of the Secretary that would have required the Secretary to consult with another Federal agency, the Secretary shall solicit the views of the Federal agency before approving the application.

(c) WRITTEN AGREEMENT.—A written agreement under this section shall—

(1) be executed by the Governor or the top-ranking transportation official in the State who is charged with responsibility for highway construction;

(2) be in such form as the Secretary may prescribe;

(3) provide that the State—

(A) agrees to assume all or part of the responsibilities of the Secretary described in subsection (a);

(B) expressly consents, on behalf of the State, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary assumed by the State;

(C) certifies that State laws (including regulations) are in effect that—

(i) authorize the State to take the actions necessary to carry out the responsibilities being assumed; and

(ii) are comparable to section 552 of title 5, including providing that any decision regarding the public availability of a document under those State laws is reviewable by a court of competent jurisdiction; and

(D) agrees to maintain the financial resources necessary to carry out the responsibilities being assumed;

(4) require the State to provide to the Secretary any information the Secretary reasonably considers necessary to ensure that the State is adequately carrying out the responsibilities assigned to the State;

(5) except as provided under paragraph (7), have a term of not more than 5 years;

(6) be renewable; and

(7) for any State that has participated in a program under this section (or under a predecessor program) for at least 10 years, have a term of 10 years.

(d) JURISDICTION.—

(1) IN GENERAL.—The United States district courts shall have exclusive jurisdiction over any civil action against a State for failure to carry out any responsibility of the State under this section.

(2) LEGAL STANDARDS AND REQUIREMENTS.—A civil action under paragraph (1) shall be governed by the legal standards and requirements that would apply in such a civil action against the Secretary had the Secretary taken the actions in question.

(3) INTERVENTION.—The Secretary shall have the right to intervene in any action described in paragraph (1).

(e) EFFECT OF ASSUMPTION OF RESPONSIBILITY.—A State that assumes responsibility under subsection (a)(2) shall be solely responsible and solely liable for carrying out, in lieu of and without further approval of the Secretary, the responsibilities assumed under subsection (a)(2), until the program is terminated as provided in subsection (j).

(f) LIMITATIONS ON AGREEMENTS.—Nothing in this section permits a State to assume any rulemaking authority of the Secretary under any Federal law.

(g) AUDITS.—

(1) IN GENERAL.—To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall—

(A) not later than 180 days after the date of execution of the agreement, meet with the State to review implementation of the agreement and discuss plans for the first annual audit;

(B) conduct annual audits during each of the first 4 years of State participation;

(C) in the case of an agreement period of greater than 5 years pursuant to subsection (c)(7), conduct an audit covering the first 5 years of the agreement period; and

(D) ensure that the time period for completing an audit, from initiation to completion (including public comment and responses to those comments), does not exceed 180 days.

(2) PUBLIC AVAILABILITY AND COMMENT.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be provided to the public for comment.

(B) RESPONSE.—Not later than 60 days after the date on which the period for public comment ends, the Secretary shall respond to public comments received under subparagraph (A).

(3) AUDIT TEAM.—

(A) IN GENERAL.—An audit conducted under paragraph (1) shall be carried out by an audit team determined by the Secretary, in consultation with the State, in accordance with subparagraph (B).

(B) CONSULTATION.—Consultation with the State under subparagraph (A) shall include a reasonable opportunity for the State to review and provide comments on the proposed members of the audit team.

(h) MONITORING.—After the fourth year of the participation of a State in the program, the Secretary shall monitor compliance by the State with the written agreement, including the provision by the State of financial resources to carry out the written agreement.

(i) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report that describes the administration of the program.

(j) TERMINATION.—

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any State in the program if—

(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

(B) the Secretary provides to the State—

(i) a notification of the determination of noncompliance;

(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

(iii) on request of the Governor of the State, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(2) TERMINATION BY THE STATE.—The State may terminate the participation of the State in the program at any time by providing to the Secretary a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(k) CAPACITY BUILDING.—The Secretary, in cooperation with representatives of State officials, may carry out education, training, peer-exchange, and other initiatives as appropriate—

(1) to assist States in developing the capacity to participate in the assignment program under this section; and

(2) to promote information sharing and collaboration among States that are participating in the assignment program under this section.

(*l*) RELATIONSHIP TO LOCALLY ADMINISTERED PROJECTS.—A State granted authority under this section may, as appropriate and at the request of a local government—

(1) exercise such authority on behalf of the local government for a locally administered project; or

(2) provide guidance and training on consolidating and minimizing the documentation and environmental analyses necessary for sponsors of a locally administered project to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any comparable requirements under State law.

(m) AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under an agreement under this section shall be deemed to be an agency for the purposes of section 2412 of title 28.

(Added Pub. L. 109–59, title VI, §6005(a), Aug. 10, 2005, 119 Stat. 1868; amended Pub. L. 111–322, title II, §2203(c), Dec. 22, 2010, 124 Stat. 3526; Pub. L. 112–140, title I, §101(e)(1), June 29, 2012, 126 Stat. 392; Pub. L. 112–141, div. A, title I, §1313(a)–(h), July 6, 2012, 126 Stat. 545–547; Pub. L. 114–94, div. A, title I, §§1308, 1446(d)(3), Dec. 4, 2015, 129 Stat. 1390, 1438; Pub. L. 117–58, div. A, title I, §11313, Nov. 15, 2021, 135 Stat. 539.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (a)(2)(A), (B)(ii), (iii) and (*l*)(2), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date on which amendments to this section by the MAP-21 take effect, referred to in subsec. (b)(2), is Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

AMENDMENTS

2021—Subsec. (a)(2)(G). Pub. L. 117–58, §11313(1), inserted '', including the payment of fees awarded under section 2412 of title 28'' before period at end.

Subsec. (c)(5). Pub. L. 117–58, §11313(2)(A), added par. (5) and struck out former par. (5) which read as follows: ''have a term of not more than 5 years; and''.

Subsec. (c)(7). Pub. L. 117–58, §11313(2)(B), (C), added par. (7).

Subsec. (g)(1)(B). Pub. L. 117–58, §11313(3)(A), struck out ''and'' at end.

Subsec. (g)(1)(C). Pub. L. 117–58, §11313(3)(D), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 117–58, §11313(3)(B), struck out ''annual'' before ''audit,''.

Subsec. (g)(1)(D). Pub. L. 117–58, §11313(3)(C), redesignated subpar. (C) as (D).

Subsec. (m). Pub. L. 117–58, §11313(4), added subsec. (m).

2015—Pub. L. 114–94, §1446(d)(3), amended directory language of Pub. L. 112–141, §1313(a)(1). See 2012 Amendment note below.

Subsec. (a)(2)(B)(iii). Pub. L. 114–94, §1308(1), substituted ''(42 U.S.C. 4321 et seq.)'' for ''(42 U.S.C. 13 4321 et seq.)''.

Subsec. (c)(4). Pub. L. 114–94, §1308(2), inserted ''reasonably'' before ''considers necessary''.

Subsec. (e). Pub. L. 114–94, §1308(3), inserted ''and without further approval of'' after ''in lieu of''.

Subsec. (g)(1). Pub. L. 114–94, §1308(4)(A), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''To ensure compliance by a State with any agreement of the State under subsection (c) (including compliance by the State with all Federal laws for which responsibility is assumed under subsection (a)(2)), for each State participating in the program under this section, the Secretary shall conduct—

''(A) semiannual audits during each of the first 2 years of State participation; and

''(B) annual audits during each of the third and fourth years of State participation.''

Subsec. (g)(3). Pub. L. 114–94, §1308(4)(B), added par. (3).

Subsec. (j)(1). Pub. L. 114–94, §1308(5), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''The Secretary may terminate the participation of any State in the program if—

''(A) the Secretary determines that the State is not adequately carrying out the responsibilities assigned to the State;

''(B) the Secretary provides to the State—

''(i) notification of the determination of noncompliance; and

''(ii) a period of at least 30 days during which to take such corrective action as the Secretary determines is necessary to comply with the applicable agreement; and

''(C) the State, after the notification and period provided under subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.''

Subsecs. (k), (*l*). Pub. L. 114–94, §1308(6), added subsecs. (k) and (*l*).

2012—Pub. L. 112–141, §1313(a)(1), as amended by Pub. L. 114–94, §1446(d)(3), struck out ''pilot'' before ''program'' in section catchline.

Subsec. (a)(1). Pub. L. 112–141, §1313(a)(2), struck out ''pilot'' before ''program (referred to''.

Subsec. (a)(2)(B)(ii) to (iv). Pub. L. 112–141, §1313(b)(1), added cls. (ii) to (iv) and struck out former cl. (ii) which read as follows: ''the Secretary may not assign—

''(I) responsibility for any conformity determination required under section 176 of the Clean Air Act (42 U.S.C. 7506); or

''(II) any responsibility imposed on the Secretary by section 134 or 135.''

Subsec. (a)(2)(F), (G). Pub. L. 112–141, §1313(b)(2), added subpars. (F) and (G).

Subsec. (b)(1). Pub. L. 112–141, §1313(c)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''The Secretary may permit not more than 5 States (including the States of Alaska, California, Ohio, Oklahoma, and Texas) to participate in the program.''

Subsec. (b)(2). Pub. L. 112–141, §1313(c)(2), substituted ''date on which amendments to this section by the MAP-21 take effect, the Secretary shall amend, as appropriate,'' for ''date of enactment of this section, the Secretary shall promulgate'' in introductory provisions.

Subsec. (c)(4) to (6). Pub. L. 112–141, §1313(d), added pars. (4) to (6).

Subsec. (e). Pub. L. 112–141, §1313(e), substituted ''subsection (j)'' for ''subsection (i)''.

Subsec. (g)(1)(B). Pub. L. 112–141, §1313(f), substituted ''of the third and fourth years'' for ''subsequent year''.

Subsec. (h). Pub. L. 112–141, §1313(g)(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 112–141, §1313(g)(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 112–140 substituted ''September 30, 2012'' for ''the date that is 7 years after the date of enactment of this section''.

Subsec. (j). Pub. L. 112–141, §1313(h), amended subsec. (j) generally. Prior to amendment, subsec. (j) related to termination of the original pilot program on Sept. 30, 2012, and termination of State participation by the Secretary.

Pub. L. 112–141, §1313(g)(1), redesignated subsec. (i) as (j).

2010—Subsec. (i)(1). Pub. L. 111–322 substituted ''7 years after'' for ''6 years after''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

Pub. L. 114–94, div. A, title I, §1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(3) is effective as of July 6, 2012, and as if included in Pub. L. 112–141 as enacted.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

Pub. L. 112–140, title I, §101(e)(2), June 29, 2012, 126 Stat. 392, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 101 of the Surface Transportation Extension Act of 2012 [Pub. L. 112–102] and shall not be subject to the special rule in section 1(c) of this Act [set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title].''

§ 328. Eligibility for environmental restoration and pollution abatement

(a) IN GENERAL.—Subject to subsection (b), environmental restoration and pollution abatement to minimize or mitigate the impacts of any transportation project funded under this title (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) may be carried out to address water pollution or environmental degradation caused wholly or partially by a transportation facility.

(b) MAXIMUM EXPENDITURE.—In a case in which a transportation facility is undergoing reconstruction, rehabilitation, resurfacing, or restoration, the expenditure of funds under this section for environmental restoration or pollution abatement described in subsection (a) shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration of the facility.

(Added Pub. L. 109–59, title VI, §6006(b), Aug. 10, 2005, 119 Stat. 1872.)

§ 329. Eligibility for control of noxious weeds and aquatic noxious weeds and establishment of native species

(a) IN GENERAL.—In accordance with all applicable Federal law (including regulations), funds

42 USC Ch. 61: UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

From Title 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 61—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
4601. Definitions.
4602. Effect upon property acquisition.
4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits.
4604. Certification.
4605. Displaced persons not eligible for assistance.

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

4621. Declaration of findings and policy.
4622. Moving and related expenses.
4623. Replacement housing for homeowner; mortgage insurance.
4624. Replacement housing for tenants and certain others.
4625. Relocation planning, assistance coordination, and advisory services.
4626. Housing replacement by Federal agency as last resort.
4627. State required to furnish real property incident to Federal assistance (local cooperation).
4628. State acting as agent for Federal program.
4629. Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority.
4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing.
4631. Federal share of costs.
4632. Administration; relocation assistance in programs receiving Federal financial assistance.
4633. Duties of lead agency.
4634. Agency coordination.
4635. Planning and other preliminary expenses for additional housing.
4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law.
4637. Repealed.
4638. Transfers of surplus property.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

4651. Uniform policy on real property acquisition practices.
4652. Buildings, structures, and improvements.
4653. Expenses incidental to transfer of title to United States.
4654. Litigation expenses.
4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases.

SUBCHAPTER I—GENERAL PROVISIONS

§4601. Definitions

As used in this chapter—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve banks and

branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means any department, agency, or instrumentality of a State or of a political subdivision of a State, any department, agency, or instrumentality of 2 or more States or of 2 or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual, and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6)(A) The term "displaced person" means, except as provided in subparagraph (B)—

(i) any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) on which such person is a residential tenant or conducts a small business, a farm operation, or a business defined in paragraph (7)(D), as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a Federal agency or with Federal financial assistance in any case in which the head of the displacing agency determines that such displacement is permanent; and

(ii) solely for the purposes of sections 4622(a) and (b) and 4625 of this title, any person who moves from real property, or moves his personal property from real property—

(I) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; or

(II) as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which such person conducts a business or a farm operation, under a program or project undertaken by a Federal agency or with Federal financial assistance where the head of the displacing agency determines that such displacement is permanent.

(B) The term "displaced person" does not include—

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

(ii) in any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 4622 of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(10) The term "comparable replacement dwelling" means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally equivalent; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(11) The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(12) The term "lead agency" means the Department of Transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(Pub. L. 91–646, title I, §101, Jan. 2, 1971, 84 Stat. 1894; Pub. L. 100–17, title IV, §402, Apr. 2, 1987, 101 Stat. 246.)

Editorial Notes

References in Text

This chapter, referred to in introductory provision and par. (6)(B)(i), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Amendments

1987—Par. (1). Pub. L. 100–17, §402(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'Federal agency' means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof."

Par. (3). Pub. L. 100–17, §402(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'State agency' means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States."

Par. (4). Pub. L. 100–17, §402(c), inserted ", any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual," after "insurance".

Par. (6). Pub. L. 100–17, §402(d), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

Par. (7)(D). Pub. L. 100–17, §402(f), substituted "section 4622" for "section 4622(a)".

Pars. (10) to (13). Pub. L. 100–17, §402(e), added pars. (10) to (13).

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Pub. L. 100–17, title IV, §418, Apr. 2, 1987, 101 Stat. 256, provided that: "The amendment made by section 412 of this title [amending section 4633 of this title] (to the extent such amendment prescribes authority to develop, publish, and issue regulations) shall take effect on the date of the enactment of this title [Apr. 2, 1987]. This title and the amendments made by this title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] (other than the amendment made by section 412 to such extent) shall take effect on the effective date provided in such regulations but not later than 2 years after such date of enactment."

Effective Date

Pub. L. 91–646, title II, §221, Jan. 2, 1971, 84 Stat. 1904, provided that:

"(a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [see Short Title note below] shall take effect on the date of its enactment [Jan. 2, 1971].

"(b) Until July 1, 1972, sections 210 and 305 [sections 4630 and 4655 of this title] shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections [sections 4630 and 4655 of this title] shall be completely applicable to all States.

"(c) The repeals made by paragraphs (4) [repealing section 1606(b) of former Title 49, Transportation], (5) [repealing section 1465 of this title], (6) [repealing section 1415(7)(b)(iii) and (8) second sentence of this

title], (8) [repealing section 3074 of this title], (9) [repealing section 3307(b), (c) of this title], (10) [repealing chapter 5 (sections 501–511) of Title 23, Highways], (11) [repealing provisions set out as notes under sections 501 and 510 of Title 23], and (12) of section 220(a) of this title and section 306 of title III [repealing sections 3071 to 3073 of this title, section 141 of Title 23, and section 596 of Title 33, Navigation and Navigable Waters] shall not apply to any State so long as sections 210 and 305 [sections 4630 and 4655 of this title] are not applicable in such State."

Short Title of 1987 Amendment

Pub. L. 100–17, title IV, §401, Apr. 2, 1987, 101 Stat. 246, provided that: "This title [enacting section 4604 of this title, amending this section and sections 4621 to 4626, 4630, 4631, 4633, 4636, 4638, 4651, and 4655 of this title, repealing sections 4634 and 4637 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Uniform Relocation Act Amendments of 1987'."

Short Title

Pub. L. 91–646, §1, Jan. 2, 1971, 84 Stat. 1894, provided: "That this Act [enacting this chapter, amending sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealing sections 1465 and 3071 to 3074 of this title, section 2680 of Title 10, Armed Forces, sections 141 and 501 to 512 of Title 23, Highways, section 596 of Title 33, Navigation and Navigable Waters, sections 1231 to 1234 of Title 43, Public Lands, and enacting provisions set out as notes under this section and sections 4621 and 4651 of this title, and repealing provisions set out as notes under sections 501 and 510 of Title 23] may be cited as the 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970'."

Willing Sellers Considered Displaced Persons

Pub. L. 111–8, div. E, title I, Mar. 11, 2009, 123 Stat. 710, provided that: "For fiscal year 2009 and hereafter, a willing seller from whom the Service acquires title to real property may be considered a 'displaced person' for purposes of the Uniform Relocation Assistance and Real Property Acquisition Policy Act [probably means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq.] and its implementing regulations, whether or not the Service has the authority to acquire such property by eminent domain."

Treatment of Real Property Buyout Programs

Pub. L. 103–181, §4, Dec. 3, 1993, 107 Stat. 2055, provided that:

"(a) Inapplicability of URA.—The purchase of any real property under a qualified buyout program shall not constitute the making of Federal financial assistance available to pay all or part of the cost of a program or project resulting in the acquisition of real property or in any owner of real property being a displaced person (within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.]).

"(b) Definition of 'Qualified Buyout Program'.—For purposes of this section, the term 'qualified buyout program' means any program that—

"(1) provides for the purchase of only property damaged by the major, widespread flooding in the Midwest during 1993;

"(2) provides for such purchase solely as a result of such flooding;

"(3) provides for such acquisition without the use of the power of eminent domain and notification to the seller that acquisition is without the use of such power;

"(4) is carried out by or through a State or unit of general local government; and

"(5) is being assisted with amounts made available for—

"(A) disaster relief by the Federal Emergency Management Agency; or

"(B) other Federal financial assistance programs."

[For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.]

[For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Executive Documents

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§4602. Effect upon property acquisition

(a) The provisions of section 4651 of this title create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to January 2, 1971.

(Pub. L. 91–646, title I, §102, Jan. 2, 1971, 84 Stat. 1895.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§4603. Additional appropriations for moving costs, relocation benefits and other expenses incurred in acquisition of lands for National Park System; waiver of benefits

(a) In all instances where authorizations of appropriations for the acquisition of lands for the National Park System enacted prior to January 9, 1971, do not include provisions therefor, there are authorized to be appropriated such additional sums as may be necessary to provide for moving costs, relocation benefits, and other expenses incurred pursuant to the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91–646; 84 Stat. 1894). There are also authorized to be appropriated not to exceed $8,400,000 in addition to those authorized in Public Law 92–272 (86 Stat. 120) to provide for such moving costs, relocation benefits, and other related expenses in connection with the acquisition of lands authorized by Public Law 92–272.

(b) Whenever an owner of property elects to retain a right of use and occupancy pursuant to any statute authorizing the acquisition of property for purposes of a unit of the National Park System, such owner shall be deemed to have waived any benefits under sections 4623, 4624, 4625, and 4626 of this title, and for the purposes of those sections such owner shall not be considered a displaced person as defined in section 4601(6) of this title.

(Pub. L. 93–477, title IV, §405, Oct. 26, 1974, 88 Stat. 1448.)

Editorial Notes

References in Text

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (a), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Public Law 92–272, referred to in subsec. (a), is Pub. L. 92–272, Apr. 11, 1972, 86 Stat. 120, which to the extent classified to the Code, amended sections 284b, 428m, 459f–10, 460m–1, 460m–7 and 460t–4 of Title 16, Conservation, and amended a provision set out as a note under section 450ll of Title 16. For complete classification of this Act to the Code, see Tables.

Codification

Section was not enacted as part of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which comprises this chapter.

§4604. Certification

(a) Acceptance of State agency certification

Notwithstanding sections 4630 and 4655 of this title, the head of a Federal agency may discharge any of his responsibilities under this chapter by accepting a certification by a State agency that it will carry out such responsibility, if the head of the lead agency determines that such responsibility will be carried out in accordance with State laws which will accomplish the purpose and effect of this chapter.

(b) Promulgation of regulations; notice and comment; consultation with local governments

(1) The head of the lead agency shall issue regulations to carry out this section.

(2) Repealed. Pub. L. 104–66, title I, §1121(f), Dec. 21, 1995, 109 Stat. 724.

(3) Before making a determination regarding any State law under subsection (a) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within the State on the effects of such State law on the ability of local governments to carry out their responsibilities under this chapter.

(c) Effect of noncompliance with certification or with applicable law

(1) The head of a Federal agency may withhold his approval of any Federal financial assistance to or contract or cooperative agreement with any displacing agency found by the Federal agency to have failed to comply with the laws described in subsection (a) of this section.

(2) After consultation with the head of the lead agency, the head of a Federal agency may rescind his acceptance of any certification under this section, in whole or in part, if the State agency fails to comply with such certification or with State law.

(Pub. L. 91–646, title I, §103, as added Pub. L. 100–17, title IV, §403, Apr. 2, 1987, 101 Stat. 248; amended Pub. L. 104–66, title I, §1121(f), Dec. 21, 1995, 109 Stat. 724.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (a) and (b)(3), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Amendments

1995—Subsec. (b)(2). Pub. L. 104–66 struck out par. (2) which read as follows: "The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of this section. A State agency shall make available any information required for such purpose."

Statutory Notes and Related Subsidiaries

Effective Date

Section effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§4605. Displaced persons not eligible for assistance

(a) In general

Except as provided in subsection (c), a displaced person shall not be eligible to receive relocation payments or any other assistance under this chapter if the displaced person is an alien not lawfully present in the United States.

(b) Determinations of eligibility

(1) Promulgation of regulations

Not later than 1 year after November 21, 1997, after providing notice and an opportunity for public comment, the head of the lead agency shall promulgate regulations to carry out subsection (a).

(2) Contents of regulations

Regulations promulgated under paragraph (1) shall—

(A) prescribe the processes, procedures, and information that a displacing agency must use in determining whether a displaced person is an alien not lawfully present in the United States;

(B) prohibit a displacing agency from discriminating against any displaced person;

(C) ensure that each eligibility determination is fair and based on reliable information; and

(D) prescribe standards for a displacing agency to apply in making determinations relating to exceptional and extremely unusual hardship under subsection (c).

(c) Exceptional and extremely unusual hardship

If a displacing agency determines by clear and convincing evidence that a determination of the ineligibility of a displaced person under subsection (a) would result in exceptional and extremely unusual hardship to an individual who is the displaced person's spouse, parent, or child and who is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, the displacing agency shall provide relocation payments and other assistance to the displaced person under this chapter if the displaced person would be eligible for the assistance but for subsection (a).

(d) Limitation on statutory construction

Nothing in this section affects any right available to a displaced person under any other provision of Federal or State law.

(Pub. L. 91–646, title I, §104, as added Pub. L. 105–117, §1, Nov. 21, 1997, 111 Stat. 2384.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

SUBCHAPTER II—UNIFORM RELOCATION ASSISTANCE

§4621. Declaration of findings and policy

(a) Findings

The Congress finds and declares that—

(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

(2) relocation assistance policies must provide for fair, uniform, and equitable treatment of all affected persons;

(3) the displacement of businesses often results in their closure;

(4) minimizing the adverse impact of displacement is essential to maintaining the economic and social well-being of communities; and

(5) implementation of this chapter has resulted in burdensome, inefficient, and inconsistent compliance requirements and procedures which will be improved by establishing a lead agency and allowing for State certification and implementation.

(b) Policy

This subchapter establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance. The primary purpose of this subchapter is to ensure that such persons shall not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons.

(c) Congressional intent

It is the intent of Congress that—

(1) Federal agencies shall carry out this subchapter in a manner which minimizes waste, fraud, and mismanagement and reduces unnecessary administrative costs borne by States and State agencies in providing relocation assistance;

(2) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this chapter;

(3) the improvement of housing conditions of economically disadvantaged persons under this subchapter shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals; and

(4) the policies and procedures of this chapter will be administered in a manner which is consistent with fair housing requirements and which assures all persons their rights under title VIII of the Act of April 11, 1968 (Public

Law 90–284), commonly known as the Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], and title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 91–646, title II, §201, Jan. 2, 1971, 84 Stat. 1895; Pub. L. 100–17, title IV, §404, Apr. 2, 1987, 101 Stat. 248.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (a)(5) and (c)(2), (4), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c)(1), (3), was in the original "this title", meaning title II of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1895, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

Title VIII of the Act of April 11, 1968 (Public Law 90–284), commonly known as the Civil Rights Act of 1968, referred to in subsec. (c)(4), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, known as the Fair Housing Act, which is classified principally to subchapter I (§3601 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (c)(4), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Amendments

1987—Pub. L. 100–17 substituted "Declaration of findings and policy" for "Declaration of policy" in section catchline and amended text generally. Prior to amendment, text read as follows: "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

Savings Provision

Pub. L. 91–646, title II, §220(b), Jan. 2, 1971, 84 Stat. 1903, provided that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section [repealing sections 1415(7)(b)(iii), (8) second sentence, 1465, 2473(b)(14), 3074, and 3307(b), (c) of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and section 1606(b) of former Title 49, Transportation, and provisions set out as notes under sections 501 and 511 of Title 23]."

§4622. Moving and related expenses

(a) General provision

Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(3) actual reasonable expenses in searching for a replacement business or farm; and

(4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $25,000, as adjusted by regulation, in accordance with section 4633(d) of

this title.

(b) Displacement from dwelling; election of payments: expense and dislocation allowance

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.

(c) Displacement from business or farm operation; election of payments; minimum and maximum amounts; eligibility

Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $40,000, as adjusted by regulation, in accordance with section 4633(d) of this title. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) Certain utility relocation expenses

(1) Except as otherwise provided by Federal law—

(A) if a program or project (i) which is undertaken by a displacing agency, and (ii) the purpose of which is not to relocate or reconstruct any utility facility, results in the relocation of a utility facility;

(B) if the owner of the utility facility which is being relocated under such program or project has entered into, with the State or local government on whose property, easement, or right-of-way such facility is located, a franchise or similar agreement with respect to the use of such property, easement, or right-of-way; and

(C) if the relocation of such facility results in such owner incurring an extraordinary cost in connection with such relocation;

the displacing agency may, in accordance with such regulations as the head of the lead agency may issue, provide to such owner a relocation payment which may not exceed the amount of such extraordinary cost (less any increase in the value of the new utility facility above the value of the old utility facility and less any salvage value derived from the old utility facility).

(2) For purposes of this subsection, the term—

(A) "extraordinary cost in connection with a relocation" means any cost incurred by the owner of a utility facility in connection with relocation of such facility which is determined by the head of the displacing agency, under such regulations as the head of the lead agency shall issue—

(i) to be a non-routine relocation expense;

(ii) to be a cost such owner ordinarily does not include in its annual budget as an expense of operation; and

(iii) to meet such other requirements as the lead agency may prescribe in such regulations; and

(B) "utility facility" means—

(i) any electric, gas, water, steam power, or materials transmission or distribution system;

(ii) any transportation system;

(iii) any communications system (including cable television); and

(iv) any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system;

located on property which is owned by a State or local government or over which a State or local government has an easement or right-of-way. A utility facility may be publicly, privately, or cooperatively owned.

(Pub. L. 91–646, title II, §202, Jan. 2, 1971, 84 Stat. 1395; Pub. L. 100–17, title IV, §405, Apr. 2, 1987, 101 Stat. 249; Pub. L. 112–141, div. A, title I, §1521(a), July 6, 2012, 126 Stat. 577.)

Editorial Notes

Amendments

2012—Subsec. (a)(4). Pub. L. 112–141, §1521(a)(1), substituted "$25,000, as adjusted by regulation, in accordance with section 4633(d) of this title" for "$10,000".

Subsec. (c). Pub. L. 112–141, §1521(a)(2), substituted "$40,000, as adjusted by regulation, in accordance with section 4633(d) of this title" for "$20,000" in second sentence.

1987—Subsec. (a). Pub. L. 100–17, §405(a)(1), inserted introductory provisions and struck out former introductory provisions which read as follows: "Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or

after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—".

Subsec. (a)(4). Pub. L. 100–17, §405(a)(2)–(4), added par. (4).

Subsec. (b). Pub. L. 100–17, §405(b), substituted "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency" for "a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200".

Subsec. (c). Pub. L. 100–17, §405(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term 'average annual net earnings' means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period."

Subsec. (d). Pub. L. 100–17, §405(d), added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective 2 years after the date of enactment of Pub. L. 112–141, see section 1521(g) of Pub. L. 112–141, set out as a note under section 308 of Title 23, Highways.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4623. Replacement housing for homeowner; mortgage insurance

(a)(1) In addition to payments otherwise authorized by this subchapter, the head of the displacing agency shall make an additional payment not in excess of $31,000, as adjusted by regulation, in accordance with 4633(d) [1] of this title, to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 90 days before the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 4625(c)(3) of this title is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under

this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

(Pub. L. 91–646, title II, §203, Jan. 2, 1971, 84 Stat. 1396; Pub. L. 100–17, title IV, §406, Apr. 2, 1987, 101 Stat. 251; Pub. L. 112–141, div. A, title I, §1521(b), July 6, 2012, 126 Stat. 578.)

EDITORIAL NOTES

AMENDMENTS

2012—Subsec. (a)(1). Pub. L. 112–141, in first sentence, substituted "$31,000, as adjusted by regulation, in accordance with 4633(d) of this title," for "$22,500" and "90 days before" for "one hundred and eighty days prior to".

1987—Subsec. (a)(1). Pub. L. 100–17, §406(1)–(3), substituted "displacing agency" for "Federal agency" and "$22,500" for "$15,000" in introductory provisions, and in subpar. (A) "acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling" for "acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment".

Subsec. (a)(1)(B). Pub. L. 100–17, §406(4), added subpar. (B) and struck out former subpar. (B) which read as follows: "The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located."

Subsec. (a)(2). Pub. L. 100–17, §406(5), added par. (2) and struck out former par. (2) which read as follows: "The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective 2 years after the date of enactment of Pub. L. 112–141, see section 1521(g) of Pub. L. 112–141, set out as a note under section 308 of Title 23, Highways.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

[1] *So in original. Probably should be preceded by "section".*

§4624. Replacement housing for tenants and certain others

(a) In addition to amounts otherwise authorized by this subchapter, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which

displacement is not a direct result of acquisition, such other event as the head of the lead agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed $7,200, as adjusted by regulation, in accordance with section 4633(d) of this title. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the head of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (a).

(Pub. L. 91–646, title II, §204, Jan. 2, 1971, 84 Stat. 1397; Pub. L. 100–17, title IV, §407, Apr. 2, 1987, 101 Stat. 251; Pub. L. 112–141, div. A, title I, §1521(c), July 6, 2012, 126 Stat. 578.)

Editorial Notes

Amendments

2012—Subsec. (a). Pub. L. 112–141, §1521(c)(1), in second sentence, substituted "$7,200, as adjusted by regulation, in accordance with section 4633(d) of this title" for "$5,250".

Subsec. (b). Pub. L. 112–141, §1521(c)(2), substituted period at end of second sentence for ", except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under section 4623(a) of this title had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations."

1987—Pub. L. 100–17 amended section generally, revising and restating as subsecs. (a) and (b) provisions formerly contained in introductory provisions and in pars. (1) and (2).

Statutory Notes and Related Subsidiaries

Effective Date of 2012 Amendment

Amendment by Pub. L. 112–141 effective 2 years after the date of enactment of Pub. L. 112–141, see section 1521(g) of Pub. L. 112–141, set out as a note under section 308 of Title 23, Highways.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4625. Relocation planning, assistance coordination, and advisory services

(a) Planning of programs or projects undertaken by Federal agencies or with Federal financial assistance

Programs or projects undertaken by a Federal agency or with Federal financial assistance shall be planned in a manner that (1) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) Availability of advisory services

The head of any displacing agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

(c) Measures, facilities, or services; description

Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of—

(A) a major disaster as defined in section 5122(2) of this title;

(B) a national emergency declared by the President; or

(C) any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person;

(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply (A) information concerning other Federal and State programs which may be of assistance to displaced persons, and (B) technical assistance to such persons in applying for assistance under such programs; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) Coordination of relocation activities with other Federal, State, or local governmental actions

The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(e) Selection of implementation procedures

Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may agree that the procedures of one of such agencies shall be utilized to implement this subchapter with respect to such activities. If such agreement cannot be reached, then the head of the lead agency shall designate one of such agencies as the agency whose procedures shall be utilized to implement this subchapter with respect to such activities. Such related activities shall constitute a single program or project for purposes of this chapter.

(f) Tenants occupying property acquired for programs or projects; eligibility for advisory services

Notwithstanding section 4601(1) of this title, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the displacing agency.

(Pub. L. 91–646, title II, §205, Jan. 2, 1971, 84 Stat. 1897; Pub. L. 100–17, title IV, §408, Apr. 2, 1987, 101 Stat. 252.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (e), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Amendments

1987—Pub. L. 100–17, substituted "Relocation planning, assistance coordination, and advisory services" for "Relocation assistance advisory services" in catchline and amended text generally, revising and restating as subsecs. (a) to (f) provisions formerly contained in subsecs. (a) to (d).

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4626. Housing replacement by Federal agency as last resort

(a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the displacing agency may use this section to exceed the maximum amounts which may be paid under sections 4623 and 4624 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the head of the lead agency shall issue.

(b) No person shall be required to move from his dwelling on account of any program or project undertaken by a Federal agency or with Federal financial assistance, unless the head of the displacing agency is satisfied that comparable replacement housing is available to such person.

(Pub. L. 91–646, title II, §206, Jan. 2, 1971, 84 Stat. 1898; Pub. L. 100–17, title IV, §409, Apr. 2, 1987, 101 Stat. 253.)

Editorial Notes

Amendments

1987—Subsec. (a). Pub. L. 100–17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project."

Subsec. (b). Pub. L. 100–17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person."

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4627. State required to furnish real property incident to Federal assistance (local cooperation)

Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 4630 and 4655 of this title. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

(Pub. L. 91–646, title II, §207, Jan. 2, 1971, 84 Stat. 1898.)

§4628. State acting as agent for Federal program

Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this chapter, be deemed an acquisition by the Federal agency having authority over such program or project.

(Pub. L. 91–646, title II, §208, Jan. 2, 1971, 84 Stat. 1899.)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of

1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

§4629. Public works programs and projects of District of Columbia government and Washington Metropolitan Area Transit Authority

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 4630 and 4631 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this chapter. Whenever real property is acquired for such a program or project on or after such effective date, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by subchapter III of this chapter.

(Pub. L. 91–646, title II, §209, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 93–198, title IV, §421, Dec. 24, 1973, 87 Stat. 789.)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Subchapter III of this chapter referred to in text, was in the original "title III of this Act", meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which enacted subchapter III of this chapter, repealed sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as a note under section 4651 of this title. For complete classification of title III to the Code, see Tables.

Statutory Notes and Related Subsidiaries

Transfer of Functions

"Mayor" substituted for "Commissioner" pursuant to section 421 of Pub. L. 93–198, title IV, Dec. 24, 1973, 87 Stat. 789. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, and replaced by Office of Mayor of District of Columbia by section 421 of Pub. L. 93–198.

§4630. Requirements for relocation payments and assistance of federally assisted program; assurances of availability of housing

Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a displacing agency (other than a Federal agency), under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, unless he receives satisfactory assurances from such displacing agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 4622, 4623, and 4624 of this title;

(2) relocation assistance programs offering the services described in section 4625 of this title shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with section 4625(c)(3) of this title.

(Pub. L. 91–646, title II, §210, Jan. 2, 1971, 84 Stat. 1899; Pub. L. 100–17, title IV, §410, Apr. 2, 1987, 101 Stat. 254.)

Editorial Notes

Amendments

1987—Pub. L. 100–17 in introductory provisions substituted "displacing agency (other than a Federal agency)" for "State agency" and "assurances from such displacing agency" for "assurances from such

State agency", and in par. (3) substituted "comparable replacement dwellings" for "decent, safe, and sanitary replacement dwellings".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

EFFECTIVE DATE

Section as completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with this section, see section 221(b) of Pub. L. 91–646, set out as a note under section 4601 of this title.

§4631. Federal share of costs

(a) Cost to displacing agency; eligibility

The cost to a displacing agency of providing payments and assistance under this subchapter and subchapter III of this chapter shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(b) Comparable payments under other laws

No payment or assistance under this subchapter or subchapter III of this chapter shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by Federal, State, or local law which is determined by the head of the Federal agency to have substantially the same purpose and effect as such payment under this section.

(c) Agreements prior to January 2, 1971; advancements

Any grant to, or contract or agreement with, a State agency executed before January 2, 1971, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after January 2, 1971, shall be amended to include the cost of providing payments and services under sections 4630 and 4655 of this title. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 4626, 4630, 4635, and 4655 of this title.

(Pub. L. 91–646, title II, §211, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100–17, title IV, §411, Apr. 2, 1987, 101 Stat. 254.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subchapter III of this chapter, referred to in subsecs. (a) and (b), was in the original "title III of this Act", meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which is classified principally to subchapter III of this chapter. For complete classification of title III to the Code, see Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–17, §411(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The cost to a State agency of providing payments and assistance pursuant to sections 4626, 4630, 4635, and 4655 of this title, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 4626, 4630, 4635, and 4655 of this title, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost."

Subsec. (b). Pub. L. 100–17, §411(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No payment or assistance under section 4630 or 4655 of this title shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4632. Administration; relocation assistance in programs receiving Federal financial assistance

In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 4626, 4630, and 4635 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this subchapter through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 4626 of this title, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

(Pub. L. 91–646, title II, §212, Jan. 2, 1971, 84 Stat. 1900.)

§4633. Duties of lead agency

(a) General provisions

The head of the lead agency shall—

(1) develop, publish, and issue, with the active participation of the Secretary of Housing and Urban Development and the heads of other Federal agencies responsible for funding relocation and acquisition actions, and in coordination with State and local governments, such regulations as may be necessary to carry out this chapter;

(2) provide, in consultation with the Attorney General (acting through the Commissioner of the Immigration and Naturalization Service), through training and technical assistance activities for displacing agencies, information developed with the Attorney General (acting through the Commissioner) on proper implementation of section 4605 of this title;

(3) ensure that displacing agencies implement section 4605 of this title fairly and without discrimination in accordance with section 4605(b)(2)(B) of this title;

(4) ensure that relocation assistance activities under this chapter are coordinated with low-income housing assistance programs or projects by a Federal agency or a State or State agency with Federal financial assistance;

(5) monitor, in coordination with other Federal agencies, the implementation and enforcement of this chapter and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this chapter; and

(6) perform such other duties as may be necessary to carry out this chapter.

(b) Regulations and procedures

The head of the lead agency is authorized to issue such regulations and establish such procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance;

(3) that any aggrieved person may have his application reviewed by the head of the Federal agency having authority over the applicable program or project or, in the case of a program or project receiving Federal financial assistance, by the State agency having authority over such program or project or the Federal agency having authority over such program or project if there is no such State agency; and

(4) that each Federal agency that has programs or projects requiring the acquisition of real property or causing a displacement from real property subject to the provisions of this chapter shall provide to the lead agency an annual

summary report the [1] describes the activities conducted by the Federal agency.

(c) Applicability to Tennessee Valley Authority and Rural Electrification Administration

The regulations and procedures issued pursuant to this section shall apply to the Tennessee Valley Authority and the Rural Electrification Administration only with respect to relocation assistance under this subchapter and subchapter I.

(d) Adjustment of payments

The head of the lead agency may adjust, by regulation, the amounts of relocation payments provided under sections 4622(a)(4), 4622(c), 4623(a), and 4624(a) of this title if the head of the lead agency determines that cost of living, inflation, or other factors indicate that the payments should be adjusted to meet the policy objectives of this chapter.

(Pub. L. 91–646, title II, §213, Jan. 2, 1971, 84 Stat. 1900; Pub. L. 100–17, title IV, §412, Apr. 2, 1987, 101 Stat. 254; Pub. L. 102–240, title I, §1055, Dec. 18, 1991, 105 Stat. 2002; Pub. L. 105–117, §2, Nov. 21, 1997, 111 Stat. 2385; Pub. L. 112–141, div. A, title I, §1521(d), July 6, 2012, 126 Stat. 578.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (a)(1), (4) to (6), (b)(1), (4), and (d), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Amendments

2012—Subsec. (b)(4). Pub. L. 112–141, §1521(d)(1), added par. (4).

Subsec. (d). Pub. L. 112–141, §1521(d)(2), added subsec. (d).

1997—Subsec. (a)(2) to (6). Pub. L. 105–117 added pars. (2) and (3) and redesignated former pars. (2) to (4) as (4) to (6), respectively.

1991—Subsec. (c). Pub. L. 102–240 inserted "and the Rural Electrification Administration" after "Tennessee Valley Authority".

1987—Pub. L. 100–17 in amending section generally, substituted "Duties of lead agency" for "Regulations and procedures" in section catchline.

Subsec. (a). Pub. L. 100–17 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs."

Subsec. (b). Pub. L. 100–17 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

"(1) that the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

"(2) that a displaced person who makes proper application for a payment authorized for such person by this subchapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

"(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency."

Subsec. (c). Pub. L. 100–17 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter."

Statutory Notes and Related Subsidiaries

Effective Date of 2012 Amendment

Amendment by Pub. L. 112–141 effective on the date of enactment of Pub. L. 112–141, see section 1521(g) of Pub. L. 112–141, set out as a note under section 308 of Title 23, Highways.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of Title 23, Highways.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective Apr. 2, 1987, to the extent such amendment prescribes authority to develop, publish, and issue regulations, and otherwise to take effect on effective date provided in such regulations but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

Executive Documents

Improvement of Administration and Implementation of This Chapter

Memorandum of the President dated February 27, 1985, 50 F.R. 8953, provided:

The purpose of this Memorandum is to improve administration and implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 et seq.].

Specifically, I hereby direct the following actions:

1. The Presidential Memorandum of September 6, 1973 on this subject is superseded.
2. As with other Administration management improvement initiatives, a lead agency, the Department of Transportation (DOT), is designated to coordinate and monitor implementation of the Act, and consult periodically with State and local governments and other organizations and interest groups affected by administration of the Act.
3. DOT, jointly with the Department of Housing and Urban Development, shall interact with the principal executive departments and agencies affected by the Act in developing Administration policy.
4. Within 90 days of the date of this Memorandum, all affected executive departments and agencies shall propose common regulations under the Act. Within one year of the date of this Memorandum, such departments and agencies shall issue common regulations under the Act. Such regulations shall be consistent with the model policy promulgated by DOT, in consultation and coordination with other affected agencies, and published in final form in the Federal Register simultaneously with this Memorandum.
5. DOT shall report annually to the President's Council on Management Improvement, through the Office of Management and Budget, on implementation of the Act.

[1] *So in original. Probably should be "that".*

§4634. Agency coordination

(a) Agency capacity

Each Federal agency responsible for funding or carrying out relocation and acquisition activities shall have adequately trained personnel and such other resources as are necessary to manage and oversee the relocation and acquisition program of the Federal agency in accordance with this chapter.

(b) Interagency agreements

Not later than 1 year after July 6, 2012, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall enter into a memorandum of understanding with the lead agency that—

(1) provides for periodic training of the personnel of the Federal agency, which in the case of a Federal agency that provides Federal financial assistance, may include personnel of any displacing agency that receives Federal financial assistance;

(2) addresses ways in which the lead agency may provide assistance and coordination to the Federal agency relating to compliance with the [1] chapter on a program or project basis; and

(3) addresses the funding of the training, assistance, and coordination activities provided by the lead agency, in accordance with subsection (c).

(c) Interagency payments

(1) In general

For the fiscal year that begins 1 year after July 6, 2012, and each fiscal year thereafter, each Federal agency responsible for funding relocation and acquisition activities (other than the agency serving as the lead agency) shall transfer to the lead agency for the fiscal year, such funds as are necessary, but not less than $35,000, to support the training, assistance, and coordination activities of the lead agency described in subsection (b).

(2) Included costs

The cost to a Federal agency of providing the funds described in paragraph (1) shall be included as part of the cost of 1 or more programs or projects undertaken by the Federal agency or with Federal financial assistance that result in the displacement of persons or the acquisition of real property.

(Pub. L. 91–646, title II, §214, as added Pub. L. 112–141, div. A, title I, §1521(e), July 6, 2012, 126 Stat. 578.)

Editorial Notes

References in Text

This chapter and the chapter, referred to in subsecs. (a) and (b)(2), were in the original "this Act" and "the Act", respectively, meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

Prior Provisions

A prior section 4634, Pub. L. 91–646, title II, §214, Jan. 2, 1971, 84 Stat. 1901, required head of each Federal agency to submit an annual report to the President respecting programs and policies established or authorized by this chapter, and the President to submit such reports to Congress, prior to repeal by Pub. L. 100–17, title IV, §§415, 418, Apr. 2, 1987, 100 Stat. 255, 256, effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987.

Statutory Notes and Related Subsidiaries

Effective Date

Section effective on the date of enactment of Pub. L. 112–141, see section 1521(g) of Pub. L. 112–141, set out as a note under section 308 of Title 23, Highways.

[1] *So in original. Probably should be "this".*

§4635. Planning and other preliminary expenses for additional housing

In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to

finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

(Pub. L. 91–646, title II, §215, Jan. 2, 1971, 84 Stat. 1901.)

§4636. Payments not to be considered as income for revenue purposes or for eligibility for assistance under Social Security Act or other Federal law

No payment received under this subchapter shall be considered as income for the purposes of title 26; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act [42 U.S.C. 301 et seq.] or any other Federal law (except for any Federal law providing low-income housing assistance).

(Pub. L. 91–646, title II, §216, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–17, title IV, §413, Apr. 2, 1987, 101 Stat. 255.)

Editorial Notes

References in Text

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Amendments

1987—Pub. L. 100–17 inserted "(except for any Federal law providing low-income housing assistance)" before period at end.

1986—Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

§4637. Repealed. Pub. L. 100–17, title IV, §415, Apr. 2, 1987, 101 Stat. 255

Section, Pub. L. 91–646, title II, §217, Jan. 2, 1971, 84 Stat. 1902, related to displacement by code enforcement, rehabilitation, and demolition programs receiving Federal assistance.

Statutory Notes and Related Subsidiaries

Effective Date of Repeal

Repeal effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as an Effective Date of 1987 Amendment note under section 4601 of this title.

§4638. Transfers of surplus property

The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this subchapter, any real property surplus to the needs of the United States within the meaning of chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration,

except that such State agency shall pay to the United States all net amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

(Pub. L. 91–646, title II, §218, Jan. 2, 1971, 84 Stat. 1902; Pub. L. 100–17, title IV, §414, Apr. 2, 1987, 101 Stat. 255.)

Editorial Notes

Codification

In text, "chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41" substituted for "the Federal Property and Administrative Services Act of 1949, as amended" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

Amendments

1987—Pub. L. 100–17 inserted "net" after "all".

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

SUBCHAPTER III—UNIFORM REAL PROPERTY ACQUISITION POLICY

§4651. Uniform policy on real property acquisition practices

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 3114(a) to (d) of title 40, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by subchapter II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required

shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this subchapter may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a Federal agency, as such person shall determine.

(Pub. L. 91–646, title III, §301, Jan. 2, 1971, 84 Stat. 1904; Pub. L. 100–17, title IV, §416, Apr. 2, 1987, 101 Stat. 255.)

Editorial Notes

References in Text

Subchapter II, referred to in par. (5), was in the original "title II", meaning title II of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1895, which is classified principally to subchapter II of this chapter. For complete classification of title II to the Code, see Short Title note set out under section 4601 of this title and Tables.

This chapter, referred to in par. (9), was in the original "this Act", meaning Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables.

This subchapter, referred to in par. (10), was in the original "this title", meaning title III of Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1904, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

Codification

In par. (4), "section 3114(a) to (d) of title 40" substituted for "section 1 of the Act of February 26, 1931 (46 Stat. 1421; 40 U.S.C. 258a)" on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Amendments

1987—Par. (2). Pub. L. 100–17, §416(a), inserted provision respecting the waiver of appraisal in cases involving the acquisition of property with a low fair market value.

Par. (9). Pub. L. 100–17, §416(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property."

Par. (10). Pub. L. 100–17, §416(c), added par. (10).

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

Savings Provision

Pub. L. 91–646, title III, §306, Jan. 2, 1971, 84 Stat. 1907, provided in part that: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section [repealing sections 3071 to 3073 of this title, section 141 of Title 23, Highways, and section 596 of Title 33, Navigation and Navigable Waters]."

§4652. Buildings, structures, and improvements

(a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

(Pub. L. 91–646, title III, §302, Jan. 2, 1971, 84 Stat. 1905.)

§4653. Expenses incidental to transfer of title to United States

The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for—

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

(Pub. L. 91–646, title III, §303, Jan. 2, 1971, 84 Stat. 1906.)

§4654. Litigation expenses

(a) Judgment for owner or abandonment of proceedings

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Payment

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) Claims against United States

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(Pub. L. 91–646, title III, §304, Jan. 2, 1971, 84 Stat. 1906.)

§4655. Requirements for uniform land acquisition policies; payments of expenses incidental to transfer of real property to State; payment of litigation expenses in certain cases

(a) Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after January 2, 1971, unless he receives satisfactory assurances from such acquiring agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 4651 of this title and the provisions of section 4652 of this title, and

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 4653 and 4654 of this title.

(b) For purposes of this section, the term "acquiring agency" means—

(1) a State agency (as defined in section 4601(3) of this title) which has the authority to acquire property by eminent domain under State law, and

(2) a State agency or person which does not have such authority, to the extent provided by the head of the lead agency by regulation.

(Pub. L. 91–646, title III, §305, Jan. 2, 1971, 84 Stat. 1906; Pub. L. 100–17, title IV, §417, Apr. 2, 1987, 101 Stat. 256.)

Editorial Notes

Amendments

1987—Pub. L. 100–17 designated existing provisions as subsec. (a), substituted "an acquiring agency" for "a State agency" and "such acquiring agency" for "such State agency", and added subsec. (b).

Statutory Notes and Related Subsidiaries

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–17 effective on effective date provided in regulations promulgated under section 4633 of this title (as amended by section 412 of Pub. L. 100–17), but not later than 2 years after Apr. 2, 1987, see section 418 of Pub. L. 100–17, set out as a note under section 4601 of this title.

ated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term ''parent'' as used in this section includes any person standing in loco parentis. A ''complaint'' as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, §407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92–318 inserted ''sex'' after ''religion,''.

§ 2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, §408, July 2, 1964, 78 Stat. 249.)

§ 2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, §409, July 2, 1964, 78 Stat. 249.)

§ 2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, §410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted ''sex'' after ''religion,''.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, §601, July 2, 1964, 78 Stat. 252.)

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

SECTION 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq*., as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e et seq.], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq*. Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

SEC. 2. *Definitions*.

2–201. ''Federally conducted education and training programs and activities'' includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. ''Education and training programs and activities'' include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. ''Military education or training programs'' are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. ''Armed Forces'' means the Armed Forces of the United States.

2–206. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 3. *Exemption from coverage*.

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. ''Culturally relevant'' refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

SEC. 4. *Administrative enforcement*.

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the

Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities.*

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;

b. examples of discriminatory conduct;

c. applicable legal principles;

d. enforcement procedures with respect to complaints against employees;

e. remedies;

f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and

g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect

to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, § 606, as added Pub. L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, § 391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, § 1076(y), Jan. 8, 2002, 115 Stat. 2093.)

AMENDMENTS

2002—Par. (2)(B). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (2)(B). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10) of the Elementary and Secondary Education Act of 1965''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

ABORTION NEUTRALITY

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

§ 2000d–5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950[1] (Public Law 874, Eighty-first Congress), or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89–750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, § 112, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103–382, title III, § 392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§ 6301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§ 236

[1] See References in Text note below.

et seq.) of Title 20 prior to repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is act July 26, 1954, ch. 576, 68 Stat. 533, which was classified generally to chapter 15 (§331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93–380, title IV, Aug. 21, 1974, 88 Stat. 544. See section 1851 et seq. of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

AMENDMENTS

1994—Pub. L. 103–382, which directed amendment of this section by striking out ''by the Act of September 23, 1950 (Public Law 815, 81st Congress),'', was executed by striking out ''by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)'' before ''or by the Cooperative'' to reflect the probable intent of Congress.

1968—Pub. L. 90–247 inserted proviso.

EFFECTIVE DATE

Section 191 of Pub. L. 89–750 provided that: ''The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241*l*, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise.''

TRANSFER OF FUNCTIONS

''Secretary of Education'' and ''Secretary'' substituted in text for ''Commissioner of Education'' and ''Commissioner'', respectively, pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, §2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, §301, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

TRANSFER OF FUNCTIONS

''Secretary of Education'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Department and Secretary of Health, Education, and Welfare to Secretary of Education.

§ 2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)

REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat.

235, as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§ 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

CODIFICATION

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term ''person'' includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term ''employer'' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term ''employment agency'' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term ''labor organization'' means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term ''employee'' means an individual employed by an employer, except that the term ''employee'' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term ''commerce'' means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or

and the Department of Transportation as the result of the restatement of those laws, and the Secretary is therefore bound to follow those laws by their own terms.

In subsection (c), the words ''In exercising the functions, powers, and duties conferred on and transferred to the Secretary by this chapter'' before ''Secretary'' are omitted as surplus. The word ''consider'' is substituted for ''give full consideration to'' to eliminate surplus words. The words ''for operational continuity of the functions transferred'' after ''the needs'' are omitted as executed.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 substituted ''13101'' for ''10101a''.

1994—Subsec. (b). Pub. L. 103–272 substituted ''This subtitle and chapters 221 and 315 of this title'' for ''Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 App. U.S.C. 1651 et seq.)''.

1991—Subsec. (d). Pub. L. 102–240, § 1036(a), added subsec. (d).

Subsec. (e). Pub. L. 102–240, § 5001, added subsec. (e).

1984—Subsec. (b). Pub. L. 98–216 substituted ''49 App. U.S.C.'' for ''49 U.S.C.''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1036(a) of Pub. L. 102–240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102–240, set out as a note under section 104 of Title 23, Highways.

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(d) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (16 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(Pub. L. 97–449, § 1(b), Jan. 12, 1983, 96 Stat. 2419; Pub. L. 100–17, title I, § 133(d), Apr. 2, 1987, 101 Stat. 173; Pub. L. 109–59, title VI, § 6009(a)(2), Aug. 10, 2005, 119 Stat. 1875.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
303(a)	49:1651(b)(2).	Oct. 15, 1966, Pub. L. 89–670, § 2(b)(2), 80 Stat. 931.
	49:1653(f) (1st sentence).	Oct. 15, 1966, Pub. L. 89–670, § 4(f), 80 Stat. 934; restated Aug. 23, 1968, Pub. L. 90–495, § 18(b), 82 Stat. 824.
303(b)	49:1653(f) (2d sentence).	
303(c)	49:1653(f) (less 1st, 2d sentences).	

In subsection (a), the words ''hereby declared to be'' before ''the policy'' are omitted as surplus. The words ''of the United States Government'' are substituted for ''national'' for clarity and consistency.

In subsection (b), the words ''crossed by transportation activities or facilities'' are substituted for ''traversed'' for clarity.

In subsection (c), before clause (1), the words ''After August 23, 1968'' after ''Secretary'' are omitted as executed. The word ''transportation'' is inserted before ''program'' for clarity. In clause (2), the words ''or project'' are added for consistency.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–59, § 6009(a)(2)(A), inserted heading and substituted ''Subject to subsection (d), the Secretary'' for ''The Secretary'' in introductory provisions.

Subsec. (d). Pub. L. 109–59, § 6009(a)(2)(B), added subsec. (d).

1987—Subsec. (c). Pub. L. 100–17 inserted ''(other than any project for a park road or parkway under section 204 of title 23)'' after ''program or project''.

TREATMENT OF MILITARY FLIGHT OPERATIONS

Pub. L. 105–85, div. A, title X, § 1079, Nov. 18, 1997, 111 Stat. 1916, provided that: ''No military flight operation (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of section 303(c) of title 49, United States Code.''

§ 303a. Development of water transportation

(a) POLICY.—It is the policy of Congress—

(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

(2) to foster and preserve rail and water transportation.

(b) DEFINITION.—In this section, ''inland waterway'' includes the Great Lakes.

(c) REQUIREMENTS.—The Secretary of Transportation shall—

(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

(B) water carriers using those waterways are interchanging traffic with rail carriers;

(5) investigate other matters that may promote and encourage inland water transportation; and

(6) compile, publish, and distribute information about transportation on inland waterways that the Secretary considers useful to the commercial interests of the United States.

(Pub. L. 103–272, § 4(j)(6)(A), July 5, 1994, 108 Stat. 1366.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
303a	49 App.:142.	Feb. 28, 1920, ch. 91, § 500, 41 Stat. 499; Aug. 6, 1981, Pub. L. 97–31, § 12(9), 95 Stat. 154.

Section 4(j)(6)(A) amends 49:ch. 3 by restating 49 App.:142 as section 303a because the provision more appropriately belongs in chapter 3.

In subsection (a)(2), the words ''in full vigor both'' are omitted as surplus.

In subsection (b), the words ''be construed to'' are omitted as surplus.

In subsection (c)(1), the word ''appropriate'' is omitted as surplus. The word ''vessels'' is substituted for ''boats'' for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(2), the words ''the subject of'', ''apparatus'', ''appliances in connection therewith'', and ''or interchange'' are omitted as surplus.

In subsection (c)(3), the words ''appropriate'' and ''suitable'' are omitted as surplus.

In subsection (c)(6), the words ''province and'', ''from time to time'', and ''useful statistics, data, and'' are omitted as surplus.

§ 304. Joint activities with the Secretary of Housing and Urban Development

(a) The Secretary of Transportation and the Secretary of Housing and Urban Development shall—

(1) consult and exchange information about their respective transportation policies and activities;

(2) carry out joint planning, research, and other activities;

(3) coordinate assistance for local transportation projects; and

(4) jointly study methods by which policies and programs of the United States Government can ensure that urban transportation systems most effectively serve both transportation needs of the United States and the comprehensively planned development of urban areas.

(b) The Secretaries shall report on April 1 of each year to the President, for submission to

2008—Subsec. (a)(10). Pub. L. 110–244 substituted ''charter, sightseeing,'' for ''charter,''.

2005—Subsec. (a). Pub. L. 109–59, § 3004(a), substituted ''Except as otherwise specifically provided, in this chapter'' for ''In this chapter'' in introductory provisions.

Subsec. (a)(1)(A), (F). Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation''.

Subsec. (a)(1)(G). Pub. L. 109–59, § 3004(b)(1), inserted ''construction, renovation, and improvement of intercity bus and intercity rail stations and terminals,'' after ''public transportation facility,'' in introductory provisions.

Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation'' wherever appearing in introductory provisions.

Subsec. (a)(1)(G)(ii). Pub. L. 109–59, § 3004(b)(2), inserted ''(other than an intercity bus station or terminal)'' after ''commercial revenue-producing facility''.

Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation''.

Subsec. (a)(1)(H). Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation''.

Subsec. (a)(1)(J) to (L). Pub. L. 109–59, § 3004(b)(3)–(5), added subpars. (J) to (L).

Subsec. (a)(4). Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation'' in introductory provisions and subpar. (A).

Subsec. (a)(5). Pub. L. 109–59, § 3004(c), substituted ''Individual with a disability'' for ''Handicapped individual'' in heading and ''individual with a disability'' for ''handicapped individual'' in text.

Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation'' in two places.

Subsec. (a)(7). Pub. L. 109–59, § 3004(d), amended heading and text of par. (7) generally. Prior to amendment, text read as follows: ''The term 'mass transportation' means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or sightseeing transportation.''

Subsec. (a)(9). Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation'' in subpars. (A) and (B).

Subsec. (a)(10). Pub. L. 109–59, § 3004(e), amended heading and text of par. (10) generally. Prior to amendment, text read as follows: ''The term 'public transportation' means mass transportation.''

Subsec. (a)(14) to (16). Pub. L. 109–59, § 3002(b)(4), substituted ''public transportation'' for ''mass transportation'' wherever appearing.

Subsec. (a)(17). Pub. L. 109–59, § 3004(f), reenacted heading without change and amended text of par. (17) generally. Prior to amendment, text read as follows: ''The term 'urbanized area' means an area—

''(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

''(B) designated as an urbanized area within boundaries fixed by State and local officials and approved by the Secretary.''

Subsec. (b). Pub. L. 109–59, § 3004(g), substituted ''Individual With a Disability'' for ''Handicapped Individual'' in heading and ''individual with a disability'' for ''handicapped individual'' in text.

1998—Pub. L. 105–178, § 3003(a), formerly § 3003, as renumbered by Pub. L. 105–206, § 9009(a)(1), amended section generally, revising and restating existing definitions and adding new pars. defining additional terms.

Subsec. (a)(1)(G)(i). Pub. L. 105–178, § 3003(b), as added by Pub. L. 105–206, § 9009(a)(2), substituted ''daycare or'' for ''daycare and''.

1997—Subsec. (a)(1)(B), (C). Pub. L. 105–102 made technical correction to directory language of Pub. L. 104–50, § 333(a). See 1995 Amendment notes below.

1996—Subsec. (a)(1). Pub. L. 104–287 made technical correction to directory language of Pub. L. 103–331, § 335A. See 1994 Amendment note below.

1995—Subsec. (a)(1)(B). Pub. L. 104–50, § 333(a)(1), as amended by Pub. L. 105–102, § 3(a)(1), struck out ''that extends the economic life of a bus for at least 5 years'' after ''rehabilitating a bus''.

Subsec. (a)(1)(C). Pub. L. 104–50, § 333(a)(2), as amended by Pub. L. 105–102, § 3(a)(2), struck out ''that extends the economic life of a bus for at least 8 years'' after ''remanufacturing a bus''.

1994—Subsec. (a)(1). Pub. L. 103–331, § 335A, as amended by Pub. L. 104–287, inserted ''payments for the capital portions of rail trackage rights agreements,'' after ''rights of way),''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–102, § 3(a), Nov. 20, 1997, 111 Stat. 2214, provided that the amendment made by section 3(a) is effective Nov. 15, 1995.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–287, § 6(c), Oct. 11, 1996, 110 Stat. 3398, provided that the amendment made by section 6(c) is effective Sept. 30, 1994.

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104–50, title III, § 333(b), Nov. 15, 1995, 109 Stat. 457, provided that: ''The amendments made by this section [amending this section] shall not take effect before March 31, 1996.''

§ 5303. Metropolitan transportation planning

(a) POLICY.—It is in the national interest—

(1) to encourage and promote the safe and efficient management, operation, and development of resilient surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas and better connect housing and employment, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) to encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State

departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 5304(d).

(b) DEFINITIONS.—In this section and section 5304, the following definitions apply:

(1) METROPOLITAN PLANNING AREA.—The term ''metropolitan planning area'' means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

(2) METROPOLITAN PLANNING ORGANIZATION.—The term ''metropolitan planning organization'' means the policy board of an organization established as a result of the designation process under subsection (d).

(3) NONMETROPOLITAN AREA.—The term ''nonmetropolitan area'' means a geographic area outside designated metropolitan planning areas.

(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term ''nonmetropolitan local official'' means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) REGIONAL TRANSPORTATION PLANNING ORGANIZATION.—The term ''regional transportation planning organization'' means a policy board of an organization established as the result of a designation under section 5304(*l*).

(6) TIP.—The term ''TIP'' means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

(7) URBANIZED AREA.—The term ''urbanized area'' means a geographic area with a population of 50,000 or more, as determined by the Bureau of the Census.

(c) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for metropolitan areas of the State.

(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2012, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation; and

(C) appropriate State officials.

(3) REPRESENTATION.—

(A) IN GENERAL.—Designation or selection of officials or representatives under paragraph (2) shall be determined by the metropolitan planning organization according to the bylaws or enabling statute of the organization.

(B) PUBLIC TRANSPORTATION REPRESENTATIVE.—Subject to the bylaws or enabling statute of the metropolitan planning organization, a representative of a provider of public transportation may also serve as a representative of a local municipality.

(C) POWERS OF CERTAIN OFFICIALS.—An official described in paragraph (2)(B) shall have responsibilities, actions, duties, voting rights, and any other authority commensurate with other officials described in paragraph (2).

(D) CONSIDERATIONS.—In designating officials or representatives under paragraph (2) for the first time, subject to the bylaws or enabling statute of the metropolitan planning organization, the metropolitan planning organization shall consider the equitable and proportional representation of the population of the metropolitan planning area.

(4) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities—

(A) to develop the plans and TIPs for adoption by a metropolitan planning organization; and

(B) to develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(5) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (6).

(6) REDESIGNATION PROCEDURES.—

(A) IN GENERAL.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as determined by the Bureau of the Census) as appropriate to carry out this section.

(B) RESTRUCTURING.—A metropolitan planning organization may be restructured to meet the requirements of paragraph (2) without undertaking a redesignation.

(7) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing urbanized area (as defined by the Bureau of the Census) only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the area make designation of more than 1 metropolitan planning organization for the area appropriate.

(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—

(A) IN GENERAL.—Notwithstanding paragraph (2), except as provided in subparagraph (B), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA–LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained.

(B) EXCEPTION.—The boundaries described in subparagraph (A) may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(6).

(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA–LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (d)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act (42 U.S.C. 7401 et seq.) for ozone or carbon monoxide.

(f) COORDINATION IN MULTISTATE AREAS.—

(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any 2 or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within an urbanized area (as defined by the Bureau of the Census) or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded under this chapter or title 23, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—

(A) IN GENERAL.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible

for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, housing, tourism, natural disaster risk reduction, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities.

(B) REQUIREMENTS.—Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

(i) recipients of assistance under this chapter;

(ii) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

(iii) recipients of assistance under section 204 of title 23.

(4) COORDINATION BETWEEN MPOS.—If more than 1 metropolitan planning organization is designated within an urbanized area (as defined by the Bureau of the Census) under subsection (d)(7), the metropolitan planning organizations designated within the area shall ensure, to the maximum extent practicable, the consistency of any data used in the planning process, including information used in forecasting travel demand.

(5) SAVINGS CLAUSE.—Nothing in this subsection requires metropolitan planning organizations designated within a single urbanized area to jointly develop planning documents, including a unified long-range transportation plan or unified TIP.

(h) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and for freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth, housing, and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(G) promote efficient system management and operation;

(H) emphasize the preservation of the existing transportation system; and

(I) improve the resiliency and reliability of the transportation system.

(2) PERFORMANCE-BASED APPROACH.—

(A) IN GENERAL.—The metropolitan transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b) of title 23 and the general purposes described in section 5301.

(B) PERFORMANCE TARGETS.—

(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

(I) IN GENERAL.—Each metropolitan planning organization shall establish performance targets that address the performance measures described in section 150(c) of title 23, where applicable, to use in tracking progress towards attainment of critical outcomes for the region of the metropolitan planning organization.

(II) COORDINATION.—Selection of performance targets by a metropolitan planning organization shall be coordinated with the relevant State to ensure consistency, to the maximum extent practicable.

(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—Selection of performance targets by a metropolitan planning organization shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d).

(C) TIMING.—Each metropolitan planning organization shall establish the performance targets under subparagraph (B) not later than 180 days after the date on which the relevant State or provider of public transportation establishes the performance targets.

(D) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A metropolitan planning organization shall integrate in the metropolitan transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in other State transportation plans and transportation processes, as well as any plans developed by recipients of assistance under this chapter, required as part of a performance-based program.

(3) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraphs (1) and (2) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

(1) REQUIREMENTS.—

(A) IN GENERAL.—Each metropolitan planning organization shall prepare and update a

transportation plan for its metropolitan planning area in accordance with the requirements of this subsection.

(B) FREQUENCY.—

(i) IN GENERAL.—The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(I) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(II) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

(ii) OTHER AREAS.—In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

(i) IN GENERAL.—An identification of transportation facilities (including major roadways, public transportation facilities, intercity bus facilities, multimodal and intermodal facilities, nonmotorized transportation facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

(ii) FACTORS.—In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as the factors relate to a 20-year forecast period.

(B) PERFORMANCE MEASURES AND TARGETS.—A description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (h)(2).

(C) SYSTEM PERFORMANCE REPORT.—A system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (h)(2), including—

(i) progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports; and

(ii) for metropolitan planning organizations that voluntarily elect to develop multiple scenarios, an analysis of how the preferred scenario has improved the conditions and performance of the transportation system and how changes in local policies and investments have impacted the costs necessary to achieve the identified performance targets.

(D) MITIGATION ACTIVITIES.—

(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(E) FINANCIAL PLAN.—

(i) IN GENERAL.—A financial plan that—

(I) demonstrates how the adopted transportation plan can be implemented;

(II) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

(III) recommends any additional financing strategies for needed projects and programs.

(ii) INCLUSIONS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(iii) COOPERATIVE DEVELOPMENT.—For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(F) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(G) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure, provide for multimodal capacity increases based on regional priorities and needs, and reduce the vulnerability of the existing transportation infrastructure to natural disasters.

(H) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities, including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.

(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas that are in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by that Act.

(4) OPTIONAL SCENARIO DEVELOPMENT.—

(A) IN GENERAL.—A metropolitan planning organization may, while fitting the needs and complexity of its community, voluntarily elect to develop multiple scenarios for consideration as part of the development of the metropolitan transportation plan, in accordance with subparagraph (B).

(B) RECOMMENDED COMPONENTS.—A metropolitan planning organization that chooses to develop multiple scenarios under subparagraph (A) shall be encouraged to consider—

(i) potential regional investment strategies for the planning horizon;

(ii) assumed distribution of population and employment;

(iii) assumed distribution of population and housing;

(iv) a scenario that, to the maximum extent practicable, maintains baseline conditions for the performance measures identified in subsection (h)(2);

(v) a scenario that improves the baseline conditions for as many of the performance measures identified in subsection (h)(2) as possible;

(vi) revenue constrained scenarios based on the total revenues expected to be available over the forecast period of the plan; and

(vii) estimated costs and potential revenues available to support each scenario.

(C) METRICS.—In addition to the performance measures identified in section 150(c) of title 23, metropolitan planning organizations may evaluate scenarios developed under this paragraph using locally-developed measures.

(5) CONSULTATION.—

(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) ISSUES.—The consultation shall involve, as appropriate—

(i) comparison of transportation plans with State conservation plans or maps, if available; or

(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(6) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, affordable housing organizations, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

(i) shall be developed in consultation with all interested parties; and

(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times;

(ii) employ visualization techniques to describe plans; and

(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(D) USE OF TECHNOLOGY.—A metropolitan planning organization may use social media and other web-based tools—

(i) to further encourage public participation; and

(ii) to solicit public feedback during the transportation planning process.

(7) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(8) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(E), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(E).

(j) METROPOLITAN TIP.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the metropolitan planning area that—

(i) contains projects consistent with the current metropolitan transportation plan;

(ii) reflects the investment priorities established in the current metropolitan transportation plan; and

(iii) once implemented, is designed to make progress toward achieving the performance targets established under subsection (h)(2).

(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The TIP shall be—

(i) updated at least once every 4 years; and

(ii) approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—

(A) PRIORITY LIST.—The TIP shall include a priority list of proposed Federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

(i) demonstrates how the TIP can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

(D) PERFORMANCE TARGET ACHIEVEMENT.—The transportation improvement program shall include, to the maximum extent practicable, a description of the anticipated effect of the transportation improvement program toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.

(3) INCLUDED PROJECTS.—

(A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.

(B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.

(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

(4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of Federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

(i) by—

(I) in the case of projects under title 23, the State; and

(II) in the case of projects under this chapter, the designated recipients of public transportation funding; and

(ii) in cooperation with the metropolitan planning organization.

(B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

(B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for

a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

(7) PUBLICATION.—

(A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—

(i) IN GENERAL.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review.

(ii) REQUIREMENT.—The listing shall be consistent with the categories identified in the TIP.

(k) TRANSPORTATION MANAGEMENT AREAS.—

(1) IDENTIFICATION AND DESIGNATION.—

(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

(3) CONGESTION MANAGEMENT PROCESS.—

(A) IN GENERAL.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this chapter and title 23 through the use of travel demand reduction (including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), job access projects, and operational management strategies.

(B) SCHEDULE.—The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

(C) CONGESTION MANAGEMENT PLAN.—A metropolitan planning organization serving a transportation management area may develop a plan that includes projects and strategies that will be considered in the TIP of such metropolitan planning organization. Such plan shall—

(i) develop regional goals to reduce vehicle miles traveled during peak commuting hours and improve transportation connections between areas with high job concentration and areas with high concentrations of low-income households;

(ii) identify existing public transportation services, employer-based commuter programs, and other existing transportation services that support access to jobs in the region; and

(iii) identify proposed projects and programs to reduce congestion and increase job access opportunities.

(D) PARTICIPATION.—In developing the plan under subparagraph (C), a metropolitan planning organization shall consult with employers, private and non-profit providers of public transportation, transportation management organizations, and organizations that provide job access reverse commute projects or job-related services to low-income individuals.

(4) HOUSING COORDINATION PROCESS.—

(A) IN GENERAL.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section may address the integration of housing, transportation, and economic development strategies through a process that provides for effective integration, based on a cooperatively developed and implemented strategy, of new and existing transportation facilities eligible for funding under this chapter and title 23.

(B) COORDINATION IN INTEGRATED PLANNING PROCESS.—In carrying out the process described in subparagraph (A), a metropolitan planning organization may—

(i) consult with—

(I) State and local entities responsible for land use, economic development, housing, management of road networks, or public transportation; and

(II) other appropriate public or private entities; and

(ii) coordinate, to the extent practicable, with applicable State and local entities to align the goals of the process with the goals of any comprehensive housing affordability strategies established within the metropolitan planning area pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) and plans developed under section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1).

(C) HOUSING COORDINATION PLAN.—

(i) IN GENERAL.—A metropolitan planning organization serving a transportation management area may develop a housing coordination plan that includes projects

and strategies that may be considered in the metropolitan transportation plan of the metropolitan planning organization.

(ii) CONTENTS.—A plan described in clause (i) may—

(I) develop regional goals for the integration of housing, transportation, and economic development strategies to—

(aa) better connect housing and employment while mitigating commuting times;

(bb) align transportation improvements with housing needs, such as housing supply shortages, and proposed housing development;

(cc) align planning for housing and transportation to address needs in relationship to household incomes within the metropolitan planning area;

(dd) expand housing and economic development within the catchment areas of existing transportation facilities and public transportation services when appropriate, including higher-density development, as locally determined;

(ee) manage effects of growth of vehicle miles traveled experienced in the metropolitan planning area related to housing development and economic development;

(ff) increase share of households with sufficient and affordable access to the transportation networks of the metropolitan planning area;

(II) identify the location of existing and planned housing and employment, and transportation options that connect housing and employment; and

(III) include a comparison of transportation plans to land use management plans, including zoning plans, that may affect road use, public transportation ridership and housing development.

(5) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All Federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (excluding projects carried out on the National Highway System) or under this chapter shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

(6) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this chapter and title 23.

(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(*l*) REPORT ON PERFORMANCE-BASED PLANNING PROCESSES.—

(1) IN GENERAL.—The Secretary shall submit to Congress a report on the effectiveness of the performance-based planning processes of metropolitan planning organizations under this section, taking into consideration the requirements of this subsection.

(2) REPORT.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

(A) the overall effectiveness of performance-based planning as a tool for guiding transportation investments;

(B) the effectiveness of the performance-based planning process of each metropolitan planning organization under this section;

(C) the extent to which metropolitan planning organizations have achieved, or are currently making substantial progress toward achieving, the performance targets specified under this section and whether metropolitan planning organizations are developing meaningful performance targets; and

(D) the technical capacity of metropolitan planning organizations that operate within a metropolitan planning area with a population of 200,000 or less and their ability to carry out the requirements of this section.

(3) PUBLICATION.—The report under paragraph (2) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

(m) ABBREVIATED PLANS FOR CERTAIN AREAS.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

(n) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

(1) IN GENERAL.—Notwithstanding any other provisions of this chapter or title 23, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.), Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(*o*) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this chapter or title 23.

(p) FUNDING.—Funds apportioned under section 104(b)(6) of title 23 or section 5305(g) shall be available to carry out this section.

(q) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under that Act.

(r) BI-STATE METROPOLITAN PLANNING ORGANIZATION.—

(1) DEFINITION OF BI-STATE MPO REGION.—In this subsection, the term ''Bi-State Metropolitan Planning Organization'' has the meaning given the term ''region'' in subsection (a) of Article II of the Lake Tahoe Regional Planning Compact (Public Law 96–551; 94 Stat. 3234).

(2) TREATMENT.—For the purpose of this title, the Bi-State Metropolitan Planning Organization shall be treated as—

(A) a metropolitan planning organization;

(B) a transportation management area under subsection (k); and

(C) an urbanized area, which is comprised of a population of 145,000 and 25 square miles of land area and 25 square miles of land area[1] in the State of California and a population of 65,000 and 12 square miles of land area and 12 square miles of land area[1] in the State of Nevada.

(Pub. L. 103–272, § 1(d), July 5, 1994, 108 Stat. 788; Pub. L. 104–287, § 5(10), Oct. 11, 1996, 110 Stat. 3389; Pub. L. 105–102, § 2(4), Nov. 20, 1997, 111 Stat. 2204; Pub. L. 105–178, title III, §§ 3004, 3029(b)(1)–(3), June 9, 1998, 112 Stat. 341, 372; Pub. L. 105–206, title IX, § 9009(b), July 22, 1998, 112 Stat. 852; Pub. L. 109–59, title III, § 3005(a), Aug. 10, 2005, 119 Stat. 1547; Pub. L. 110–244, title II, § 201(b), June 6, 2008, 122 Stat. 1609; Pub. L. 112–141, div. B, § 20005(a), July 6, 2012, 126 Stat. 628; Pub. L. 114–94, div. A, title III, § 3003(a), Dec. 4, 2015, 129 Stat. 1447; Pub. L. 114–322, title III, § 3603(f)(3), Dec. 16, 2016, 130 Stat. 1789; Pub. L. 115–31, div. K, title I, § 192, May 5, 2017, 131 Stat. 756; Pub. L. 117–58, div. C, § 30002, Nov. 15, 2021, 135 Stat. 890.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5303(a)	49 App.:1607(a) (2d–last sentences).	July 9, 1964, Pub. L. 88–365, 78 Stat. 302, § 8(a) (2d–last sentences)–(g), (n); added Nov. 6, 1978, Pub. L. 95–599, § 305(b), 92 Stat. 2743; Apr. 2, 1987, Pub. L. 100–17, § 310, 101 Stat. 227; restated Dec. 18, 1991, Pub. L. 102–240, § 3012, 105 Stat. 2098, 2104.
5303(b)	49 App.:1607(f).	
5303(c)(1)	49 App.:1607(b)(1).	
5303(c)(2)	49 App.:1607(b)(2).	
5303(c)(3)	49 App.:1607(b)(6).	
5303(c)(4)	49 App.:1607(b)(4).	
5303(c)(5)	49 App.:1607(b)(5).	
5303(c)(6)	49 App.:1607(b)(3).	
5303(d)	49 App.:1607(c).	
5303(e)	49 App.:1607(d), (e).	
5303(f)	49 App.:1607(g).	
5303(g)	49 App.:1607(n).	
5303(h)	49 App.:1607(p).	July 9, 1964, Pub. L. 88–365, 78 Stat. 302, § 8(p); added Nov. 6, 1978, Pub. L. 95–599, § 305(b), 92 Stat. 2743; Apr. 2, 1987, Pub. L. 100–17, § 310, 101 Stat. 227; restated Dec. 18, 1991, Pub. L. 102–240, § 3012, 105 Stat. 2105; Oct. 6, 1992, Pub. L. 102–388, § 502(h), 106 Stat. 1566.

In this section, the word ''together'' is omitted as surplus. The words ''Secretary of Commerce'' are substituted for ''Bureau of the Census'' because of 15:1511(e).

In subsection (b)(2), the word ''applicable'' is omitted as surplus.

In subsection (b)(3), the words ''where it does not yet occur'' are omitted as surplus.

In subsection (b)(4), the words ''the provisions of all applicable'' are omitted as surplus.

In subsection (c)(4), before clause (A), the words ''whether made under this section or other provisions of law'' are omitted as surplus.

[1] So in original.

In subsection (d), the word ''entire'' is omitted as surplus.

In subsection (e)(2), the words ''or compacts'' and ''joint or otherwise'' are omitted as surplus.

In subsection (f)(3), the word ''area'' is added for clarity and consistency with 42:7501(2).

In subsection (f)(5)(A), the words ''published or otherwise'' are omitted as surplus.

In subsection (g), before clause (1), the words ''local governmental authorities'' are substituted for ''local public bodies'', and the words ''departments, agencies, and instrumentalities of the Government'' are substituted for ''Federal departments and agencies'', for consistency in the revised title and with other titles of the United States Code.

In subsection (h)(6)(A), the words ''for obligation'', ''a period of'', and ''the close of'' are omitted as surplus.

PUB. L. 104–287

This amends 49:5303(f)(2) and (h)(4) to correct erroneous cross-references.

PUB. L. 105–102, §2(4)(A)

This amends 49:5303(c)(1) to correct an erroneous cross-reference.

PUB. L. 105–102, §2(4)(B)

This amends 49:5303(c)(4)(A) to correct an erroneous cross-reference.

PUB. L. 105–102, §2(4)(C)

This amends 49:5303(c)(5)(A) to correct an erroneous cross-reference.

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the Federal Public Transportation Act of 2012, referred to in subsecs. (d)(2) and (*l*)(2), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways.

The Clean Air Act, referred to in subsecs. (e)(4)(A), (5)(D), (g)(1), (i)(3), (m)(2), and (n)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of the SAFETEA-LU, referred to in subsec. (e)(4)(A), (5), is the date of enactment of title III of Pub. L. 109–59, which was approved Aug. 10, 2005.

The National Environmental Policy Act of 1969, referred to in subsec. (q), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117–58, §30002(a)(1), inserted ''and better connect housing and employment'' after ''urbanized areas''.

Subsec. (d)(3)(D). Pub. L. 117–58, §30002(b)(1)(A), added subpar. (D).

Subsec. (d)(7). Pub. L. 117–58, §30002(b)(1)(B), substituted ''an existing urbanized area (as defined by the Bureau of the Census)'' for ''an existing metropolitan planning area'' and ''the area'' for ''the existing metropolitan planning area''.

Subsec. (g)(1). Pub. L. 117–58, §30002(b)(2)(A), substituted ''an urbanized area (as defined by the Bureau of the Census)'' for ''a metropolitan area''.

Subsec. (g)(3)(A). Pub. L. 117–58, §30002(a)(2), inserted ''housing,'' after ''economic development,''.

Subsec. (g)(4), (5). Pub. L. 117–58, §30002(b)(2)(B), added pars. (4) and (5).

Subsec. (h)(1)(E). Pub. L. 117–58, §30002(a)(3), inserted '', housing,'' after ''growth''.

Subsec. (i)(4)(B)(iii) to (vii). Pub. L. 117–58, §30002(a)(4)(A), added cl. (iii) and redesignated former cls. (iii) to (vi) as (iv) to (vii), respectively.

Subsec. (i)(6)(A). Pub. L. 117–58, §30002(a)(4)(B), inserted ''affordable housing organizations,'' after ''disabled,''.

Subsec. (i)(6)(D). Pub. L. 117–58, §30002(b)(3), added subpar. (D).

Subsec. (k)(4) to (6). Pub. L. 117–58, §30002(a)(5), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (p). Pub. L. 117–58, §30002(b)(4), substituted ''section 104(b)(6)'' for ''section 104(b)(5)''.

2017—Subsec. (r)(2)(C). Pub. L. 115–31 made amendment identical to that made by Pub. L. 114–322. See 2016 Amendment note below.

2016—Subsec. (r)(2)(C). Pub. L. 114–322 inserted ''and 25 square miles of land area'' after ''145,000'' and ''and 12 square miles of land area'' after ''65,000''.

2015—Subsec. (a)(1). Pub. L. 114–94, §3003(a)(1), inserted ''resilient'' after ''development of''.

Subsec. (c)(2). Pub. L. 114–94, §3003(a)(2), substituted '', bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers'' for ''and bicycle transportation facilities''.

Subsec. (d)(3) to (7). Pub. L. 114–94, §3003(a)(3), added par. (3), redesignated pars. (3) to (6) as (4) to (7), respectively, and in par. (5), substituted ''paragraph (6)'' for ''paragraph (5)''.

Subsec. (e)(4)(B). Pub. L. 114–94, §3003(a)(4), substituted ''subsection (d)(6)'' for ''subsection (d)(5)''.

Subsec. (g)(3)(A). Pub. L. 114–94, §3003(a)(5), inserted ''tourism, natural disaster risk reduction,'' after ''economic development,''.

Subsec. (h)(1)(I). Pub. L. 114–94, §3003(a)(6), added subpar. (I).

Subsec. (i)(2)(A)(i). Pub. L. 114–94, §3003(a)(7)(A)(i), substituted ''public transportation facilities, intercity bus facilities'' for ''transit''.

Subsec. (i)(2)(G). Pub. L. 114–94, §3003(a)(7)(A)(ii), substituted '', provide'' for ''and provide'' and inserted before period at end '', and reduce the vulnerability of the existing transportation infrastructure to natural disasters''.

Subsec. (i)(2)(H). Pub. L. 114–94, §3003(a)(7)(A)(iii), inserted before period at end '', including consideration of the role that intercity buses may play in reducing congestion, pollution, and energy consumption in a cost-effective manner and strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated''.

Subsec. (i)(6)(A). Pub. L. 114–94, §3003(a)(7)(B), inserted ''public ports,'' before ''freight shippers,'' and ''(including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program)'' after ''private providers of transportation''.

Subsec. (i)(8). Pub. L. 114–94, §3003(a)(7)(C), substituted ''paragraph (2)(E)'' for ''paragraph (2)(C)'' in two places.

Subsec. (k)(3)(A). Pub. L. 114–94, §3003(a)(8)(A), inserted ''(including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), job access projects,'' after ''travel demand reduction''.

Subsec. (k)(3)(C), (D). Pub. L. 114–94, §3003(a)(8)(B), added subpars. (C) and (D).

Subsec. (*l*)(1). Pub. L. 114–94, §3003(a)(9)(A), inserted a period at end.

Subsec. (*l*)(2)(D). Pub. L. 114–94, §3003(a)(9)(B), substituted ''with a population of 200,000 or less'' for ''of less than 200,000''.

Subsec. (p). Pub. L. 114–94, §3003(a)(10), substituted ''Funds apportioned under section 104(b)(5)'' for ''Funds set aside under section 104(f)''.

Subsec. (r). Pub. L. 114–94, §3003(a)(11), added subsec. (r).

2012—Pub. L. 112–141 amended section generally, substituting provisions consisting of subsecs. (a) to (q), including requirement to submit report on performance-based planning processes, for former provisions consisting of subsecs. (a) to (p).

2008—Subsec. (f)(3)(C)(ii)(II). Pub. L. 110–244, §201(b)(1), added subcl. (II) and struck out former subcl. (II). Prior to amendment, text read as follows: ''In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this chapter and title 23, 1 percent of the funds allocated under section 202 of title 23 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.''

Subsec. (j)(3)(D). Pub. L. 110–244, §201(b)(2), inserted ''or the identified phase'' after ''the project'' in two places.

Subsec. (k)(2). Pub. L. 110–244, §201(b)(3), struck out ''a metropolitan planning area serving'' before ''a transportation management area,''.

2005—Pub. L. 109–59 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to designation of a metropolitan planning organization for each urbanized area with a population of more than 50,000, general requirements, scope of planning process, boundaries of each area, coordination in multistate areas, development of long-range transportation plans, grants for studies and evaluations, and apportionment of funds.

1998—Subsecs. (a), (b). Pub. L. 105–178, §3004(a), added subsecs. (a) and (b) and struck out headings and text of former subsecs. (a) and (b) which related to development requirements and plan and program factors, respectively.

Subsec. (c)(1)(A). Pub. L. 105–178, §3004(b)(1)(B), substituted ''or cities, as defined by the Bureau of the Census)'' for ''as defined by the Secretary of Commerce)''.

Pub. L. 105–178, §3004(b)(1)(A), as amended by Pub. L. 105–206, §9009(b)(1)(A), substituted ''general purpose local government that together represent'' for ''general local government representing''.

Subsec. (c)(2). Pub. L. 105–178, §3004(b)(2), substituted ''Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area when designated or redesignated under this subsection shall consist of'' for ''In a metropolitan area designated as a transportation management area, the designated metropolitan planning organization, if redesignated after December 18, 1991, shall include'' and ''officials of public agencies'' for ''officials of authorities''.

Subsec. (c)(3). Pub. L. 105–178, §3004(b)(3), as amended by Pub. L. 105–206, §9009(b)(1)(B), substituted ''within an existing metropolitan planning area only if the chief executive officer of the State and the existing metropolitan organization determine that the size and complexity of the existing metropolitan planning area'' for ''in an urbanized area (as defined by the Secretary of Commerce) only if the chief executive officer decides that the size and complexity of the urbanized area''.

Subsec. (c)(4)(A). Pub. L. 105–178, §3004(b)(4), as added by Pub. L. 105–206, §9009(b)(1)(E), directed an amendment identical to that made by Pub. L. 105–102, §2(4)(B). See 1997 Amendment note below.

Subsec. (c)(5)(A). Pub. L. 105–178, §3004(b)(5)(A), formerly §3004(b)(4)(A), as renumbered and amended by Pub. L. 105–206, §9009(b)(1)(C), (D), substituted ''general purpose local government that together represent'' for ''general local government representing''.

Subsec. (c)(5)(B). Pub. L. 105–178, §3004(b)(5)(B), formerly §3004(b)(4)(B), as renumbered by Pub. L. 105–206, §9009(b)(1)(D), substituted ''or cities, as defined by the Bureau of the Census)'' for ''as defined by the Secretary of Commerce)''.

Subsec. (c)(5)(D). Pub. L. 105–178, §3004(b)(5)(C), formerly §3004(b)(4)(C), as renumbered by Pub. L. 105–206, §9009(b)(1)(D), added subpar. (D).

Subsec. (d). Pub. L. 105–178, §3004(c), inserted ''Planning'' after ''Metropolitan'' in subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, inserted ''planning'' before ''area'' in first sentence and substituted pars. (2) to (4) for ''The area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may include the Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Secretary of Commerce. An area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) shall include at least the boundaries of the nonattainment area, except as the chief executive officer and metropolitan planning organization otherwise agree.''

Subsec. (e)(2). Pub. L. 105–178, §3004(d)(1), inserted ''or compact'' after ''2 States making an agreement'' and substituted ''making the agreements and compacts effective'' for ''making the agreement effective''.

Subsec. (e)(4) to (6). Pub. L. 105–178, §3004(d)(2), as amended by Pub. L. 105–206, §9009(b)(2), added pars. (4) to (6).

Subsec. (f). Pub. L. 105–178, §3004(e)(5), substituted ''Developing Long-Range Transportation Plans'' for ''Developing Long-Range Plans'' in heading.

Pub. L. 105–178, §3004(e)(6), which directed substitution of ''long-range transportation plans'' for ''long-range plans'' wherever appearing, could not be executed because ''long-range plans'' does not appear in text.

Subsec. (f)(1)(A). Pub. L. 105–178, §3004(e)(1)(A), substituted ''national, regional, and metropolitan transportation functions'' for ''United States and regional transportation functions''.

Subsec. (f)(1)(B)(iii). Pub. L. 105–178, §3004(e)(1)(B), added cl. (iii) and struck out former cl. (iii) which read as follows: ''recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects and programs;''.

Subsec. (f)(1)(C). Pub. L. 105–178, §3004(e)(1)(C), added subpar. (C) and struck out former subpar. (C) which read as follows: ''assess capital investment and other measures necessary—

''(i) to ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, and operations, maintenance, modernization, and rehabilitation of existing and future mass transportation facilities; and

''(ii) to use existing transportation facilities most efficiently to relieve vehicular congestion and maximize the mobility of individuals and goods; and''.

Subsec. (f)(1)(E). Pub. L. 105–178, §3004(f)(1), as added by Pub. L. 105–206, §9009(b)(3), added subpar. (E).

Subsec. (f)(2). Pub. L. 105–178, §3004(e)(2), substituted ''and any State or local goals developed within the cooperative metropolitan planning process as they relate to a 20-year forecast period and to other forecast periods as determined by the participants in the planning process'' for ''as they are related to a 20-year forecast period''.

Subsec. (f)(4). Pub. L. 105–178, §3004(e)(3), inserted ''freight shippers, providers of freight transportation services,'' after ''mass transportation authority employees,'' and ''representatives of users of public transit,'' after ''private providers of transportation,''.

Subsec. (f)(5)(A). Pub. L. 105–178, §3004(e)(4), inserted ''published or otherwise'' before ''made readily available''.

Subsec. (f)(6). Pub. L. 105–178, §3004(f)(2), as added by Pub. L. 105–206, §9009(b)(3), added par. (6).

Subsec. (h)(1). Pub. L. 105–178, §3029(b)(1), (2), substituted ''subsection (c) or (h)(1) of section 5338 of this title'' for ''section 5338(g)(1) of this title'' and ''sections 5304 and 5305 of this title'' for ''sections 5304–5306 of this title''.

Subsec. (h)(2)(A), (3)(A). Pub. L. 105–178, § 3029(b)(1), substituted ''subsection (c) or (h)(1) of section 5338 of this title'' for ''section 5338(g)(1) of this title''.

Subsec. (h)(4). Pub. L. 105–178, § 3029(b)(3), substituted ''subsection (c) or (h)(1) of section 5338 of this title'' for ''section 5338(g) of this title''.

1997—Subsec. (c)(1). Pub. L. 105–102, § 2(4)(A), inserted ''and sections 5304–5306 of this title'' after ''this section''.

Subsec. (c)(4)(A). Pub. L. 105–102, § 2(4)(B), substituted ''paragraph (5)'' for ''paragraph (3)''.

Subsec. (c)(5)(A). Pub. L. 105–102, § 2(4)(C), inserted ''and sections 5304–5306 of this title'' after ''this section''.

1996—Subsec. (f)(2). Pub. L. 104–287, § 5(10)(A), substituted ''subsection (b)'' for ''subsection (e)''.

Subsec. (h)(4). Pub. L. 104–287, § 5(10)(B), substituted ''section 5338(g)'' for ''5338(g)(1)''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 8(1) of Pub. L. 104–287, as amended by Pub. L. 105–102, § 3(d)(2)(A), Nov. 20, 1997, 111 Stat. 2215, provided that: ''The amendments made by sections 3 and 5(10)–(17), (19), (20), (52), (53), (55), (61), (62), (65), (70), (77)–(79), and (91)–(93) of this Act [amending this section, sections 5307, 5309, 5315, 5317, 5323, 5325, 5327, 5336, 5338, 20301, 21301, 22106, 32702, 32705, 40109, 41109, 46301, 46306, 46316, 60114, 70102, and 70112 of this title, and section 1445 of Title 28, Judiciary and Judicial Procedure] shall take effect on July 5, 1994.''

PILOT PROGRAM FOR TRANSIT-ORIENTED DEVELOPMENT PLANNING

Pub. L. 112–141, div. B, § 20005(b), July 6, 2012, 126 Stat. 642, as amended by Pub. L. 117–58, div. C, § 30009, Nov. 15, 2021, 135 Stat. 904, provided that:

''(1) DEFINITIONS.—In this subsection the following definitions shall apply:

''(A) ELIGIBLE PROJECT.—The term 'eligible project' means a new fixed guideway capital project or a core capacity improvement project, as those terms are defined in section 5309 of title 49, United States Code, as amended by this division.

''(B) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

''(2) GENERAL AUTHORITY.—The Secretary may make grants under this subsection to a State or local governmental authority to assist in financing comprehensive or site-specific planning associated with an eligible project that seeks to—

''(A) enhance economic development, ridership, and other goals established during the project development and engineering processes;

''(B) facilitate multimodal connectivity and accessibility;

''(C) increase access to transit hubs for pedestrian and bicycle traffic;

''(D) enable mixed-use development;

''(E) identify infrastructure needs associated with the eligible project; and

''(F) include private sector participation.

''(3) ELIGIBILITY.—A State or local governmental authority that desires to participate in the program under this subsection shall submit to the Secretary an application that contains, at a minimum—

''(A) identification of an eligible project;

''(B) a schedule and process for the development of a comprehensive plan or a site-specific plan;

''(C) a description of how the eligible project and the proposed comprehensive plan or the proposed site-specific plan advance the metropolitan transportation plan of the metropolitan planning organization;

''(D) proposed performance criteria for the development and implementation of the comprehensive plan or the site-specific plan; and

''(E) identification of—

''(i) partners;

''(ii) availability of and authority for funding; and

''(iii) potential State, local or other impediments to the implementation of the comprehensive plan or the site-specific plan.''

GUIDANCE ON DOCUMENTING COMPLIANCE WITH REQUIREMENTS OF PRIVATE ENTERPRISE PARTICIPATION IN PUBLIC TRANSPORTATION PLANNING AND TRANSPORTATION IMPROVEMENT PROGRAMS

Pub. L. 112–141, div. B, § 20013(d), July 6, 2012, 126 Stat. 694, as amended by Pub. L. 114–94, div. A, title III, § 3010(b), Dec. 4, 2015, 129 Stat. 1474, provided that: ''Not later than 1 year after the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways], the Secretary [of Transportation] shall publish in the Federal Register policy guidance regarding how to best document compliance by recipients of Federal assistance under chapter 53 of title 49, United States Code, with the requirements regarding private enterprise participation in public transportation planning and transportation improvement programs under sections 5303(i)(6), 5306(a), and 5307(b) of such title 49.''

SCHEDULE FOR IMPLEMENTATION

Pub. L. 109–59, title III, § 3005(b), Aug. 10, 2005, 119 Stat. 1559, required the Secretary of Transportation to issue guidance on a schedule for implementation of the changes made to this section by section 3005(a) of Pub. L. 109–59 and required State or metropolitan planning organization plan or program updates to reflect such changes beginning July 1, 2007.

§ 5304. Statewide and nonmetropolitan transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—Subject to section 5303, to accomplish the objectives stated in section 5303(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State.

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways, bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter van-

pool providers) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 5303(a) and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5303 for metropolitan areas of the State and with statewide trade and economic development planning activities and related multistate planning efforts; and

(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) INTERSTATE AGREEMENTS.—

(1) IN GENERAL.—Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(G) promote efficient system management and operation;

(H) emphasize the preservation of the existing transportation system; and

(I) improve the resiliency and reliability of the transportation system.

(2) PERFORMANCE-BASED APPROACH.—

(A) IN GENERAL.—The statewide transportation planning process shall provide for the establishment and use of a performance-based approach to transportation decision-making to support the national goals described in section 150(b) of title 23 and the general purposes described in section 5301.

(B) PERFORMANCE TARGETS.—

(i) SURFACE TRANSPORTATION PERFORMANCE TARGETS.—

(I) IN GENERAL.—Each State shall establish performance targets that address the performance measures described in section 150(c) of title 23, where applicable, to use in tracking progress towards attainment of critical outcomes for the State.

(II) COORDINATION.—Selection of performance targets by a State shall be coordinated with the relevant metropolitan planning organizations to ensure consistency, to the maximum extent practicable.

(ii) PUBLIC TRANSPORTATION PERFORMANCE TARGETS.—In areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, selection of performance targets by a State shall be coordinated, to the maximum extent practicable, with providers of public transportation to ensure consistency with sections 5326(c) and 5329(d).

(C) INTEGRATION OF OTHER PERFORMANCE-BASED PLANS.—A State shall integrate into the statewide transportation planning process, directly or by reference, the goals, objectives, performance measures, and targets described in this paragraph, in other State transportation plans and transportation processes, as well as any plans developed pursuant to title 23 by providers of public transportation in areas with a population of fewer than 200,000 individuals, as calculated according to the most recent decennial census, and not represented by a metropolitan planning organization, required as part of a performance-based program.

(D) USE OF PERFORMANCE MEASURES AND TARGETS.—The performance measures and targets established under this paragraph shall be considered by a State when developing policies, programs, and investment priorities reflected in the statewide transportation plan and statewide transportation improvement program.

(3) FAILURE TO CONSIDER FACTORS.—The failure to take into consideration the factors specified in paragraphs (1) and (2) shall not be subject to review by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, a

statewide transportation improvement program, a project or strategy, or the certification of a planning process.

(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall, at a minimum—

(1) with respect to nonmetropolitan areas, cooperate with affected local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (l);

(2) consider the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

(3) consider coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

(B) NONMETROPOLITAN AREAS.—

(i) IN GENERAL.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in cooperation with affected nonmetropolitan officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (*l*).

(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the consultation process in each State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(3) PARTICIPATION BY INTERESTED PARTIES.—

(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide to—

(i) nonmetropolitan local elected officials, or, if applicable, through regional transportation planning organizations described in subsection (*l*), an opportunity to participate in accordance with subparagraph (B)(i); and

(ii) citizens, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties a reasonable opportunity to comment on the proposed plan.

(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

(i) develop and document a consultative process to carry out subparagraph (A)(i) that is separate and discrete from the public involvement process developed under clause (ii);

(ii) hold any public meetings at convenient and accessible locations and times;

(iii) employ visualization techniques to describe plans; and

(iv) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(C) USE OF TECHNOLOGY.—A State may use social media and other web-based tools—

(i) to further encourage public participation; and

(ii) to solicit public feedback during the transportation planning process.

(4) MITIGATION ACTIVITIES.—

(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(5) FINANCIAL PLAN.—The statewide transportation plan may include—

(A) a financial plan that—

(i) demonstrates how the adopted statewide transportation plan can be implemented;

(ii) indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan; and

(iii) recommends any additional financing strategies for needed projects and programs; and

(B) for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

(7) PERFORMANCE-BASED APPROACH.—The statewide transportation plan should include—

(A) a description of the performance measures and performance targets used in assessing the performance of the transportation system in accordance with subsection (d)(2); and

(B) a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the performance targets described in subsection (d)(2), including progress achieved by the metropolitan planning organization in meeting the performance targets in comparison with system performance recorded in previous reports;

(8) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(9) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

(1) DEVELOPMENT.—

(A) IN GENERAL.—Each State shall develop a statewide transportation improvement program for all areas of the State.

(B) DURATION AND UPDATING OF PROGRAM.—Each program developed under subparagraph (A) shall cover a period of 4 years and shall be updated every 4 years or more frequently if the Governor of the State elects to update more frequently.

(2) CONSULTATION WITH GOVERNMENTS.—

(A) METROPOLITAN AREAS.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.

(B) NONMETROPOLITAN AREAS.—

(i) IN GENERAL.—With respect to each nonmetropolitan area in the State, the program shall be developed in cooperation with affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (*l*).

(ii) ROLE OF SECRETARY.—The Secretary shall not review or approve the specific consultation process in the State.

(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the tribal government and the Secretary of the Interior.

(3) PARTICIPATION BY INTERESTED PARTIES.—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

(4) PERFORMANCE TARGET ACHIEVEMENT.—A statewide transportation improvement program shall include, to the maximum extent practicable, a discussion of the anticipated effect of the statewide transportation improvement program toward achieving the performance targets established in the statewide transportation plan, linking investment priorities to those performance targets.

(5) INCLUDED PROJECTS.—

(A) IN GENERAL.—A transportation improvement program developed under this subsection for a State shall include Federally supported surface transportation expenditures within the boundaries of the State.

(B) LISTING OF PROJECTS.—

(i) IN GENERAL.—An annual listing of projects for which funds have been obligated for the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review.

(ii) FUNDING CATEGORIES.—The listing described in clause (i) shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(C) PROJECTS UNDER CHAPTER 2.—

(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(D) CONSISTENCY WITH STATEWIDE TRANSPORTATION PLAN.—Each project shall be—

(i) consistent with the statewide transportation plan developed under this section for the State;

(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act (42 U.S.C. 7401 et seq.), if the project is carried out in an area designated as a nonattainment area for ozone, particulate matter, or carbon monoxide under part D of title I of that Act (42 U.S.C. 7501 et seq.).

(E) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(F) FINANCIAL PLAN.—

(i) IN GENERAL.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs.

(ii) ADDITIONAL PROJECTS.—The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(G) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—

(i) NO REQUIRED SELECTION.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

(ii) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

(H) PRIORITIES.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this chapter and title 23.

(6) PROJECT SELECTION FOR AREAS OF LESS THAN 50,000 POPULATION.—

(A) IN GENERAL.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this chapter), by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation or, if applicable, through regional transportation planning organizations described in subsection (*l*).

(B) OTHER PROJECTS.—Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or under sections 5310 and 5311 of this chapter shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(7) TRANSPORTATION IMPROVEMENT PROGRAM APPROVAL.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

(8) PLANNING FINDING.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5303.

(9) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(h) PERFORMANCE-BASED PLANNING PROCESSES EVALUATION.—

(1) IN GENERAL.—The Secretary shall establish criteria to evaluate the effectiveness of the performance-based planning processes of States, taking into consideration the following:

(A) The extent to which the State is making progress toward achieving, the performance targets described in subsection (d)(2), taking into account whether the State developed appropriate performance targets.

(B) The extent to which the State has made transportation investments that are efficient and cost-effective.

(C) The extent to which the State—

(i) has developed an investment process that relies on public input and awareness to ensure that investments are transparent and accountable; and

(ii) provides reports allowing the public to access the information being collected in a format that allows the public to meaningfully assess the performance of the State.

(2) REPORT.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of the Federal Public Transportation Act of 2012, the Secretary shall submit to Congress a report evaluating—

(i) the overall effectiveness of performance-based planning as a tool for guiding transportation investments; and

(ii) the effectiveness of the performance-based planning process of each State.

(B) PUBLICATION.—The report under subparagraph (A) shall be published or otherwise made available in electronically accessible formats and means, including on the Internet.

(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5303, and sections 134 and 135 of title 23, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 5303, and sections 134 and 135 of title 23, if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section and section 5303, and sections 134 and 135 of title 23, as appropriate.

(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under that Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(k) SCHEDULE FOR IMPLEMENTATION.—The Secretary shall issue guidance on a schedule for implementation of the changes made by this section, taking into consideration the established planning update cycle for States. The Secretary shall not require a State to deviate from its established planning update cycle to implement changes made by this section. States shall reflect changes made to their transportation plan or transportation improvement program updates not later than 2 years after the date of issuance of guidance by the Secretary under this subsection.

(*l*) DESIGNATION OF REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a State may establish and designate regional transportation planning organizations to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and transportation improvement programs, with an emphasis on addressing the needs of nonmetropolitan areas of the State.

(2) STRUCTURE.—A regional transportation planning organization shall be established as a multijurisdictional organization of nonmetropolitan local officials or their designees who volunteer for such organization and representatives of local transportation systems who volunteer for such organization.

(3) REQUIREMENTS.—A regional transportation planning organization shall establish, at a minimum—

(A) a policy committee, the majority of which shall consist of nonmetropolitan local officials, or their designees, and, as appropriate, additional representatives from the State, private business, transportation service providers, economic development practitioners, and the public in the region; and

(B) a fiscal and administrative agent, such as an existing regional planning and development organization, to provide professional planning, management, and administrative support.

(4) DUTIES.—The duties of a regional transportation planning organization shall include—

(A) developing and maintaining, in cooperation with the State, regional long-range multimodal transportation plans;

(B) developing a regional transportation improvement program for consideration by the State;

(C) fostering the coordination of local planning, land use, and economic development plans with State, regional, and local transportation plans and programs;

(D) providing technical assistance to local officials;

(E) participating in national, multistate, and State policy and planning development processes to ensure the regional and local input of nonmetropolitan areas;

(F) providing a forum for public participation in the statewide and regional transportation planning processes;

(G) considering and sharing plans and programs with neighboring regional transportation planning organizations, metropolitan planning organizations, and, where appropriate, tribal organizations; and

(H) conducting other duties, as necessary, to support and enhance the statewide planning process under subsection (d).

(5) STATES WITHOUT REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS.—If a State chooses not to establish or designate a regional transportation planning organization, the State shall consult with affected nonmetropolitan local officials to determine projects that may be of regional significance.

(Pub. L. 103–272, § 1(d), July 5, 1994, 108 Stat. 793; Pub. L. 105–178, title III, § 3005, June 9, 1998, 112 Stat. 345; Pub. L. 105–206, title IX, § 9009(c)(2), July 22, 1998, 112 Stat. 854; Pub. L. 109–59, title III, § 3006(a), Aug. 10, 2005, 119 Stat. 1559; Pub. L. 112–141, div. B, § 20006, July 6, 2012, 126 Stat. 643; Pub. L. 114–94, div. A, title III, § 3003(b), Dec. 4, 2015, 129 Stat. 1449; Pub. L. 117–58, div. C, § 30003, Nov. 15, 2021, 135 Stat. 893.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5304(a)	49 App.:1607(h)(1).	July 9, 1964, Pub. L. 88–365, 78 Stat. 302, §8(h); added Nov. 6, 1978, Pub. L. 95–599, §305(b), 92 Stat. 2743; Apr. 2, 1987, Pub. L. 100–17, §310, 101 Stat. 227; restated Dec. 18, 1991, Pub. L. 102–240, §3012, 105 Stat. 2102; Oct. 6, 1992, Pub. L. 102–388, §§501, 502(e), 106 Stat. 1566.
5304(b)	49 App.:1607(h)(2).	
5304(c)	49 App.:1607(h)(3), (5).	
5304(d)	49 App.:1607(h)(6).	
5304(e)	49 App.:1607(h)(4).	

In subsection (b)(1), the word ''initial'' is omitted as surplus.

In subsection (b)(2)(C), the words ''and programs'' are omitted as surplus.

In subsection (c)(1), the word ''otherwise'' is omitted as surplus.

Editorial Notes

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(2) and (g)(5)(D)(iii), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Part D of title I of the Act is classified generally to part D (§7501 et seq.) of subchapter I of chapter 85 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of the Federal Public Transportation Act of 2012, referred to in subsec. (h)(2)(A), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112–141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of Title 23, Highways.

The National Environmental Policy Act of 1969, referred to in subsec. (j), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (e). Pub. L. 117–58, §30003(a)(1), struck out quotation marks before ''In'' in introductory provisions.

Subsec. (f)(3)(C). Pub. L. 117–58, §30003(b), added subpar. (C).

Subsec. (i). Pub. L. 117–58, §30003(a)(2), substituted ''this'' for ''this this''.

2015—Subsec. (a)(2). Pub. L. 114–94, §3003(b)(1), substituted '', bicycle transportation facilities, and intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities and commuter vanpool providers'' for ''and bicycle transportation facilities''.

Subsec. (d)(1)(I). Pub. L. 114–94, §3003(b)(2)(A), added subpar. (I).

Subsec. (d)(2)(B)(ii). Pub. L. 114–94, §3003(b)(2)(B)(i), struck out ''urbanized'' after ''In''.

Subsec. (d)(2)(C). Pub. L. 114–94, §3003(b)(2)(B)(ii), struck out ''urbanized'' after ''public transportation in''.

Subsec. (f)(3)(A)(ii). Pub. L. 114–94, §3003(b)(3), inserted ''public ports,'' before ''freight shippers,'' and ''(including intercity bus operators, employer-based commuting programs, such as a carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program)'' after ''private providers of transportation''.

2012—Pub. L. 112–141 amended section generally. Prior to amendment, section related to statewide transportation planning and consisted of subsecs. (a) to (j).

2005—Pub. L. 109–59 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (e) relating to development and updating of a transportation improvement program, contents of program, selection of projects, notice and an opportunity to comment on proposed programs, and conformance of review requirements under the National Environmental Policy Act of 1969.

1998—Subsec. (a). Pub. L. 105–178, §3005(d)(1), as added by Pub. L. 105–206, §9009(c)(2), designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 105–178, §3005(a), in second sentence, substituted ''the metropolitan planning organization, in cooperation with the chief executive officer of the State and any affected mass transportation operator,'' for ''the organization'' and inserted ''other affected employee representatives, freight shippers, providers of freight transportation services,'' after ''transportation authority employees,'' and ''representatives of users of public transit,'' after ''private providers of transportation,''.

Subsec. (b)(2)(B). Pub. L. 105–178, §3005(d)(2)(A), as added by Pub. L. 105–206, §9009(c)(2), struck out ''and'' at end.

Subsec. (b)(2)(C). Pub. L. 105–178, §3005(d)(2)(B), as added by Pub. L. 105–206, §9009(c)(2), which directed amendment of subpar. (C) by substituting ''strategies; and'' for ''strategies which may include'', was executed by making the substitution for ''strategies, which may include'' to reflect the probable intent of Congress. Remaining provisions of subpar. (C) redesignated (D).

Pub. L. 105–178, §3005(b), added subpar. (C) and struck out former subpar. (C) which read as follows: ''recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects.''

Subsec. (b)(2)(D). Pub. L. 105–178, §3005(d)(2)(B), as added by Pub. L. 105–206, §9009(c)(2), which directed amendment of subpar. (C) by substituting ''strategies; and'' followed by ''(D) may include'' for ''strategies which may include'', was executed by making the substitutions for ''strategies, which may include'' to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 105–178, §3005(c)(1), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in section 5305(d)(1) of this title, the State, in cooperation with the metropolitan planning organization, shall select projects in a metropolitan area that involve United States Government participation. Selection shall comply with the transportation improvement program for the area.''

Subsec. (c)(3). Pub. L. 105–178, §3005(c)(2), added par. (3).

Subsec. (c)(4). Pub. L. 105–178, §3005(d)(3), as added by Pub. L. 105–206, §9009(c)(2), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''Notwithstanding subsection (b)(2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(C).''

Pub. L. 105–178, §3005(c)(2), added par. (4).

Subsec. (c)(5), (6). Pub. L. 105–178, §3005(c)(2), added pars. (5) and (6).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as

included in Pub. L. 105–178 at time of enactment, and provisions of Pub. L. 105–178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105–206 to be treated as not enacted, see section 9016 of Pub. L. 105–206, set out as a note under section 101 of Title 23, Highways.

SCHEDULE FOR IMPLEMENTATION

Pub. L. 109–59, title III, § 3006(b), Aug. 10, 2005, 119 Stat. 1565, required the Secretary of Transportation to issue guidance on a schedule for implementation of the changes made to this section by section 3006(a) of Pub. L. 109–59 and required State or metropolitan planning organization plan or program updates to reflect such changes beginning July 1, 2007.

§ 5305. Planning programs

(a) STATE DEFINED.—In this section, the term ''State'' means a State of the United States, the District of Columbia, and Puerto Rico.

(b) GENERAL AUTHORITY.—

(1) GRANTS AND AGREEMENTS.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, and make agreements with other departments, agencies, or instrumentalities of the Government to—

(A) develop transportation plans and programs;

(B) plan, engineer, design, and evaluate a public transportation project; and

(C) conduct technical studies relating to public transportation.

(2) ELIGIBLE ACTIVITIES.—Activities eligible under paragraph (1) include the following:

(A) Studies related to management, planning, operations, capital requirements, and economic feasibility.

(B) Evaluating previously financed projects.

(C) Peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners.

(D) Other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(c) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated or made available under section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(d) METROPOLITAN PLANNING PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion 80 percent of the amounts made available under subsection (g)(1) among the States to carry out sections 5303 and 5306 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census of population; bears to

(ii) the total population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) ALLOCATION TO MPO'S.—Amounts apportioned to a State under paragraph (1) shall be made available, not later than 30 days after the date of apportionment, to metropolitan planning organizations in the State designated under this section under a formula that—

(A) considers population of urbanized areas;

(B) provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section;

(C) the State develops in cooperation with the metropolitan planning organizations; and

(D) the Secretary approves.

(3) SUPPLEMENTAL AMOUNTS.—

(A) IN GENERAL.—The Secretary shall apportion 20 percent of the amounts made available under subsection (g)(1) among the States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

(B) FORMULA.—The Secretary shall apportion amounts referred to in subparagraph (A) under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under sections 5303 and 5306 in certain urbanized areas.

(e) STATE PLANNING AND RESEARCH PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion the amounts made available under subsection (g)(2) among the States for grants and contracts to carry out this section and sections 5304 and 5306 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census; bears to

(ii) the population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) SUPPLEMENTAL AMOUNTS.—A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts made available under subsection (d).

(f) GOVERNMENT SHARE OF COSTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Government share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity unless the Secretary determines that it is in the interests of the Government—

(A) not to require a State or local match; or

(B) to allow a Government share greater than 80 percent.

harm to the landmark. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3226.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306107	16 U.S.C. 470h–2(f).	Pub. L. 89–665, title I, § 110(f), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306108. Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306108	16 U.S.C. 470f.	Pub. L. 89–665, title I, § 106, Oct. 15, 1966, 80 Stat. 917; Pub. L. 94–422, title II, § 201(3), Sept. 28, 1976, 90 Stat. 1320.

The words ''historic property'' are substituted for ''district, site, building, structure, or object that is included in or eligible for inclusion in the National Register'' because of the definition of ''historic property'' in section 300308 of the new title.

§ 306109. Costs of preservation as eligible project costs

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306109	16 U.S.C. 470h–2(g).	Pub. L. 89–665, title I, § 110(g), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2996.

§ 306110. Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed $1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306110	16 U.S.C. 470h–2(h).	Pub. L. 89–665, title I, § 110(h), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2997.

The words ''historic property'' are substituted for ''historic resources'' for consistency because the defined term in the new division is ''historic property''.

§ 306111. Environmental impact statement

Nothing in this division shall be construed to—

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306111	16 U.S.C. 470h–2(i).	Pub. L. 89–665, title I, § 110(i), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2997.

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 306112. Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this subchapter (except section 306108) may be waived in whole or in part in the event of a major natural disaster or an imminent threat to national security.

(Pub. L. 113–287, § 3, Dec. 19, 2014, 128 Stat. 3227.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
306112	16 U.S.C. 470h–2(j).	Pub. L. 89–665, title I, § 110(j), as added Pub. L. 96–515, title II, § 206, Dec. 12, 1980, 94 Stat. 2997.

Delaware Law and Code References

Delaware Statutory Code

6 Delaware Code, Ch. 77 - Alternative Dispute Resolution

10 Delaware Code, Ch. 61 - Condemnation

17 Delaware Code, Ch. 1 - Highways

17 Delaware Code, Section 132 - DelDOT General Authority

17 Delaware Code, Section 137 - Authority to Acquire and Dispose of Real Property

17 Delaware Code, Section 138 - Uneconomic Remnants

17 Delaware Code, Section 145 - Corridor Capacity Preservation Program

24 Delaware Code, Ch. 40 - Real Estate Appraisers

24 Delaware Code, Section 4007 - Certificate or License Required

24 Delaware Code, Section 4009 - Appraiser Trainee; Requirements of Supervision

29 Delaware Code, Section 2504 - DOJ Authority for DelDOT

29 Delaware Code, Ch. 69 - Procurement Guidelines

29 Delaware Code, Section - 8401 - Establishment of DelDOT

29 Delaware Code, Ch 93 - State Planning and Property Acquisition

29 Delaware Code, Section - 9301 Relocation Assistance

29 Delaware Code, Section - 9305 Relocation Assistance

29 Delaware Code, Section - 9308 Relocation Assistance

29 Delaware Code, Ch. 94 - Real Property Disposition

29 Delaware Code, Ch. 95 - Real Property Acquisition

29 Delaware Code, Section 9504 - Inverse Condemnation

29 Delaware Code, Section 9505 - General Acquisition Policies

29 Delaware Code, Section 9506 - General Acquisition Policies

Delaware Administrative Code

2 Del. Admin. C. § 2406 Policies and Procedures for Acquisition of Certain Real Property

2 Del. Admin. C. § 2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property

Delaware Court Rules

Superior Court Civil Rule 71.1 Superior Court Condemnation Procedures

DelDOT Policy Implement

Policy No. R-04 – Joint Use of Right of Way Beneath Roadway Structures

Subtitle IV
Commercial Development
Chapter 77
Voluntary Alternative Dispute Resolution

§ 7701. Short title; purpose.

(a) This chapter shall be known and may be cited as the "Delaware Voluntary Alternative Dispute Resolution Act."

(b) The purposes of the Delaware Voluntary Alternative Dispute Resolution Act are to provide a means to resolve business disputes without litigation and to permit parties to agree, prior to any disputes arising between them, to utilize alternative dispute resolution techniques if a dispute occurs. An interpretation of the provisions of this chapter shall seek to achieve these purposes.

(70 Del. Laws, c. 151, § 1.)

§ 7702. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "ADR" means the alternative dispute resolution method provided for by this chapter unless the parties to a dispute adopt by written agreement some other method of ADR in which event "ADR" shall refer to the method they adopt.

(2) "ADR Specialist" means an individual who has the qualifications provided for in § 7708 of this title to conduct an ADR proceeding.

(3) A "dispute subject to ADR" means any dispute that:

a. Involves at least $100,000 in contention; and

b. Is not a summary proceeding under § 211, § 215, § 220 or § 225 of Title 8.

(4) "Person" means any individual, corporation, association, partnership, statutory trust, business trust, limited liability company or other entity whether or not organized for profit.

(70 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 329, § 40.)

§ 7703. How ADR is selected.

(a) Any person, by filing the certificate provided for in § 7704 of this title, shall be deemed to have agreed to submit all disputes subject to ADR to the ADR provided for by this chapter. Upon the filing of such certificate, the filer shall be bound by the provisions of this chapter until a certificate of revocation has become effective under § 7707 of this title.

(b) In addition to persons covered by subsection (a) of this section, any person who enter into a written agreement with a person who has filed the certificate provided for in § 7704 of this title, when such agreement incorporates (by reference or otherwise) the ADR requirements of this chapter, will be bound by the ADR requirements of this chapter with regard to disputes arising out of the subject matter of such written agreement. For purposes of compliance with this provision, it shall be sufficient for such writing to state:

"The undersigned hereby agree to be bound by the provisions of the Delaware Voluntary Alternative Dispute Resolution Act with respect to any dispute which arises out of the subject matter of this agreement."

(70 Del. Laws, c. 151, § 1.)

§ 7704. Contents of certificate.

(a) The certificate of agreement to submit to ADR shall set forth:

(1) The name of the person filing the certificate,

(2) The address of such person (which shall include the street, number, city and state) at which it shall be given notice of any dispute, and

(3) The agreement of such person that by filing the certificate that person is bound to follow the provisions of this chapter and submits to the power of any court with jurisdiction over it to require it to participate in ADR with any other person who invokes the provisions of this chapter for any dispute subject to ADR.

(b) Any provision in a certificate that purports to limit the disputes that are subject to ADR shall be of no force or effect.

(70 Del. Laws, c. 151, § 1.)

§ 7705. Place of filing.

(a) The certificate accepting ADR shall be filed with the Secretary of State of the State of Delaware and shall be executed and acknowledged by the chairperson or vice-chairperson of the board of directors or by the president or vice-president of any corporation, by a general partner of any partnership, or by a person with equivalent authority in any other entity.

(b) The Secretary of State shall keep such records as are required to determine who has filed a certificate accepting ADR or revoking such a certificate, together with the date of any such filing.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7706. Filing fee.

No certificate accepting ADR or revoking ADR shall be filed unless it shall be accompanied by the payment of $1,000 to the State, except that the filing fee shall be $100 for every corporation, limited partnership, statutory trust, limited liability company or other entity organized under the laws of the State.

(70 Del. Laws, c. 151, § 1; 73 Del. Laws, c. 329, § 41.)

§ 7707. Revocation of ADR.

A certificate accepting ADR may be revoked by the filing of a certificate stating that it revokes a previously filed certificate. A certificate of revocation shall be executed and acknowledged in the same manner as a certificate accepting ADR. A certificate of revocation shall be effective upon filing and payment of the filing fee, except with respect to disputes arising under contracts requiring ADR and which were entered into prior to the filing of the certificate of revocation.

(70 Del. Laws, c. 151, § 1.)

§ 7708. Qualifications of ADR Specialist.

The ADR proceedings shall be conducted by any individual meeting one of the following criteria:

(a) Successful completion of 25 hours of training in resolving civil disputes in a course approved by the department or division of the government authority charged with responsibility over adult education in the jurisdiction where that individual resides, or

(b) Admission to the bar of the jurisdiction in which that individual resides, together with a minimum of 5 years experience as a practicing attorney.

(70 Del. Laws, c. 151, § 1.)

§ 7709. Selection of ADR Specialist.

(a) In the case of ADR proceedings that are to be held in the State, the party who initiates the proceedings shall select a panel of 3 ADR Specialists in Delaware to be considered by the parties. Unless the parties otherwise agree in writing, the ADR Specialist shall thereafter be chosen in accordance with the procedures set forth in subsections (c) through (f) of this section below.

(b) In all disputes not to be submitted to ADR in the State and unless the parties otherwise agree in writing, the ADR Specialist shall be selected by the following procedure:

(1) When there are 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in either:

a. The state of incorporation or domicile of the other party to the dispute; or

b. The jurisdiction where the other party to the dispute resides as determined from the address stated on the ADR certificate on file with the Secretary of State.

(2) When there are more than 2 parties to the dispute, the party who initiates the ADR proceedings shall choose a panel of 3 ADR Specialists from those qualified persons who reside or have an office in the jurisdiction where the greatest number of the other parties to the ADR proceeding:

a. Are incorporated or domiciled; or

b. Reside as determined from the address stated on any ADR certificate on file with the Secretary of State.

If no jurisdiction has the greatest number of parties then the person initiating ADR shall choose panelists from any of the states of incorporation, domicile or residence of the other parties.

(c) The identity of the panel of the ADR Specialists shall be included in the ADR notice provided for in § 7710 of this title.

(d) Within 14 days of receiving the ADR notice provided for in § 7710 of this title a person receiving such notice shall:

(1) Select 1 of the members of the panel of ADR Specialists contained in the notice by advising the person initiating the ADR in writing of the selection; or

(2) Advise the party initiating the ADR that none of the members of the panel are acceptable.

When more than 2 persons are involved in the ADR proceedings, the ADR Specialist shall be the person chosen by the greatest number of parties and in the case of a tie in a vote, the person initiating the ADR proceedings shall choose the ADR Specialist from the ADR Specialists who received the same number of votes.

(e) Upon receiving the selection of the ADR Specialist by the other person or persons to the dispute, the person initiating the ADR proceedings shall promptly notify the ADR Specialist of that person’s selection and send copies of such notice to the other parties. If a party receiving an ADR notice provided for in § 7710 of the title does not select an ADR Specialist in a timely manner, or advise that none of the members of the panel are acceptable, the person sending the ADR notice:

(1) May select the ADR Specialist, or

(2) In the case of more than 2 parties to a dispute, may cast a vote for the ADR Specialist on behalf of the party who failed to respond to the ADR notice.

(f) If none of the ADR Specialists selected by the party initiating the ADR proceedings are acceptable to the other parties to the dispute, in the ADR proceedings that are to be held in Delaware the ADR Specialist shall be selected in accordance with the rules of the Superior Court of the State as may be adopted by that Court and approved by the Delaware Supreme Court. In ADR proceedings to be conducted outside of Delaware, in the case of a failure of the parties to agree on the ADR Specialist the Specialist shall be selected in accordance with such rules as may apply in the jurisdiction where the ADR proceedings are to be conducted or, if no such rules have been adopted, then by the American Arbitration Association.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7710. Initiation of ADR proceeding.

ADR proceedings are initiated by written notice to the other parties to a dispute who have filed an ADR certificate in accordance with § 7704 of this title or who have agreed to be bound by the ADR requirements of this chapter. The notice shall state in summary form:

(1) The dispute is subject to the provisions of this chapter,

(2) The nature of the dispute to be submitted to ADR and

(3) The identities of the members of the panel of ADR Specialists chosen pursuant to § 7709 of this title.

A failure to send such a notice to a person who has an interest in the dispute shall not prevent the ADR proceedings from going forward between or among parties who did receive such notice.

(70 Del. Laws, c. 151, § 1.)

§ 7711. Participation by other parties.

When not all the parties to a dispute have filed an ADR certificate or have agreed to be bound by the Delaware Voluntary Dispute Resolution Act, such other parties may be given the opportunity to participate in the ADR proceedings by delivering to them the notice provided for in § 7710 of this title. Parties to the dispute who are not bound to participate in the ADR proceedings may elect to participate in the ADR by selecting an ADR Specialist in accordance with § 7709 of this title. Such selection shall constitute the agreement of the party to be subject to the provisions of this chapter for purposes of the dispute in which the election to participate is made. After the passage of the time for selection of the ADR Specialist, the ADR shall proceed without further notice to or involvement by those parties to the dispute who have not elected ADR.

(70 Del. Laws, c. 151, § 1.)

§ 7712. Scheduling of ADR proceedings.

Promptly after notification of appointment, the ADR Specialist shall: (1) advise the parties of a willingness to serve as the ADR Specialist for this dispute, (2) notify the parties of the expected rate of compensation, and (3) set the time and date of the ADR proceedings which shall be within 60 days of notice of appointment unless the parties and the ADR Specialist agree to another date. Unless otherwise agreed, the ADR proceedings shall be held in the offices of the ADR Specialist.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7713. Compensation of ADR Specialist.

(a) The ADR Specialist shall be reimbursed for all reasonable out-of-pocket expenses. The ADR Specialist shall be compensated on the basis of the Specialist's regular hourly fees for professional services for time spent during the day of the actual ADR proceeding and for any subsequent continuation of the proceedings agreed to by parties. In addition to this compensation for the actual ADR proceeding, the ADR Specialist may charge for up to 10 hours spent in preparing for the ADR proceeding, unless the parties agree to additional preparation time.

(b) The ADR Specialist may require the parties, on a pro rata basis, to advance the Specialist's fees for preparation and the actual proceeding within 10 days of the notice of the scheduling of the ADR proceedings.

(c) Unless otherwise agreed, the fees and expenses of the ADR Specialist shall be divided among the parties to the proceedings on a pro rata basis.

(d) The parties and the ADR Specialist may agree on any method or rate of compensation other than as set forth in this section, provided that such agreement is in a writing signed by the parties to the agreement.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7714. Conduct of the ADR proceedings.

Subject to any agreement of the parties to adopt different rules of proceeding and the power of the ADR Specialist to modify these procedures in appropriate instances, the ADR shall be conducted as follows:

(a) No later than 7 days prior to the commencement of the ADR, each party shall submit to the ADR Specialist and the other parties a statement of its position in the dispute and such supporting documents as it deems appropriate, provided that such statement of position shall not exceed 25 pages in length.

(b) Upon the commencement of the ADR, each party shall have no more than 1 hour to present its position to the ADR Specialist in the presence of the other parties. This presentation may be made by counsel, by examining witnesses or by any other means that

is reasonable under the circumstances. Upon conclusion of any party's presentation, the ADR Specialist may permit the other parties to have up to 1 hour to ask questions of the presenting party, with such hour to be divided among the other parties as determined by the ADR Specialist.

(c) Upon conclusion of the initial presentations of positions by all the parties and such questioning of the parties as thereafter occurs pursuant to subsection (b) of this section, the ADR Specialist as soon as possible shall attempt to resolve the dispute by meeting with the parties, either separately or as a group as the Specialist determines is appropriate. Such meetings shall conclude when the dispute is resolved or at the regular close of business on the day the ADR commenced, whichever first occurs.

(d) If the parties thereafter agree, the ADR Specialist may continue to discuss the resolution of the dispute with them, either separately or together, until any party notifies the ADR Specialist that such discussions are at an impasse.

(70 Del. Laws, c. 151, § 1.)

§ 7715. Conclusion of ADR.

Any settlement of the dispute submitted to ADR shall be reduced to writing as soon as possible after the settlement is reached, with such writing to be prepared by the ADR Specialist (unless the parties otherwise agree as part of their settlement that they will prepare the writing) and shall be signed by the parties to be valid and binding upon them. If no settlement is reached at the close of business on the day the ADR is commenced or after further mediation at the parties request until an impasse is declared, the ADR Specialist shall declare the ADR has concluded by advising the parties in writing.

(70 Del. Laws, c. 151, § 1.)

§ 7716. Confidentiality.

All ADR proceedings shall be confidential and any memoranda submitted to the ADR Specialist, any statements made during the ADR and any notes or other materials made by the ADR Specialist or any party in connection with the ADR shall not be subject to discovery or introduced into evidence in any proceeding and shall not be construed to be a waiver of any otherwise applicable privilege. Nothing in this section shall limit the discovery or use as evidence of documents that would have otherwise been discoverable or admissible as evidence but for the use of such documents in the ADR proceeding.

(70 Del. Laws, c. 151, § 1.)

§ 7717. Immunity.

The ADR Specialist shall have such immunity as if the Specialist were a judge acting in a court with jurisdiction over the subject matter and the parties involved in the dispute that led to ADR.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7718. Attendance at ADR.

A person may be represented by counsel in all stages of the ADR proceeding. In addition to its counsel, each party must attend the initial ADR proceeding in which the parties make their presentations and submit to questioning and meet with the ADR Specialist. A person may attend through its chief executive officer (or person holding an equivalent position in such entity) or through any other person authorized in writing by the entity's governing body to so attend, provided such authorized person files a written authorization to attend with the ADR Specialist. The authorization shall state that the representative has the authority to settle the dispute (subject to any limits that are deemed appropriate by the governing body and which limits need not be revealed) and such person is charged with the responsibility of reporting to the party's governing body on what occurred during the ADR proceedings. Any such report shall be confidential in accordance with § 7716 of this title.

(70 Del. Laws, c. 151, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7719. Enforcement of ADR rights.

(a) The right to ADR provided for under this chapter may be enforced by any court with jurisdiction over the parties. Any person who files a certificate under § 7704 of this title thereby consents to the jurisdiction of the Court of Chancery of the State for the purpose of enforcing in a summary proceeding the rights provided for by this chapter.

(b) In addition to the right to compel ADR provided by subsection (a) of this section, any party to an ADR proceeding to be conducted pursuant to this chapter shall be entitled to reasonable attorneys' fees incurred in compelling ADR.

(c) Any party failing to pay the reasonable fees and expenses of an ADR Specialist shall be subject to suit by the ADR Specialist for 3 times the amount of such fees and expenses, together with the attorneys' fees and other costs incurred in such litigation.

(70 Del. Laws, c. 151, § 1.)

§ 7720. Tolling of limitations.

The initiation of ADR under § 7710 of this title shall suspend the running of the statute of limitations applicable to the dispute that is the subject of the ADR until 14 days after the ADR is concluded in accordance with § 7715 of this title.

(70 Del. Laws, c. 151, § 1.)

§ 7721. Effect of commencing litigation.

Other than a proceeding to require ADR under § 7719 of this title, this chapter and the procedures provided for herein shall cease to have any force or effect upon the commencement of litigation concerning the dispute that is the subject of the ADR proceedings. The parties to any such litigation shall be exclusively subject to the rules of the tribunal in which such litigation has been commenced and nothing in this chapter shall be construed to infringe upon or otherwise affect the jurisdiction of the courts over such disputes.

(70 Del. Laws, c. 151, § 1.)

Part IV
Special Proceedings
Chapter 61
Condemnation

§ 6101. Application of chapter.

This chapter shall govern the procedure for all condemnations of real and personal property within this State under the power of eminent domain exercised by any authority whatsoever, governmental or otherwise.

(48 Del. Laws, c. 271, § 1; 10 Del. C. 1953, § 6101.)

§ 6102. Jurisdiction of Superior Court; filing of complaint.

All condemnation proceedings within the State shall be commenced by filing a complaint as provided in this chapter in the Superior Court in and for the county where the property is located, or if part of such property is situated in 1 county and part in another, then in either county. The Superior Court shall have exclusive jurisdiction of all condemnation proceedings.

(48 Del. Laws, c. 271, § 2; 10 Del. C. 1953, § 6102.)

§ 6103. Applicability of Superior Court Rules.

The Rules of the Superior Court shall govern, insofar as applicable, all condemnation proceedings of real and personal property under the power of eminent domain, except as otherwise provided in this chapter.

(48 Del. Laws, c. 271, § 3; 10 Del. C. 1953, § 6103.)

§ 6104. Joinder of properties.

The plaintiff may join in the same action, under this chapter, 1 or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(48 Del. Laws, c. 271, § 4; 10 Del. C. 1953, § 6104.)

§ 6105. Complaint; parties.

(a) A complaint under this chapter shall contain a caption as provided in Rule 10(a) of the Rules of the Superior Court, except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken consistent with § 9501A of Title 29, the compliance with § 9505(15) of Title 29, a description of the property sufficient for its identification, the interest to be acquired, and, as to each separate piece of property, a designation of the defendants who have been joined as owners thereof or of some interest therein.

(c) Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the determination of compensation to be paid, the plaintiff shall add as defendants all persons having or claiming an interest in the property whose names can be ascertained by a search of the records to the extent commonly made by competent searchers of title in the vicinity in the light of the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners."

(d) Process shall be served as provided in § 6106 of this title upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in § 6107 of this title.

(e) In the event that § 9501A(d) of Title 29 applies, then the Court shall schedule a hearing for the agency to meet its burden to establish a public use as defined in 9501A of Title 29.

(48 Del. Laws, c. 271, § 5; 10 Del. C. 1953, § 6105; 77 Del. Laws, c. 12, §§ 3, 4.)

§ 6106. Process; notice of publication.

(a) Upon the filing of a complaint under this chapter, the prothonotary shall issue summons, in appropriate form, directed to all of the defendants designated or named in the complaint, which summons shall be personally served in like manner as other writs of summons in the Court in accordance with Rule 4(d) and (f)(1)(I), (III), (IV) of the Rules of the Superior Court.

(b) If it appears by affidavit of the plaintiff or the plaintiff's attorney that any defendant cannot be personally served with summons, because he or she is outside of this State, or because after diligent inquiry his or her place of residence cannot be ascertained by the plaintiff, or if any defendant is an infant or incompetent person or under some other legal disability, the Court may make an order directing that service shall be made upon any such defendant by publishing a notice, substantially in the form prescribed in subsection (c) of this section, in a newspaper of general circulation in the county in which the proceeding is pending, at least once a week for 2 successive weeks. Such

service by publication shall be supplemented by service by registered mail, where practicable, as the Court in its order may direct. Notice to unknown owners shall be given by publication in like manner by notice addressed to "unknown owners," coupled, if practicable, with an appropriate identification of the alleged source of their interest in the property, as the Court may direct. Proof of publication and of mailing, if required, shall be made by affidavit of the plaintiff or the plaintiff's attorney on or before such time as the Court may fix.

(c) The notice referred to in subsection (b) of this section shall set forth the name of the Court, the title of the action, the name or names of the defendant or defendants to whom it is directed, a statement that the action is one for the condemnation of property, a brief description of such property reasonably sufficient for its identification, the extent of the interest to be taken, the authority for the taking, and the use or uses for which the property is to be taken. The notice shall also state that any defendant shall serve and file, in accordance with the rules of court, an answer within 20 days after the date of the first publication of the notice, in default of which no objection or defense to the taking of the property will be heard. The notice shall also specify the name and address of the plaintiff's attorney therein.

(48 Del. Laws, c. 271, § 6; 10 Del. C. 1953, § 6106; 70 Del. Laws, c. 186, § 1.)

§ 6107. Objections or defenses to taking.

Any objection or defense to the taking of the property, or any interest therein, by any defendant, shall be made by answer. Any such answer setting forth any such objection or defense shall identify the property in which the answering defendant claims to have an interest, shall state the nature and extent of the interest claimed, and shall state specifically any such objections or defenses to the taking of the property. All objections and defenses not so presented shall be deemed waived. After the disposition of all such objections and defenses the cause shall proceed to the trial of the issue of just compensation.

(48 Del. Laws, c. 271, § 7; 10 Del. C. 1953, § 6107.)

§ 6108. Trial; choice of commissioners; viewing property.

(a) After the time has expired for answering a complaint under this chapter, and all preliminary questions of law disposed of, the cause shall be placed upon the regular trial calendar of the Superior Court for trial.

(b) Prior to the trial date the Court shall submit to the appearing parties a list of 11 proposed commissioners, who are impartial, disinterested and judicious citizens of the county where the real property is situated or the personal property is found, showing their full names and addresses. Thereafter, at a place and time designated by the Court, the plaintiff or plaintiffs shall (jointly, if more than 1), strike out 1 of the names, and then the defendant or defendants shall (jointly, if more than 1) strike out another, and so on until 8 names have been stricken out. If the plaintiff or plaintiffs or the defendant or defendants refuse to strike or do not attend the striking or cannot agree among themselves, then the Court or the prothonotary or the prothonotary's deputy, if designated by the Court, shall strike, for the party or parties refusing to strike, to attend, or who cannot agree among themselves. After the opposing parties have stricken 8 names, the remaining 3 shall be the commissioners for the cause and the prothonotary shall thereupon deliver to the sheriff a certified list of the names of the 3 commissioners, with their addresses annexed to a writ commanding the sheriff to summon the 3 named persons as commissioners to attend the Superior Court for trial at a time fixed by the Court. The sheriff shall, thereupon, summon them according to the command of the writ and shall return the list with the writ.

(c) At the trial of the cause and before entering upon their duties, the 3 commissioners shall be sworn or affirmed faithfully and impartially to perform the duties assigned to them.

(d) The Court, in its discretion, may determine whether or not the commissioners shall view the premises and if a view is ordered shall designate the time therefor. The view, if ordered, shall be conducted under the supervision of the Court by the court bailiffs and the view shall not be considered as evidence but only for the purpose of better understanding the evidence presented at the trial, nor shall any testimony be taken at the view. This restraint shall not prevent the parties from designating and identifying the property during the view.

(e) At the trial any party may present competent and relevant evidence upon the issue of just compensation and all such evidence shall be given in the presence of the Court and the commissioners. The Court shall, during the course of the trial, determine all questions of law and the admissibility of all evidence. A religious corporation or religious body of this State as a party to a condemnation proceeding may present as competent or relevant testimony upon the issue of just compensation the reasonable costs as of the date of the taking of the church property, of erecting a new structure of substantially the same size and of comparable character and quality of construction as the acquired church structure, at some other suitable and comparable location to be provided by such religious corporation or body. The admissibility of such evidence is conditioned upon the religious corporation or religious body being a duly constituted legal corporation or body and using the acquired site as a church or place of religious worship; and upon the further condition that the new structure or building to be erected for religious worship shall be located within the county of this State in which the acquired site is located at the time of the taking of possession of said acquired site.

(f) If 1 of the 3 commissioners becomes incapacitated during the course of the trial, the remaining 2 shall have power to make the factual determination of just compensation.

(g) After all evidence is presented and the commissioners have been charged by the Court with the applicable law, they shall retire and in secret arrive at a determination of the amount to be awarded as just compensation for the respective parties in interest, and thereafter announce their awards in open court. Such awards shall be confirmed by the Court unless the commissioners have been guilty of misconduct in their proceedings, or unless they have made an improper award to any party in interest, whether based upon an error

of fact or law, in which events the Court may, upon its own motion, or motion of any party filed and served within 5 days of the award, set aside the erroneous award in whole or in part, or modify it to conform to the facts as presented by the evidence, or to conform it with the law as announced by the Court. In the event the award is set aside in whole or in part, the Court may, in its discretion, recommit it to the commissioners with instructions.

(h) The final award, as confirmed or modified, may be reviewed by the Supreme Court as provided in this chapter.

(i) The prothonotary shall record the final award in a special docket to be maintained for that purpose.

(48 Del. Laws, c. 271, § 8; 10 Del. C. 1953, § 6108; 52 Del. Laws, c. 340; 56 Del. Laws, c. 406; 70 Del. Laws, c. 186, § 1.)

§ 6109. Dismissal of action.

(a) In a condemnation proceeding under this chapter, if no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) Before the entry of any award or possession of property is taken by the plaintiff, the action may be dismissed, in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby, and, if the parties so stipulate, the Court may vacate any award that has been entered.

(c) At any time before compensation for a piece of property has been determined and paid and, after motion and hearing, the Court may dismiss the action as to that party, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession, or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) Except as otherwise provided in the notice or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

(48 Del. Laws, c. 271, § 9; 10 Del. C. 1953, § 6109.)

§ 6110. Entry into possession; requirements.

(a) At any time after the filing of any condemnation proceeding under this chapter, the plaintiff, upon the filing of a notice of intention to take possession of the property sought to be condemned, or any part thereof, on a day therein specified, and upon deposit in Court of the sum of money estimated by plaintiff to be just compensation for the property or the part thereof taken, has the right to enter into possession, occupy or take the property from and after such day, upon entry of an appropriate order by the Court, which order may be made ex parte and without notice.

(b) Upon application of any party in interest, the Court may order the money so deposited in Court, or any part thereof, be paid forthwith for or on account of just compensation to be awarded in the proceeding and such payment shall not jeopardize any party's right to prove just compensation in a greater or less amount. If the compensation finally awarded to any defendant exceeds the amount paid to the defendant on distribution of the deposit, the Court shall credit the payment to the final award and if the compensation finally awarded to any defendant is less than the amount which has been paid to the defendant, the Court shall enter judgment against the defendant in favor of the plaintiff for such overpayment.

(c) In any case where possession has been so taken the obligation of the plaintiff to pay the amount ultimately determined as just compensation in the cause shall be absolute. Title shall vest in plaintiff on the date of payment of the final award.

(48 Del. Laws, c. 271, § 10; 10 Del. C. 1953, § 6110; 70 Del. Laws, c. 186, § 1.)

§ 6111. Costs.

The costs of any condemnation proceeding provided for in this chapter, including a reasonable fee for the commissioners but in no case to exceed $20 per day for each commissioner, and including the cost of giving notice by publication and by registered mail as provided in § 6106 of this title, shall be borne and paid for by the plaintiff or plaintiffs in the proportions determined by the Court. Fees of counsel or of experts retained by any party may not be taxed as costs under any circumstances upon any of the parties or considered in determining the issue of just compensation, except as follows:

(1) At any time prior to the day before the compensation trial of a condemnation proceeding begins, the plaintiff shall serve upon the defendant(s) an offer to allow judgment to be taken against the plaintiff, in accordance with the terms of the offer, exclusive of court costs and interest. If the defendant(s) accept the offer by serving a written notice of acceptance upon the plaintiff, either party may then file the offer and notice of acceptance with the Court, together with proof of service thereof, and thereupon the prothonotary shall enter the notice of acceptance as if it were the final award pursuant to § 6108 of this title. An offer not accepted prior to the swearing of the commissioners pursuant to § 6108(c) of this title shall be deemed withdrawn, and evidence thereof is not admissible except in a later proceeding to determine costs pursuant to this section. The fact that an offer is made but not accepted shall not preclude a subsequent offer.

(2) If the award of just compensation, exclusive of interest, is closer to the highest valuation evidence provided at trial on the defendant's behalf than the plaintiff's offer made under paragraph (1) of this section, the defendant may apply for an order for the

plaintiff to pay the defendant's reasonable litigation expenses, including reasonable attorney, appraisal, engineering or other expert witness fees actually incurred because of the compensation trial, by serving on the plaintiff and filing with the prothonotary a verified application therefor within 15 days after the final confirmed condemnation award. The application shall show cause why the defendant is entitled to an award pursuant to this paragraph; state the amount sought; and include an itemized statement under oath from an attorney or expert witness representing or appearing at trial on behalf of the defendant stating the fee charged, the basis therefor, the actual time expended and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the Court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded. Any order of the Court awarding expenses pursuant to this paragraph shall be filed with the prothonotary and, unless appealed within 30 days, shall be a final order. Any expenses awarded by the Court pursuant to this paragraph shall be paid within 30 days of the Court's final order. The Court, in its discretion, may reduce the amount to be awarded pursuant to this paragraph, or deny such award, to the extent that the defendant, during the course of the proceeding, engaged in conduct which unduly and unreasonably protracted the final resolution of the action, or to the extent the Court finds that the position of the plaintiff was substantially justified, or that special circumstances make an award of expenses unjust. In no event shall the amount of the expenses awarded pursuant to this paragraph exceed the amount awarded as just compensation.

(3) If the award of just compensation, exclusive of interest, is lower than the plaintiff's offer made under paragraph (1) of this section, the plaintiff may apply for an order for the defendant to pay the plaintiff's reasonable litigation expenses incurred after the service of the offer, excluding attorney fees but including reasonable appraisal, engineering or other expert witness fees actually incurred because of the condemnation trial, by serving on the defendant and filing with the prothonotary a verified application therefor within 15 days after the final confirmed condemnation award. The application shall show cause why the plaintiff is entitled to an award pursuant to this paragraph; state the amount sought; and include an itemized statement under oath from an attorney or expert witness representing or appearing at trial on behalf of the plaintiff stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the Court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded. Any order of the Court awarding expenses pursuant to this paragraph shall be filed with the prothonotary and, unless appealed within 30 days, shall be a final order. Any expenses awarded by the Court pursuant to this paragraph may be deducted from the award of just compensation, unless payment of the expenses awarded is otherwise made within 30 days of the Court's final order. The Court, in its discretion, may reduce the amount to be awarded pursuant to this paragraph, or deny such award, to the extent that the plaintiff, during the course of the proceeding, engaged in conduct which unduly and unreasonably protracted the final resolution of the action, or to the extent the Court finds that the position of the defendant was substantially justified, or that special circumstances make an award of expenses unjust. In no event shall the amount of the expenses awarded pursuant to this paragraph exceed the amount awarded as just compensation.

(48 Del. Laws, c. 271, § 11; 10 Del. C. 1953, § 6111; 69 Del. Laws, c. 308, § 1.)

§ 6112. Review.

There shall be a right of review in every condemnation cause from the final confirmed award of the Superior Court to the Supreme Court as in the manner provided for review of any other final civil judgment of the Superior Court. Any such review must be instituted within 1 month from the time of entry of the final confirmed award of the Superior Court.

(48 Del. Laws, c. 271, § 12; 10 Del. C. 1953, § 6112.)

§ 6113. Time for payment of award; interest.

In the event no review of a condemnation cause is taken, the plaintiff or plaintiffs may pay or tender the amount of the award within 2 months after the entry of the confirmed award of the Superior Court, and in the event a review to the Supreme Court is taken, plaintiff or plaintiffs may pay or tender the amount thereof within 1 month of the entry of any final award entered pursuant to the mandate of the Supreme Court. Interest shall accrue on the award from the date of taking possession or from the date of the award, whichever first occurs.

(48 Del. Laws, c. 271, § 13; 10 Del. C. 1953, § 6113.)

§ 6114. Deposit of award.

In any condemnation case in which any final award is made to any party in interest who is unknown, is a minor, or is mentally incompetent, or is under any other legal disability, cannot be found, or resides outside of this State, or refuses to accept such award, the Court may direct that the amount of such award be deposited by the plaintiff to the credit of such party in any state or national bank having a branch or office in the county wherein the condemnation proceedings are instituted, within the periods providing for payment as set forth in § 6113 of this title, or the Court may make such other order as is appropriate and just.

(48 Del. Laws, c. 271, § 14; 10 Del. C. 1953, § 6114; 63 Del. Laws, c. 142, § 28.)

§ 6115. Recording of certified abstract of condemnation proceedings; failure to record.

(a) Whenever lands or any interest therein are condemned by any person, corporation or political subdivision under any statute of this State, and the amount of damages ascertained shall have been paid or deposited as provided in the statute, the record thereof shall be filed in the office of the prothonotary for the county, in which the land lies and the person, corporation or political subdivision for whose

benefit such land is condemned, shall secure from the prothonotary a certified abstract of the record of such condemnation proceedings. The certified abstract shall include a description of the land condemned, a statement of the title or interest so acquired, the name of the former owner or owners of such interest, the name of the person, corporation or political subdivision, acquiring the interest through the proceedings and a memorandum showing the amount of damages paid or deposited. The abstract shall, within 30 days after the memorandum showing the amount of damages paid or deposited shall have been filed in the prothonotary's office, be recorded in the office of the recorder of deeds for the county wherein the land lies, in the deed records of the county and shall be indexed by the recorder in the name of the condemning person, corporation or political subdivision, as the grantee, and in the name of the former owner or owners of the land, as the grantor or grantors.

(b) If such abstract is not recorded as provided in subsection (a) of this section, the condemnation proceedings shall not avail against a subsequent fair creditor, mortgagee or purchaser, for a valuable consideration, unless it shall appear that such creditor when giving the credit, or such mortgagee or purchaser, when advancing the consideration, had notice of such condemnation proceedings.

(Code 1915, § 3238A; 33 Del. Laws, c. 210; 34 Del. Laws, c. 197; Code 1935, § 3702; 10 Del. C. 1953, § 6115.)

Legislative Council,
General Assembly
State of Delaware

Title 17

Highways

NOTICE: The Delaware Code appearing on this site is prepared by the Delaware Code Revisors and the editorial staff of LexisNexis in cooperation with the Division of Legislative Services of the General Assembly, and is considered an official version of the State of Delaware statutory code. This version includes all acts enacted as of February 14, 2025, up to and including 85 Del. Laws, c. 3.

DISCLAIMER: With respect to the Delaware Code doctm1ents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assmnes any legal liability or responsibility for the usefulness of any infonnation, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Please seek legal counsel for help on interpretation of individual statutes.

Chapter 1
GENERAL PROVISIONS

Subchapter I

Definitions

§ 101 Definitions.

(a) As used in this title, unless the context indicates a different intent:

(1) "Construction" means the first complete building or rebuilding of a highway after it has been converted into a state highway upon a modern engineering design with a permanent foundation of cement, concrete or other equally hard and permanent material and a top dressing of suitable material to economically withstand the wear of the particular traffic to which such highway will probably be subject with an adequate drainage system so that such highway, with reasonable maintenance, can reasonably be expected to endure for upwards of 40 years.

(2) A "Delaware byway" is a transportation route which is adjacent to or runs along or next to an area that has particular intrinsic scenic, historic, recreational, cultural or archaeological qualities and for which such transportation route is managed in order to protect such characteristics and to encourage development of tourism and recreational resources.

(3) "Department" means the Department of Transportation.

(4) "Express highway" means a state highway especially designed for through traffic over which owners of abutting property shall have no easement or right of direct access, light or air, by reason of the fact that this property abuts on such highway, and it shall have only such public entrances or exits as shall be designated by the Department and may be with or without service roads in the discretion of the Department.

(5) "Maintenance," as applied to constructed or reconstructed highways, is the upkeep and support thereof with true surfaces in a hard, smooth condition as when such highways were constructed or reconstructed and with proper and adequate drainage systems; as applied to state highways not constructed or reconstructed, is the upkeep and support thereof in as high a condition of perfection as is consistent with the character of such unconstructed or unreconstructed highway and shall include the keeping of the right-of-way of all state highways clear of underbrush and debris which might interfere with the drainage or injure the foundation of such highways and the setting out and preserving of trees where desirable along such right-of-way.

(6) "Public carrier" includes every individual, partnership, association, corporation, joint stock company, agency or department of this State, or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees, or receivers appointed by any court whatsoever, that now operates or hereafter may operate, within this State, any railroad, street railway, traction railway, motor bus or electric trackless trolley coach service, system, plant or equipment for public use.

(7) "Railroad" means a road, the cars, carriages and coaches on which are propelled by steam power, electricity, cable, motor or any improved motive power.

(8) "Reconstruction" is the first extensive repairing of an improved road converted into a state highway, and before the Department has constructed such highway, as in the opinion of the Department and the Secretary of Transportation, will result in a state highway of such permanency that there will be a net saving of reconstruction.

(9) "Road" and "highway" include any public way or road or portion thereof and any sewer, drain or drainage system connected therewith and any bridge, culvert, viaduct or other construction or artificial way used in connection therewith and anything which is accessory to any of the same or to the use thereof.

(10) "Secretary" means the Secretary of Transportation.

(11) "State highway" includes any road or highway or portion thereof which the Department has constructed or of which the Department has taken or assumed control or jurisdiction.

(b) As used in this title, "construct" and "constructed" shall be defined in accordance with the definition of "construction"; "reconstruct" and "reconstructed" shall be defined in accordance with the definition of "reconstruction"; "maintain" and "maintained" shall be defined in accordance with the definition of "maintenance."

(29 Del. Laws, c. 63, § 1; Code 1935, § 5720; 47 Del. Laws, c. 406, § 2; 17 Del. C. 1953, § 101; 53 Del. Laws, c. 255; 57 Del. Laws, c. 671, §§ 1A-1C; 59 Del. Laws, c. 393, § 3; 60 Del. Laws, c. 503, §§ 18, 19; 72 Del. Laws, c. 444, § 1; 77 Del. Laws, c. 367, § 2.)

Subchapter II

Organization and Administration of Department

§ 111 Secretary of Transportation; powers and duties; Chief Engineer.

(a) The Secretary of Transportation shall, immediately upon assuming the duties of office and from time to time, recommend to the Department a program for the improvement of state highways and for the inclusion of additional roads or portions of roads in the state highway system, the probable cost of the construction or reconstruction of such roads or portions of roads and the roads or portions of roads which should first be improved and the probable amount of construction which could be undertaken.

(b) The Secretary shall employ, promote and discharge all persons hired by the Department, including a Chief Engineer, for the performance of work for which the Secretary is responsible. All such employment, promotion and discharge shall comply with the laws applicable to the Department.

(c) The Chief Engineer shall be not less than 30 years of age; the Chief Engineer shall be a civil engineer registered or eligible for registration as such in Delaware and shall have been in active practice of the profession for at least 10 years; the Chief Engineer shall have had responsible charge of road engineering work for at least 5 years; and the Chief Engineer shall be qualified to design as well as direct road engineering work. Graduation from a school of engineering of recognized reputation shall be considered as equivalent to 2 years of active practice. The total compensation to be paid to the Chief Engineer and the allocation thereof between the Department and any other public agency or office for services performed for the Department and any other public agency shall be determined by the Department.

(17 Del. C. 1953, § 116; 53 Del. Laws, c. 39, § 3; 57 Del. Laws, c. 671, §§ 1B, 1D; 60 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1.)

§ 112 Liability insurance for Department employees.

The Department shall enter into a contract with a reliable insurance company or companies doing business in this State to insure the employees of the Department against injury or death incurred while performing their duties as employees of the Department. The Department shall be the sole judge of the kind of insurance and the amount thereof which will best execute such purpose.

(17 Del. C. 1953, § 118; 53 Del. Laws, c. 39, § 1.)

§ 113 Appointment and powers of notaries public.

In addition to the notaries public now provided by law in the several counties, the Governor shall appoint 4 employees of the Department, 1 residing in New Castle County, 1 residing in Kent County and 2 residing in Sussex County, notaries public to hold office not exceeding 2 years. Such notaries public may not exercise their office or take affidavits or acknowledgments except on documents and papers for the benefit of the Department, and for which they shall make no charge. Whenever any such person appointed notary public ceases to be an employee of the Department, the notary public's authority as such notary public shall cease, and thereupon the Governor may appoint another employee of the Department a notary public in the person's place. The Governor may appoint additional employees of the Department as notaries public as may be deemed necessary, to which the requirements of this section shall apply.

(17 Del. C. 1953, § 119; 53 Del. Laws, c. 39, § 3; 65 Del. Laws, c. 38, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Jurisdiction, Powers and Duties of Department

§ 131 General jurisdiction.

(a) All the public roads, causeways, highways and bridges in this State which have been or may hereafter be constructed, acquired or accepted by the Department of Transportation shall be under the absolute care, management and control of the Department.

(b) All roads and streets situate in unincorporated suburban communities throughout the State which were built or created between July 1, 1935, and July 1, 1951, whether paved or unpaved, shall henceforth be under the absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the said Department.

(c) The Department shall immediately commence the necessary preliminary work in order to bring these roads up to proper standards as soon as possible with due consideration for the immediate needs of certain areas.

(d) The general jurisdiction conferred upon the Department by this section shall be exercised by it by the establishment and supervision of any and all policies which may be necessary or appropriate to implement such jurisdiction.

(e) All roads and streets not dedicated to the public use and intended to be private, as indicated on the filing plan, situated in an unincorporated suburban community within the State, shall be constructed in accordance with rules and regulations adopted by the county in which such road or street is located. Such rules and regulations for construction of private subdivision streets and roads shall, in addition to specifying standards for the design and construction of such private streets and roads, establish a mechanism to provide for the perpetual maintenance of such private streets and roads, but in no event shall the State or county be responsible for such maintenance. In addition, the following provisions shall apply to all such streets and roads:

(1) In the event that the county has not adopted rules and regulations for construction of private subdivisions, streets and roads or such rules and regulations have been established and there is no mechanism contained therein to provide for the perpetual maintenance of private subdivision streets or roads, all such roads or streets shall be constructed in accordance with standards set forth by the Department of Transportation, Division of Highways, for streets and roads dedicated to public use.

(2) Private roads or streets shall not be accepted for maintenance by the State until:

a. The right-of-way for the streets and roads has been dedicated to the public use, accepted by the State and the streets and roads constructed or reconstructed at the expense of the property owners in accordance with the standards established by the Department of Transportation, Division of Highways, for streets and roads dedicated to public use in accordance with Chapter 5 of Title 9; and

b. The Department's Division Engineer, Maintenance Engineer and Subdivision Engineer, if applicable, for the division in which the roads are situated have each certified that the roads to be accepted by the State have been constructed or reconstructed in accordance with the construction plans approved by the Department; and

c. Copies of such certifications have been forwarded to the members of the General Assembly in whose districts the roads to be accepted are situated.

(3) In the event any real property with road frontage or a private road or street, constructed or reconstructed pursuant to this section, which road or street is not to be maintained by the State, is conveyed subsequent to such construction or reconstruction, the deed conveying such real property shall contain a statement that such private street or road is not maintained by the State.

(4) Any private road, street or thoroughfare in the State shall be constructed either in accordance with state standards and pursuant to department rules and regulations or pursuant to rules and regulations established by the county. In either event, a mechanism for perpetual maintenance must be established. The State and county shall have concurrent jurisdiction to enforce the requirements of this section by legal or equitable means. The county shall withhold the issuance of building or occupancy permits for any structure abutting such road, street or thoroughfare to insure compliance with the requirements of this section.

(f) The Department of Transportation, Division of Highways, is hereby authorized to inspect all suburban community street construction and to establish and collect fees for the inspection of said street construction in amounts deemed necessary to defray costs of administering this section. All fees collected shall be placed to the credit of the Department of Transportation, Division of Highways.

(g) All roads and streets situated in unincorporated suburban communities throughout the State which were built between July 1, 1951, and July 1, 1975, whether paved or unpaved, shall, upon dedication of a right-of-way to public use, henceforth be under the absolute care, management and control of the Department of Transportation, Division of Highways, and shall be maintained, repaired and reconstructed by the said Department of Transportation, Division of Highways. Said right-of-way shall be determined by the Department of Transportation, Division of Highways, in accordance with physical conditions, but in no case shall be less than 30 feet in width. Dedication of the right-of-way must occur prior to June 30, 1978, to qualify for the aforementioned responsibilities under the auspices of this section.

(h) The Department of Transportation, Division of Highways, is hereby authorized and directed to immediately inventory all streets which may fall within this category and upon completion begin the necessary maintenance. Work to bring these roads up to proper standards, with due consideration for the immediate needs of certain areas, shall be undertaken as time and funds permit.

(i) In connection with the Department's review of subdivision proposals affecting the transportation system, it is authorized to collect fees for the costs of administering the subdivision approval process. The fees for such purposes shall be as follows:

Initial stage fee:

1. Plan review, residential subdivisions of 5 lots or more: $400 plus $10 per lot;

2. Plan review, nonresidential property: $500 plus $20 per lot or $20 per 1,000 square feet of gross floor area, whichever is greater.

Construction stage fee:

1. Residential subdivisions of 5 lots or more: 125% of initial stage fee;

2. Nonresidential property: 150% of initial stage fee.

For review of residential subdivisions of 4 lots or less, in lieu of the staged fees set forth above, there shall be a single fee of $100. If all or a portion of the property subject to this fee is re-subdivided within 10 years of the payment of this fee, that subdivision shall be treated for fee purposes as if planned for 5 lots or more. All fees collected shall be deposited to the credit of the Transportation Trust Fund, established in Title 2.

(40 Del. Laws, c. 107, §§ 1, 2; Code 1935, § 1645; 17 Del. C. 1953, § 131; 50 Del. Laws, c. 380, § 1; 53 Del. Laws, c. 39, § 4; 57 Del. Laws, c. 671, § 1C; 60 Del. Laws, c. 185, § 1; 60 Del. Laws, c. 450, § 1; 60 Del. Laws, c. 503, § 18; 63 Del. Laws, c. 130, § 1; 64 Del. Laws, c. 312, § 1; 71 Del. Laws, c. 150, § 82; 71 Del. Laws, c. 378, §§ 87, 88; 76 Del. Laws, c. 328, § 1.)

§ 132 General powers and duties.

(a) The Department shall acquire full information concerning the roads of this State, the nature and improvement thereof, the needs thereof and the character and amount of traffic thereon and such other details as may be necessary or desirable for the Department to have in the performance of its duty of determining upon and laying out, without regard to any personal advantage or disadvantage or bias toward any person or persons, community or political party or organization, consistent and congruous route or routes of state highways with a view to establishing such a consistent, congruous, comprehensive and permanent system of state highways along the route or routes of travel as will accommodate the greatest needs of the people of this State.

(b) The Department shall:

(1) Determine upon, lay out, construct or reconstruct state highways so as to make roads which, with reasonable maintenance, shall be permanent;

(2) Maintain all state highways under its jurisdiction;

(3) Maintain a system of accounting adequate to give in detail the expenditures of the Department and the costs of its works;

(4) Keep full and accurate minutes of all meetings and records of all proceedings of the Department, which minutes and records shall

be public records;

(5) Reimburse the owner thereof for the expense (as hereinafter defined) of the relocation of public utility facilities necessitated by any project where the State is to be reimbursed by at least 90% of the cost of such project from federal funds or by the federal government or any agency thereof, such expense to be the amount paid by such owner properly attributable to such relocation after deducting therefrom any increase in the value of the new facilities and any salvage value derived from the old facilities;

(6) Install on state land the tile necessary, in the opinion of the Department, to provide adequate entrances and exits to and from the property of adjoining landowners provided:

a. The tile is supplied by the adjoining landowners;

b. The tile conforms to the specifications established from time to time by the Department; and

c. The property is a single residential lot occupied or to be occupied by the land owners and intended for residential use only; or

d. The property is agricultural use land. "Agricultural use land" shall mean land devoted to the production for sale of plants and animals useful to humans, including but not limited to: Forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to soil conversation program under an agreement with an agency of the federal government.

Nothing contained in this subsection shall relieve the Department from the responsibility for replacing tile originally installed by the Department or any governmental agency and subsequently damaged by operations of the Department;

(7) Maintain the Van Buren Street Bridge over the Brandywine Creek;

(8) Provide relocation assistance to persons displaced as a result of the acquisition for highway purposes of real property upon which they live or conduct a business or farm operation in accordance with Chapter 91 of Title 29.

(c) To these ends the Department may do the following:

(1) Determine upon and lay out a system of state highways.

(2) Take over and convert into state highways any public road by whatever name such road or part thereof, or under whatever authority or control such road or part thereof, may have theretofore existed.

(3) Lay out, open, widen, straighten, grade, extend, construct, reconstruct, and maintain any state highway or proposed state highway for the purpose of the improvement of state highways.

(4) Acquire by condemnation or otherwise any land, easement, franchise, material, or property, which, in the judgment of the Department, shall be necessary therefor, provided that the Department may not reconstruct a highway unless there will result a net saving or reconstruction, further provided that § 145 of this title may not be deemed to be inconsistent with the provisions under this paragraph (c)(4).

(5) Have access to and make copies of maps, surveys, data, or information which any state agency may possess concerning any road in the State.

(6) Employ and discharge professional or technical experts, surveyors, agents, assistants, clerks, employees and laborers, skilled and unskilled, and also such advisers and consultants as may be required to accomplish the purposes of the chapter and the other responsibilities of the Department. In the event that the size of the Capital Transportation Program requires overtime to administer in a timely manner, or in the event that: (i) The federal government makes available additional funding for transportation projects which are part of the Department's Capital Transportation Program; and (ii) use of these funds in a particular federal fiscal year is required to access these funds; and (iii) overtime is required to administer the program within that federal fiscal year to assure the use of these funds, then for these purposes the Department may pay overtime moneys to those employed under this subsection, any relevant Delaware law, rule, or regulation to the contrary notwithstanding.

(7) Secure and furnish offices and quarters for the Department.

(8) Exclusively grant franchises and licenses to public service corporations or to corporations furnishing gasoline or petroleum products to the air field installation operated by the federal government in Kent County, to use the state highways, in whole or in part, for a term not exceeding 50 years; provided, however, that any franchise or license granted to any such corporation furnishing gasoline or petroleum products to said air field installation shall restrict the use of said state highways to the transmission of gasoline or petroleum products to said air field installation. Any franchise or license owned by any public service corporation on April 2, 1917, is not be affected by this chapter.

(9) Make and enter into any and all contracts, agreements or stipulations for the execution of the purposes of this chapter.

(10) Purchase all machinery, tools, supplies, material, and instrumentalities whatsoever which may be necessary for the full performance of its duties.

(11) Call upon the Attorney General for the Attorney General's opinion or advice touching its duties or powers.

(12) Accept lands by easement or lease in the name of the State in areas where it is deemed necessary to establish dumping areas for the use of the public, supervise and control all areas so accepted and provide suitable passageways to the dumping areas and further, police the areas in order to prevent the spread of pests and disease and make such other regulations and rules as shall be deemed necessary for the purpose of carrying out the intent and purpose of this paragraph.

(13) Enter upon the lands or waters of any person for the purpose of surveys, repairs, reconstruction, and operation of publicly financed improvements but subject at all times to responsibility for all and any damages which shall be done to the property of any such person or persons. Water levels to be maintained back of publicly financed sluices, water control structures, dams, and similar structures shall be at a level that will not cause damage to adjoining property, such as seepage of water into basements and wells, and that no lands may be flooded without the owners' full consent.

(14) Place vending machines or other items that will enable drivers to be more rested and refreshed in safety roadside rest areas, unless prohibited by federal laws, rules, or regulations. Any profits derived from such items must be credited to the Department of Transportation Safety Roadside Rest Area Fund.

a. There is hereby created within the State Treasury a special fund to be designated as the Department of Transportation Safety Roadside Rest Area Fund which must be used in the operation and maintenance of the roadside rest areas under the jurisdiction of the Department.

b. Any profits realized by the Department from items available at existing roadside rest areas that are for the purpose of enabling drivers to be more rested and refreshed must be deposited in the State Treasury to the credit of said Department of Transportation Safety Roadside Rest Area Fund. Such profits must be used by the Department for the operation and maintenance of the safety roadside rest area facilities within its jurisdiction.

(d) The Department may also do whatever is incidental and germane to the scope of the duties and powers conferred on it by law.

(e) The general powers and duties conferred upon the Department by this section shall be exercised by it by the establishment and supervision of any and all policies pursuant to which such powers and duties shall be carried out.

(f) Whenever the Department of Transportation widens, constructs or reconstructs any major arterial, minor arterial, collector road or proposed road in an urbanized area of this State, the Department shall incorporate within such plans, layout, widening, construction or reconstruction the construction of sidewalks, provided there is a need for sidewalks or that it can be reasonably anticipated that the need for sidewalks will exist. The Department shall have the responsibility for determining whether such need for sidewalks does or will exist for all or any part of any such project and, before arriving at a decision as to the need of such sidewalk construction, shall consult with the county department of planning, the State Planning Office, the Department of Education and the local school district in which the proposed new road construction or road widening construction is to take place. The cost of such sidewalk construction shall be included in the total cost of the new road construction or road widening project. This subsection shall apply only to projects funded pursuant to acts authorizing the State to borrow money and issue bonds and notes for capital improvements, enacted after January 1, 1973.

(g) The Department shall have exclusive original supervision and regulation of all public carriers and also over their property, property rights, equipment, facilities, franchises, rates, fares, tariffs, regulations, practices, measurements and services.

(h) The Department may work in conjunction with any political subdivision of the State and with any private organization to plan and construct such bicycle and pedestrian transportation facilities as may be appropriate. In carrying out this portion of its overall program, the Department may take into consideration in scheduling its projects those in which the affected local community is willing to contribute a matching share (whether in cash, rights of way, or other in-kind services) in order to accomplish the project.

(29 Del. Laws, c. 63, § 5; Code 1935, § 5722; 17 Del. C. 1953, § 132; 49 Del. Laws, c. 262; 51 Del. Laws, c. 141, § 1; 51 Del. Laws, c. 328; 52 Del. Laws, c. 295; 53 Del. Laws, c. 39, §§ 5, 6, 13; 54 Del. Laws, c. 251; 55 Del. Laws, c. 14; 56 Del. Laws, c. 101; 57 Del. Laws, c. 327, § 1; 57 Del. Laws, c. 671, § 1F; 57 Del. Laws, c. 754, § 2; 58 Del. Laws, c. 585; 59 Del. Laws, c. 393, § 4; 60 Del. Laws, c. 386, § 1; 60 Del. Laws, c. 503, § 18; 62 Del. Laws, c. 384, § 1; 68 Del. Laws, c. 98, § 1; 68 Del. Laws, c. 156, § 47; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 65, § 19; 73 Del. Laws, c. 351, § 1; 75 Del. Laws, c. 98, § 95; 83 Del. Laws, c. 37, § 33.)

§ 133 Road improvements; additions to state system.

With respect to roads or portions thereof, the Department shall determine which if any, shall be improved and which, if any, shall be added to the state highway system.

(29 Del. Laws, c. 63; 34 Del. Laws, c. 81; Code 1935, § 5724; 17 Del. C. 1953, § 133; 53 Del. Laws, c. 39, § 7; 57 Del. Laws, c. 671, § 1G.)

§ 134 Authority in incorporated towns and cities; construction and maintenance of highways; local authority.

(a) The Department shall have no power, authority or jurisdiction of the streets of any incorporated city or town, except as otherwise provided in this section, unless such power, authority and jurisdiction shall be voluntarily given and surrendered by such city or town to the Department and then only upon such terms as the Department shall prescribe.

(b) When in the judgment of the Department the route for the construction or reconstruction of any state highway should continue through any incorporated city or town, the Department shall construct and maintain the highway through such incorporated city or town, such construction and maintenance to be at the sole expense of the Department. Whenever the Department shall construct a state highway through any incorporated city or town, it shall not change the widths of the streets of the city or town, except with the consent of the duly constituted governing body of the city or town.

(c) Whenever the Department shall construct a state highway through an incorporated city or town, it shall have the whole and sole control over such construction and over the maintenance of the highway through the city or town, and such highway shall not be undermined, broken open or anywise torn up for any purpose, except by the permit in writing of the Department.

(d) With respect to state highways within their corporate limits, incorporated cities and towns in the State may erect and maintain such traffic control signals as shall be authorized by proper ordinance of the city or town and by the Department.

(e) Local authorities, on the basis of an engineering study and traffic investigation within their respective jurisdictions, may prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways which prohibitions and limitations shall be posted as set forth in § 4505 of Title 21; except that the alteration of weights or the prohibitions of trucks or other commercial vehicles shall not be effective on any state-maintained highway until such alteration has been approved by the Department.

(f) Local authorities, within their respective jurisdictions, may create "historic districts" which encompass 1 or more state-maintained roads, and the standards for traffic signs and traffic markings on any such road may be altered by the Department of Transportation to be more compatible with the time period of the historic district, unless:

(1) The posted speed limit on the road is above 25 miles per hour;

(2) There are more than 2 through-travel lanes on the road;

(3) The road is a U.S. or Delaware route; or

(4) The road has no reasonable alternative route which can adequately handle the traffic.

Any traffic signs or traffic markings that are proposed under this subsection must be approved by the Department of Transportation.

(g) Each rule and regulation adopted pursuant to this section shall be in the form of a resolution signed by the Secretary or the Secretary's designee. A permanent record of these shall be kept by the Department and at the time of adoption a copy of each shall be forwarded to the Department of Safety and Homeland Security, to the New Castle County Police, if within their jurisdiction, and to the incorporated city or town in which the highway lies.

(h) Pursuant to this section, the Department is authorized to perform all engineering studies and traffic investigations necessary to implement this section and Chapter 41 of Title 21, and to install, maintain, operate and remove all traffic-control devices necessary to comply with this section and Chapter 41 of Title 21. Where concurrent authority is granted, the incorporated town or city shall have the responsibility for traffic-control devices.

(i) Nothing in this section shall be construed as granting to the Department or to the local jurisdiction the right to make any rules and regulations respecting the use of highways in incorporated areas contrary to the Code.

(29 Del. Laws, c. 63, § 5; 30 Del. Laws, c. 69; 32 Del. Laws, c. 53; Code 1935, §§ 5722, 5728; 17 Del. C. 1953, § 134; 60 Del. Laws, c. 701, § 1; 66 Del. Laws, c. 127, §§ 1, 2; 74 Del. Laws, c. 110, § 138; 84 Del. Laws, c. 85, § 1.)

§ 135 Authority to construct dual and express highways.

(a) The Department may divide or separate any state highway into separate roadways wherever there is particular danger to the travelling public of collision between vehicles proceeding in opposite directions or from cross traffic, by constructing curbs, central dividing parkways or other physical separations, or by signs, marks or other devices, in or on the roadway, appropriate to designate the dividing line.

(b) The Department may designate as express highways, and control public or private access thereto, the westerly approach or approaches to the Delaware Memorial Bridge and any road or roads heretofore or hereafter constructed by the Department for the purpose of connecting such Bridge or its westerly approach or approaches with any existing highway in this State.

(34 Del. Laws, c. 78; Code 1935, § 5758; 45 Del. Laws, c. 270; 46 Del. Laws, c. 127; 47 Del. Laws, c. 406, §§ 1, 3; 17 Del. C. 1953, § 135.)

§ 135A Authority to construct low-speed local streets and local roads.

(a) The Department may plan, designate, construct, operate, and maintain low-speed local streets or roads to improve safety in accordance with a safe system approach by implementing proven safety countermeasures, including the following:

(1) Implementing roadway reconfigurations.

(2) Narrowing travel lanes or edge line striping.

(3) Constructing raised medians, pinch points, chicanes, speed humps, speed tables, roundabouts, traffic circles, or diverters.

(4) Implementing corridor access management.

(5) Reducing clear zone conflicts.

(6) Altering the operation of signals.

(7) Other means found appropriate by the Department.

(b) The Department shall design such designated low-speed streets or roads so that they have no more than 2 through-travel lanes for motor vehicles and with a goal that the free-flowing eighty-fifth percentile motor vehicle traffic speeds are 25 miles per hour or less in municipalities and 35 miles per hour or less in unincorporated areas. Such designated local streets and local roads shall be especially designed for local traffic to safely access abutting properties at low speed. In addition, the Department shall develop and implement design standards for low-speed streets or roads in accordance with a safe system approach to meet the goals of this section, including traffic calming, diversion of motor vehicle through traffic, and the protection of vulnerable users to reduce or eliminate safety risks on designated low-speed local streets and roads.

(c) The Department shall publish annually county specific maps and lists identifying locations of fatal and serious injury crashes in all primary emphasis areas included in the Strategic Highway Safety Plan.

(d) As used in this title, "safe system approach" means working in a comprehensive way and in cooperation with other Delaware state

agencies, county, and local governments to improve all aspects of roadway safety through the following 5 initiatives:

(1) *Safe road users. —*

Providing education and training programs to improve behavior for all users of the road.

(2) *Safe vehicles. —*

In addition to the requirements under Title 21, implementing technologies in the roadway infrastructure that can prevent crashes or lessen their severity.

(3) *Safe speeds. —*

Setting and enforcing speed limits based on what the road and surrounding environment can safely accommodate for all roadway users.

(4) *Safe roads. —*

Designing and maintaining all elements of the State's roadway infrastructure to be forgiving of user mistakes and minimize the impact of crashes on human life.

(5) *Post-crash care. —*

Implementing emergency response systems on the State's roadway network and technology infrastructure to enable efficient delivery of critical care to those involved in crashes.

(84 Del. Laws, c. 515, § 1.)

§ 136 Improvements of roads leading to institutions.

The Department may widen, straighten, grade, reconstruct and otherwise improve and maintain any road, lane or entrance leading from any public road to any institution which is owned or controlled in whole or in part by the State. The Department shall have the same rights, powers and privileges for the purpose of performing and carrying out the duty hereby imposed as it has for the purpose of constructing state highways in general.

(29 Del. Laws, c. 63, § 5B; 37 Del. Laws, c. 75; Code 1935, § 5729; 17 Del. C. 1953, § 136; 53 Del. Laws, c. 39, § 8; 57 Del. Laws, c. 671, § 1H.)

§ 137 Acquisition and sale of real property.

(a) (1) The Department, in the name of the State, is authorized by law to acquire property and property rights, including rights to access, air, view, and light, for the purposes set forth in this section and within its jurisdiction. The Department may only acquire private or public property and property rights needed for the purposes listed in paragraph (a)(1)a. of this section and through the means listed in paragraph (a)(1)b. of this section. Property rights so acquired must be in fee simple absolute or such lesser interest as the Department may deem appropriate. Except as provided in paragraph (a)(2) of this section, no acquisition of real property or property rights may be made without Department approved final right-of-way plans by parcel depicting the proposed acquisitions and that approval coming only after the project has been developed and plans prepared in accordance with all applicable governing laws, rules and regulations pertaining to the development of transportation projects.

a. The Department, in the name of the State, may only acquire private or public property and property rights needed for the following purposes:

1. To provide public throughfares such as pathways, roads, streets, or highways.

2. To preserve the traffic capacity in existing thoroughfares in accordance with § 145(d) of this title.

3. For sidewalks, bus shelters, parking areas in support of public transit, maintenance yards, and similar public transportation related facilities.

b. The Department, in the name of the State, may acquire private or public property rights through any of the following means:

1. By gift.

2. By devise.

3. By purchase.

4. By the exercise of the power of eminent domain where the private or public property and property rights may be acquired by condemnation by proceeding in the manner prescribed in Chapter 61 of Title 10.

5. Be authorized by law to acquire such property or property rights for the purposes set forth in this section and within its jurisdiction.

(2) The acquisition of real property by the Department in advance of final right-of-way plan approval, shall be reviewed by a committee consisting of the Secretary of the Department of Natural Resources and Environmental Control, the Secretary of the Department of Transportation, the Secretary of the Department of Agriculture, the Director of the Division of Small Business, the Governor's Chief of Staff, a member of the Senate designated by the President Pro Tempore of the Senate, a member of the House of Representatives designated by the Speaker of the House of Representatives, a member of the public designated by the President Pro Tempore of the Senate and a member of the public designated by the Speaker of the House of Representatives to determine the consistency of such action with the State's overall goals for land use planning. If it determines that the acquisition will be inconsistent with State planning goals, the committee may disapprove the acquisition.

(3) The Department shall provide to the Governor and General Assembly, on or before December 31 of each year, a report identifying all properties acquired in the preceding 12 month period in connection with acquisitions made pursuant to paragraph (a)(2) of this

section.

(4) For the purposes of acquiring real property for pathways that go through dedicated open space in a recorded residential subdivision, where the proposed pathway is not adjacent to the existing right of way, the Department is not authorized to exercise its eminent domain power to acquire land for such pathway, unless a majority of the residents of the recorded residential subdivision vote to approve within 90 days of notice of its intent to exercise its eminent domain power by the Department. There will be 1 ballot per residence and the ballot may be cast by paper ballot, by proxy, by signing a petition, or electronically from a confirmed valid email address for a resident.

(b) When any property heretofore or hereafter acquired by the Department by gift, devise, purchase or condemnation is no longer needed for transportation purposes the Department shall attempt to dispose of the property as follows:

(1) If at the time of the Department's determination to dispose of the property, the property is subject to a revenue producing lease agreement which has been in force for a period of at least 5 years, the Department shall, in writing, notify the tenant that the property is no longer needed for transportation purposes. Such notice shall inform the tenant of the Department's desire to sell the property, and include a copy of the Department's approved appraisal and a purchase agreement containing the terms and conditions for sale to the tenant. The sale price shall not be less than the approved appraised value. If the tenant elects to purchase the property, the tenant shall execute and return the purchase agreement to the Department within 30 days of such notice. Such notice is not required if the tenant has, in writing, waived any desire to purchase the property, or if the property is subject to multiple leases. Failure of the tenant to respond to the notice within 30 days shall constitute a waiver of the tenant's rights hereunder.

(3) If the provisions of paragraphs (b)(1) and (2) of this section have been satisfied without sale, the Department shall determine if the property has independent utility and in such cases shall offer the property for sale to the general public at a public auction sale. The Department shall notify the public of the sale by posting a "Notice of Sale" on the property at least 2 weeks before the sale and by publishing a "Notice of Sale" for at least 1 day a week for 2 consecutive weeks in a newspaper having general circulation in the county where the property is located. The "Notice of Sale" shall describe the property to be sold, state the date, time, location of the sale, terms and conditions, and amount of the minimum acceptable bid. The public sale may be conducted by Department personnel or the Department may retain an outside contractor to handle the sale. At the conclusion of the sale, the Department's representative shall announce the name of the highest bidder and the amount of the bid. The Department's representative shall record the results of the sale including the name and amount of the next highest bid. The Department shall have the authority to accept or reject the highest bid as long as such bid is equal to or greater than 85 percent of the approved appraised value. The Department shall offer the property for sale at a price not less than 85 percent of the approved appraised value and shall reject any bid of a lesser amount. The Department may reject any bid for due cause. If the sale is confirmed and the highest bidder defaults, the Department may proceed to the next highest acceptable bidder. In the event that the Department does not receive an acceptable bid, the public sale shall be deemed concluded. The Department may proceed to dispose of the property through absolute auction for whatever price can be obtained, subject, however, to unanimous written approval of the selling price from the Controller General and the Director of the Office of Management and Budget.

(5) Notwithstanding any other provisions of this section, the Department may convey property by direct sale or trade to an owner of other property which is being acquired for transportation purposes. Such sale shall not abridge the provisions of paragraphs (b)(1) and (2) of this section. The Department shall receive in return a price and/or compensatory property valued at not less than the approved appraised value.

(6) Notwithstanding any other provisions of this section, the Department may convey property by direct sale to a public utility company when such property is needed for public utility purposes, provided the Department receives in return a price not less than the approved appraised value.

(7) a. Notwithstanding any other provisions of this section, the Department may convey property to other governmental entities for public purposes, on terms acceptable to the Department and other agency.

b. Notwithstanding any other provisions of this section or Chapter 9 of Title 3, the Department may convey property to the Delaware Agricultural Lands Preservation Foundation on terms acceptable to the Department and the Foundation.

c. Notwithstanding any other provisions of this section or Chapter 75 of Title 7, the Department may convey property to the Delaware Open Space Council on terms acceptable to the Department and the Council.

(8) As used in this subsection, "approved appraised value" shall mean:

(2) If the provisions of paragraph (b)(1) of this section do not apply, or were forfeited through lack of response, or were waived by the tenant, or the tenant fails to comply with the terms and conditions of the purchase agreement, the Department shall, in writing, notify the owner from whom the property was acquired, if the property had been acquired within the immediately preceding 5 years, that the property is no longer needed for transportation purposes. In the event that the previous owner is deceased, the Department may proceed with the provisions for sale identified in paragraph (b)(3) of this section. Such notice shall inform the prior owner of the Department's desire to sell the property at the approved appraised value, and shall include a copy of the Department's approved appraisal and a purchase agreement containing the terms and conditions for the sale to the prior owner. The sale price shall not be less than the approved appraised value. If the prior owner elects to purchase the property, the prior owner shall execute and return the purchase agreement to the Department within 30 days of such notice. Such notice is not required if the prior owner has, in writing, waived his/her right to repurchase the property. Failure of the prior owner to respond to the notice within 30 days shall constitute a waiver of their rights

hereunder.

(4) Notwithstanding any other provisions of this section, the Department may determine that the property has minimal independent utility for reasons such as, but not limited to, lack of access, irregular shape, poor topography or hydrology, small size and nominal value (less than $3,000 in the opinion of the Department's Chief Review Appraiser). In such event the Department may, without having to perform an appraisal of the property, sell or otherwise convey such property to an adjoining property owner or an organized community civic association or maintenance association for use as community open space at a price to be negotiated by the parties. The Department shall notify all adjoining property owners in writing of the property availability and provide 2 weeks for adjoining property owners to express interest in purchasing the property. In cases where more than 1 adjoining property owner indicates an interest in purchasing the property, the Department may elect to offer the property for sale via sealed bid to the highest bidder, or to divide the property to accommodate the interests of all interested owners.

a. When the estimated value of the property is not more than $10,000, an appraisal performed by a qualified Department employee or qualified independent appraiser, reviewed and approved by a qualified Department review appraiser; or

b. When the estimated value of the property exceeds $10,000, an appraisal performed by a qualified independent appraiser, reviewed and approved by a qualified Department review appraiser.

(9) Property rights disposed of pursuant to this section may be in fee simple absolute or such lesser interest as the Department may deem appropriate.

(10) "Notice," as required in paragraphs (b)(1) and (2) of this section, shall be sent by certified mail, return receipt requested, addressed to the tenant or previous owner at the last known postal address obtained after diligent inquiry. If after diligent inquiry a postal address cannot be found, the Department shall publish a notice for at least 1 day a week for 2 consecutive weeks in a newspaper having general circulation in the county in which the property is located. Such published notice shall set forth the name or names of the tenant or previous owner to whom it is directed, that the Department desires to sell the property, a brief description of the property to be sold and the date by which the Department must receive a response. The return receipt of the notice, whether signed, refused or unclaimed, or a copy of the published newspaper notice shall be held and considered to be prima facie evidence of the service of the notice.

(11) The Department shall provide to the Governor and the General Assembly on or before December 31 of each year, a report identifying by size and location all properties being held for projects, properties deemed surplus or excess properties, dates of acquisition, purchase price, previous owner, date the property was determined to be excess or surplus, dates and nature of actions undertaken to dispose of such surplus or excess properties, and approximate fair market value of each. If properties are deemed nonmarketable they must be identified as such. The report must further identify all properties disposed of during the previous year by size and location, date of disposition, appraised value if appraised, amount received from disposition and name of the purchaser, purchasers or owners, including equitable owners.

(36 Del. Laws, c. 106; Code 1935, §§ 5759, 5759A; 43 Del. Laws, c. 264, § 1; 47 Del. Laws, c. 406, § 3; 17 Del. C. 1953, § 137; 58 Del. Laws, c. 256, § 1; 60 Del. Laws, c. 550, § 1; 63 Del. Laws, c. 103, § 1; 65 Del. Laws, c. 75, § 1; 69 Del. Laws, c. 138, § 1; 70 Del. Laws, c. 166, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 257, § 1; 71 Del. Laws, c. 226, § 3; 71 Del. Laws, c. 235, §§ 1-3; 75 Del. Laws, c. 88, §§ 21(9), 33; 80 Del. Laws, c. 246, § 1; 81 Del. Laws, c. 49, § 14; 81 Del. Laws, c. 225, § 1; 81 Del. Laws, c. 374, § 43; 83 Del. Laws, c. 470, § 1; 84 Del. Laws, c. 42, § 1.)

§ 138 Acquisition of uneconomic remnants of land along right-of-way.

In addition to the powers now vested in the Department for the acquisition of lands or rights therein by virtue of any statute, the Department may, in its discretion, acquire by gift, devise, purchase or in the exercise of the power of eminent domain, acquire by condemnation by proceeding in the manner prescribed in Chapter 61, Title 10, an entire lot, block or tract of land, if by so doing the interest of the public will be best served even though said entire lot, block or tract is not needed for the right-of-way proper, but only if the portion outside the normal right-of-way is landlocked or is so situated so as to give rise to claims or litigation concerning severance or other damage, the cost of acquisition to the State will be practically equivalent to the total value of the whole parcel of land and the parcel remaining is of little value to the owner.

(29 Del. Laws, c. 63, § 11; Code 1935, § 5730; 43 Del. Laws, c. 264, § 2; 47 Del. Laws, c. 406, § 3; 17 Del. C. 1953, § 138; 58 Del. Laws, c. 256, § 2.)

§ 139 Notice to landowners; written claim for damages.

After the Department has determined upon the road or roads which shall be maintained as state highways, it shall cause notice thereof to be sent by mail, a record of which shall be preserved, to all persons owning property abutting upon or contiguous to such road or roads, and any such owner or the legal representative of any such owner, who after such notice has been given shall construct any building within 60 feet of the center line of any such road, shall be allowed no compensation for such building, upon the condemnation thereof, or the land upon which it is situated, unless such owner shall serve written notice upon the Department within 3 months from the time that the owner receives such notice that the owner claims damages.

(29 Del. Laws, c. 63, § 11; Code 1935, § 5730; 17 Del. C. 1953, § 139; 70 Del. Laws, c. 186, § 1.)

§ 140 Educational and safety campaigns.

(a) The Department may conduct throughout the State an educational campaign on street and highway safety.

(b) Such campaign shall be conducted by the Department in the manner which it deems most beneficial to accomplish the purpose thereof, and the Department may use and employ the facilities of the Delaware Safety Council, Delaware Automobile Association and any similar organization.

(38 Del. Laws, c. 55, §§ 1, 2; Code 1935, §§ 5762, 5763; 42 Del. Laws, c. 77, § 1; 44 Del. Laws, c. 197; 17 Del. C. 1953, § 140.)

§ 141 Regulation of traffic; exceptions.

(a) The Department shall have jurisdiction and control of all state highways of this State outside of the limits of incorporated cities and towns for the purpose of regulating traffic and for the use and operation of all vehicles thereover, and may adopt any and all rules and regulations respecting the use of such highways and the operation of all vehicles upon the same.

(b) Each rule and regulation adopted pursuant to this section shall be in the form of a resolution signed by the Secretary or the Secretary's designee. A permanent record of these shall be kept by the Department and at the time of adoption a copy of each shall be forwarded to the Department of Safety and Homeland Security and to the New Castle County police, if within their jurisdiction.

(c) Pursuant to this section, the Department is authorized to perform all engineering studies and traffic investigations necessary to implement this section and Chapter 41 of Title 21, and to install, maintain, operate and remove all traffic control devices necessary to implement Chapter 41 of Title 21 and regulations adopted thereunder.

(d) The Department, on the basis of engineering studies and traffic investigations, may prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways which prohibitions and limitations shall be posted as set forth in § 4505 of Title 21.

(e) Nothing in this section shall be construed as granting the Department the power to make any rules and regulations respecting the use of highways contrary to Delaware law.

(29 Del. Laws, c. 63; 34 Del. Laws, c. 78; Code 1935, § 5758; 45 Del. Laws, c. 270; 17 Del. C. 1953, § 141; 60 Del. Laws, c. 701, § 2; 66 Del. Laws, c. 407, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 138.)

§ 142 Automobile for use of Governor.

The Department shall provide an automobile to the Governor of the State, suitable and befitting the office of Governor, for the use of the Governor. The Department shall provide a new automobile for such use during each biennium beginning with the biennium beginning July 1, 1959. The Department shall dispose of any automobiles replaced pursuant to this section in the same manner as are disposed other Department vehicles.

(17 Del. C. 1953, § 144; 52 Del. Laws, c. 55.)

§ 143 Expenses of alteration or relocation of facilities or structures of public utilities.

(a) As used in this section:

(1) "Facility" includes, but is not limited to, structures and appliances and their appurtenances, poles, wires, conductors, transformers, substations, manholes, vaults, valves, conduits, sewer pipes, gas mains, regulator stations, water pipes, water distribution facilities, and service lines;

(2) "Public utility" means a utility defined in § 102(2) and (8) of Title 26.

(b) If required by reason of the construction, reconstruction, relocation, repair, or maintenance of a public highway, the Department of Transportation shall, at its sole expense, make any necessary alteration or relocation of the facilities owned and/or operated by a public utility of a municipality or of any governmental body or political subdivision of the State.

(c) The Department may enter into an agreement with a nonmunicipal or other nongovernmental public utility to reimburse it for up to 50 percent of the cost of the public utility facility's alteration or relocation as part of a highway construction, reconstruction, relocation, repair, or maintenance project if:

(1) The existing public utility facility is located within a highway or public right-of-way by grant of franchise; and

(2) The alteration or relocation is necessitated by special circumstances, including, but not limited to:

a. A major economic development project in which the public utility's cooperation is critical to accomplishing the project in a timely manner;

b. Recovery from natural disasters such as storms or floods; or

c. Compelling benefit to the traveling public.

(d) The determination of whether special circumstances exist under paragraph (c)(2) of this section vests solely with the Secretary. The Secretary shall make written findings detailing the nature of the special circumstances and the costs and benefits to the State in altering or relocating a public utility facility. The determination of the Secretary is a public record. The Secretary shall forward a copy of the determination to the Public Service Commission for filing with the public records of the Commission.

(e) If construction specifications for the alteration or relocation of a nonmunicipal or other nongovernmental public utility facility, authorized by the Department as part of a highway construction, reconstruction, relocation, repair, or maintenance project, require the use of unique materials or supplies, the Department may enter into an agreement with the public utility for the use of the unique materials or supplies in advance of the construction contract. If the public utility is required to store the unique materials or supplies for more than 60 days prior to their incorporation into the construction work, the Department shall enter into an agreement with the public utility to reimburse the public utility for all or a portion of the actual cost incurred for the storage of the unique materials or supplies.

(f) If the Department determines that it is beneficial to enter into an agreement with a nonmunicipal or other nongovernmental public utility for the alteration or relocation of its facilities in advance of the commencement of a highway construction, reconstruction, relocation, repair, or maintenance project, the agreement may include provisions for the Department to reimburse the public utility for increased expenses incurred as a result of the advanced move, including, but not limited to, expenses for the maintenance of traffic, tree and vegetation removal, grubbing, grading, test holes, and surveying.

(g) (1) The Department shall reimburse a nonmunicipal or other nongovernmental public utility for the cost of altering or relocating its facility due to a highway construction, reconstruction, relocation, repair, or maintenance project under each of the following circumstances:

a. The Department requires a second alteration or relocation of the same public utility facility within 10 years from the date of completion of the initial alteration or relocation;

b. The Department alters its plan of construction for the project at any time before its completion, in a manner that requires the public utility to alter or relocate its facility that has already been fully or partially altered or relocated in connection with the project;

c. The Department cancels or does not commence a highway construction, reconstruction, relocation, repair, or maintenance project within a period of 2 years from the date of authorization;

d. The Department requests a temporary alteration or relocation of the public utility facility.

(2) The amount of reimbursement to be paid to a public utility under this subsection is the entire cost of alteration or relocation minus any increase in the value of the altered or new facility and any salvage value derived from the old facility.

(h) The Department and a nonmunicipal or other nongovernmental public utility may agree to include in a construction contract between the Department and the Department's contractor or subcontractor a provision to identify specific facility alteration or relocation construction items which will be performed by the Department's contractor or subcontractor instead of by the public utility. The construction items may include, but are not limited to, adjusting manholes and installing conduits, valve boxes, and concrete pads. As part of the agreement, the public utility must agree to reimburse the Department or the Department's contractor or subcontractor for the construction items.

(i) The Secretary may enter into an agreement with a nonmunicipal or other nongovernmental public utility that owns or maintains poles in public rights-of-way to attach Department road signs to the poles under such terms and conditions as the public utility considers necessary in order to provide for the safety of the public utility's employees and contractors and to avoid interference with the public utility's operations. The authority given to the Department in this subsection does not alter the public utility's right to refuse access to its poles if it believes that such access would create a safety hazard or interfere with its operations. If the Department attaches a sign to a pole owned or maintained by a public utility, a person alleging injury to person or property as a result of the attachment has no cause of action against the public utility.

(j) The Department may enter into an agreement with a nonmunicipal or other nongovernmental public utility regarding the alteration or relocation of the public utility's facilities to reimburse the public utility for the public utility's additional expenses incurred due to the enhancement of the public utility's facilities or of its equipment design, location, placement, or specification, if, in the judgment of the Department, the enhancement will result in net cost savings to the Department, will expedite the project, or will otherwise result in increased public benefit and convenience.

(17 Del. C. 1953, § 145; 53 Del. Laws, c. 321; 74 Del. Laws, c. 297, § 1.)

§ 144 Millsboro Pond Dam; construction and maintenance.

The Department may construct, reconstruct, maintain and repair a dam across the Millsboro Pond at the site of a presently existing dam adjacent to the Indian River.

(17 Del. C. 1953, § 146; 53 Del. Laws, c. 338, § 1.)

§ 145 Corridor capacity preservation.

(a) *Application.* — This section is applicable only to transportation routes categorized as corridor capacity preservation projects as described herein.

(b) *Definitions.* — As used in this section:

(1) "Comprehensive development plan" means a comprehensive land use plan, master plan or comprehensive plan as provided in Title 9, 22, or 29.

(2) "Corridor" means a particular route of 1 or more highways of this State, serving predominantly statewide and/or regional travel at a high level of service at the time of the analysis conducted under subsection (d) of this section.

(3) "Corridor capacity" means the ability of a corridor to sustain its level of service for a period of at least 10 years and for up to 20 years.

(4) "Department" means the Department of Transportation.

(5) "Preservation" means to maintain corridor capacity.

(c) *Findings.* — (1) Pursuant to federal and state law, the Department is required to develop long-range plans and principles to consider the various appropriate means of meeting the transportation needs of the State. This work is coordinated with the planning efforts of metropolitan planning organizations pursuant to 23 U.S.C. § 134 et seq. As part of these long-range plans and principles, the Department may identify transportation routes requiring corridor capacity preservation in order to:

a. Focus development toward existing locations;

b. Reduce the need for expansion of the transportation system; and

c. Otherwise advance the quality of life of Delawareans and the development policies adopted by the Cabinet Committee on State Planning Issues.

(2) Pursuant to the Quality of Life Act of 1988, Chapters 26, 49, and 69 of Title 9, as well as the Land Use Planning Act, Chapter 92 of Title 29, each county of this State is required to adopt a comprehensive development plan to guide and control future development. Each plan, which is to have the force and effect of law, includes among its purposes the facilitation of the adequate and efficient provision of transportation. These plans are reviewed by the Cabinet Committee on State Planning Issues to determine their compliance with the State's development policies, including the Department's long-range plans and principles. The State is under no obligation to provide infrastructure improvements to support land use or development actions where a county's comprehensive plans are inconsistent with the State's policies. In addition, pursuant to Chapter 3 of Title 22, municipalities are also required to develop comprehensive development plans, with relief of congestion constituting one of the goals of such plans. As part of this coordinated process, therefore, the comprehensive development plans adopted by the counties and municipalities should incorporate the Department's designation of transportation routes requiring corridor capacity preservation.

(3) This legislation is intended to facilitate the acquisition of property interests sufficient to provide corridor capacity preservation in keeping with these comprehensive development plans and the Department's long-range plans.

(d) *Implementation.* — On or before October 1, 1996, and every 3 years thereafter, under 23 U.S.C. § 134 et seq., the Department's long-range plans shall propose transportation routes requiring corridor capacity preservation, if any. The determination of these routes shall be based upon the following criteria: Level of service analysis; input and comment from the counties and municipalities to the need within growth areas; development trends; traffic growth; additional threats to roadway integrity; safety; support for long range planning goals of the Department and any relevant metropolitan planning organization; deliverability; economic impacts; social or environmental impacts; and air quality. The location of these routes shall be submitted to the local government bodies of the counties and municipalities for review and then presented to the public at a public hearing. The local governing bodies shall have 90 days to review the locations and respond to the Department. The Department shall, after considering public comments and the responses of the local governing bodies of the municipalities and counties, determine those routes requiring corridor capacity preservation. Each county and municipality shall incorporate these determinations into their comprehensive development plans or amendments thereto. Any subsequent Departmental corridor capacity preservation projects shall be subject to the same approval process as other capital projects. When approved by the Council on Transportation and adopted by the General Assembly, the Department may then proceed to pursue these projects as set forth each year in the Department's Capital Transportation Program. Property interests acquired for these projects under this section shall be in fee simple absolute or such lesser interest as the Department may deem appropriate. Acquisition of such property interests may be obtained by gift, devise, purchase, or in the exercise of the power of eminent domain, by condemnation in the manner prescribed in Chapter 61 of Title 10, subject to the provisions of Chapter 95 of Title 29.

(e) *Effect on other powers.* — The powers conveyed to the Department by this section are in addition to and not in derogation of any other powers it may have related to corridor capacity preservation, including but not limited to the power to seek voluntary compliance with its policies, to regulate subdivision streets intended for state maintenance, and the power to regulate access to and from state-maintained highways.

(17 Del. C. 1953, § 147; 57 Del. Laws, c. 754, § 1; 70 Del. Laws, c. 523, § 1; 83 Del. Laws, c. 37, § 34.)

§ 146 Access to state-maintained highways.

(a) The Department is authorized to adopt standards and regulations for the location, design, construction, reconstruction, maintenance, use and control of vehicular and pedestrian access to and from any state-maintained highway in order to protect public safety, to maintain smooth traffic flow, to maintain highway right-of-way drainage, to regulate drainage from property leading into or carried by the highway drainage system and any other public purpose, as determined by the Department.

(b) No person, firm, or corporation shall construct, open, reconstruct, maintain, modify or use any crossing or entrance onto a state-maintained highway, street or road, including any drainage modifications leading into or carried by the highway drainage system, without first having complied with standards and regulations adopted by the Department and having obtained a permit issued by the Department.

(c) Any person, firm, or corporation who constructs, opens, reconstructs, maintains, uses or modifies an entrance onto or an exit from a state-maintained highway, street or road without first having complied with standards and regulations adopted by the Department and having obtained a permit from the Department for such entrance or exit shall be punished by a fine of not less than $100 nor more than $1,000 for each offense, and a further sum in an amount equal to the amount fined for the initial offense for each and every day such violation exists.

(d) For purposes of this section, whenever the use to which a property is being put is changed such that there will be a significant alteration in the character, flow or volume of traffic, as determined within the sole discretion of the Department, a new permit shall be required.

(e) The Justice of the Peace Courts shall have jurisdiction over violations of subsections (b), (c), and (d) of this section.

(f) In addition to whatever legal or equitable remedies are available, the Department may install barricades across or remove any entrance or exit constructed, opened, reconstructed, maintained, modified or used in violation of this section and the standards or

regulations adopted pursuant thereto, at the expense of the property owner.

(g) (1) An applicant who has submitted an accepted entrance plan for review and obtained an erosion and sediment control permit may request, and the Department must issue within 10 business days, a temporary entrance permit to perform on-site permitted construction activities for any commercial or economic development project. An applicant who obtains such a temporary entrance permit and performs such on-site permitted construction activities does so at its own risk and the State, including all of its agencies, shall not be responsible for any harm to the applicant including denial of the project, required modifications to plans or work, and permits not being issued. No certificate of occupancy shall be issued prior to entrance plan approval and entrance construction being substantially complete.

(2) For purposes of this subsection, "economic development project" means a development project creating full-time jobs, that is consistent with an adopted local government comprehensive plan and local land development and zoning ordinances.

(h) (1) Any residential subdivision defined as a Level I or Level II project by the Department in the most recent version of the DelDOT Development Coordination Manual from which access is provided to a state-maintained highway shall be eligible to receive a credit for construction of off-premises improvements to a state-maintained highway. The credited amount shall be a percentage of the cost of the improvements equal to the percentage of the affordable housing lots that are set aside for affordable housing. The developer shall be relieved of the requirement to provide improvements consistent with the credited percentage. The Department shall administer this section and may promulgate regulations for that purpose.

(2) For purposes of this subsection, "affordable housing lots" means a lot on which a residential dwelling is intended to be constructed for a household whose income does not exceed 100% of the median income for the area as defined by the United States Department of Housing and Urban Development.

(i) Along existing highways, the Department may exercise its authority under § 137 of this title to acquire property rights for consolidating commercial entrances or to create new commercial interconnections, when the Department determines such consolidation or interconnection would likely improve safety in accordance with a "safe system approach," as defined in § 135A of this title. Private properties made nonconforming under local zoning codes as a result of Delaware state acquisitions to consolidate entrances for traffic safety reasons are exempt from variance requirements under any county or municipal zoning code.

(60 Del. Laws, c. 620, § 1; 63 Del. Laws, c. 163, § 1; 84 Del. Laws, c. 46, § 1; 84 Del. Laws, c. 458, § 1; 84 Del. Laws, c. 515, § 2.)

§ 147 Authority to establish standards for traffic-control devices.

(a) The Department shall adopt a uniform standard for each type of traffic-control device to be used on all highways open to the public in this State. Such standard shall correlate with, and so far as practical, conform to the standards used in other states, except that the Department is authorized to adopt different standards and types of devices or applications if the Department determines that, based on engineering judgment, different standards or types of devices or applications are needed in order to reduce fatal or serious injury crashes or improve safety in accordance with a "safe system approach," as defined under § 135A of this title. For purposes of this subsection, "standards" includes publications, policies, guidelines, or memoranda.

(b) The standards shall be recorded in a manual to be known as the Delaware Manual on Uniform Traffic-Control Devices for Streets and Highways. The manual shall have separate chapters setting individual standards for signs, signals and markings.

(c) Any traffic-control device erected in violation of the manual, except experimental devices erected by the Department, shall be unofficial, unauthorized and unenforceable.

(d) A person or corporation shall not sell or offer for sale in this State any traffic-control device or other device intended to regulate, warn or guide traffic unless it conforms with the state manual and specifications adopted under this section.

(60 Del. Laws, c. 701, § 3; 84 Del. Laws, c. 515, § 3.)

§ 148 Trust fund.

All moneys received pursuant to this title as proceeds from the sale, lease or rental of land with or without improvements, regardless of the source of funding for the original purchase of the aforesaid land or improvements, shall be credited to a special fund established by the State Treasurer and transferred quarterly to the Transportation Trust Fund. Such revenues shall be utilized by the Department to carry out the general purposes of this title. Moneys received pursuant to this section that originate from federal funding will be credited to the proper projects/accounts in accordance with established federal guidelines.

(62 Del. Laws, c. 51, § 1; 71 Del. Laws, c. 354, § 272.)

§ 149 Authority to adopt regulations governing state land.

(a) The Department shall have the authority to adopt rules, regulations or restrictions governing the use of or the conduct on those lands owned, controlled or in the custody of the Department. Such rules, regulations or restrictions adopted pursuant hereto may be adopted to control such behavior as, but not limited to, loud and tumultuous behavior, the sale or consumption of alcoholic beverages, or sales of goods or services for profit or vending operations of any kind without a permit issued by the Department. The Department shall also have the authority to issue rules and regulations to meet its requirements under federal, state and local environmental laws, including but not limited to the National Pollutant Discharge Elimination System (NPDES) permits required by the Clean Water Act [33 U.S.C. § 1342 et seq.].

(b) Any violation of any rule, regulation or restriction adopted pursuant hereto by the Department shall constitute a class B misdemeanor as defined in Title 11 and any person found to be in violation thereof shall receive a penalty in accordance therewith.

(c) (1) *Legislative findings.* — The General Assembly finds that the proliferation of sporting and recreational activity taking place in and adjacent to the State's public rights-of-way is growing along with the State's population, and further finds that such mixed-use activity threatens the safety of the recreants as well as members of the motoring public.

(2) In keeping with the General Assembly's legislative findings herein, and in order to promote safe neighborhood recreation, the Department shall make every effort to remove from public rights-of-way devices such as basketball hoops, hockey goals, shuffleboards and the like. The Department is further authorized and directed to establish such regulations as may be necessary and appropriate to enforce this activity. The regulations may include provisions for recreational use agreements with public agencies or other responsible entities for State property under Department control, that the Department may determine as suitable for these activities. Notwithstanding any other provision of state law to the contrary, any repeat offender found in violation of the regulations adopted pursuant to this subsection shall pay a fine of $25 per incident.

(66 Del. Laws, c. 181, § 1; 72 Del. Laws, 1st Sp. Sess., c. 258,, §§ 114, 115; 72 Del. Laws, c. 282, § 1; 75 Del. Laws, c. 98, § 110; 75 Del. Laws, c. 230, § 12.)

§ 150 Lead paint on outdoor structures.

All provisions of this title must comply with Chapter 30M of Title 16.

(81 Del. Laws, c. 396, § 6.)

§ 150A Utilities Coordination Council.

The General Assembly creates a permanent Utilities Coordination Council.

(1) The council shall consist of the following members, or a designee appointed by the member serving by virtue of position:

a. A Representative appointed by the Speaker of the House Representatives.

b. A Senator appointed by the President Pro Tempore of the Senate.

c. The Secretary of the Department of Transportation.

d. A Department of Transportation Utilities Engineer.

e. One representative from Delmarva Power Corporation.

f. One representative from Delaware Electric Cooperative.

g. One representative from Verizon Delaware LLC.

h. One representative from Chesapeake Utilities Corporation.

i. One representative from Artesian Water Company.

j. One representative from Comcast Corporation.

k. One representative from the Delaware Municipal Electric Corporation.

l. One representative from the Delaware Chapter of the National Association of Water Companies.

m. One representative from the American Council of Engineering Companies of Delaware.

(2) The Council shall:

a. Recommend and review best practices to shorten the total time to coordinate and implement utility relocations on transportation projects on Delaware's highways.

b. Consider all reasonable options for improvement and recommend any combination of proposed agreements, regulations, or legislation for consideration by the General Assembly.

c. Ensure that recommendations are implemented and hold the Department and utility companies accountable.

d. Resolve issues on specific projects that have or are experiencing utility delays.

(3) Meetings; quorum; officers; committees; procedure.

a. The Council must meet by December 30, 2021, and thereafter must meet at least 4 times each year. A majority of members present shall constitute a quorum.

b. The Secretary of the Department of Transportation will convene the initial meeting of the Council.

c. At the initial meeting of the Council, a Chairperson and Vice Chairperson are to be elected by the Council members. Thereafter, the Council will elect a Chairperson and Vice Chairperson biennially at the first meeting of the calendar year to serve a 2-year term. The Chairperson has the duty to convene and preside over meetings of the Council. The Vice Chairperson's duty is to act as chairperson in the absence of the Chairperson.

d. The Council may establish committees composed of Council members and other knowledgeable individuals as deemed advisable to assist in achieving the purposes of the Council.

e. The Council must submit a written report of its activities and recommendations to the Governor and General Assembly within 1 year of establishment of the Council and at least once every year thereafter.

(83 Del. Laws, c. 229, § 1.)

Subchapter IV

Award of Contracts

§ 151 Procedure for procurement of materials, equipment or supplies and award of contracts for performance of work.

The Department shall not purchase any materials, equipment or supplies, nor enter into any contract for the performance of any work except in accordance with Chapter 69 of Title 29, except that said Chapter 69 of Title 29 shall not apply, when in the best interests of the State, as determined by the Secretary and approved by the Budget Commission, the Department enters into agreements with other states, counties, municipalities, other governmental agencies or private entities to have such work or services supplied pursuant to contracts entered into by such other public authorities or private entities.

(17 Del. C. 1953, § 151; 54 Del. Laws, c. 106, § 1; 63 Del. Laws, c. 171, § 1.)

§ 152 Supervision by Secretary of Transportation.

The execution and performance of all contracts awarded by the Department shall be under the charge of the Secretary of Transportation, and the Secretary's decision shall be final in all matters concerning the performance of the work and compliance with the terms of the contract.

(17 Del. C. 1953, § 152; 54 Del. Laws, c. 106, § 1; 57 Del. Laws, c. 671, § 1B; 60 Del. Laws, c. 503, § 19; 70 Del. Laws, c. 186, § 1.)

§ 153 Border crossing agreements.

(a) The General Assembly finds as follows:

(1) There are over 150 locations at which public roads cross Delaware's border with either Maryland or Pennsylvania.

(2) Several of these roads include portions that cross into Maryland or Pennsylvania from Delaware with no intersections with such roads from within the other state.

(3) Some public roads move back and forth across the state border, while others continue from 1 state to the other.

(4) These border crossings raise several difficult issues concerning potential liability, appropriate continuity of pavement maintenance policies and practices, snow removal responsibilities, and oversight of subdivision development and entrance permit regulations applicable to each jurisdiction.

(5) Therefore, it is appropriate to direct the Department of Transportation to enter into such border crossing agreements as it deems fitting and proper, to obtain cooperation with the responsible jurisdictions in other states to deal with the issues caused by the interplay of the state's borders with the public road transportation network.

(b) The Department of Transportation is authorized and directed to enter into border crossing agreements with counties, townships, other states, and such other government agencies as are responsible for those public roads that cross between, intersect with, or are adjacent to the Delaware border with Maryland or Pennsylvania, and which are connected to the road system for which the Department is responsible under this chapter. Such agreements may include provisions for pavement reconstruction and maintenance, sharing of snow removal and other responsibilities, joint subdivision review and entrance permit approval processes, adoption of uniform traffic control policies, road segment responsibility designations, reimbursement provisions for expenditures made on these roads, and for other purposes as the Department may deem fitting and proper. Chapter 69 of Title 29 shall not apply to such agreements or to the purchase of materials, equipment, supplies, or the performance of any work on the road segments included within these agreements, except that the provisions of § 6960 of Title 29, thereof shall apply to any work contracted for performance within Delaware.

(c) The provisions of this section shall be limited to those public roads located within 1/2 mile of the Delaware border, measured perpendicularly from the border.

(75 Del. Laws, c. 98, § 117.)

Subchapter V

Controlled-Access Highways

§ 171 Declaration of policy.

The General Assembly finds, determines and declares that this subchapter is necessary for the immediate preservation of the public peace, health and safety and for the promotion of the general welfare.

(17 Del. C. 1953, § 171; 50 Del. Laws, c. 603, § 1.)

§ 172 Definition of a controlled-access facility.

For the purposes of this subchapter, a controlled-access facility is defined as a highway especially designed for through motor vehicle traffic, and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways may be freeways open to use by all customary forms of highway traffic, or they may be parkways from which trucks, buses and other commercial vehicles shall be excluded, or they may be multi-modal corridors where the absence or restriction of turning vehicle movements enables safer movement of people and goods via multiple modes of travel.

(17 Del. C. 1953, § 172; 50 Del. Laws, c. 603, § 1; 84 Del. Laws, c. 515, § 4.)

§ 173 Authority to establish controlled-access facilities.

The Department, acting alone or in cooperation with any other governmental agency or political subdivision of this State or with any federal, state or local agency of any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, maintain and provide controlled-access facilities for public use wherever the Department is of the opinion that traffic conditions, present or future, will justify such special facilities, provided that within cities and towns such authority shall be subject to such municipal consent as may be provided by law. The Department, in addition to the specific powers granted in this subchapter, shall also have and may exercise, relative to controlled-access facilities, any and all additional authority now or after June 22, 1956, vested in it relative to highways or streets within its jurisdiction. The Department may regulate, restrict or prohibit the use of such controlled-access facilities by the various classes of vehicles or traffic in a manner consistent with § 172 of this title.

(17 Del. C. 1953, § 173; 50 Del. Laws, c. 603, § 1.)

§ 174 Design of controlled-access facility.

The Department may so design any controlled-access facility and so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection the Department may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections or other physical separations or by designating such separate roadways by signs, markers, stripes and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person shall have any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

(17 Del. C. 1953, § 174; 50 Del. Laws, c. 603, § 1.)

§ 175 Acquisition of property and property rights.

For the purpose of this subchapter, the Department may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase or condemnation in the same manner as such units are now or may, after June 22, 1956, be authorized by law to acquire such property or property rights in connection with highways and streets within its jurisdiction. All property rights acquired under this subchapter shall be in fee simple. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof or service road in connection therewith, the Department may, in its discretion, acquire an entire lot, block or tract of land, if, by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for the right-of-way proper.

(17 Del. C. 1953, § 175; 50 Del. Laws, c. 603, § 1.)

§ 176 New and existing facilities; grade-crossing eliminations.

The Department may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing highway as a controlled-access facility. The State or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing state roads by grade separation or service road or by closing off such roads and streets at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade, except as a temporary expedient, for which a separate resolution for each individual location shall be approved by a duly executed resolution of the Department. No city or town street, state highway, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Department. Such consent and approval shall be given only if the public interest shall be served thereby.

(17 Del. C. 1953, § 176; 50 Del. Laws, c. 603, § 1; 84 Del. Laws, c. 515, § 5.)

§ 177 Authority of local units to consent.

The Department may enter into agreements with other states, counties, towns or with the federal government respecting financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access facilities or other public ways in its jurisdiction to facilitate the purposes of this subchapter.

(17 Del. C. 1953, § 177; 50 Del. Laws, c. 603, § 1.)

§ 178 Local service roads.

In connection with the development of any controlled-access facility, the Department may plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or may designate as local service roads and streets any existing road or street and may exercise jurisdiction over service roads in the same manner as is authorized over controlled-access facilities under the terms of this subchapter, if, in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

(17 Del. C. 1953, § 178; 50 Del. Laws, c. 603, § 1.)

§ 179 Restrictions on use of controlled-access facilities.

The Department may prohibit the use of specific classes of motor-driven vehicles or of other vehicles on controlled-access highways either all the time or during such times as necessary for safety. Notice of such prohibition shall be posted on traffic-control devices at the entrance to the controlled-access facilities.

(17 Del. C. 1953, § 179; 50 Del. Laws, c. 603, § 1; 60 Del. Laws, c. 701, § 4.)

§ 180 Certain commercial establishment prohibited.

No automotive service station or other commercial establishment for serving motor vehicle users, except telephone facilities, shall be constructed or located within the right-of-way of, or on publicly owned or publicly leased land acquired or used for, or in connection with a controlled-access facility.

(17 Del. C. 1953, § 181; 52 Del. Laws, c. 38.)

Subchapter VI

Delaware Byways Program

§ 190 Statement of intent.

The General Assembly finds that certain portions of the state highway system are notable for their scenic, historic, recreational, cultural or archaeological value and worthy of designation as Delaware byways to provide special consideration of their unique features and special role in the highway system.

The General Assembly further finds that the public interest would be served by the formation of a coordinated scenic highway program to enhance recreational, cultural and archaeological resources, encourage development through tourism, and educate residents and visitors on the history, culture and natural beauty of this State.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, § 1.)

§ 191 Delaware Byways Program.

The Secretary shall establish within the Department a program to be known as the Delaware Byways Program (hereinafter referred to as "byways program," or "program") to encourage and coordinate state actions and the activities of others which relate to the development, protection, promotion, operation and management of byways. In order to carry out the purposes of the program, the Secretary is authorized to:

(1) Plan, design and develop the Delaware byways system and to designate such highways as the Department may deem appropriate as "Delaware Byways." The process for such designation shall ensure that Delaware byways are selected and managed through a process that balances equity for property owners with the desire of the community to have a specific highway designated under this program;

(2) Ensure to the extent possible that all byway designations are continuous;

(3) Make safety improvements to a highway designated as a byway under this article to the extent such improvements are necessary to accommodate increased or reduced traffic as well as any changes necessary as a result of the types of vehicles using the highway due to such designation;

(4) Construct along such byways such improvements as may be necessary for the use and enjoyment of motorists, pedestrians and bicyclists;

(5) Improve the highway to enhance access to areas utilized for the purpose of recreation, including but not limited to youth-related activities and water-related recreation;

(6) Protect scenic, historical, natural, archaeological and cultural resources in areas adjacent to the highway;

(7) Develop and provide tourist information to the public, including interpretive information about the byway;

(8) Apply for funding from any appropriate source to further the purposes of the program, including but not limited to federal grants or private contributions; and

(9) Enter into contracts with qualified and responsible not-for-profit organizations involved in byway activities for services relating to the development of the byways program or services relating to the operation, development or promotion of a specific byway.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, §§ 3-11.)

§ 192 Regulations.

The Secretary is authorized to promulgate such regulations as may be necessary or desirable to implement the Delaware Byways program, consistent with departmental policy and this subchapter. Such regulations may also:

(1) Encourage counties, towns and municipalities to work with the Department to designate Delaware byways within their jurisdictions and to petition for the inclusions of these highways into the byways program. Such inclusion shall enable the municipality to participate in federal funding that may be available under the National Scenic Byways Program of the Transportation Equity Act of the 21st Century of 1998 (23 U.S.C. § 162).

(2) Develop criteria for Delaware byway designation based upon its scenic, historic, natural, recreational, cultural or archeological qualities;

(3) Encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of the Delaware Byways Program;

(4) Provide participants with tools and ideas for enhancement and protection of designated byways;

(5) Provide operation and management standards for highways designated as Delaware byways, including strategies for maintaining or improving the qualities for which a byway is so designated, for protecting and enhancing the landscape and scenic view and for minimizing traffic congestion as much as possible on such byways;

(6) Provide standards for byway-related signs, including those which identify Delaware byways;

(7) Develop and implement a byways corridor management plan that specifies the actions, procedures, controls, operational practices and administrative strategies to maintain the scenic, historic, cultural, recreational, archaeological and natural qualities of the byway; and

(8) Develop planning and design standards for development of official byways.

(72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, §§ 12-20.)

§ 193 Delaware Byway Advisory Board [Repealed].

72 Del. Laws, c. 444, § 2; 77 Del. Laws, c. 367, § 21; 81 Del. Laws, c. 49, § 15; 81 Del. Laws, c. 374, § 44; repealed by 84 Del. Laws, c. 87, § 1, effective June 30, 2023.

§ 194 Outdoor advertising exemptions.

(a) Nothing in this subchapter shall authorize any removal or restriction on outdoor advertising erected or approved by the appropriate governmental authority to be erected before July 18, 2000.

(b) Outdoor advertising signs, displays, and devices to be erected along a designated Delaware byway or within the 660 ft. control zone of a designated Delaware byway, provided they are in accordance with the provisions listed in Chapter 11 of this title, shall be limited to the following:

(1) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions as authorized or required by the laws of this State;

(2) Signs, displays and devices advertising the sale or lease of the real property upon which they are located;

(3) Signs, displays and devices advertising activities conducted on the real property upon which they are located;

(4) Gateway signs as defined by § 1102 of this title;

(5) Beautification/landscape planting sponsorship signs located within the right-of-way of a Delaware byway;

(c) For the purposes of this section “outdoor advertising” has the same meaning as defined by § 1102 of this title.

(72 Del. Laws, c. 444, § 2; 79 Del. Laws, c. 320, § 1; 82 Del. Laws, c. 15, § 1.)

Subchapter VII

Projects Requiring Landscape and Reforestation Activities

Part I

General Provisions

§ 201 Legislative intent.

It is declared that increases in forested land in the State, together with landscape features such as trees, shrubs and ground covers other than or in addition to grass, not only improve the aesthetic value of our State, but carry with them valuable benefits to the health and welfare of our citizens and our environment. It is likewise declared that the Department of Transportation is a leader in replacing forestlands that are required to be cleared for such projects and in providing travelers throughout the State with scenic vistas along its roadways while maintaining safe design and construction standards.

Therefore, this subchapter is intended to more precisely reflect a policy requiring the incorporation of landscaping and reforestation in the projects developed by the Department of Transportation for road construction and improvements in the State. This subchapter is intended to provide minimum standards for the volume of landscaping or reforestation that must take place, for how those activities must be planned, and for how much must be allocated to ensure those activities can take place. The Department of Transportation bears the responsibility for providing specific standards that are needed through regulations developed pursuant to this subchapter.

(73 Del. Laws, c. 351, § 2.)

§ 202 Definitions.

For the purposes of this subchapter:

(1) “An acre of trees” means a contiguous acre of land on which there are situated at least 50 trees or woody plants with a trunk measuring at least 4 inches in diameter at 4 feet above the ground. Partial acres and individual parcels will be added together to determine the total acreage within the project scope.

(2) “Canopy tree” means any tree or other woody plant that when fully grown will provide shade and/or shelter for the land beneath while allowing passage of people, animals and/or vehicles upon the land beneath. Canopy trees are classified in 1 of 3 categories: “lower canopy,” “medium canopy,” and “upper canopy.” “Lower canopy trees” include all species of trees and woody plants that when fully grown reach an average height of not more than 30 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below. “Medium canopy trees” include all species of trees and woody plants that when fully grown reach an average heights of not less than 30 feet nor more than 50 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below. “Upper canopy trees” include all species of trees and woody plants that when fully grown reach an average height of not less than 50 feet when measured vertically in a straight line from the uppermost branches to the ground immediately below.

(3) “Construction project” means any activity undertaken, authorized or required by the Department of Transportation through which any expressway, arterial or collector road is:

a. Constructed on a new alignment; or

b. Widened by adding 1 or more through travel lanes.

(4) “Forest” means a biological community dominated by trees covering a contiguous area of land and includes any definition thereof developed by the Department of Agriculture Forest Service. A “forest” may be identified by the diversity of the tree species composing it or by its type. A “forest type” is a forest composed of associations of tree species that have similar ecological requirements.

(5) “Landscape improvements” means living trees and shrubs planted for the purpose of enhancing the aesthetic value or wildlife habitat of the land, including, but no limited to, organized or planned arrangements of living plants as well as naturally occurring or wild growth of living plants. These improvements shall be made in a manner prescribed by the Department of Transportation’s landscape policies, as amended from to time. In establishing and modifying these policies, the Department of Transportation shall seek the advice of the Department of Agriculture and the Department of Natural Resources and Environmental Control and such other public or private agencies as may be deemed appropriate by the Department.

(6) “Landscaping and planting activities” means the placement of landscape improvements. Landscaping and planting activities do not include the erection of fences, structures or other nonliving barriers or borders.

(7) “Reforestation activities” means landscaping and planting activities according to advice provided by the Department of Agriculture Forest Service on lands within rights-of-way owned or controlled by the Department of Transportation on which no forest currently exists, or on which a forest exists that is less dense than recommended by the Department of Agriculture Forest Service, to a density that will reasonably ensure the establishment of a mature forest of a particular type once fully grown.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, § 1.)

§ 203 Duty to incorporate cost of landscaping, planting and reforestation activities.

Whenever the Department of Transportation undertakes any construction project in this State covered by this subchapter, it shall incorporate into the cost of such project sufficient funds to complete all landscaping, planting and/or reforestation activities required by this subchapter.

If upon the completion of all landscaping, planting and/or reforestation activities required by this subchapter, and upon the completion of any funds transfers authorized by this subchapter, there remain funds in the budget of a construction project that had been designated specifically for landscaping, planting and/or reforestation activities, the Department shall use the remaining unobligated funds to perform or pay for other landscaping, planting and/or reforestation activities in the State.

(73 Del. Laws, c. 351, § 2.)

§ 204 Reclamation of dedicated funds.

If upon the completion of all landscaping, planting and/or reforestation activities required by this subchapter, and upon the completion of any funds transfers authorized by this subchapter, there remain funds in the budget of a construction project that had been designated specifically for landscaping, planting and/or reforestation activities, the Department shall use the remaining unobligated funds to perform or pay for other landscaping, planting and/or reforestation activities in the State.

(73 Del. Laws, c. 351, § 2.)

§ 205 Duty to minimize removal, cutting or clearing of landscape improvements.

Whenever the Department of Transportation undertakes any construction project in this State, it shall make every reasonable effort to preserve large, mature trees. Additionally, it shall make every reasonable effort to remove, cut or clear only the minimum number of trees and shrubs that are necessary to complete the project and remain consistent with safe design practices.

(73 Del. Laws, c. 351, § 2.)

§ 206 Duty to complete landscaping, planting and reforestation activities; modification of project plans.

(a) The Department of Transportation shall complete all landscaping, planting and reforestation activities required by this subchapter, or cause the same to be completed, and shall complete all funds transfers authorized by this subchapter within 1 year of the expiration of any guarantee or warranty period.

(b) Wherever practicable, the Department of Transportation shall modify or alter construction projects and plans to include landscaping,

planting or reforestation activities within median areas and along roadside affected thereby. This includes but is not limited to modifications resulting in the increased use of earthen berms or, if necessary, metal or cement roadside barriers without compromising safety.

(73 Del. Laws, c. 351, § 2.)

§ 207 Lands held for duration of construction project and thereafter; limitation upon transfer and development.

(a) Any other provision of law not withstanding, all lands, and all rights therein, on which landscaping, planting or reforestation activities take place pursuant to this subchapter shall remain in the possession and control of the Department of Transportation for the duration of the construction project and shall remain so thereafter until such time as the Department of Transportation determines that such lands no longer meet its existing or projected needs. At such time, the Department of Transportation may transfer any or all of said lands to any agency, instrumentality or political subdivision of the State for the purposes of preserving them for the public good.

(b) At no time may the Department of Transportation, or any other agency, instrumentality or political subdivision of the State transfer any right in or to lands on which reforestation activities take place that would in any way change the nature of the lands from forestland or that would permit development of any kind on said lands other than for the purposes of establishing or expanding a local, state or federal park, natural area, or preserve.

(c) The Department of Transportation may perform maintenance activities such as pruning or the selective removal of diseased or dead trees as it deems necessary for the safe operation of the transportation system.

(73 Del. Laws, c. 351, § 2.)

§ 208 Regulations.

(a) The Department of Transportation shall promulgate such rules and regulations as it deems necessary for implementing this subchapter.

(b) All policies, standards and general specification relating to landscaping, planting and reforestation activities, as well as the planting and placement of trees, shrubs, groundcover, sod and grass, must appear within the Department of Transportation's design standards and/or regulations and must be developed in conjunction with the Department of Agriculture and the Department of Natural Resources and Environmental Control or such other public or private agencies as may be deemed appropriate by the Department.

(c) All rules and regulations promulgated pursuant to this section shall meet the requirements of the Administrative Procedures Act (Chapter 101 of Title 29).

(73 Del. Laws, c. 351, § 2.)

Part II

Mitigation Needs Analysis And Planting Or Reforestation Activities

§ 209 Mitigation needs analysis.

(a) Before the Department of Transportation removes, cuts or clears any landscape improvement, tree or forest from the site of a construction project, it shall conduct an analysis, or cause the same to be conducted, to determine the total area of landscape improvements, individual trees up to 50, or if more than 50, the total acres of trees that will be removed, cut or cleared in order to complete the project.

(b) Whenever the Department of Transportation constructs or widens any major arterial, interstate connector, minor arterial, collector road or proposed road in an urbanized area of this State, the Department shall incorporate in the plans therefore provision for all costs incurred in replacing, wherever possible, shade trees to be removed in order to execute the plan. Replacement shade trees shall be a minimum height of 16 feet, balled and burlapped nursery-grown stock, and all planting work shall be done in accordance with § 728 of the Delaware Department of Transportation Standard Specifications (January 1, 1974, or latest revised edition). The place of planting trees shall be in compliance with federal law and regulations relating to the distance such trees must be planted from the edge of the roadway.

(c) If the Department of Transportation determines that it will not remove, cut or clear any trees in order to complete the construction project, it shall incorporate into the construction plans landscape improvements to improve the rights of way within the project area only, in accordance with the Department's standards as set forth herein.

(d) If the Department of Transportation determines that it will remove, cut or clear landscape improvements of 10 or fewer trees in order to complete the construction project, it shall incorporate into the construction plans requirements for landscape mitigation through the performance of landscaping and planting activities to improve the rights-of-way within the project area at a ratio of at least 1 new tree or shrub for every tree or shrub removed.

(e) If the Department of Transportation determines that it will remove more than 10 but fewer than 50 trees in order to complete the construction project, regardless of the number of acres on which those tree are situated, it shall incorporate into the construction plans requirements for landscaping and planting activities in Part II of this subchapter that will result in the planting of at least 2 trees for every tree to be removed, cut or cleared in order to complete the construction project.

(f) If the Department of Transportation determines that it will remove 50 or more trees in order to complete the construction project, it

shall incorporate into the construction plans requirements for activities that will result in the reforestation of at least 1 acre of land for every acre of trees to be removed, cut or cleared in order to complete the construction project. The ratio of land on which reforestation activities occur to land from which 50 or more trees have been removed, cut or cleared shall apply equally to complete acres as well as fractions thereof.

(g) The Department of Transportation shall itself undertake the reforestation activities required pursuant to this section or shall cause the same to be undertaken.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, §§ 2, 3.)

§ 210 Inability to meet minimum requirements; alternate landscaping and planting activities.

(a) If the Department of Transportation is unable to meet the minimum requirements for landscaping and planting activities set forth in Part II within the rights-of-way of the construction project with which the landscaping and planting activities are associated, it must first complete the balance of those landscaping and planting activities within other:

(1) State-owned rights-of-way which are along the same road and geographically closest to the construction project requiring landscaping and planting activities and thereafter moving outward in all directions until it has met the minimum requirements for landscaping and planting activities set forth in this part; or

(2) Within conservation easements approved and maintained by the Department of Natural Resources and Environmental Control that are within the same or an adjacent watershed.

(b) If, thereafter, the Department of Transportation remains unable to meet the minimum requirements for landscaping and planting activities set forth above within any rights-of-way it owns or controls in the State, it shall determine the number of acres of landscaping and planting activities it has been unable to mitigate and:

(1) Perform landscaping and planting activities in the State (or cause the same to be performed) at locations recommended by the Department of Agriculture Forest Service or the Department of Natural Resources and Environmental Control; or

(2) If the Department of Agriculture or the Department of Natural Resources and Environmental Control are unable to identify any locations in the State for the performance of landscaping and planting activities, transfer to either the Department of Agriculture Forest Service or the Department of Natural Resources and Environmental Control an amount equal to the dollar value per square yard necessary to plant seedlings in the area it has been unable to mitigate to be used by either Department for conducting landscaping and planting activities in the State under programs administered by those Departments.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, § 4.)

§ 211 Planting standards.

(a) All landscaping and planting activities undertaken as part of the Department of Transportation’s obligation to mitigate the removal, cutting or clearing of landscape improvements pursuant to this part must be conducted pursuant to a landscape plan prepared by the Delaware licensed and registered landscape design professional or by the Delaware Department of Transportation, and must be conducted:

(1) To promote transplant survival;

(2) In compliance with federal law and regulation;

(3) In compliance with any Department of Transportation design specifications relating to obstructions in the right-of-way, and the distance that landscape improvements must be planted from the travel lanes of the roadway for safety purposes and corresponding to any policies related to context sensitive design;

(4) In compliance with the Department of Transportation’s landscape and reforestation policies developed in conjunction with the Department of Agriculture and the Department of Natural Resources and Environmental Control or other such public or private agencies as the Department of Transportation may deem appropriate; and

(5) To be maintainable with resources available to the Department at the time of planting, to include any permanent agreements entered into relating to maintenance.

(b) A landscape plan prepared by a Delaware-licensed and registered landscape design professional or by the Delaware Department of Transportation for use in completing the minimum landscaping and planting activities required by this part may include whatever components the Department of Transportation determines are necessary or appropriate for the area in which the activities will take place, but must at a minimum:

(1) Screen, while maintaining transportation safety standards, at least 50 percent of the frontage of industrial properties and the back sides of nonagricultural, commercial properties;

(2) Use an appropriate combination of trees, shrubs, groundcovers, and grass or sod, both within median areas and along all roads, for aesthetic and screen purposes; and

(3) Select from upper, medium and lower canopy trees, both within median areas and along all roads where space is safely available, that:

a. Are no less than 1 inch in diameter, as measured 6 inches above the established ground level when planted;

b. Are planted in sufficient quantities to achieve an aesthetically pleasing view and/or, if outside the right-of-way, wildlife habitat when fully grown.

(c) All landscaping and screening shall be in conformance with any context sensitive design and vegetative policies that are in effect at

the time of the project.

(d) No landscape improvement determined to be an invasive species shall ever be knowingly planted, authorized or required by the Department of Transportation.

(73 Del. Laws, c. 351, § 2; 77 Del. Laws, c. 361, §§ 5-8.)

Subchapter VIII

Brandywine Valley National Scenic Byway

§ 220 Findings and intent.

(a) The Brandywine Valley National Scenic Byway (the "National Scenic Byway"), which includes Delaware Route 52 within the State of Delaware from Rodney Square to the Pennsylvania Line and Delaware Route 100 from its intersection with Delaware Route 52 to the Pennsylvania line, was designated in 2005 as the first National Byway in the State of Delaware. The General Assembly hereby finds that the historic, cultural and scenic qualities of National Scenic Byway are unique and worthy of special consideration.

(b) In recognition of the foregoing, it is the intent of the General Assembly to establish a permanent, interdisciplinary advisory board comprised of such individuals as provided below, to assist policymakers and other stakeholders in preserving, maintaining and enhancing the National Scenic Byway.

(78 Del. Laws, c. 402, § 1.)

§ 221 Establishment of Board.

(a) There is hereby established a Brandywine Valley National Scenic Byway Advisory Board, which shall be chaired by the Secretary or his or her designee and comprised of members serving for terms of 3 years each. The following organizations shall be entitled to appoint a representative to the Board:

(1) Department of Natural Resources and Environmental Control;

(2) Department of State;

(3) Delaware Tourism Office;

(4) New Castle County;

(5) City of Wilmington and/or the Wilmington Convention and Visitors Bureau;

(6) Kennett Pike Association;

(7) Delaware Greenways;

(8) Delaware Nature Society;

(9) Centreville Civic Association;

(10) Brandywine Conservancy;

(11) Maintenance Corporation of Westover Hills;

(12) Westover Hills Woods Association; and

(13) The Harriett Tubman Underground Railroad Byway.

(b) In addition to the foregoing, the Board shall also include a representative of the hospitality industry; a representative of the Brandywine Valley museum community (including but not limited to the Hagley Museum, Longwood Gardens, Winterthur Museum and Gardens and the Brandywine River Museum); a representative of the Greenville, Centreville or Montchanin business community; and such other members as shall be nominated and appointed from time to time. Members appointed pursuant to this subsection (b) shall be nominated by a majority vote of the existing members and appointed by the Secretary.

(c) The Board shall adopt bylaws that provide for operating procedures such as election of officers, appointment of committees, designation of a quorum, conducting of meetings, and other matters that will promote the efficient operation of the Board in the performance of its duties under this chapter.

(78 Del. Laws, c. 402, § 1; 70 Del. Laws, c. 186, § 1.)

§ 222 Duties and responsibilities of Board.

The Board shall assist in and make recommendations regarding the protection, preservation, designation, development, operation, management and promotion of the National Scenic Byway. In connection with the foregoing, the responsibilities and powers of the Board shall include:

(1) In an advisory capacity, reviewing and participating in the development of regulations and laws that impact the National Scenic Byway, at all levels of government;

(2) Securing funding to operate programs that enhance and preserve the National Scenic Byway for residents and visitors;

(3) Recommending policies and standards related to the National Scenic Byway;

(4) Participating in the update and implementation of the Corridor Management Plan and any associated reports, studies and plans; and

(5) Preparing and submitting the biennial report described in § 223 of this title hereunder; and

(6) Such other responsibilities and powers consistent with the Board's role as an advisory body as shall be determined from time to time.

(78 Del. Laws, c. 402, § 1.)

§ 223 Reports.

The Board shall prepare and submit a report of its activities and accomplishments to the General Assembly no later than June 30, 2014, and every second year thereafter.

(78 Del. Laws, c. 402, § 1.)

Chapter 40
REAL ESTATE APPRAISERS
Subchapter I
Council on Real Estate Appraisers

§ 4001 Objectives.

(a) The primary objective of the Council on Real Estate Appraisers, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

(b) The secondary objectives of the Council are to maintain minimum standards of practitioner competency and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Council shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Council; shall adjudicate at informal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensed practitioners.

(75 Del. Laws, c. 105, § 3.)

§ 4002 Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(1) "Appraisal" shall mean an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate as of a specific date. An appraisal may be classified by subject matter into either a valuation or an analysis. A valuation is an estimate of the value of real estate or real property. An analysis is a study of real estate or real property other than estimating value. A competitive market analysis is not an appraisal.

(2) "Appraisal management company" means a corporation, partnership, sole proprietorship, subsidiary or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term "appraisal management company," "mortgage technology provider," "lender processing services," "lender services," "loan processor," "mortgage services," "real estate closing services provider," "settlement services provider," "vendor management company" or any other term, and that does any of the following:

a. Administers an appraiser panel of independent contract appraisers to perform real property appraisal services in this State for clients.

b. Receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into an agreement with 1 or more independent appraisers to perform the real property appraisal services contained in the request.

c. Otherwise serves as a third-party liaison of appraisal management services between clients and appraisers.

(3) "Appraisal management services" means the process of receiving a request for the performance of real property appraisal services from a client, and for a fee paid by the client, entering into an agreement with 1 or more independent appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.

(4) "Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management company to perform real property appraisal services for the appraisal management company.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, but does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not communicate an opinion related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of Professional Appraisal Practice.

(6) "AQB" shall mean the Appraisal Qualifications Board appointed by the Appraisal Foundation to establish the minimum education, examination, and experience requirements for real estate appraisers providing appraisals in federally-related transactions.

(7) "Certified general real property appraiser" shall mean a person, who has met the certification requirements of this chapter pertaining to the appraisal of residential and nonresidential real property utilized in connection with federally-related transactions, and who holds a current, valid certificate issued under this chapter.

(8) "Certified residential appraiser" shall mean a person, who has met the certification requirements of this chapter, pertaining solely to the appraisal of residential real property utilized in connection with federally-related transactions, and who holds a current, valid certificate issued under this chapter.

(9) "Classroom hour" shall mean 50 minutes out of each 60-minute hour.

(10) "Controlling person" means any of the following:

a. An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal management services in this State.

b. An individual who is employed, appointed or authorized by an appraisal management company and who has the authority to

enter into a contractual relationship with clients for the performance of appraisal management services and to enter into agreements with independent appraisers for the performance of real property appraisal services.

c. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(11) "Council" shall mean the State Council on Real Estate Appraisers established in this chapter.

(12) "Division" shall mean the State Division of Professional Regulation.

(13) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed practitioner, or the abuse of alcoholic beverage such that it impairs the ability to perform the work of an appraiser.

(14) "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(15) "Federally-related transaction" means any real-estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and requires the services of an appraiser.

(16) "FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010 [P.L. 111-203, 124 Stat. 2190].

(17) "Licensed real property appraiser" shall mean a person, who has met the licensing requirements of this chapter and who may appraise noncomplex 1 to 4 residential units having a transaction value less than $1,000,000 and complex 1 to 4 residential units having a transaction value of $400,000 or less, and who holds a current, valid license issued under this chapter. Licensed appraisers cannot appraise a property with a market value in excess of $1,000,000.

(18) "Person" shall mean an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, and any other legal entity and includes a legal successor of those entities.

(19) "Personal supervision" shall mean the active oversight by the state-licensed or certified real estate appraiser of the real property appraiser trainee. The trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that the trainee has been under the personal supervision of the state certified or licensed real estate appraiser, and provided further that the state-certified or licensed real estate appraiser shall review and sign the appraisal report and accept total responsibility for said appraisal report.

(20) "Real estate appraiser" means any person who advises, consults, or prepares analyses with respect to real estate values, uses, sales, developments or disposition, including acquisitions by eminent domain, or renders opinions relevant to the marketability of real estate, as a whole or partial vocation.

(21) "Real estate-related financial transaction" shall mean a transaction involving the following:

a. Sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof.

b. Refinancing of real property or interests in real property.

c. Use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(22) "Real property" shall mean 1 or more defined interests, benefits, and rights inherent in the ownership of real estate.

(23) "State" shall mean the State of Delaware.

(24) "Substantially related" shall mean the nature of the criminal conduct for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of real estate appraisal.

(25) "Trainee" shall mean a person who has completed classroom hours of education on real estate matters satisfactory to the Council, as indicated in the rules and regulations, including classroom hours on the topic of Uniform Standards of Professional Appraisal Practice.

(26) "Uniform Standards of Professional Appraisal Practice" (USPAP) shall mean the standards of appraisal practice established by The Appraisal Foundation.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 340, §§ 1, 2; 79 Del. Laws, c. 163, § 1; 82 Del. Laws, c. 88, § 1; 83 Del. Laws, c. 532, § 1.)

§ 4003 Council on Real Estate Appraisers; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Council on Real Estate Appraisers, which shall administer and enforce this chapter.

(b) The Council shall consist of 9 members, who are residents of this State, and are appointed by the Governor. Four of the 9 members shall be licensed or certified appraisers engaged primarily in the real estate appraisal business or in the appraisal management business, including at least 1 certified general real property appraiser and at least 2 certified residential appraisers. One of the 9 members shall be a certified real estate appraiser also engaged in the real estate brokerage business. One member shall be from the banking community. Three of the 9 members shall be public members. The public members shall not be, nor ever have been, appraisers nor members of the immediate family of an appraiser; shall not have been employed by an appraiser or a company engaged in the practice of appraising; shall not have a material interest in the providing of goods and services to appraisers; nor have been engaged in an activity directly related to appraising. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself

for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Council shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the member shall remain eligible to participate in Council proceedings unless and until replaced by the Governor.

(d) A person, who has never served on the Council, may be appointed to the Council for 2 consecutive terms; but no such person shall thereafter be eligible for 2 consecutive appointments. No person, who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period, shall again be appointed to the Council until an interim period of at least 1 term has expired since such person last served.

(e) Any act or vote by a person appointed in violation of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

(f) A member of the Council shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Council business until the charge is adjudicated or the matter is otherwise concluded. A member may appeal any suspension or removal to the Superior Court.

(g) No member of the Council, while serving on the Council, shall hold elective office in any professional association of real estate appraisers; this includes a prohibition against serving as head of the professional association's Political Action Committee (PAC).

(h) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Council.

(i) Any member, who is absent without adequate reason for 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall be guilty of neglect of duty.

(j) Each member of the Council shall be reimbursed for all expenses involved in each meeting, including travel, and in addition shall receive compensation per meeting attended in an amount determined by the Division in accordance with Del. Const. art. III, § 9.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 340, § 3; 79 Del. Laws, c. 163, § 1; 81 Del. Laws, c. 85, § 23.)

§ 4004 Organization; meetings; officers; quorum.

(a) The Council shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the chair deems necessary, or, at the request of a majority of Council members.

(b) The Council annually shall elect a chair and vice-chair. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. No disciplinary action shall be taken without the affirmative vote of at least 5 members of the Council.

(d) Minutes of all meetings shall be recorded and the Division shall maintain copies. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4005 Records.

The Division shall keep a register of all approved applications for certified real estate appraiser, certified residential real property appraiser, licensed real property appraiser, and real property appraiser trainee, and complete records relating to meetings of the Council, examinations, rosters, changes and additions to the Council's rules and regulations, complaints, hearings, and such other matters as the Council shall determine. Such records shall be prima facie evidence of the proceedings of the Council.

(75 Del. Laws, c. 105, § 3.)

§ 4006 Powers and duties.

(a) The Council on Real Estate Appraisers shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this State [Chapter 101 of Title 29]. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Designate the application form to be used by all applicants and process all applications.

(3) Designate the written, standardized examination, endorsed by the Appraiser Qualifications Board (AQB), or its successor, and approved by the Council, and graded by the testing service, to be taken by all persons applying for licensure and certification; applicants, who qualify for licensure or certification by reciprocity, shall have achieved a passing score on all parts of the designated examination or a comparable, alternative national or regional examination, if the designated examination was not available at the time of the applicant's original licensure.

(4) Evaluate the credentials of all persons applying for a license or a certificate as an appraiser in this State, in order to determine whether such persons meet the qualifications for licensing or certification set forth in this chapter.

(5) Grant certificates and licenses to, and renew certificates and licenses of, all persons who meet the qualifications for certification or licensure.

(6) Register applicants as real property appraiser trainees.

(7) Issue temporary certificates or licenses to persons who qualify.

(8) Establish by rule and regulation continuing education standards required for license or certification renewal.

(9) [Repealed.]

(10) Refer all complaints from certificate holders, licensees and the public concerning certified or licensed appraisers or concerning practices of the Council or of the profession, to the Division for investigation pursuant to § 8735 of Title 29; and assign a member of the Council to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint.

(11) Conduct hearings and issue orders in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(12) Where it has been determined after a hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.

(b) The Council on Real Estate Appraisers shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of real estate appraisal.

(75 Del. Laws, c. 105, § 3; 79 Del. Laws, c. 163, § 1.)

Subchapter II

Certificate or License

§ 4007 Certificate or license required.

(a) No person, partnership, association, or corporation shall hold himself, herself, or itself out to the public in this State as being qualified to act as a real estate appraiser, or advertise, or engage in the practice of appraising or assume to act as an appraiser, or use in connection with the person's, partnership's, association's or corporation's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person, partnership, association or corporation is qualified to act as an appraiser, unless such person has been duly certified or licensed under this chapter.

(b) Whenever a certificate or license to practice as an appraiser in this State has expired or been suspended or revoked, it shall be unlawful for the person to act as an appraiser in this State.

(c) No person shall act as an appraiser trainee or hold himself or herself out to be an appraiser trainee unless such person has been duly registered by the Council under this chapter.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 340, § 4.)

§ 4008 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant, who is applying for certification or licensure as an appraiser under this chapter, for the relevant certificate, license or registration, shall submit evidence, verified by oath and satisfactory to the Council, that such person:

(1) Has met the qualifications established by the AQB and incorporated into this section by reference.

(2) Shall not have been the recipient of any administrative penalties regarding that applicant's practice as an appraiser, including but not limited to fines, formal reprimands, license suspensions or revocation, (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Council on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Council may determine after a hearing whether such administrative penalty is grounds to deny licensure.

(3) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as an appraiser in a manner consistent with the safety of the public.

(4) Does not have a criminal conviction record, nor pending criminal charge relating to an offense that is substantially related to real estate appraising. Applicants, who have criminal conviction records or pending criminal charges, shall request appropriate authorities to provide information about the record or charge directly to the Council. However, if after consideration of the factors set forth under § 8735(x)(3) of Title 29 through a hearing or review of documentation the Council finds that a waiver would not create an unreasonable risk to public safety, the Council, by an affirmative vote of a majority of the quorum, shall waive this paragraph (a)(4).

a.-d. [Repealed.]

(5) Has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed, certified, or registered.

(b) Where the Council has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(c) Where the application of a person has been refused or rejected and such applicant feels that the Council has acted without justification, has imposed higher or different standards for the applicant than for other applicants, registrants, certificants or licensees, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 436, § 46; 77 Del. Laws, c. 199, § 34; 78 Del. Laws, c. 44, §§ 66, 67; 83 Del. Laws, c. 433, § 28.)

§ 4009 Appraiser trainee; requirements of supervision.

(a) Persons, who are presented to the Council by a supervising appraiser for registration as an appraiser trainee, shall provide a statement to the Council that the trainee:

(1) Shall perform only those specific functions, which have been delineated in the supervising appraiser's statement; and

(2) Shall practice only under the direct supervision of a state-certified appraiser; and

(3) Shall identify themselves to the public as a real estate appraisal trainee; and

(4) Has not been convicted of a crime that is substantially related to the practice of real estate appraisal. However, if after consideration of the factors set forth under § 8735(x)(3) of Title 29 through a hearing or review of documentation the Council determines that granting a waiver would not create an unreasonable risk to public safety, the Council, by an affirmative vote of a majority of the quorum, shall waive this paragraph (a)(4).

a.-d. [Repealed.]

(b) An applicant, who has been registered by the Council as an appraiser trainee, may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that the appraiser trainee is actively and personally supervised by a state-certified real estate appraiser.

(c) In addition, the supervising state-certified real estate appraiser shall review and sign all appraisals prepared under the supervising state-certified real estate appraiser's supervision by the appraiser trainee and shall accept total responsibility for the appraisal report.

(d) The Council in its regulations shall determine the number of appraiser trainees that a supervising appraiser may supervise and the requirements of their supervision.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 436, § 47; 76 Del. Laws, c. 340, § 5; 77 Del. Laws, c. 199, § 35; 78 Del. Laws, c. 44, §§ 68, 69; 82 Del. Laws, c. 9, § 3; 83 Del. Laws, c. 433, § 28.)

§ 4010 Temporary license.

(a) A real estate appraiser from another state, who is licensed or certified by the appraiser licensing or certifying agency in such state, may apply for registration to receive temporary licensing or certification privileges in this State by paying all required fees and filing with the Council an application, on a form prescribed by the Council for such purpose, which shall set forth and include:

(1) The applicant's name, address, social security number, and such other information as may be necessary to identify the applicant; and

(2) The type of license or certificate held by the applicant and the license or certificate number;

(3) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(4) Whether the license or certificate was issued as a result of passing a licensure or certification examination, by reciprocity, or by some other means;

(5) A statement that the person has met the requirements of § 4008(a)(2), (3), (4), and (5) of this title;

(6) A statement that the applicant agrees to abide by all appraiser laws and rules of this State and to cooperate with any investigation initiated as provided under this chapter;

(7) Identification of the property to be appraised and the anticipated duration of the assignment; and

(8) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this State.

(b) Licensing and certification privileges granted under the provisions of this section shall expire upon completion of the specific appraisal assignment for which the Council has issued the temporary license or certificate.

(c) The Division is empowered to issue a temporary license or certificate to an appraiser from another state, who has documented compliance with the requirements of this section.

(75 Del. Laws, c. 105, § 3; 82 Del. Laws, c. 9, § 3.)

§ 4011 Reciprocity.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Council, the Council shall grant a license to each applicant, who shall present proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this State.

(b) An applicant, who is licensed in a state whose standards are not substantially similar to those of this State, shall have practiced for a minimum of 5 years after licensure; provided however, that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant, who is a graduate of a foreign college or university, and who is not licensed in another state, the District of Columbia, or territory of the United States, shall submit a certified copy of the applicant's college or university record for evaluation by the Council, in addition to fulfilling the applicable requirements for licensure of §§ 4008 and 4009 of this title.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 163, § 1.)

§ 4012 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Council, as well as the proportional expenses incurred by the Division in its service on behalf of the Council. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other

state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fees for the licensure biennium. The Division shall charge a biennial fee to licensees and certificate holders for enrollment in the federal roster or registry.

(75 Del. Laws, c. 105, § 3.)

§ 4013 Issuance and renewal of licenses and certification.

(a) The Council shall issue a license to each applicant, who meets all of the requirements of this chapter for licensure or certification as an appraiser and who pays the fee established under § 4012 of this title.

(b) Each license or certificate shall be renewed biennially in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Council, and shall meet the requirements of § 4008(a)(2), (3), (4) and (5) of this title.

(c) Licensees and certificate holders shall be enrolled in the Federal roster or registry of state-licensed and state-certified real property appraisers. The licensee or certificate holder shall pay the fee established for that purpose biennially to the State.

(d) The Council, in its rules and regulations, shall determine the period of time within which a licensed or certified appraiser may still renew that appraiser's license, notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date.

(e) A licensee or certificate holder, upon written request, may be placed in an inactive status in accordance with the Council's rules and regulations. The renewal fee of such person shall be prorated according to the amount of time such person was inactive. Such person may reenter practice upon written notification to the Council of the intent to do so and completion of continuing education as required in the Council's rules and regulations.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1; 82 Del. Laws, c. 88, § 2; 83 Del. Laws, c. 532, § 1.)

§ 4014 Grounds for discipline.

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 4016 of this title, if, after a hearing, the Council finds that the appraiser:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license or certificate as an appraiser; has impersonated another person holding a license or certificate, or allowed another person to use that appraiser's license or certificate, or aided or abetted a person not licensed or certified as an appraiser to represent himself or herself as an appraiser.

(2) Has illegally, incompetently or negligently practiced appraising.

(3) Has been convicted of a crime that is substantially related to the practice of real estate appraisal. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor.

(4) Has excessively used or abused drugs either in the past 2 years or currently; excessive use or abuse of drugs shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed practitioner, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of an appraiser.

(5) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(6) Has had that appraiser's own license or certificate as an appraiser suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Council by certified record; and the Council has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed or certified as an appraiser in this State shall be deemed to have given consent to the release of this information by the Council or other comparable agencies in another jurisdiction, and have waived all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(7) Has failed to notify the Council that the appraiser's license or certificate as an appraiser in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Where a practitioner fails to comply with the Council's request that the practitioner attend a hearing, the Council may petition the Superior Court to order such attendance, and the said Court or any judge assigned thereto shall have the jurisdiction to issue such order.

(c) Subject to the provisions of subchapter IV of Chapter 101 of Title 29, no license or certificate shall be restricted, suspended, or revoked by the Council, and no practitioner's right to practice appraising shall be limited by the Council until such practitioner has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4015 Complaints.

(a) All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(b) When it is determined that an individual is engaging, or has engaged, in the practice of appraising, or is using the title "appraiser" or other title implying that the individual is competent to act as an "appraiser" and is not licensed or certified under the laws of this State, the Council shall apply to the Office of the Attorney General to issue a cease and desist order.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4016 Disciplinary sanctions.

(a) The Council may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 4014 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Council on the matters, which are the basis of the probation.

b. Limit all practice and professional activities to those areas prescribed by the Council.

(4) Suspend any practitioner's license or certificate.

(5) Revoke any practitioner's license or certificate.

(6) Impose a monetary penalty not to exceed $500 for each violation.

(b) The Council may withdraw or reduce conditions of probation when it finds that the deficiencies, which required such action, have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

(75 Del. Laws, c. 105, § 3; 79 Del. Laws, c. 213, § 2.)

§ 4016A Counseling; letters of concern.

(a) If the Council determines after an investigation that a violation of this chapter or of the rules and regulations enacted pursuant to this chapter warranting formal disciplinary action has not occurred, but that an act or omission of the licensee or certificate holder is a matter of concern and that licensee's or certificate holder's practice may be improved if made aware of the concern, the Council may issue a nondisciplinary confidential letter of concern regarding the licensee's or certificate holder's act or omission.

(b) If a person licensed under this chapter receives a total of 3 letters of concern pursuant to this section, the Council may reasonably require a formal assessment of professional competency to assess the licensee's or certificate holder's ability in order to protect the health and safety of the public. At such hearing, all of the licensee's or certificate holder's letters of concern may be deemed no longer confidential and may be admitted into evidence.

(79 Del. Laws, c. 163, § 1.)

§ 4017 Hearing procedures.

(a) If a complaint is filed with the Council pursuant to § 8735 of Title 29, alleging violation of § 4016 of this title, the Council shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be informal without use of rules of evidence. If the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under this chapter, as it deems necessary. The Council's decision shall be in writing and shall include its reasons for such decision. The Council's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Council, the practitioner may appeal the Council's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4018 Reinstatement of a suspended license; removal from probationary status.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Council may reinstate such license if, after a hearing, the Council is satisfied that the licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension and/or the probation.

(b) Applicants for reinstatement shall pay the appropriate fees and submit documentation required by the Council as evidence that all the conditions of a suspension and/or probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be required, as appropriate.

(c) [Repealed.]
(75 Del. Laws, c. 105, § 3; 82 Del. Laws, c. 8, § 18.)

Subchapter III

Other Provisions

§ 4019 Exception.

(a) This chapter shall not apply to any Delaware licensed real estate salesperson or broker, who prepares a competitive market analysis survey used only for the purpose of listing a property for sale or lease, nor to any individual, who prepares real estate appraisals for the licensee's full-time employer for the employer's internal use only, and which is performed in the regular course of employee's position.

(b) Nothing in this chapter shall require a geologist licensed under Chapter 36 of this title to meet the requirements for either certification or licensure, provided that the geologist's written estimate of value is not the sole determinant of a property's value and that any such estimate of value is not used as an appraisal in federally-related transactions.

(c) Nothing in the chapter shall require an auctioneer to meet the requirement for either certification or licensure under this chapter, provided that the auctioneer provides only a verbal estimate of sale and not a written appraisal of the value of any real property.

(d) This chapter shall not invalidate nor shall it apply to real estate tax assessments or reassessments done for municipal or county governments where such appraisals are done by full-time municipal or county government employees acting in the regular course of business.

(e) The Council on Real Estate Appraisers shall develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments or his or her designee for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4020 Penalty.

A person, not currently licensed as an appraiser under this chapter, when guilty of engaging in the practice of appraising, or using in connection with the person's name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to act as an appraiser, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than $500 or more than $1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than $1,000 or more than $2,000 for each offense. Justice of the Peace Court shall have jurisdiction over all violations of this chapter.

(75 Del. Laws, c. 105, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4021 Criminal background checks of new applicants.

An applicant for licensure or certification under § 4008 or § 4009 of this title shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council shall be the screening point for the receipt of said federal criminal history records.

(79 Del. Laws, c. 163, § 1.)

Subchapter IV

Appraisal Management Companies

§ 4022 Registration of appraisal management companies.

(a) A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the Council pursuant to this section, regardless of the entity's use of appraisal management company, mortgage technology company or any other name.

(b) A person who wishes to be registered as an appraisal management company in this State must file a written application with the Council on a form prepared and furnished by the Council and pay a fee in an amount to be determined by the Division of Professional Regulation. The registration required by subsection (a) of this section shall include:

(1) The name, residence address, business address and telephone number of the applicant and the location of each principal office and branch office at which the appraisal management company will conduct business in this State.

(2) The name under which the applicant will conduct business as an appraisal management company.

(3) The name, residence address, business address and telephone number of each person who will have an interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and title of each person.

(4) If the person seeking registration is a corporation that is not domiciled in this State, the name and contact information for the company's registered agent for service of process in this State.

(5) A certification that the person seeking registration has a system and process in place to verify that a person being added to the appraiser panel for the appraisal management company's appraisal management services in this State holds a license or certification in good standing in this State.

(6) A certification that the person seeking registration has a system in place to review the work of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

(7) A certification that the person maintains a detailed record of each service request that it receives and the independent appraiser that performs the real property appraisal services for the appraisal management company.

(8) A certification that the person seeking registration has a system in place to train those who select individual appraisers for real property services in this State, to ensure that the selectors have appropriate training in placing appraisal assignments.

(9) Proof of a surety bond of $20,000.

(10) A registration fee to cover the cost of enrollment in the federal roster or registry.

(79 Del. Laws, c. 163, § 2; 82 Del. Laws, c. 19, § 1.)

§ 4023 Exemptions from registration.

Nothing in this chapter shall apply to:

(1) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to direct regulation by an agency of the United States government or of this State.

(2) A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business and that is responsible for ensuring that the real property appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice and federal and state law.

(79 Del. Laws, c. 163, § 2.)

§ 4024 Registration form for appraisal management companies.

(a) An applicant for initial and renewal registration as an appraisal management company shall submit to the Council an application on a form prescribed by the Council.

(b) An initial registration granted by the Council pursuant to this chapter is valid for 1 year. Registration renewals are renewed annually.

(79 Del. Laws, c. 163, § 2; 83 Del. Laws, c. 532, § 1.)

§ 4025 Owner requirements for appraisal management companies.

(a) An appraisal management company applying for registration may not be owned by a person or have any principal of the company who has had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this State or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(b) Each person that owns an appraisal management company in this State shall:

(1) Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no such information relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction that is substantially related to the practice of real estate appraisal may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this title. The State Bureau of Identification may release any subsequent criminal history to the Council.

(2) Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this State or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(79 Del. Laws, c. 163, § 2; 82 Del. Laws, c. 88, § 3; 83 Del. Laws, c. 433, § 28.)

§ 4026 Appraisal management company controlling person.

(a) Each appraisal management company applying to the Council for registration in this State shall designate 1 controlling person that will be the main contact for all communication between the Council and the appraisal management company.

(b) To serve as a controlling person of an appraisal management company, a person shall:

(1) Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate issued by this State, or any other state, refused, denied, canceled, revoked or voluntarily surrendered, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(2) a. A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

b. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction that is substantially related to the practice of real estate appraisal may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this title. The State Bureau of Identification may release any subsequent criminal history to the Council.

(79 Del. Laws, c. 163, § 2; 83 Del. Laws, c. 433, § 28.)

§ 4027 Appraisal management company employees.

Any employee of an appraisal management company that performs an appraisal review shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice and hold a valid appraiser license or certification in this or any state.

(79 Del. Laws, c. 163, § 2.)

§ 4028 Agreements with independent appraisers; limitations.

An appraisal management company registered in this State pursuant to this chapter may not enter into contracts or agreements with an independent appraiser for the performance of real property appraisal services in this State unless that person is licensed or certified in good standing with the Council.

(79 Del. Laws, c. 163, § 2.)

§ 4029 Annual certification; renewal.

(a) Each appraisal management company registered in this State shall certify to the Council on an annual basis at the time of renewal, on a form prescribed by the Council and after paying the appropriate fee, that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this State pursuant to the Council.

(b) Each appraisal management company registered in this State shall certify to the Council on an annual basis, at the time of renewal, that it has a system in place to review the quality of appraisals of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

(c) Each appraisal management company registered shall certify to the Council on an annual basis, at the time of renewal, that it maintains a detailed record of each service request that it receives and the name of the independent appraiser that performs the real property appraisal services for the appraisal management company. An appraisal management company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal record for the same real property appraisal activity.

(d) Each appraisal management company registered shall certify to the Council on an annual basis, at the time of renewal, that it has a system in place to train those who select individual appraisers for real property services in this State, to ensure that the selectors have appropriate training in placing appraisal assignments.

(79 Del. Laws, c. 163, § 2; 83 Del. Laws, c. 532, § 1.)

§ 4030 Disclosure of fees.

The appraisal management company shall not prohibit the appraiser from reporting in the appraisal report the fee paid to the appraiser.

(79 Del. Laws, c. 163, § 2.)

§ 4031 Appraiser independence; prohibitions.

(a) Any employee, director, officer or agent of an appraisal management company registered pursuant to this chapter shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

(1) Withholding or threatening to withhold timely payment for an appraisal.

(2) Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser.

(3) Expressly or implicitly promising future business, promotions or increased compensation for an independent appraiser.

(4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser.

(5) Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.

(6) Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed

or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

(7) Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(8) Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser.

(9) Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless such action is required by law or there is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file or unless the appraisal or automated valuation model is done pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

(10) Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(b) An appraisal fee offered or paid may not be based on the predetermined appraised value or range of appraised value of the subject property or the amount of the transaction price.

(c) Subsections (a) and (b) of this section do not prohibit an appraisal management company from requesting that an independent appraiser either:

(1) Provide additional information about the basis for a valuation.

(2) Correct objective factual errors in an appraisal report.

(3) Consider additional appropriate property information.

(79 Del. Laws, c. 163, § 2.)

§ 4032 Payment.

Except in cases of breach of contract or substandard performance of services, each appraisal management company shall make payment to an independent appraiser for the completion of an appraisal or valuation assignment within 45 days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

(79 Del. Laws, c. 163, § 2.)

§ 4033 Appraisal reports; alteration; use.

An appraisal management company shall not:

(1) Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser, including removing the signature of the appraiser.

(2) Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated in the report.

(79 Del. Laws, c. 163, § 2.)

§ 4034 Removal of appraisers from appraiser panels.

(a) An appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real property appraisal services to an independent appraiser, without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company.

(b) An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice or violation of state licensing standards may file a complaint with the Council for a review of the decision of the appraisal management company, except that in no case shall the Council make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in subsection (a) of this section.

(c) If an independent appraiser files a complaint against an appraisal management company pursuant to subsection (b) of this section, the Council shall adjudicate the complaint within a reasonable time.

(d) If after opportunity for a hearing and review, the Council determines that an independent appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice or a violation of this chapter, the Council shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint. The Council shall furnish the appraisal management company with all written documentation and investigation records that support the Council's findings.

(79 Del. Laws, c. 163, § 2; 82 Del. Laws, c. 88, § 4.)

§ 4035 Enforcement.

The Council may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this chapter or impose civil penalties not to exceed $15,000 per violation if, after a hearing, the Council finds that an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

(1) Committing any act in violation of this chapter.

(2) Violating any rule adopted by the Council in the interest of the public and consistent with this chapter.

(3) Knowingly making or causing to be made to the Council any false representation of material fact.

(4) Suppressing or withholding from the Council any information that the applicant possesses and that, if submitted by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the Council.

(5) Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010 [P. L. 111-203, 124 Stat. 2190].

(79 Del. Laws, c. 163, § 2.)

§ 4036 Disciplinary hearing.

(a) The Council may conduct disciplinary proceedings in accordance with subchapter III of Chapter 101 of Title 29.

(b) The written notice required by subchapter III of Chapter 101 of Title 29 shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this State or by sending the notice by certified mail to the controlling person of the registrant to the registrant's address on file with the Council.

(79 Del. Laws, c. 163, § 2.)

§ 4037 Rule-making authority.

The Council shall adopt rules that are reasonably necessary to implement, administer and enforce this subchapter.

(79 Del. Laws, c. 163, § 2.)

§ 4038 Effective date.

All appraisal management companies operating in this State as of July 1, 2013, must become registered on or before July 1, 2014.

(79 Del. Laws, c. 163, § 2.)

Part III
State Offices Created by Constitution
Chapter 25
State Department of Justice
Subchapter I
General Powers

§ 2501. Purpose.

The purpose of this chapter is to accomplish efficiency by centralizing in 1 department the State's facilities for the rendering of legal services to the Governor, General Assembly, officers, departments, boards, agencies, commissions and instrumentalities of the state government and to provide for the enforcement of the criminal law of this State.

(29 Del. C. 1953, § 2501; 56 Del. Laws, c. 326, § 1.)

§ 2502. Department of Justice established.

There is created a State Department of Justice under the supervision, direction and control of the Attorney General.

(29 Del. C. 1953, § 2502; 56 Del. Laws, c. 326, § 1.)

§ 2503. Definition of Attorney General.

Whenever "Attorney General" is referred to or designated in the Constitution, any statute, rules of any court, contract, document or usage, such reference or designation shall include any person duly appointed by the Attorney General pursuant to § 2505 of this title, except where the term "Attorney General" is immediately followed by "himself or herself" or "in person" or where the context otherwise indicates.

(29 Del. C. 1953, § 2503; 56 Del. Laws, c. 326, § 1; 59 Del. Laws, c. 289, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2504. Powers, duties and authority of the State Department of Justice.

The State Department of Justice and the Attorney General shall have the following powers, duties and authority:

(1) To continue to exercise the powers and perform the duties by the Constitution, statutes and common law vested in and imposed upon the Attorney General prior to January 1, 1969;

(2) Notwithstanding any other laws, to provide legal advice, counsel and services for administrative offices, agencies, departments, boards, commissions and officers of the state government concerning any matter arising in connection with the exercising of their official powers or duties and to publish or cause to be published such opinions in book form every 2 years. The courts, counties and incorporated municipalities are excepted from this chapter;

(3) Notwithstanding any other laws, to represent as counsel in all proceedings or actions which may be brought on behalf of or against them in their official capacity in any court, except in actions in which the State has a conflicting interest, all officers, agencies, departments, boards, commissions and instrumentalities of state government;

(4) To investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith; provided, however, that nothing in this subdivision shall restrict the general powers of the General Assembly to investigate matters involving the public peace, safety and justice and to subpoena witnesses and evidence in connection therewith;

(5) To direct the activities of state detectives;

(6) To have charge of all criminal proceedings as prior to January 1, 1969;

(7) To recommend revisions in the Constitution and statutes of this State with particular reference to law enforcement;

(8) To draft or cause to be drafted such bills or amendments as may be requested by any state officer or any department, division, commission or other state agency and otherwise render assistance, aid, information, counsel and advice in the preparation and drafting of any such proposed legislation; and

(9) To represent witnesses for the State or individuals who have cooperated with state investigative agencies when they are sued as a result of, or on account of, their cooperation with any agency of the State in any investigation or prosecution conducted by the State unless such representation creates a conflict with the interests of the State.

(29 Del. C. 1953, § 2504; 56 Del. Laws, c. 326, § 1; 58 Del. Laws, c. 253, § 8; 59 Del. Laws, c. 253, §§ 18, 19; 64 Del. Laws, c. 418; 65 Del. Laws, c. 134, § 1.)

§ 2505. Chief Deputy, State Solicitor, State Prosecutor, assistants, special assistants and law clerks.

(a) The Attorney General may appoint, from the practicing members of the Bar of this State, a lawyer resident in this State who shall be the Chief Deputy Attorney General and who shall have such powers, duties and responsibilities as designated by the Attorney General and shall serve on a full-time basis. In the event that the office of Attorney General becomes vacant, or should the Attorney General be unable to discharge the powers and duties of the office due to illness or incapacitation, the Chief Deputy Attorney General shall discharge

Part VI
Budget, Fiscal, Procurement and Contracting Regulations

Chapter 69
State Procurement

Subchapter I
General Provisions

§ 6901. Purpose.

The purpose of this chapter is to:

(1) Create a more efficient procurement process to better enable the State to obtain the highest quality goods, materials and services at the best possible price, thereby maximizing the purchasing value of public moneys; and

(2) Create a single forum in which the procurement needs of state agencies and the technical and legal requirements of the Government Support Services are addressed simultaneously so as to increase mutual understanding, respect, trust and fair and equitable treatment for all persons who deal with the state procurement process.

(70 Del. Laws, c. 601, § 2; 73 Del. Laws, c. 143, § 5; 75 Del. Laws, c. 88, § 22(4).)

§ 6902. Definitions [For application of this section, see 82 Del. Laws, c. 36, § 3].

For purposes of this chapter:

(1) "Agency" means every board, department, bureau, commission, person or group of persons or other authority which directly receives moneys under any budget appropriation act or supplemental appropriation act and which was created and now exists or hereafter is created to:

a. Execute, supervise, control and/or administer governmental functions under the laws of this State; and/or

b. To perform such governmental functions under the laws of this State, or to perform such other duties as may be prescribed; and/or

c. To collect and/or use any taxes, fees, licenses, permits or other receipts for service or otherwise for the performance of any function or related to or supported in whole or in part by the laws of this State; and/or

d. To administer any laws providing for the collection of taxes, fees, permits, licenses or other forms of receipts from any sources whatsoever for the use of the State or any agency of the State.

"Agency" shall include Delaware Technical and Community College and the Delaware State University but shall not include any local government unit or agency receiving only grants-in-aid appropriations from the State and no other appropriations, as described herein, the University of Delaware, volunteer ambulance/rescue companies, volunteer fire departments and the Delaware Transit Corporation. Nothing in this paragraph shall be deemed to exempt any entity that is otherwise required to comply with § 6960 of this title.

(2) "Agency head" means the top official in an agency whether elected, appointed or otherwise. The agency head may delegate duties under this chapter to a designee within the agency.

(3) "Agency official" means any employee, consultant, person in the category of other personal service or any other person receiving compensation from the State, its agencies, municipalities, political subdivisions or school boards.

(4) "Compensation" means the total amount paid by an agency for professional services, including reimbursed expenses, unless otherwise stated in the contract.

(5) "Contractor" means any person, partnership, firm, corporation, nonprofit agency or other business association who has a contract with an agency.

(6) "Covered agency" means any agency except school districts, Delaware Technical & Community College, the Delaware State University and the Legislative Branch of State government.

(7) "Craft training program" means an apprenticeship program approved by and registered with any state apprenticeship agency or the United States Department of Labor.

(8) "Custom fabrication" means the offsite fabrication, assembly, or other production of nonstandard goods or materials, including components, fixtures, or parts thereof, specifically for a public works project. Such goods and materials shall include those used in only the following trades or systems:

a. Plumbing or pipe fitting systems, including heating, ventilating, air-conditioning, refrigeration systems, sheet metal or other duct systems.

b. Electrical systems.

c. Mechanical insulation work.

d. Ornamental iron work.

e. Commercial signage that does not attempt or appear to direct the movement of traffic on highways or roadways or interfere with, imitate, or resemble any official traffic sign, signal or device.

(9) "Director" means, for the purposes of this chapter, the Director of the Office of Management and Budget, except as provided by § 6960 of this title, in which case it shall mean the Secretary of the Department of Labor.

(10) "Disadvantaged business enterprise" means a business that has been certified by either the Delaware Office of Supplier Diversity, as a minority, women, veteran, service-disabled veteran, or individual with a disability.

(11) "Electronic bid" means the bidder, in response to an advertised invitation to bid, submits all documentation, except for information and documents specified in the invitation to bid, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office or an agency until the close of the bidding period. In this process, no hard copy documentation shall be submitted to the Office or an agency prior to the award of the contract.

(12) "Electronic procurement advertising system" means the advertising system on which all state agencies must submit public notice of bid solicitations, other solicitations, and awarded contracts subject to the public advertising requirements of this chapter.

(13) "Electronic submission" means the vendor, in response to an advertised request for proposal, submits all documentation, unless specified in the request for proposal, only through an electronic process to an identified secure electronic mail account that will not be opened by the Office or an agency until the close of the request for proposal submittal period. In this process, no hard copy is to be submitted to the Office or an agency after the close of the request for proposal submittal period unless specifically requested by the Office or agency.

(14) "Firm" means a person, organization, partnership, limited partnership, corporation, association, nonprofit agency or other business association.

(15) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(16) "Labor supply ratio" means the number of skilled crafts persons per unskilled workers employed on a public works project. Any person who has completed a federal apprenticeship program, an apprenticeship program approved by the Delaware Department of Labor under Chapter 2 of Title 19, or has otherwise documented 8 years of experience in a particular craft, is deemed to be a skilled crafts person for the purposes of this definition.

(17) "Lifecycle costing analysis" means the contracting agency's evaluation of costs associated with the cost of acquisition, the cost of energy consumption required for operation, the cost of maintenance and the cost of consumables that affect the State's overall cost of ownership of equipment or public works projects. Such evaluation is used by the contracting agency or project architect or project engineer for the development of contract specifications.

(18) "Local government unit" means any municipality incorporated in this State under the authority of the General Assembly and any of the 3 counties.

(19) "Materiel" means materials, equipment, tools, supplies, or any other personal property, but does not include real property or electric, gas, water, telephone or similar utilities.

(20) "Nonstandard goods or materials" means goods or materials manufactured or prefabricated to specifications for a particular project or for 1 or a limited number of customers.

(21) "Office" means the Office of Management and Budget; as provided in § 6960 of this title, "Department" shall mean the Department of Labor.

(22) "On-line bidding method" means a procurement process in which the Office or an agency receives vendors' bids electronically over the Internet as either a substitute for a hard copy bid submission or in a real-time, competitive bidding event.

(23) "Professional services" means services which generally require specialized education, training or knowledge and involve intellectual skills. Examples of professional services include, but are not limited to, engineering, environmental engineering, environmental monitoring, land surveying, landscape architecture, geology, architectural, archaeologists, architectural historians, historians, educational consultants, management, medical, teaching, planning, computer information management, financial, accounting, auditing, construction management and arbitration services. Professional services subject to the provisions of § 2507 of this title or which require compliance with Delaware Supreme Court Rule 52 or a substantially similar rule of another state shall not be included in this definition and shall not be subject to this chapter.

(24) "Public building" means any edifice or building which is or is to be constructed, reconstructed, altered or repaired pursuant to a public works contract. It does not mean the act or process itself of constructing, reconstructing, altering or repairing.

(25) "Public funds" means funds of the State, of any agency within the State, of any public school district, of or from the United States government or of or from any department or representative body thereof.

(26) "Public works contract" means construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.

(27) "Reverse auctioning" means an on-line procurement method wherein bidders bid on specified goods and nonprofessional services through real-time electronic competitive bidding, with the award being made to the lowest responsive and responsible bidder.

During the bidding process, bidders' prices are public and are revealed electronically, and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for the auction.

(28) "Section" means the Section of Government Support Services in the Office of Management and Budget.

(29) "Third tier contractor" means a firm that has contracted with a subcontractor to provide services and/or materiel in connection with a public works contract.

(30) "User group" means 2 or more agency or nonagency representatives, one of whom shall be an agency representative who provides technical advice to the Government Support Services concerning the requirements of certain materiel and nonprofessional services contracts. Nonagency representatives shall be limited to expected users of the materiel and/or services being procured and/or persons having technical expertise deemed necessary by the agency. In no event shall nonagency representatives be affiliated with a vendor or prospective vendor of the contract.

(31) "Volunteer ambulance/rescue companies" means a volunteer ambulance or rescue company certified as such by the State Fire Prevention Commission.

(32) "Volunteer fire department" means a volunteer fire department recognized as such by the State Fire Prevention Commission.

(33) "Z score" means a calculation used to assess a bidder's fiscal health. The calculation is based on the following weighted ratios: return on total assets, sales to total assets, equity to debt, working capital to total assets, and retained earnings to total assets.

(29 Del. C. 1953, § 6901; 54 Del. Laws, c. 106, § 2; 61 Del. Laws, c. 386, § 1; 62 Del. Laws, c. 306, § 1; 66 Del. Laws, c. 298, § 1; 70 Del. Laws, c. 601, § 3; 71 Del. Laws, c. 4, § 1; 71 Del. Laws, c. 309, §§ 1-3; 72 Del. Laws, c. 133, § 2; 73 Del. Laws, c. 143, § 5; 73 Del. Laws, c. 416, §§ 1-3; 73 Del. Laws, c. 438, § 1; 74 Del. Laws, c. 359, § 1; 74 Del. Laws, c. 373, § 1; 74 Del. Laws, c. 419, §§ 1, 2; 75 Del. Laws, c. 88, §§ 16(5), 22(4); 78 Del. Laws, c. 288, § 1; 81 Del. Laws, c. 298, § 1; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 129, § 3; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 466, § 2; 84 Del. Laws, c. 489, § 1; 84 Del. Laws, c. 513, § 1.)

§ 6903. Violations and penalties.

(a) Any person, who, with intent to avoid compliance with this chapter, wilfully fragments or subdivides any contract for the purchase of materiel, nonprofessional services, public works or professional services, shall be subject to the penalties listed in this section.

(b) Each contract entered into by an agency for professional services shall contain a prohibition against contingency fees as follows:

(1) The firm offering professional services swears that it has not employed or retained any company or person, working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of it employees in any professional service procurement process;

(2) The firm offering the professional service has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement; and

(3) For the violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

(c) Any agency official who offers to solicit or secure, or solicits or secures, any agency or central contract and in connection therewith is paid any fee, commission, percentage, gift or any other consideration, shall be subject to the penalties listed in this section.

(d) Any individual or firm who offers, agrees or contracts to improperly influence any agency or its employees in the procurement of any agency or central contract and who is paid or is to be paid a fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or the making of an agency or central contract, shall be subject to the penalties listed in this section.

(e) Any individual or firm offering materiel and/or services which shall offer to pay to an agency official, representative or employee or is paid any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of any agency or central contract shall be subject to the penalties listed in this section.

(f) Except for § 6960 of this title, for which the penalties and remedies enumerated in that section shall apply, any individual or firm which commits a violation of this chapter, as listed in this section, shall be punished by a fine of not less than $1,000 and not more than $2,000 or by imprisonment for not more than 6 months, or both, and upon a second or subsequent conviction thereof, shall be punished by a fine of not less than $2,000 and not more than $5,000 or by imprisonment for not more than 1 year, or both. The Superior Court for the State shall have exclusive original jurisdiction over offenses listed in this section.

(g) The remedies and penalties provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies which exist with respect to any other provisions of law including but not limited to state and/or federal criminal prosecutions or common law or statutory actions brought by private parties and/or the provisions and penalties defined in Chapter 58 of this title.

(70 Del. Laws, c. 601, § 4; 71 Del. Laws, c. 4, §§ 2-4.)

§ 6904. Exceptions.

(a) If any provision of this chapter conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity.

If any provisions of this chapter conflict or are inconsistent with Chapter 40 of Title 31, the provisions of Chapter 40 of Title 31 shall prevail and govern.

(b) This chapter shall not apply to any purchase of materials or services from the federal government or from the government of the State including any agency of the State, as defined in § 6902 of this title.

(c) This chapter shall not apply to contracts for the transportation of school children. Such contracts shall be submitted to the Secretary of Education through the Department of Education Transportation Office for approval.

(d) This chapter shall not apply to any purchase of library materials such as books, periodicals, subscriptions and software by libraries of any agency, nor shall this chapter apply to the purchase of services by libraries of any agency pursuant to Chapter 66 of this title.

(e) If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

(f) Where, because of changed situations, unforeseen conditions, strikes or acts of God, a change order is determined to be necessary and is requested by the agency and not specified in the agency's solicitation or advertisement for bids and in the contract, as awarded, the awarding agency may issue a change order setting forth the change, addition or extra work required to be undertaken by the contractor on a contract, which shall not:

(1) Be subject to the competitive bidding requirements of this chapter; or

(2) Invalidate the contract; provided, that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the agency.

(g) All material required by any agency shall be purchased, except where hereinafter provided, and all work of a nonprofessional nature, except as hereinafter provided, which is not to be performed by employees of the agency shall be performed under a contract entered into pursuant to this subchapter and after competitive bidding as provided for in this section except that an agency may purchase material or contract for work to be performed without competitive bidding in the following instances:

(1) When the purchased material will be used by the Delaware Industries for the Blind within the Department of Health and Social Services as raw material for goods and services which the program manufactures and provides for resale or the purchased material will be used by the Business Enterprise Program of the Division for the Visually Impaired as supplies to operate the vending stands in the program;

(2) When material or services are on the procurement list published by the commission for the purchase of products and services of the blind and other severely disabled individuals those materiel or services shall be purchased in accordance with the procedure described in § 9605 of Title 16; or

(3) Where the purchased material or work which is the subject of the contract is necessary to enable the Department of Natural Resources and Environmental Control to engage in the preservation of the beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware in accordance with the Beach Preservation Act, Chapter 68 of Title 7. Notwithstanding the foregoing, any such purchase must be approved by the Budget Commission prior to the commencement of any purchase of material or work.

(h) This chapter shall not apply to purchases of historical artifacts or art for the purpose of public display.

(i) A contract may be awarded without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required contract. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required contract and no other type of goods or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this subsection. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency for the sole source procurement shall be included in the agency's contract file.

(j) This chapter shall not apply to any purchase of educational materials and supplies by post-secondary educational institutions participating in and benefiting from special educational discount and cooperative programs.

(k) This chapter shall not apply to the Wilmington Housing Authority in the procurement of goods and/or services when such goods and/or services are provided by primarily Wilmington Housing Authority resident-owned businesses.

(*l*) This chapter shall not apply to the office of the Commissioner of Elections or the several departments of elections in the purchase of material or work which is the subject of the contract and which is necessary to enable the Department of Elections to conduct a primary, general, special election or voter registration pursuant to Title 15.

(m) This chapter shall not apply to the Department of Education in the procurement of goods and/or services from the Data Service Center, University of Delaware, Delaware State University and Delaware Technical and Community College.

(n) This chapter shall not apply to contracts entered into by the Board of Pension Trustees, authorized pursuant to § 8308(c)(5) of this title, with respect to the procurement of financial services, including advisory, management and investment services relating to any fund administered by the Delaware Public Employees' Retirement System.

(o) [Repealed.]

(70 Del. Laws, c. 601, § 4; 71 Del. Laws, c. 4, § 5; 71 Del. Laws, c. 132, § 368; 71 Del. Laws, c. 378, § 112; 73 Del. Laws, c. 310, § 23; 76 Del. Laws, c. 80, § 67; 82 Del. Laws, c. 248, § 2; 82 Del. Laws, c. 248, § 3; 83 Del. Laws, c. 54, § 378.)

§ 6905. Failure to comply with contract; new award; supervision.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency which signed the contract may terminate the contract and proceed to award a new contract in accordance with this chapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

(29 Del. C. 1953, § 6906; 54 Del. Laws, c. 106, § 2; 70 Del. Laws, c. 601, § 4.)

§ 6906. Rental and purchase of motor vehicles; exceptions.

(a) Notwithstanding the provisions of this title, all passenger vehicles, including sedans, station wagons, passenger and utility vans, off-road vehicles, police-type cars and station wagons and trucks rated 10,000 GVW or less purchased for State use by any agency/school district must be approved by the Director of the Office of Management and Budget and purchased by contracts administered by the Government Support Services. All other vehicles purchased for State use by any agency/school district must be purchased from contracts administered by the Government Support Services.

(b) Notwithstanding the provisions of this title, the purchase of special purpose vehicles by any agency/school district in excess of the restrictions set forth in subsection (a) of this section, without the written approval of the Director of the Office of Management and Budget and the Controller General, is prohibited.

(c) Used vehicles employed by any agency for undercover operations may be purchased by negotiation rather than by competitive bidding as provided in this section, provided that the negotiated prices are approved by the Director of the Office of Management and Budget and the Controller General.

(d) Except for the Governor's car, cars rented while on out-of-state business and those cars leased by the Government Support Services, no agency/school district may lease passenger vehicles except from the Government Support Services.

(e) Passenger vehicles may not be transferred from one agency/school district to another agency/school district without the approval of the Director of the Office of Management and Budget.

(f) The procurement of vehicles by the New Castle County Police shall be exempt from the provisions of this section.

(g) The procurement of vehicles by Sussex County shall be exempt from the provisions of this section.

(69 Del. Laws, c. 136, § 1; 69 Del. Laws, c. 277, § 1; 70 Del. Laws, c. 601, § 3; 71 Del. Laws, c. 4, § 9; 73 Del. Laws, c. 143, §§ 5, 6; 75 Del. Laws, c. 88, §§ 16(5), 21(13), 22(4), 28, 29.)

§ 6907. Emergency procedures and critical need for professional services.

(a) An agency head may waive any or all provisions of this chapter to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property.

(1) Any procurement pursuant to this subsection shall be limited to those materials and/or nonprofessional services necessary to satisfy the emergency.

(2) Any public works project contracted pursuant to this subsection shall be subject to § 6960 of this title.

(3) Any public works project contracted pursuant to this subsection shall be subject to § 6962(d)(4)b. of this title.

(4) A copy of each emergency determination processed under this procedure shall be kept on file by the agency.

(b) In addition to the waiver provisions provided for in subsection (a) of this section, an agency head may waive any or all provisions of subchapter VI of this chapter to meet a critical need of the agency as required by an emergency or other condition where it is determined to be in the best interest of the agency. The agency head may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

(1) Any procurement pursuant to this subsection shall be limited to those professional services necessary to satisfy the critical need.

(2) A copy of each critical need determination processed under this procedure shall be kept on file by the agency.

(70 Del. Laws, c. 601, § 5.)

§ 6908. Section powers and duties.

(a) In addition to the powers and duties prescribed by other sections in this chapter, the Section shall do all of the following:

(1) Review and recommend improvements to the State's procurement process.

(2) Function as the contracting agent in central or joint contracting for state agencies provided, that, at a minimum, all contracts are awarded in conformance with the requirements of this chapter. The Section is required to meet or exceed the requirements of the agencies.

(3) Function as a resource for state agencies by providing, on request, procurement information and assistance.

(4) Serve as a clearinghouse for procurement information for materiel and services for both agencies and vendors.

(5) Promulgate rules and regulations to effect this chapter. Such rules and regulations shall be promulgated according to the Administrative Procedures Act in Chapter 101 of this title and shall be approved by the Contracting and Purchasing Advisory Council.

(6) Establish procedures through which all public works contracts, which are paid in whole or in part through public funds, include provisions requiring the contractor, its agents, and employees to implement a mandatory drug testing program for all employees or agents working on the job site in nonclerical positions. Provisions governing mandatory drug testing shall be incorporated into all public works contracts and the rules governing the administration of such tests by the contractor shall be promulgated by the Director pursuant to this subsection.

(7) Administer on behalf of all agencies the State's centralized procurement computer system or software that is used for contract development, solicitation, evaluation, and contract administration, including public posting of notice of awarded agency contracts. The Section may, with written approval of the Director, authorize an agency to operate, with approved integration, a separate bidding or contract administration platform provided that all information is readily shared with the statewide portal managed by the Section. The announcement of bid solicitations, other solicitations, and associated notices for the required duration on a site designated by the Section satisfies the public notice and advertisement requirements of this chapter.

(8) Assume such other powers, duties, and functions as the Director of the Office may assign which are not otherwise inconsistent with the laws of this State.

(b) The Section shall not charge any agency any fee for central contracting services. The Section director may charge any agency of this State local government unit or volunteer fire departments within the State for which the Section makes purchases, supplies, contractual services or to which it distributes materiel a reasonable service charge. The Section shall deposit such charges into a special account to be used to effectuate the purposes of the Section.

(70 Del. Laws, c. 601, § 5; 75 Del. Laws, c. 88, §§ 16(5), 22; 75 Del. Laws, c. 283, § 1; 81 Del. Laws, c. 298, § 2; 84 Del. Laws, c. 489, § 2.)

§ 6909. Special requirements for contracts involving environmental statutes.

All contracts covered under this chapter shall make provisions for all federal and state anti-pollution, conservation and environmental statutes, rules and regulations and county ordinances which will be involved in the execution of the contract.

(70 Del. Laws, c. 601, § 5; 74 Del. Laws, c. 419, § 3.)

§ 6909A. Lifecycle costing analysis.

(a) In the case of small and large public works contracts awarded under § 6961, § 6962 or § 6965 of this title, the contracting agency shall require the project architect or project engineer to perform lifecycle costing analysis on equipment, systems, materiel and design elements for public works projects when said equipment, systems, materiel and design elements have the potential to reduce operating, maintenance or energy costs over the useful life of the public works project. On the basis of said analysis, the project architect or the project engineer shall incorporate in the public works contract specifications the equipment, systems, materiel, and design elements for the public works project that have the lowest total cost of ownership and operation over the useful life of the public works project. The use of lifecycle costing analysis may be waived by the agency head, in writing, if any of said equipment, systems, materiel or design elements are not appropriate for lifecycle costing analysis.

(b) In the case of contracts awarded under §§ 6922, 6923, 6924, 6925, 6933, 6934 and 6938 of this title, the contracting agency shall perform lifecycle costing analysis on equipment that has the potential to reduce operating, maintenance or energy costs over the useful life of the equipment. On the basis of said analysis, the contracting agency shall incorporate specifications in the contract for equipment that has the lowest total cost of ownership and operation over the useful life of the equipment. The use of lifecycle costing analysis may be waived by the agency head, in writing, if the equipment is not appropriate for lifecycle costing analysis. In the case of central contracts, and public works contracts awarded by the Office, only the Director may waive the use of lifecycle costing analysis.

(74 Del. Laws, c. 419, § 4; 75 Del. Laws, c. 88, § 16(5).)

§ 6909B. Fair background check practices.

The State shall include in all formal solicitations a section stating the State does not consider the criminal record, criminal history, credit history, or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law, and vendors doing business with the State are encouraged to adopt similar policies.

(79 Del. Laws, c. 227, § 3.)

Subchapter II
Central Contracting

§ 6910. Applicability.

(a) This subchapter shall apply to all covered agencies as defined in § 6902(6) of this title.

(b) Any organization, entity or person designated as the recipient of grant-in-aid shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section during the fiscal year for which aid is appropriated, provided that all of the following apply:

(1) The organization, entity, or person received an appropriation of at least $100,000.

(2) The organization, entity, or person has a staff of at least 5 people.

(c) Any bona fide nonprofit organization, entity, or person who is under contract with the State to provide goods or services shall be entitled to purchase materials, nonprofessional services, or professional services under any central contract negotiated by the Section during the fiscal year for which said nonprofit contract is in effect, provided that either of the following apply:

(1) The organization, entity, or person is a bona fide § 501(c)(3) [26 U.S.C. § 501(c)(3)] organization under the United States Internal Revenue Code.

(2) The organization, entity, or person is a member in good standing of the Delaware Alliance for Nonprofit Advancement or a Delaware registered nonprofit corporation.

(d) Any organization, entity, or person who is a participant in the Business Enterprise Program sanctioned by Division of the Visually Impaired (DVI) shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section, provided that the participant holds a valid license issued by DVI.

(e) Any municipality, political subdivision, or local government unit within the State shall be entitled to purchase material, nonprofessional services, or professional services under any central contract negotiated by the Section.

(70 Del. Laws, c. 601, § 5; 71 Del. Laws, c. 409, § 1; 73 Del. Laws, c. 388, § 1; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22; 79 Del. Laws, c. 225, § 1; 82 Del. Laws, c. 179, § 1.)

§ 6911. Authority and responsibilities.

(a) The Section shall act as the exclusive contracting agent for all purchases of materiel and nonprofessional services and may act as the exclusive contracting agent for professional services not subject to the small purchasing procedures made by contracting agencies and as outlined in this subchapter and made by 2 or more covered agencies except for lodging and interstate and international travel and except as provided for in subsection (d) of this section.

(b) The Section shall have the following responsibilities for central contracts:

(1) Assembling the bid specification package;

(2) Conducting the advertising, bidding and awarding of each contract;

(3) Resolving disagreements between vendors and agencies; and

(4) Assuring that vendors and products meet the requirements of awarded contracts.

(c) Each agency that participates in a central contract shall have the following responsibilities for the materiel or service purchased under that contract:

(1) Providing and approving commodity specifications;

(2) Participating in user groups by requiring that appropriate covered agency staff attend user group meetings, as described in § 6912 of this title; and

(3) Providing information concerning contract effectiveness to the Section.

(d) Covered agencies shall exclusively use central contracts. A covered agency head may exempt the agency from a central contract only when all of the following conditions are met by the covered agency head:

(1) Demonstration that participation in a central contract would negatively impact the operations of the covered agency. However, operations, as used in this subsection, shall not include the fiscal impact to the covered agency;

(2) Demonstration that the covered agency has attempted to negotiate the specifications with the Section prior to the covered agency head exempting the materiel or service; and

(3) Demonstration that the exemption is an exception to the covered agency's use of a central contract rather than a common practice.

Any exemption issued by an agency head under this subsection shall not be a blanket exemption but shall only apply to an individual central contract.

(e) The Administrator of the Section may waive the requirement that a covered agency use a state contract in the event the Administrator deems such a waiver is in the best interest of the State.

(70 Del. Laws, c. 601, § 5; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22; 75 Del. Laws, c. 89, § 157; 84 Del. Laws, c. 489, § 3.)

§ 6912. Covered agency user groups.

(a) The Section shall establish, convene and chair user groups for the purchase of a materiel or service or group of materiel and/or services by a central contract or contracts. Convention of a user group may include, but is not limited to, a formal meeting, electronic mail among user group members and/or a teleconference among user group members. The method by which the user group convenes shall be agreed to by all user group members.

(b) The Section shall provide reasonable opportunity for each covered agency to participate in a user group if that covered agency anticipates the purchasing of materiel or service or services or a group of materiel and/or services under a specific central contract to be written and bid. A covered agency not participating in a user group shall not be grounds for an exception to the use of that central

contract. A user group shall perform at least the following functions for the materiel or service or group of materiel and/or services to be purchased by a central contract:

(1) Make recommendations on the contents of the contract;

(2) Rate vendors, materials and/or services;

(3) Rate the effectiveness of the contract; and

(4) Qualify a materiel and/or service.

(70 Del. Laws, c. 601, § 6; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22.)

§ 6913. Contracting and purchasing advisory council.

(a) There is established a Contracting and Purchasing Advisory Council to consist of all covered agency heads or their designee and 1 additional member representing all public school districts. The Section director shall be a nonvoting member of the Council.

(b) The Director of the Office shall be the Council Chair.

(c) The purpose of the Council is to advise as to the effectiveness of and make recommendations for changes to the State's procurement laws, policies and practices to the Director of the Office and the Section director.

(d) The Council shall be responsible for:

(1) Recommending procurement policy and administrative procedures to the Director. The Director shall elicit the Council's comments before issuing policy statements, policy changes, administrative procedures or administrative changes regarding this chapter;

(2) Reporting annually to the Governor by December 31 of each year concerning the effectiveness of the State's procurement processes. This report shall include recommended changes to the State's procurement laws as may be necessary to improve the State's overall effectiveness;

(3) Reviewing vendor concerns regarding the overall procurement process and recommending appropriate action relating to these concerns; and

(4) Setting the dollar amount thresholds required in this chapter. When setting these dollar amount thresholds, the Council shall take into consideration operational issues and inflation. Nothing in this subsection shall affect the amounts set in § 6960 of this title.

(e) A Contracting and Purchasing Committee shall also be established. The Section director shall appoint representatives to the Committee, with the approval of the Council. The Section director shall chair the Committee. The Committee shall staff the Council, monitor the effectiveness of the State's procurement process, recommend changes to the procurement process, policies and procedures and any other duties deemed necessary by the Council.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, §§ 16(5), 22; 83 Del. Laws, c. 56, § 33(b); 84 Del. Laws, c. 489, § 4.)

§ 6914. Delegation of centralized contracting authority.

The Section may delegate its centralized contracting authority for specific materials and/or services or groups of materials and/or services to another covered agency with the covered agency's concurrence.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3; 75 Del. Laws, c. 88, § 22.)

§ 6915. Exceptions.

(a) In a contract for professional services, public works or nonprofessional services, where the contract includes items that are a part of a central purchasing contract, those items shall not be subject to the purchasing requirements of this title.

(b) If a service or a materiel is a component part of a specific project that is part of another contract, then the requirements of this subchapter shall not apply.

(c) This section is not intended to allow agencies to avoid the use of central purchasing contracts by contracting with a vendor under the auspices of procuring a good or service when the sole or partial purpose of such a contract is to procure from that vendor another good or service that is on a central purchasing contract.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 3.)

§§ 6916-6921.

Subchapter III

Materiel and Nonprofessional Services

§ 6922. Small purchase procedure.

(a) *Applicability.* — Any state contract for which an agency is a party for materiel or nonprofessional services, whose annual probable cost is less than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, may be made under small purchase procedures established by the Director.

(b) *Procedure.* — The Director, with the approval of the Contracting and Purchasing Advisory Council, shall provide for a simplified administrative process for obtaining competitive prices for small purchases. The procedure shall incorporate the procedures identified

as lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title. This procedure shall be in writing and distributed to all agencies.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 5; 75 Del. Laws, c. 88, § 16(5).)

§ 6923. Competitive sealed bidding.

(a) *Applicability.* — Any state contract except for lodging and interstate and international travel and for which an agency is a party for materiel or nonprofessional services, whose annual probable cost is greater than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, shall be made only through the use of competitive sealed bids.

(b) *Advertising requirements.* — (1) If the probable cost of the materiel or nonprofessional services estimated to annually exceed the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, the procurement shall be made only after public announcement and the receipt of sealed bids as provided for in this subchapter. The announcement for such bids shall be published for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director. Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director.

(2) The advertisement for bids shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity and location of the work or the character and quantity of materiel, the time and place for the opening of bids and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening of bids from that described in the advertisement, on not less than 2 calendar days' notice, unless special circumstances apply as determined by the Section director.

(c) *Bid openings.* — (1) Bids shall be opened publicly at the time and place designated in the invitation to bid. The main purpose of the bid opening is to reveal the name(s) of the bidder(s), not to serve as a forum for determining the low bidder(s). The disclosure of additional information, including prices, shall be at the discretion of the procuring agency until such time that the responsiveness of each bid has been determined.

(2) The contract shall be awarded within 30 calendar days of the bid opening to the lowest responsive and responsible bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation to bid, except that in the case of a public school district and its board or designee or the Department of Education, the contract shall be awarded within 60 days thereafter.

(3) The bids, bid summaries and bid tabulations shall not be open for public inspection until after receipt of a fully executed contract. Bids shall be unconditionally accepted without alteration. Bids shall be evaluated based on the requirements set forth in the invitation to bid. No criteria may be used in bid evaluations that are not set forth in the invitation to bid. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of this State or fair competition shall be permitted.

(d) *Vendor eligibility.* — (1) A firm may be required to have a valid State of Delaware business license prior to the execution of an agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the invitation to bid for an agency contract.

(3) To supplement the contract public notice, the agency may compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall provide the firm with a means to register its interest in competing for future formal procurement opportunities. The firm shall complete the vendor registration form and return it to the agency. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact and distribute invitations to bid, amendments to invitations to bid as well as all correspondence utilizing the agency's vendor eligibility list.

(6) [Repealed.]

(e) *Invitation to bid.* — (1) The agency shall make available invitations to bid at least 14 days before the time and date of the bid opening, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the agency.

(2) The invitation to bid shall include the following:

a. Instructions and information concerning the bid submission requirements, including the time, date and place set for bid opening and any other special information;

b. The description, specifications, evaluation criteria, delivery or performance schedule and inspection and acceptance requirements for the contract; and

c. The contract terms and conditions, including, but not limited to, warranty and bonding or other security requirements, as applicable.

(3) If the invitation to bid incorporates documents by reference, the invitation to bid shall specify where such documents may be obtained or reviewed.

(4) An invitation to bid may require the submission of bid samples, descriptive literature and technical data and may require inspection or testing of a product before award.

(5) A copy of the invitation to bid shall be made available for public inspection at the agency.

(f) *Pre-bid conferences.* — An agency may conduct a pre-bid conference within a reasonable time but not less than 7 days before a bid opening to explain the requirements of an invitation to bid. An agency may require mandatory attendance by bidders at such pre-bid conferences to qualify as a responsible and responsive bidder. Statements made at the pre-bid conference shall not be considered amendments to the invitation to bid unless a written amendment is issued pursuant to subsection (g) of this section.

(g) *Amendments to invitations to bid.* — (1) An amendment to an invitation to bid shall be issued to:

a. Make changes in the invitation to bids;

b. Correct defects or ambiguities in the invitation to bid; and/or

c. Change the date, place or time of the bid opening.

(2) Amendments to invitations to bid shall be made publicly available.

(3) [Repealed.]

(h) *Withdrawal of bids.* — (1) A bidder may withdraw its bid at any time before bid opening if the withdrawal is received in writing before the bid opening at the location designated in the invitation for bids for receipt of bids. A bidder or its authorized representative may withdraw its bid in person if, before the bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(2) All documents concerning a withdrawal of a bid shall be retained in the appropriate procurement file.

(3) After a bid opening, a firm may request in writing that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the agency. If withdrawal of a bid after bid opening is permitted or denied, the agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(i) *Late bids and late modifications.* — (1) A bid or withdrawal of a bid is late if it is received at the location designated in the invitation to bid for receipt of bids after the time and date set for bid opening.

(2) Bidders submitting bids or withdrawals of bids that are late shall be notified as soon as practicable and the bid shall be returned unopened.

(3) Documentation concerning a late bid or late withdrawal of a bid shall be retained in the appropriate procurement file.

(j) *Receipt, opening and recording of bids.* — (1) Except as provided in paragraph (j)(2) of this section, each bid shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for bid opening. Bids received electronically shall remain unopened by the agency until the time and date set for the bid opening.

(2) An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) Bids shall be opened publicly and in the presence of 1 or more witnesses at the time, date and location designated in the invitation. Bid information shall be disclosed at the public opening pursuant to paragraph (c)(1) of this section. The bid information made available at the public opening shall be recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.

(4) Bids shall not be available for public inspection before receipt of a fully executed contract pursuant to paragraph (c)(3) of this section. After contract award, the bids shall be available for public inspection, except to the extent that withholding of information is permitted by Chapter 100 of this title or otherwise permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

(k) *Bid evaluation and award.* — (1) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the invitation to bid. If the invitation to bid so provides, award may be made by individual line item, by group of line items, by county, zone or any other way designated by the agency or for the aggregate total of all line items; otherwise award shall be made in lump sum. A formal contract shall be executed with the successful bidder within 20 days after the award of the contract.

(2) A contract may be awarded to a firm other than the lowest responsible and responsive bidder if, in the opinion of the agency, the interests of the State shall be better served by awarding the contract to some other bidder provided the agency head makes a written determination of the reason or reasons for granting the contract to a firm other than the lowest responsible and responsive bidder.

(3) A product acceptability evaluation may be conducted to determine whether a bidder's product meets the bid specifications. Any bidder's offer that does not meet the bid specifications shall be rejected as nonresponsive.

(4) Bids shall be evaluated to determine which bidder offers the lowest cost to the agency in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria that are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, the evaluation

factors shall be reasonable estimates based upon information the agency has available concerning future use. Prior unsatisfactory performance on a State contract by a bidder may be included in the evaluation criteria to determine if a bidder is responsible.

(5) A contract may not be awarded to a bidder submitting a higher quality item than that designated in the invitation for bids unless the bidder is also the lowest bidder as determined under this section. The agency may seek clarification of a bid, but negotiations are not permitted with any bidder.

(6) If 2 or more responsible firms bid an equal amount and such amount is the lowest bid, the agency may award the contract to any 1 of them or reject all bids consistent with the provisions of this section.

(7) A record showing the basis for determining the successful bidder shall be retained in the agency procurement file.

(8) A written notice of award shall be sent to the successful bidder. For procurement greater than the threshold amount or amounts set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

(*l*) *Only 1 bid received.* — (1) If only 1 responsive bid is received to an invitation for bids, an award may be made to the single bidder if the agency determines that:

a. The price submitted is fair and reasonable and other prospective bidders had reasonable opportunity to respond; or

b. There is not adequate time for re-solicitation.

(2) If only 1 responsive bid is received and the bid is rejected, the agency may:

a. Solicit new bids; or

b. Cancel the proposed procurement.

(m) *Cancellation of invitation to bid.* —

An invitation to bid or other solicitation may be canceled or any or all bids may be rejected in whole or in part if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If an invitation to bid or other solicitation is canceled prior to the opening of bids, a notice of cancellation shall be publicly posted and made available to all bidders.

(2) Any bids that have been received shall be returned unopened to the bidders.

(3) Any electronic bids received shall be deleted by the agency and notice of the cancellation sent to those bidders.

(n) *Rejection of individual bids.* — A bid may be rejected if:

(1) The bidder is determined to be nonresponsive pursuant to subsection (o) of this section; or

(2) The bid is nonresponsive or not responsible in accordance with subsection (k) of this section; or

(3) It is otherwise not advantageous to the State.

Bidders whose bids are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(o) *Responsiveness of bidders.* — An agency shall determine that a bidder is responsive before awarding a contract to that bidder. Factors to be considered in determining if a bidder is responsible include:

(1) The bidder's financial, physical, personnel or other resources, including subcontracts;

(2) The bidder's record of performance and integrity;

(3) Whether the bidder is qualified legally to contract with the State; and

(4) Whether the bidder supplied all necessary information concerning its responsiveness.

The agency may establish specific responsibility criteria for a particular procurement. Specific responsibility criteria shall be set forth in the solicitation. If an agency determines that a bidder is nonresponsive and/or, not responsible the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected bidder. The final determination shall be made part of the procurement file.

(p) *Electronic bid submission.* — (1) If the Office or an agency determines that an electronic bid submission is advantageous, the Office or the agency may use electronic bidding to obtain bids for the purchase of goods and nonprofessional services.

(2) The solicitation must designate that the procurement method will be an electronic bid submission, a schedule of bid activities, and an electronic mail account to which the bidding response must be sent.

(3) The Section's or the agency's representative and a witness shall open the e-mail account immediately after the closing date and time; record the vendors that submitted bids, the date and time submitted, the bids, and associated prices; and prepare a bid tabulation of all responsive vendors for review.

(q) *Reverse auction.* —

(1) When the Section determines that a reverse auction is advantageous, the Section may use the reverse auction bidding method to obtain bids for the purchase of goods and nonprofessional services.

(2) The solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in time but may remain dependent on a variable or variables specified in the solicitation. At the opening date and time,

the Section must begin accepting real-time, on-line bids. The solicitation must remain open until the closing date and time, as may be determined by a variable or variables specified in the solicitation.

(3) The Section may require bidders to register before the opening date and time and, as part of that registration, to agree to any terms, conditions or other requirements of the solicitation.

(4) a. Following receipt of the first bid after the opening date and time, all bid prices must be posted electronically to the Internet and updated on a real-time basis. At any time before the closing date and time, a bidder may lower the price of its bid, as long as its bid price is less than the then-current bid. A bidder's lowest bid price supersedes the bidder's prior higher bid price. Bid prices may not be increased any time after the opening date and time. All bids are binding and may not be withdrawn unless the bid price entered by the bidder is entered incorrectly. If a price entered by the bidder is in error, the bidder must correct the bid within the time period and manner specified in the solicitation.

b. After the Section closes the bid, the bidder may request, in writing via an electronic mail message to the Section as specified in the solicitation, that its respective bid be withdrawn. Such a request may be allowed only upon the approval of the Section. If withdrawal of a bid after the Section closes the bid is permitted or denied, the Section shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

c. If the lowest responsive bid is withdrawn after the closing date and time, the Section may cancel the solicitation or reopen on-line real time bidding to all preexisting bidders by giving notice to all preexisting bidders of both the new opening date and time and the new closing date and time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(5) Receipt and safeguarding of bids. Other than price, any information provided to the Section by a bidder must be safeguarded as required by § 6923(j)(4) of this title.

(r) *On-line bidding method. —*

If the Office or an agency determines that an on-line bidding method is beneficial, the Office or the agency may use an on-line bidding method to obtain and evaluate bids for the purchase of goods and nonprofessional services.

(70 Del. Laws, c. 601, § 7; 71 Del. Laws, c. 4, §§ 6, 7; 71 Del. Laws, c. 378, § 113; 73 Del. Laws, c. 416, §§ 4, 5; 75 Del. Laws, c. 88, § 16(5); 75 Del. Laws, c. 89, § 157; 78 Del. Laws, c. 288, § 2; 81 Del. Laws, c. 298, § 3; 82 Del. Laws, c. 36, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 489, § 5; 84 Del. Laws, c. 513, § 1.)

§ 6924. Competitive sealed proposal; request for proposal procedure.

(a) *Applicability. —* When the agency head makes a determination that the use of competitive sealed bidding is either not practical or not in the best interest of the State, a contract may be entered into through competitive sealed proposals. The determination to use competitive sealed proposals may be made if it is necessary to:

(1) Use a contract other than a fixed-price type;

(2) Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals;

(3) Afford offerors an opportunity to revise their proposals;

(4) Compare the different price, quality and contractual factors of the proposals submitted;

(5) Award a contract in which price is not the determining factor; or

(6) The agency is unable to draft specifications in sufficient detail to be applicable to competitive sealed bidding.

(b) *Advertising requirements. —* (1) Proposals shall be solicited through a request for proposal which shall be issued and shall include the location where proposals are to be received and the date and time the proposals are to be opened.

(2) Adequate public notice of the request for proposals shall be given in the same manner as provided in § 6923(b) of this title.

(3) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror and such other relevant information as is specified in the request for proposals shall be read publicly and recorded in accordance with the request for proposal promulgated by the agency. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation.

(4) The request for proposals shall state the relative importance of price and other evaluation factors.

(5) Offerors intending to submit proposals may be afforded an opportunity for discussion for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and amending proposals, and such amendments may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(6) The award shall be made in writing to the responsible offeror or offerors whose proposal is determined to be the most advantageous to the State taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. (The award of a contract for goods and/or services may be made upon criteria which do not include price. The contract file shall contain the basis on which the award is made.)

(c) *Request for proposals. —* (1) A request for proposals shall set forth those factors listed in § 6923(e) of this title that are applicable and shall also state:

a. The type of materiel or services required and a description of the work involved;

b. The type of contract to be used;

c. That offerors may designate as trade secrets or proprietary data portions of the proposals;

d. That discussions may be conducted with offerors who submit proposals determined to be likely to be selected for award;

e. The minimum information that the proposal must contain; and

f. The closing date and time for receipt of proposals.

(2) A request for proposals shall be issued at least 14 calendar days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the agency.

(3) Notice of the request for proposals shall be issued in accordance with § 6923(b) of this title.

(4) Vendor lists compiled and maintained in accordance with § 6923(d) of this title may serve as a method for soliciting competitive sealed proposals.

(5) Amendments to requests for proposals shall be made in accordance with § 6923(g) of this title.

(d) *Pre-proposal conferences.* — Pre-proposal conferences may be convened in accordance with § 6923(f) of this title.

(e) *Late proposals or late withdrawals.* — (1) A proposal received after the closing date and time for receipt of proposals is late and shall not be considered. A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered.

(2) No offeror shall be permitted to make a modification to its original proposal after the date and time for the receipt of proposals and before negotiations start pursuant to subsection (g) of this section.

(3) A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered by the agency.

(f) *Evaluation of proposals.* — (1) Each agency shall establish written administrative procedures for the evaluation of the proposals.

(2) For the purpose of conducting negotiations, the agency shall determine, in accordance with subsection (g) of this section, that proposals are either likely to be selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the agency determines that an offeror's proposal is unacceptable, the agency shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

(g) *Negotiations with individual offerors.* — All agencies shall have a right to negotiate with individual offerors after their proposals are opened. The agency shall establish a committee, procedures and schedules for conducting negotiations. Disclosure of 1 offeror's price to another and any information derived from competing proposals is prohibited.

(h) *Best and final offers.* —

The agency shall reserve the right to seek best and final offers and if choosing to do so the agency shall issue a written request for best and final offers. The request shall set forth the date, time, and place for the submission of best and final offers. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer. Best and final offers shall be requested only once, unless the agency makes a written determination that it is advantageous to the State to conduct further negotiations or change the State's requirements.

(i) *Mistakes in proposals.* — Prior to the time and date set for receipt of best and final offers, any offeror with whom negotiations have been held may withdraw the offer or correct any mistake by modifying the offer.

(j) *Contract award.* — (1) The contract shall be awarded within 90 days of the closing date and time advertised in the request for proposals. The agency shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the request for proposals. The determination shall explain the basis of award.

(2) The agency shall notify each unsuccessful offeror in writing of the award.

(3) After receipt of a fully executed contract, the proposals shall be open for public inspection in accordance with § 6923(j)(4) of this title.

(4) A formal contract shall be executed with the successful firm within 20 days after the award of the contract.

(k) *Cancellation of requests for proposals.* —

(1) A request for proposals or other solicitation may be canceled in whole or in part if it is in the best interest of the State. The reasons for the cancellation shall be made part of the procurement file.

(2) If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be publicly posted and available to all offerors, and any proposals that have been received shall be returned unopened to the offerors.

(3) If proposals have been received electronically, the files must be deleted by the agency and notice sent to those offerors.

(*l*) *Rejection of individual proposals.* — A proposal or quotation may be rejected for 1 or more of the following reasons:

(1) The person responding to the solicitation is determined to be nonresponsive or not responsible pursuant to subsection (m) of this section;

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

(4) It is otherwise not advantageous to the State.

Offerors whose proposals are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file. The reasons for the rejection shall be stated in the determination.

(m) *Responsibility of offerors.* — An agency shall determine that an offeror is responsible before awarding a contract to that offeror. Factors to be considered in determining if an offeror is responsible include:

(1) The offeror's financial, physical, personnel or other resources, including subcontracts;

(2) The offeror's record of performance and integrity;

(3) Whether the offeror is qualified legally to contract with the State;

(4) Whether the offeror supplied all necessary information concerning its responsibility; and

(5) Any other specific criteria for a particular procurement which an agency may establish; provided, that the criteria shall be set forth in the solicitation and is otherwise in conformity with state and/or federal law.

If an agency determines that an offeror is nonresponsive or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the affected offeror. The final determination shall be made part of the procurement file.

(n) *On-line bidding method.* —

If an agency determines that an on-line bidding method is beneficial, the agency may use an on-line bidding method to obtain and evaluate proposals for the purchase of goods and nonprofessional services.

(70 Del. Laws, c. 601, § 7; 71 Del. Laws, c. 4, § 8; 84 Del. Laws, c. 489, § 6.)

§ 6925. Sole source procurement.

(a) A contract may be awarded for materiel or nonprofessional services without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required materiel or nonprofessional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required material or service and that no other type of material or service will satisfy the requirements of the agency. The agency shall examine cost or pricing data, which shall include lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title if the sole source offers more than 1 type or variety of equipment, prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency stating the basis for the sole source procurement shall be included in the agency contract file. Textbooks and related instructional materials are sole source purchases.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 6; 75 Del. Laws, c. 88, § 22.)

§ 6926. Multiple source contracting.

An agency may award a contract for a particular materiel or nonprofessional service to 2 or more firms if the agency head makes a determination that such an award is in the best interest of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award shall be based.

(70 Del. Laws, c. 601, § 7.)

§ 6927. Bid and contract security.

(a) *Bid bonds.* — For the purchase of materiel and nonprofessional services, in accordance with § 6923 of this title, the agency or a representative delegated by the agency may, at their discretion, require that bids be accompanied by:

(1) A deposit of either a good and sufficient bond to the State for the benefit of the agency involved; such bonds shall be issued with a corporate surety authorized to do business in this State, the surety shall be approved by the agency, and the bond form used shall be the standard form included as part of the bid documents issued by the Office of Management and Budget for this purpose; or

(2) A security of the bidder assigned to the agency for a sum equal to at least 10% of the bid.

The bid bond or bid security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid.

Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility. If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

(b) *Loss of bid bond as damages.* — In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of awarding the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

(c) *Return of bid bond.* — Upon the execution of a formal contract and performance bond, the bid bond shall be returned to the successful bidder.

(d) *Performance bonds.* — Simultaneous with the execution of the formal contract where required by §§ 6923(k)(1) and 6924(j)(1) of this title, the procuring agency may require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State;

(2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

(3) Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the projects' bid documents.

Contracts for the purchase of material with a value less than the threshold amount(s) established by the Contracting and Purchasing Advisory Council may reduce or waive this bond requirement from the successful bidder. Such reduction or waiver shall be stated in the bid specifications.

(e) *Contents of performance bonds.* — The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the State and the agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

(f) *Invoking a performance bond.* — The agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for the person's own use in the name of the State or the contracting county in any court of competent jurisdiction for the recovery of such sum or sums as may be due such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract, otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this section or on the bond required in this section shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

(g) *Other security for contracts under threshold amount(s).* — Contracts for the purchase of materiel and nonprofessional services valued less than the threshold amount(s) set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful vendor post with the State an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no later than 3 years subsequent to the date of delivery of such materiel or nonprofessional service or to the extent of the warranty period, whichever is greater. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the bid specifications.

(h) *Waivers from performance bonds.* — On a contract for the purchase of a materiel or nonprofessional service, the State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be stated in the bid specifications.

(i) In the case of bids submitted to agencies other than any county of this State and other than any public school district, wherever security is required under this section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or Social Security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The agency shall report to the Division of Revenue each vendor selected for award within 15 days of execution of the contract and each subcontractor within 15 days of such contractor having been identified to the agency or on the date of execution of the contract, whichever is later, unless the Director of the Division of Revenue has notified the agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

(70 Del. Laws, c. 601, § 7; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 428, §§ 1, 2; 75 Del. Laws, c. 88, § 16(5).)

§ 6928. Failure to comply with contract.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform it or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this chapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.

(70 Del. Laws, c. 601, § 7.)

§ 6929. Contract insurance and contract liability.

In addition to bond requirements as stated in § 6927 of this title, each successful bidder shall purchase adequate insurance for the performance of the contract and, by submission of a bid, agrees to indemnify and save harmless and to defend all legal or equitable actions brought against the State, any agency, officer and/or employee of the State, for and from all claims of liability which is or may be the result of the successful bidder's actions during the performance of the contract. The purchase or nonpurchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract will not waive any defense which the State, its agencies and their respective officers, employees and agents might otherwise have against such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this section, the State and all agencies, officers and employees thereof shall not be financially responsible for the consequences of work performed, pursuant to said contract.

(70 Del. Laws, c. 601, § 7.)

§ 6930. Right to audit records.

An agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

(70 Del. Laws, c. 601, § 7.)

§ 6931. Procurement of information and telecommunications systems [Repealed].

(70 Del. Laws, c. 601, § 7; repealed by 84 Del. Laws, c. 489, § 7, effective Oct. 9, 2024.)

§ 6932. Maximum practicable competition.

Descriptions or specifications shall not use a brand or trade name except as an indication of the type and quality of materiel and in all such cases shall contain the words "or approved equal." All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs and shall not be unduly restrictive.

(70 Del. Laws, c. 601, § 7.)

§ 6933. Authorization for cooperative purchasing.

(a) The Section may, with written approval of the Section director or the Section director's designee, participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with 1 or more public procurement units either within the State or within another state in accordance with an agreement entered into between the participants.

(b) The Section may grant temporary approval to another agency to participate in, sponsor, conduct or administer a cooperative or joint purchasing agreement for the procurement of materiel or nonprofessional services with the written approval of the Section director or Section director's designee.

(70 Del. Laws, c. 601, § 7; 75 Del. Laws, c. 88, §§ 16(5), 22; 77 Del. Laws, c. 327, § 29; 78 Del. Laws, c. 290, § 24(c); 84 Del. Laws, c. 489, §§ 8, 9.)

§ 6934. Purchase of used materiel or equipment.

Any agency may purchase used equipment or other materiel by negotiated purchase, rather than by competitive bidding, as provided in this chapter, if it is demonstrated to the satisfaction of the agency head that the negotiated price is reasonable for the intended use. The contracting agency shall use lifecycle costing analysis as specified in §§ 6902 and 6909A(b) of this title prior to demonstrating to the agency head that the negotiated price is reasonable for the intended use.

(70 Del. Laws, c. 601, § 7; 74 Del. Laws, c. 419, § 7.)

§ 6935. Purchases using federal contracts.

The Section may, with written approval of the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase materiel at prices approved by the General Services Administration of the United States government or its successor.

(70 Del. Laws, c. 601, § 7; 75 Del. Laws, c. 88, § 16(5); 84 Del. Laws, c. 489, § 10.)

§ 6936. Special requirements for financial contracts.

No contract shall be awarded which includes the transportation, handling or storage of moneys, including lawful currency and coin, negotiable and nonnegotiable securities, stocks, bonds, coupons and things of unusual value unless the successful bidder shall have, at the time of the award of the contract, a valid license as required by Chapter 32 of Title 5. At the time of the submission of its bid, the bidder shall provide evidence of possession of such license or evidence that application for such license was made with the State Banking Commissioner and all fees required by such Chapter 32 of Title 5 had been paid.

(70 Del. Laws, c. 601, § 7.)

§ 6937. Purchase of native plants [For application of this section, see 84 Del. Laws, c. 451, § 3].

(a) For purposes of this section:

(1) “Athletic field” means land that is used for athletic events and does not include land that is adjacent to the playing area.

(2) “Cultivar” means a genetic variant of a native species that enhances a particular trait and is maintained by propagation.

(3) “Golf course” means land that is used for playing the game of golf and does not include land that is adjacent to the playing area.

(4) “Historic” means a historic resource as defined in § 1803 of Title 30, a “certified historic property” as defined in § 1812 of Title 30, or property otherwise designated as historic on a landscape plan kept by an agency and available for public review.

(5) “Invasive plant” means a plant on the Invasive Plant List under § 2904 of Title 3.

(6) “Lawn” means an area of short, mown grass.

(7) “Native plant” or “native species” means a plant that occurs naturally in the eastern temperate forest ecoregion of the United States. “Native plant” includes any viable portion of a plant, including seeds.

(8) “Pasture” means land covered with grass and other low plants suitable for grazing animals.

(9) “Secretary” means the Secretary of the Department of Agriculture.

(b) (1) The Secretary shall adopt regulations that maintain a list of native plants that are generally available and appropriate for the needs of agencies.

(2) The Secretary shall adopt regulations under paragraph (b)(1) of this section with the advice of the Department of Natural Resources and Environmental Control and the Delaware Native Species Commission.

(c) (1) Except as provided under this section, an agency shall purchase only native plants in the development of new landscaped areas and in the rehabilitation of existing landscaped areas, including parks and landscaped areas surrounding buildings.

(2) An agency may also purchase any of the following:

a. A cultivar of a native species.

b. A hybrid of a native species, if the hybrid is a cross of 2 native species.

c. A wildlife habitat seed mix consisting of more than 75% native plant seed.

(d) If the plant is not an invasive plant, an agency may purchase a plant that is not allowed under subsection (c) of this section for any of the following purposes:

(1) Land purchased and managed as an historic property.

(2) Appropriate habitats for zoo animals.

(3) Agriculture, including crop fields, pastures, and fruit or vegetable gardens.

(4) Areas maintained as grass or turf, including lawns, athletic fields, golf courses, and a right-of-way along a road. Agencies are encouraged to minimize grass or turf areas and instead, use meadow areas and natural habitats.

(5) Botanical gardens.

(6) Plots used for ecological research.

(7) Flowering annuals and bulbs, within landscape beds.

(8) Any of the following, if approved by the Department of Natural Resources and Environmental Control or the Department of Agriculture:

a. Wildlife plantings for food or habitat.

b. Land where no plants allowed under subsection (c) of this section can thrive.

c. For trees, any of the following:

1. A lack of commercial availability.

2. Maintenance needs of the tree or property.

3. General safety, such as preventing tripping hazards from shallow spreading roots.

(e) (1) If an agency cannot purchase a plant under this section, the agency may not accept a donation of that plant.

(2) This section applies to plants purchased after December 31, 2025, and applies to both new landscaped areas and the rehabilitation of existing landscaped areas.

(3) Notwithstanding paragraph (e)(2) of this section, an agency may maintain plantings that cannot be purchased under this section if the planting was established before January 1, 2026.

(84 Del. Laws, c. 451, § 1.)

§ 6938. Purchase of recycled, reusable and recyclable products.

(a) The State shall have as a goal the maximum feasible purchase of recycled content products and reusable or recyclable products, and the maximum feasible percentage of postconsumer recycled content in its purchases. For any item that is being purchased by the State and for which the U.S. Environmental Protection Agency has developed a Comprehensive Procurement Guideline as required by § 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), it shall be a goal of the State to purchase that item with a recycled content that meets or exceeds the EPA guideline standards.

(b) Prior to initiating a request for procurement of any product, an agency shall review its existing specifications for such product to determine whether recycled content products or reusable or recyclable products are directly or indirectly excluded. The agency must eliminate any such exclusion from its specifications, unless it can demonstrate in writing to the satisfaction of the agency head that the exclusion is either:

(1) Operationally necessary;

(2) Legally mandated; or

(3) *Necessary to avoid excessive cost.* — Excessive cost shall be defined as when the recycled product cost is greater than 5% of the equivalent virgin product cost. Such costs shall include lifecycle costing analysis as defined by §§ 6902 and 6909A(b) of this title.

(c) When requesting any purchase of a product for which the U.S. EPA has established a Comprehensive Procurement Guideline, an agency is required to buy the specified product unless the agency can demonstrate in writing to the satisfaction of the agency head that a product meeting the standards either:

(1) Is not available competitively;

(2) Is not available within a reasonable time frame;

(3) Does not meet appropriate performance standards; or

(4) Is available only at an excessive cost as defined in paragraph (b)(3) of this section.

(d) There is established an interagency work group comprised of 1 representative from the Office of Management and Budget, the Department of Natural Resources and Environmental Control, the Department of Transportation and the Department of Health and Social Services. This work group shall be known as the State Materials Recycling Team (SMRT) and its members shall be appointed by the respective Department heads. The Chair of the SMRT will be selected by the team's membership. The work group's primary purposes shall be:

(1) To educate state agencies about recycling and to promote the purchase of recycled products as called for in this subsection;

(2) To develop a methodology for tracking purchases made in accordance with this section;

(3) To review and assess State agency recycling practices; and

(4) To report to the Governor and the General Assembly on an annual basis its findings and conclusions with respect to the above purposes.

(72 Del. Laws, c. 491, § 1; 74 Del. Laws, c. 419, § 8; 75 Del. Laws, c. 88, § 16(5); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 19.)

§ 6939. Purchase of energy efficient products.

(a) Agencies shall purchase Energy Star products, as designated by the federal Environmental Protection Agency, when such products are available. The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

(b) Prior to initiating a request for procurement of any product, an agency shall review the specifications for such product to determine whether an Energy Star product is available. If an Energy Star product is available, the agency is required to include in its bid specifications the requirement that the product be an Energy Star product unless the agency can demonstrate, in writing, to the satisfaction of the agency head, that a product with an Energy Star rating meets at least 1 of the following criteria:

(1) The product is not available competitively,

(2) The product is not available within a reasonable time frame, or

(3) The product does not meet appropriate performance standards.

The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

(74 Del. Laws, c. 416, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 6940. Service worker protection [For application of this section, see 84 Del. Laws, c.453, § 3].

An agency must comply with the Service Worker Protection Act, Chapter 20 of Title 19, when the agency is an awarding authority or a successor employer to a service contract.

(84 Del. Laws, c. 453, § 2.)

Subchapter IV
Public Works Contracting

§ 6960. Prevailing wage requirements.

(a) The specifications for every contract or aggregate of contracts relating to a public works project in excess of $500,000 for new construction (including painting and decorating) or $45,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of buildings or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. As of January 1, 2016, the Delaware Department of Labor, Division of Industrial Affairs shall establish the prevailing wage for each respective craft or class of laborers and mechanics at the same rates established in collective bargaining agreements between labor organizations and their employers, or when collective bargaining agreement rates do not prevail, that govern work of a similar nature and similar crafts or classes of laborers and mechanics for the county where the public works contract will be performed if that particular labor organization's collective bargaining rate prevailed and they participated in the survey, for that particular trade or craft in that particular county for 4 consecutive years. When collective bargaining rates do not apply, the prevailing wage shall be the highest rate of the 4 years. If the agreed rate of pay is designated to be the craft's collective bargaining agreement, the annual rate adjustment will be determined by the collective bargaining agreement rate for each craft and county, each year. When collective bargaining rates do not prevail, the annual rate adjustment shall be the Consumer Price Index-Construction. If the prevailing wage cannot be reasonably and fairly determined in any locality because no such agreements exists or the collective bargaining rate has not prevailed for 4 consecutive years the Department shall use the prevailing wage as established by the Department's annual prevailing wage survey. There will be a 1-time challenge of the prevailing wage rate per cycle as in the Department regulations.

For each respective craft or class of laborers or mechanics, the craft or class whose collectively bargained wages as of January 1, 2015, for that particular labor organization's collective bargaining rate prevailed for that particular trade or craft in that particular county is the prevailing wage rate and whose rate has prevailed for 4 of the last 5 years, or will prevail in the future for 4 consecutive years, shall have their collective bargaining agreement adopted as the prevailing wage rate negotiated by industry standards between workers and employers and the raise be determined by the collective bargaining agreement rate as of September 1 for that craft, county, and year.

All other provisions of this law are to remain unchanged.

(b) Every contract based upon these specifications must contain a stipulation that the employer must pay all mechanics and laborers employed directly upon the site of the work or engaged in any custom fabrication work, regardless of where the work is performed, unconditionally and not less often than once a week and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the employer and such laborers and mechanics. The specifications must further stipulate that the scale of wages to be paid must be posted by the employer in a prominent and easily accessible place at the site of the work, and that there may be withheld from the employer so much of accrued payments as may be considered necessary by the Department of Labor to pay to laborers and mechanics employed by the employer the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and rates of wages received by such laborers and mechanics to be remitted to the Department of Labor for distribution upon resolution of any claims.

(c) Every contract based upon these specifications shall contain a stipulation that sworn payroll information, as required by the Department of Labor, be furnished weekly. The Department of Labor shall keep and maintain the sworn payroll information for a period of 6 months from the last day of the work week covered by the payroll.

(d) The Department of Labor shall investigate all claims that the prevailing wage rates as provided for under this section are not being or have not been paid. Upon finding that an employer has not paid or is not paying the prevailing wage rates, the Department of Labor shall notify the employer of the violations by certified mail and make an effort to obtain compliance. Upon failure to obtain compliance within 15 days of receipt of said certified mail, the Secretary may terminate all rights of the employer to proceed with the work under the public construction contract, and the employer shall be responsible for all damages resulting therefrom.

(e) Any employer who knowingly fails or refuses to pay the prevailing wage rates provided for under this section, or who fails to submit payroll reports or post notice of the wage rates which apply to the project shall, for each such violation, be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. No public construction contract in this State shall be bid on, awarded to or received by any contractor or subcontractor or any person, firm, partnership or corporation in which such employer has an interest who, within 2 years after entry of a judgment pursuant to this chapter, is adjudicated in violation of this chapter in a subsequent

proceeding until 3 years have elapsed from the date of the subsequent penalty judgment. A civil penalty claim may be filed in any court of competent jurisdiction.

(f) Any laborer or mechanic employed by any employer, or the Department of Labor on behalf of any laborer or mechanic employed by any employer, who is paid in a sum less than the prevailing wage rates provided for under this section shall have a right of action against the employer in any court of competent jurisdiction to recover treble the difference between the amount so paid and the prevailing wage rate. Such action may be brought by the Department of Labor in the name and for the benefit of the laborer or mechanic with or without an assignment of the claim from the employee and upon notice to the aggrieved employee, the Department of Labor shall have the power to settle and adjust any such claim to the same extent as would the aggrieved employee. It shall not be a defense to such action that the underpayment was received by the laborer or mechanic without protest. Upon the filing of an action under this section, the employer shall post suitable bond approved by the court for the damages which may be recoverable thereunder. Any judgment entered for plaintiff shall include an award for reasonable attorney's fees and costs of prosecution. The Department of Labor shall not be required to pay the filing fee or other costs of the action or fees of any nature to file bond or other security of any nature in connection with such action or with proceedings supplementary thereto or as a condition precedent to the availability to the Department of any process in aid of such action or proceedings. The Department shall have the authority to join various claimants in 1 preferred claim lien and, in case of suit, to join them in 1 cause of action.

(g) Any wages collected under this chapter, but not claimed by the employee within 1 year from the date of collection, shall be retained by the Department of Labor for enforcement purposes.

(h) No action to recover wages and damages under this section shall be brought after the expiration of 2 years from the accruing of the cause of action.

(i) Whenever any person shall contract with another for the performance of any work which the contracting person has undertaken to perform, the contracting person shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of treble damages, as required under this section, whenever and to the extent that the employer of such employees fails to pay such wages, and the employer of such employees shall be liable to such person for any wages paid by the employer under this section. If pursuant to this subsection a person becomes civilly liable to employees of another, such liability shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(j) A contract manager shall be responsible for monitoring compliance with this section, but shall not become civilly liable to the same extent as the contracting person. For purposes of this section, "contract manager" means any person who performs the function of the contracting person without becoming a party to the contract of performance, but rather contracts with the recipient of the goods or services to act as the recipient's agent. A contract manager who knowingly fails or refuses to monitor compliance with this section shall, for each such failure or refusal, be subject to a civil penalty of not less than $100 nor more than $500. A civil penalty claim under this subsection may be filed in any court of competent jurisdiction. A contract manager's liability for a civil penalty pursuant to this subsection shall not constitute a violation of this section for purposes of the termination, civil penalty and debarment provisions of subsections (d) and (e) of this section.

(k) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department pursuant to this chapter, or because that employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or has testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(*l*) [Repealed.]

(m) None of the specifications of this section shall apply to a project of the Department of Transportation wholly funded by Community Transportation Funds. None of the specifications of this section shall apply to a project wholly funded by the Municipal Street Aid Program authorized pursuant to Chapter 51 of Title 30.

(29 Del. C. 1953, § 6913; 53 Del. Laws, c. 380, § 1; 57 Del. Laws, c. 454, § 17; 58 Del. Laws, c. 408; 63 Del. Laws, c. 80, § 69; 65 Del. Laws, c. 368, § 1; 67 Del. Laws, c. 260, § 1; 69 Del. Laws, c. 64, § 28; 69 Del. Laws, c. 295, § 1; 70 Del. Laws, c. 99, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 601, §§ 6, 8; 71 Del. Laws, c. 310, § 1; 71 Del. Laws, c. 312, § 1; 72 Del. Laws, c. 170, § 1; 73 Del. Laws, c. 129, § 1; 74 Del. Laws, c. 279, §§ 1, 3; 76 Del. Laws, c. 185, § 1; 80 Del. Laws, c. 105, §§ 1-3; 83 Del. Laws, c. 37, § 36; 83 Del. Laws, c. 283, § 44; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 466, §§ 3, 4.)

§ 6960A. Craft training requirement.

(a) (1) A contract relating to a public works project under § 6962 of this title must include a craft training program for each craft in the project if at the time the contractor executes a public works contract, all of the following apply:

a. A project meets the prevailing wage requirement under § 6960 of this title.

b. The contractor employs 10 or more total employees.

c. The project is not a federal highway project, except for the project under § 6962(c)(11) of this title.

d. There is an apprenticeship program for a craft in the project on the list of crafts under § 204(b)(2) of Title 19.

(2) A contractor must commit that all subcontractors provide craft training if paragraph (a)(1) of this section applies to the subcontractor.

(b) (1) If a contract requires a craft training program under subsection (a) of this section, the contractor must satisfy the craft training requirement before the contract is executed. A contractor or subcontractor may satisfy the craft training requirement under this section by doing any of the following for each craft under subsection (a) of this section:

a. Having at least 1 active apprentice in a craft training program for the craft.

b. Having at least 1 active apprentice who completes a craft training program for the craft within the 6 months before the date the contract was executed.

c. Being a member of a consortium that provides craft training for the craft and all of the following apply to the craft training program for the craft:

1. The consortium requires a regular financial contribution.

2. The contractor or subcontractor has access to the craft training program.

3. There is at least 1 active apprentice in the craft training program.

d. Making a payment under subsection (c) of this section.

(2) The craft training program under paragraphs (b)(1)a. through (b)(1)b. of this section may be provided by the contractor or subcontractor or through agreement with another entity.

(3) The active apprentice under paragraphs (b)(1)a. through (b)(1)b. of this section does not have to work on the contract being executed under paragraph (b)(1) of this section.

(c) (1) For contracts executed after September 9, 2022, a contractor or subcontractor may satisfy the craft training requirement under this section by making a payment in the amount established under § 204(b)(2)b.2. of Title 19, for the craft into the Apprenticeship and Training Fund of the Department Labor.

(2) For each calendar year, a contractor or subcontractor satisfies the craft training requirement for all contracts executed during that year when payments made under paragraph (c)(1) of this section after January 1 equal the following amounts:

a. For employers with 10 through 25 employees, payments that total $10,000.

b. For employers with more than 25 employees, payments that total $20,000.

(d) (1) All contracts that require a craft training program under subsection (a) of this section must contain a penalty provision against the successful bidder for the failure to comply with the requirements under this section. The penalty provision must require all of the following:

a. The contractor must pay the amount of the payment required under subsection (c) of this section to the Apprenticeship and Training Fund.

b. An amount that does not exceed 10 percent of the payment under paragraph (d)(1)a. of this section.

(2) A penalty assessed under paragraph (d)(1) of this section may be fully or partially remitted or refunded by the agency awarding the contract only if the contractor establishes compliance within 60 days of the notice of the penalty. A claim for remission or refund of a penalty may only be granted if an application for the remission or refund is filed within 1 year of the notice of the penalty.

(3) All money received from penalties under paragraph (d)(1)b. of this section, that is not remitted or refunded, reverts to the government entity under the contract for which the penalty was imposed.

(83 Del. Laws, c. 129, § 4; 83 Del. Laws, c. 283, § 45.)

§ 6961. Small public works contract procedures.

(a) *Applicability.* — Any state contract for which an agency is a party and for which the probable cost is less than or equal to the threshold amount(s) set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for small public works contracts shall be subject to the provisions of this section.

(b) *Procedure.* — All contracts entered into pursuant to this section shall follow the procedures as prescribed by the Director pursuant to § 6922 of this title.

(c) Bid and performance bonds as authorized in § 6962 of this title may be made a requirement by the agency for contracts made pursuant to this section.

(70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 16(5).)

§ 6962. Large public works contract procedures [For application of this section, see 82 Del. Laws, c. 36, § 3].

(a) *Applicability.* — Any state contract for which an agency is a party and for which the probable cost is greater than the amount set by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for small public works contracts shall be subject to the provisions of this section.

(b) *Advertising requirements.* —

Each agency shall publicly announce, for 2 consecutive weeks, each public works contract unless a shorter advertisement period has been approved by the Section director. Public advertising shall require electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director. An agency may also maintain a register of prospective bidders which may be used to provide direct notification of

contracts to be bid. This register shall not be used in a manner which will limit the competitiveness of the bidding process described in this subchapter. No agency shall be subject to a cause of action or be otherwise liable for any errors or omissions in administering a bid registry. The public announcement shall also state the nature of the contract under the following conditions:

(1) If the agency requires all bidders to be registered or prequalified in order to receive bidding documents for the proposed contract, the announcement shall state in general terms the character and location of the work and bid and performance bond requirements. If the agency requires prequalification of subcontractors in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing who has not already been prequalified by the agency.

(2) If the agency does not require bidder registration or prequalification for the proposed contract, the announcement shall state with reasonable accuracy the character, quantity and location of the work as well as bid and performance bond requirements. The public announcement shall also state that the agency may extend the time and place for the opening of bids from that described in the announcement. Such extension shall not take place unless at least 2 calendar days' notice, unless special circumstances apply as determined by the Section director, by certified delivery, facsimile transmission or by other verifiable electronic means, is sent to those bidders who obtained copies of the plans and specifications or contract descriptions.

(c) *Bidder prequalification requirements. —*

(1) The Office shall establish a 2-step process for the prequalification of contractors and subcontractors that desire to bid on large public works contracts for which prequalification is specified by the contracting agency. A contractor shall not be permitted to bid on a contract that requires prequalification unless the contractor has been prequalified pursuant to this subsection. A prequalified and classified contractor shall not be permitted to submit a bid on a specific contract unless the contractor completes a questionnaire and submits supplemental information at the option of the contracting agency or per paragraph (c)(9)a. of this section to the Office pertaining to that contract. The supplemental request for information shall not include any information requested during the first step of the prequalification process, but may require the contractor to affirm that no material changes have occurred since the application for the first step of the prequalification process was submitted to the Office. The prequalification process shall apply to general contractors and subcontractors in the areas that are deemed necessary by the Office.

(2) The prequalification classification issued by the Office as part 1 of the prequalification process shall be valid for 24 months. A contractor or subcontractor subject to prequalification shall request to be reclassified by the Office after the 24-month period in order to remain eligible to bid on public works contracts that require prequalification. A contractor or subcontractor who holds a valid prequalification classification shall report any material changes which could adversely affect the prequalification, as established in paragraph (c)(3) of this section, to the Office in writing within 10 days of the material change. A contractor or subcontractor may report to the Office in writing material changes which could positively affect the prequalification, as established in paragraph (c)(3) of this section. Based on the information provided, the Office may change the classification or revoke prequalification at the sole discretion of the Director.

(3) The prequalification process shall include a requirement that the contractor or subcontractor submit a statement under oath on a form designated by the Office. The form shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership, relationships, and prior experience of the contractor or subcontractor and any other pertinent and material facts as may be deemed necessary by the Office. At the discretion of the Office, the submission shall include part or all of the following:

a. The most recent audited financial statement and/or financial statement review containing a complete statement of the proposing contractor's or subcontractor's financial status. Such statement shall include the contractor's Z score;

b. The proposing contractor's or subcontractor's experience on other public works or private sector projects, including but not limited to the size, complexity and scope of the firm's prior projects;

c. Performance reviews of the proposing contractor or subcontractor on previously awarded public works or private sector construction projects within the last 5 years;

d. Civil judgments and/or criminal history of the proposing contractor's or subcontractor's principals;

e. Any debarment or suspension by any government agency;

f. Any revocation or suspension of a license;

g. Any bankruptcy filings or proceedings; and

h. A statement as to organization, which shall demonstrate the adequacy of such organization to undertake a public works contract. This statement shall include the resumes of the management and professional staff.

(4) After the receipt of the submission provided for in paragraph (c)(3) of this section, the Office may verify all information provided in the contractor's or subcontractor's submission, including applicable license and certificate requirements, federal or state debarments, and violations of law. The Office may also conduct inquiries or surveys of the contractor's or subcontractor's prior customers.

(5) a. Based upon the submission provided for in paragraphs (c)(3) and (4) of this section, the Office Review Committee, which shall include at least 2 Office employees, shall assign a contractor or subcontractor the following classification or classifications and limits for the purpose of determining the types of projects for which a contractor or subcontractor is entitled to bid:

1. A trade(s) or work classification(s); and

2. The maximum contract dollar value for which the contractor or subcontractor may submit a bid.

To effectuate these requirements of the prequalification process, the Office shall develop rules and regulations for assigning classifications and maximum dollar limits.

b. The classification shall be made, or prequalification may be denied, and notice thereof shall be sent to the contractor or subcontractor within 5 days of the determination made pursuant to paragraph (c)(5)a. of this section by registered or certified mail or other legally valid methods. Notice of prequalification classification or denial shall also be sent to the contracting agency if said agency is not the Office.

(6) Based upon the proposing contractor's or subcontractor's answers to the step-1 or step-2 prequalification questionnaire, the Office may deny prequalification for any 1 of the following specified reasons:

a. Insufficient financial ability to perform a public works contract;

b. Inadequate experience to undertake a public works contract;

c. Documented failure to perform on prior public or private construction contracts, including but not limited to final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;

d. Prior judgments for breach of contract that indicate the proposing contractor or subcontractor may not be capable of performing the work or completing a large public works contract;

e. Criminal convictions for fraud, misrepresentation or theft relating to contract procurement;

f. Previous debarment or suspension of the contractor or subcontractor by any government agency that indicates the proposing contractor or subcontractor may not be capable of performing the work or completing a large public works contract;

g. Previous revocation or suspension of a license that indicates the proposing contractor or subcontractor may not be capable of performing the work or completing a public works contract;

h. Previous bankruptcy proceedings that indicate the proposing contractor or subcontractor may not be capable of performing the work or completing a public works contract; or

i. Failure to provide accurate prequalification information on past or current prequalification questionnaires.

Reason or reasons for the denial of prequalification shall be in writing, and shall be sent to the contractor or subcontractor within 5 working days of such decision. An agency may refuse to provide any contractor or subcontractor disqualified under this paragraph plans and specifications for a contract. An agency receiving a bid from a contractor or subcontractor disqualified under this paragraph shall not consider such bid.

(7) Any contractor or subcontractor disqualified pursuant to paragraph (c)(6) of this section may request a review of such decisions with the Director within 5 working days of the receipt of the agency's notification of the prequalification decision. Such request shall be made in writing. No action in law or equity shall lie against any agency or its employees if the contractor or subcontractor does not first review the decision with the Director. To the extent the contractor or subcontractor brings an action challenging a decision made pursuant to paragraph (c)(6) of this section after such review by the Director, the court shall afford great weight to the decision of the Office head and shall not overturn such decision unless the contractor or subcontractor proves by clear and convincing evidence that such decision was arbitrary and capricious.

(8) The Office shall maintain a registry of all contractors and subcontractors prequalified to bid on public works projects. The registry shall include the classification or classifications of the contractor or subcontractor and the maximum contract dollar value for which the contractor or subcontractor may submit a bid.

(9) a. In addition to the prequalification required herein, any agency shall require a contractor or subcontractor to provide supplemental information that is specifically relevant to the public works contract to be bid. Such additional information shall be considered supplemental certification and shall not duplicate in any way the information required by the Office in its prequalification process except for labor supply available to complete the project in a timely manner.

b. Based upon the proposing contractor's or subcontractor's answers to the agency's supplemental prequalification questionnaire, the Director, or in the case of school projects, the school district may deny the prequalification for any 1 of the following specified reasons:

1. Inadequate experience to undertake the specific project that requires supplemental prequalification;

2. Inadequate expertise to undertake the specific project that requires supplemental prequalification;

3. Failure to provide supplemental prequalification information for the specific project that requires supplemental prequalification; or

4. Inadequate labor supply available to complete the project in a timely manner.

Denial of supplemental prequalification by the Office, or in the case of school projects, the school district shall be in writing no later than 2 weeks before the close of the project bid and shall be sent to the contractor or subcontractor within 5 working days of such decision. An agency may refuse to provide any contractor or subcontractor disqualified under this paragraph plans and specifications for the contract. An agency receiving a bid from a contractor or subcontractor disqualified under this paragraph shall not consider such bid.

(10) Any contractor or subcontractor disqualified pursuant to paragraph (c)(9) of this section may request in writing within 5 working days of the receipt of the Office's or, in the case of school projects, the school district's, supplemental prequalification a review of such

decisions with the Director or the Director's designee or, in the case of school projects, the school district. No action in law or equity shall lie against any agency or its employees if the contractor or subcontractor does not first review the decision with the Director or, in the case of school projects, the school district within 5 working days after the decision is rendered by the Office or, in the case of school projects, the school district. To the extent the contractor or subcontractor brings an action challenging a decision made pursuant to paragraph (c)(9) of this section after such review by the Director or, in the case of school projects, the school district, the court shall afford great weight to the decision of the Director or, in the case of school projects, the school district and shall not overturn such decision unless the contractor or subcontractor proves by clear and convincing evidence that such decision was "arbitrary and capricious."

(11) In addition, for the US 301 project from the Maryland-Delaware state line to its termination at Delaware Route 1, all contractors and subcontractors are required, independently or through agreement with other organizations, to provide craft training for journeyman and apprentice levels through a bona fide program approved by and registered with the State of Delaware and/or United States Department of Labor.

(12) a. A Department of Transportation project, excluding a municipal street aid contract, must include a performance-based rating system.

b. The Department of Transportation's performance-based rating system must be defined in regulations promulgated by the Secretary of the Department of Transportation.

c. A contractor is eligible to bid as follows:

1. A contractor meeting or exceeding the minimum contractor's performance rating at the time of bid, as determined by the Department's performance-based contractor evaluation system, is eligible to bid.

2. A. A contractor who does not meet or exceed the minimum contractor's performance rating at the time of bid is eligible to bid if the contractor agrees to allow the Department to retain 5% of the payments to be made to the contractor for work performed under the contract under the procedures provided in paragraph (d)(5)a.1. of this section.

B. A contract under paragraph (c)(12)c.2. of this section must contain all of the following provisions:

I. A variable retainage in an amount that does not exceed 5%, that is established at the discretion of the Secretary.

II. When the project is at 50% completion, the contractor may request that the retainage be reduced to 2% after an interim evaluation of the current project.

III. The project completion percentage will be based on the actual work completed, excluding money paid for stored materials.

(13) a. If there is a craft training requirement for a craft in the project under § 6960A of this title, a contractor must commit that the contractor and all subcontractors will provide craft training for journeyman and apprentice levels at the time the contractor executes the public works contract.

1.–3. [Repealed.]

b., c. [Repealed.]

d. The Secretary of the Department of Labor may promulgate and adopt regulations to implement this paragraph (c)(13) of this section.

(d) *Bid specifications and plans requirements.* —

(1) *Preparation of plans and specifications and approvals.* — The contracting agency shall cause suitable plans and specifications to be prepared for all contracts pursuant to this section. All plans and specifications shall be prepared by registered and licensed architects and/or engineers who shall sign the plans and specifications and affix their seals thereto. This requirement may be waived if:

a. The work to be covered by the public works contract is to be performed in accordance with identical plans and specifications similarly signed and sealed pursuant to which previous public works contracts have been awarded under this subchapter. Any architect and/or engineer who signed and sealed the original of such identical plan(s) will have no liability arising from the use of those plans other than the use contemplated by the contract pursuant to which the original copies of such plans was created, unless such architect and/or engineer reviews and approves such different use; or

b. The project does not require architectural and engineering services and the agency head waives in writing the use of such services.

(2) *Agency assistance.* — An agency may retain, in accordance with subchapter V of this chapter, the professional services of a general contractor or other qualified firm to assist in cost estimation, economic design analysis and construction.

(3) *Prohibition of brand specification.* — The description of work and/or materiel and the plans and specifications shall not use a brand or trade name, except as an indication of the type or quality of materiel and in all such limited cases shall contain the words "or approved equal."

(4) *Special provisions.* — a. *Anti-pollution, conservation, environmental measures or Energy Star equipment not covered by contract specifications.* — 1. The description of the materiel and the plans and specifications for the work issued by the agency shall set forth those provisions of federal, state and local statutes, ordinances, rules and regulations respecting anti-pollution, conservation and environmental protection which affect the project or projects for which such solicitations or bids are sought.

2. If the successful bidder must undertake anti-pollution, conservation or environmental protection work not specified in the agency's plans and specifications or descriptions of materiel, including measures required by the enactment of new or the amendment of existing statutes, ordinances, rules or regulations occurring after the submission of the successful bid or quotation, the awarding agency shall issue a change order, as provided for in § 6963 of this title, setting forth the additional measures that must be undertaken.

3. *Cost.* — The cost of such a change order to the awarding agency shall be determined in accordance with the contract for change orders or force accounts. If no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materiel, equipment rentals, insurance and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit.

4. *Authorization.* — Written authorization by the agency is to be given to the successful bidder prior to the bidder undertaking such additional activity. Costs incurred by the successful bidder for additional work performed without prior approval shall not be approved for payment by the agency.

5. *Energy Star equipment.* — Prior to finalizing specifications for equipment to be purchased as part of a large public works contract, the agency or its architect and/or engineer shall review all equipment to determine whether Energy Star rated products are available. For each piece of equipment, if an Energy Star product is available, the specifications and bid documents shall require the use of an Energy Star product unless the agency can demonstrate, in writing, to the satisfaction of the Director, that a product with an Energy Star rating meets at least 1 of the following criteria:

A. The Energy Star rated equipment is not available competitively,

B. The Energy Star rated equipment is not available within a reasonable time frame, or

C. The Energy Star rated equipment does not meet appropriate performance standards.

The agency may include non-Energy Star rated equipment as an alternate in the bid documents to enable lifecycle costing analysis to be performed as part of the analysis of responsive bids. The agency shall be required to award a contract that includes the procurement of Energy Star rated equipment unless the agency can demonstrate, in writing, to the satisfaction of the Director, that the interests of the state would be better served by procuring non-Energy Star rated equipment.

b. *Preference for Delaware labor.* — In the construction of all public works for the State or any political subdivision thereof or by firms contracting with the State or any political subdivision thereof, preference in employment of laborers, workers or mechanics shall be given to bona fide legal citizens of the State who have established citizenship by residence of at least 90 days in the State. Each public works contract for the construction of public works for the State or any political subdivision thereof shall contain a stipulation that any person, company or corporation who violates this section shall pay a penalty to the Secretary of Finance equal to the amount of compensation paid to any person in violation of this section.

(5) *Retainages and substitution of securities.* — a. *Authority to withhold contract retainage.* — 1. Agencies may retain a portion of the payments to be made to a contractor for work performed pursuant to a public works contract. The percentage of the value of work performed which may be retained shall be established for each particular contract in the contract bidding documents and shall be incorporated into the contract. The percentage retained shall be 5% of the value of the work completed by the contractor under the contract. Upon completion of the work under the contract, the agency may release 60% of the amount then retained. The balance of the amount retained will be held until:

A. All reports required of the contract are received;

B. All subcontractors in trades listed on the bid form are paid by the contractor, unless the amount owed to the subcontractor is disputed, in which case the agency may withhold 150% of the amount withheld by the contractor in its dispute with the subcontractor; and

C. Final payment is authorized by the agency.

2. The agency may, at its option, retain, temporarily or permanently, a small amount and may cause the contractor to be paid, temporarily or permanently, from time to time, such portion of the amount retained as it deems equitable. The contractor shall be paid for all work that is due to the contractor under the contract except for the amount retained.

3. The agency may at the beginning of each public works contract establish a time schedule for the completion of the project. If the project is delayed beyond the completion date due to the contractor's failure to meet the contractor's own responsibilities, the agency may forfeit all or part of retainage at its discretion.

b. *Procedures requirement.* — Agencies shall establish standard procedures and regulations for the administration of contract retainages prior to entering into contracts which require retainages. All agency procedures shall provide for contract retainage and substitution of securities for retainage.

c. *Substitution of securities.* — 1. The contractor under a public works contract, with the approval of the agency, may deposit securities as authorized by this section in substitution for moneys being withheld from the contractor as retainage. Securities allowable for substitution of retainage shall be: United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills; bonds or notes of the State; bonds of any political subdivision of the State; or certificates of deposit from state or national banks located in this State; or any letter of credit or other security approved by the agency.

2. The contractor shall have the right to withdraw and take all or portions of the moneys being retained from the contractor under the contract by depositing securities in substitution for such moneys. The contractor may do so only in accordance with the agency's standard procedures and mechanisms. Such substitution shall be approved by the agency only if the aggregate market value of the securities are at least as great as the contract retainages being withdrawn.

3. A contractor may substitute cash for and receive back all or part of the securities on deposit from the contractor. The cash must at least have the same value as the market value of the securities received back from the agency.

4. The contractor shall be entitled to receive, in all events, all interest and income earned on the securities deposited by the contractor in substitution for contract retainage. If the securities deposited are in the form of coupon bonds, the agency or the escrow agent designated by it and holding the deposited securities shall deliver each coupon to the contractor as it matures.

5. All securities shall be released, delivered and paid over to the contractor at such time as cash moneys being retained from the contractor would have been released, delivered and paid over to the contractor under the public works contract if there had been no substitution for the cash moneys.

6. All costs of depositing and maintaining securities as provided for in this section shall be borne by the contractor.

7. No agency shall have any duty to invest moneys being retained by it from a contractor under a public works contract in any interest bearing account or to establish any procedures or mechanisms for any such investment.

8. Notwithstanding any other provisions of this section, any contracting agency may deny the contractor on any public works contract permission to substitute securities for moneys being held as retainages. This action shall be taken only for good cause and when the agency deems it to be in the best interest of the contracting agency. Written notice shall be given to the contractor and a hearing shall be held by the agency showing cause for such denial if requested in writing by the contractor. Denial of such substitution shall be for a stated period of time, not to exceed a period of 3 years, and shall continue until the end of the stated time period, or until the contractor has successfully completed all outstanding public works contracts without forfeiting any part of the retainage held by the agency, whichever occurs first.

(6) *Partial payments.* — Any public works contract executed by any agency may provide for partial payments with respect to materials placed along or upon the sites or stored at secured locations, which are suitable for use in the performance of the contract. When approved by the agency, partial payments may include the values of tested and acceptable materials of a nonperishable or noncontaminative nature which have been produced or furnished for incorporation as a permanent part of work yet to be completed, provided acceptable provisions have been made for storage. Any allowance made for materials on hand will not exceed the delivered cost of the materials as verified by invoices furnished by the contractor, nor will it exceed the contract bid price for the material complete in place.

(7) *Equality of employment opportunity and equal pay on public works.* —

a. As a condition of the awarding of any contract for public works financed in whole or in part by state appropriation, such contracts shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity, national origin, or housing status. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity, national origin, or housing status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, gender identity, national origin, or housing status.

3. The contractor will ensure employees receive equal pay for equal work, without regard to sex. Employee pay differential is acceptable if pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or if the differential is based on any other factor other than sex.

b. The Secretary of the Department of Labor shall be responsible for the administration of this provision and shall adopt such rules and regulations and issue such orders as deemed necessary to achieve the purposes thereof; provided, that no requirement established hereby shall be in conflict with § 6904 of this title.

c. For the purposes of this section:

1. "Housing status" means as defined in § 204 of Title 19.

2. "Protective hairstyle" includes braids, locks, and twists.

3. "Race" includes traits historically associated with race, including hair texture and a protective hairstyle.

(8) *Bid bonding requirements.* — a. All bids shall be accompanied by a deposit of either a good and sufficient bond to the agency for the benefit of the agency, with corporate surety authorized to do business in this State, the form of the bond and the surety to be approved by the agency, and the bond form used shall be the standard form issued by the Office of Management and Budget for this purpose or a security of the bidder assigned to the agency, for a sum equal to at least 10% of the bid. The bid bond need not be for a specific sum, but may be stated to be for a sum equal to 10% of the bid to which it relates and not to exceed a certain stated sum, if said sum is equal to at least 10% of the bid. Any bid which, at the time it is submitted, is not accompanied by a bid bond or sufficient security as required by this paragraph shall not be opened or read, and shall be rejected.

b. Upon the execution of a formal contract and performance bond, the bid bond or security shall be returned to the successful bidder. The security of the unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or the rejection of all bids, but in no event later than 30 days after the opening of bids with the exception of school districts and the Department of Public Instruction, which shall be no more than 60 days unless the contracting agency or school district extends the bid evaluation period by 5 working days per the requirements of paragraph (d)(13)a. of this section. If the bid evaluation period is extended by 5 working days, then the security of each unsuccessful bidder shall be returned to them on the first working day after the end of the extended bid evaluation period.

c. *Loss of bid bond as damages.* — In the event of any successful bidder refusing or neglecting to execute a formal contract and bond within 20 days of the awarding of the contract, the bid bond or security deposited by the successful bidder shall be taken and become the absolute property of the State for the benefit of the agency as liquidated damages. Such damages shall neither constitute a forfeiture nor a penalty and shall be deposited with the Secretary of Finance. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. The contracting agency may award the contract to the next lowest responsible bidder or re-advertise for new bids.

d. In the case of bids submitted to agencies other than any county of this State and other than any public school district, wherever security is required under this section, the vendor shall also supply with its bid its taxpayer identification number (i.e., federal employer identification number or social security number) or a Delaware business license number and, should the vendor be awarded a contract, such vendor shall provide to the agency the taxpayer identification or Delaware business license numbers of such subcontractors. Such numbers shall be provided on the later of the date on which such subcontractor is required to be identified or the time the contract is executed. The agency shall report to the Division of Revenue each vendor selected for award within 15 days of execution of the contract and each subcontractor within 15 days of such contractor having been identified to the agency or on the date of execution of the contract, whichever is later, unless the Director of the Division of Revenue has notified the agency of criteria according to which, in the Director's discretion, reporting is not required and the contract meets such criteria.

(9) *Performance bonding requirements.* — a. Simultaneous with the execution of the formal contract, the successful bidder shall also execute a good and sufficient bond to the contracting agency for the benefit of the agency, with corporate surety authorized to do business in this State, in a sum equal to 100% of the contract price and the bond form used shall be the standard form issued by the Office of Management and Budget.

b. The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal and plans and specifications thereof, at the time and in the manner prescribed by the contract and the plans and specifications, including the payment in full, to every firm furnishing materiel or performing labor in the performance of the contract, of all sums of money due it for such labor or materiel. The bond shall also contain the successful bidder's guarantee to indemnify and save harmless the agency from all costs, damages and expenses growing out of or by reason of the successful bidder's failure to comply and perform the work and complete the contract in accordance with the contract.

c. The agency may, when it considers that the interests of the agency so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be paid for the credit of the agency to the Secretary of Finance or to the chief financial officer of the agency if it is not a state agency.

d. Every firm furnishing materiel or performing labor under the contract for which the successful bidder is liable may maintain an action on the bond for its own use in the name of the agency in any court of competent jurisdiction for the recovery of such sum or sums as may be due such firm from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful bidder ceased work on the contract. Otherwise, suits may be commenced at any time within 3 years following the date the last work was done on the contract.

e. No firm or surety, in any action brought under this section, or on the bond required by this section, shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

f. In the event of defaults of its contracts, the money collected on the performance bonds shall be utilized by the contracting agency for the projects for which the performance bonds were issued. All performance bond proceeds received shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund.

g. In addition to the bond, letter of credit or other financial security posted by the successful bidder in conjunction with the execution of the formal contract, each successful bidder, regardless of the type of the security posted or waived, as the case may be, must purchase adequate insurance for the performance of the contract and, by submission of a bid, does agree to indemnify and

save harmless and to defend all legal or equitable actions brought against the agency or officer or employee of the agency for and from all claims of liability which is or may be the result of the successful bidder's actions during the performance of the contract. The purchase or nonpurchase of such insurance or the involvement of the successful bidder in any legal or equitable defense of any action brought against the successful bidder based upon work performed pursuant to the contract shall not waive any defense which the agency and its officers and employees might otherwise have to such claims, specifically including the defense of sovereign immunity, where applicable, and by the terms of this section, the agency and its officers and employees shall not be financially responsible for the consequences of work performed, pursuant to said contract.

h. Contracts may contain a waiver of the bond requirement; provided however, that the successful bidder post with the contracting agency an irrevocable letter of credit or other suitable or readily collectible financial security for the project. Such security shall be subject to the terms and conditions of the contracting agency.

(10) *Public buildings; special requirements.* — a. Pre-bid meeting requirement. —

In the case of any public works contract for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) the agency shall call a meeting of all prospective bidders upon notice in compliance with Chapter 100 of this title. The meeting shall be at least 15 days before the date for the submission of bids.

1. At the meeting, all the participants, including the agency, shall attempt to agree upon a listing of all subcontractor categories to be included in the bids for performing the work as required by paragraph (d)(10)b. of this section and any such agreed listing shall be final and binding upon all bidders and upon the agency. If all of the participants do not agree on such a listing at the meeting, then the agency itself, at least 10 days before the due date for the submission of bids, shall determine the subcontractor categories to be included in the listing. The listing, whether agreed to by all of the participants at the meeting or determined by the agency itself in the absence of the unanimous agreement of the participants at the meeting, shall be published by the agency at least 10 days before the due date for the submission of bids by mailing and listing to all of the participants at the meeting. The listing, as so published, shall be final and binding upon all bidders and the agency and it shall be filled out completely, in full, without any abbreviations. If the agency required prequalification of subcontractors pursuant to this section in its invitation to bid, no contractor shall list a subcontractor in its subcontractor listing required by this subsection who has not already been prequalified by the agency.

2. If a pre-bid meeting is held but the bidding process does not proceed, a new bidding process for the same project without any changes to the scope of the project does not require a new pre-bid meeting if the agency head determines that in the best interest of the State one is not needed.

b. *Subcontracting requirements.* — All contracts for the construction, reconstruction, alteration or repair of any public building (not a road, street or highway) shall be subject to the following provisions:

1. Such contract shall be awarded only to a bidder whose bid is accompanied by a statement containing, for each subcontractor category set forth in the listing as provided in paragraph (d)(10)a. of this section the name and address (city or town and State only — street number and P.O. Box addresses not required) of the subcontractor whose services the bidder intends to use in performing the work and providing the materiel for such subcontractor category. Where any services and/or materiel are to be provided by or through a third-tier contractor, the bidder shall also supply the name and address of the third-tier contractor. If a bidder intends to perform the work or provide the materiel for any subcontractor category specifically established by the agency and as set forth in the listing provided for in paragraph (d)(10)a. of this section, the bidder must list itself as the subcontractor for that category. If at the time it is submitted a bid is not accompanied by the subcontractor statement required by this subparagraph, or if a bidder fails to list itself as the subcontractor for any category for which it intends to perform the work or provide the materiel, the bid shall not be opened or read, and shall be rejected.

2. The contracting agency shall neither accept any bid nor award any contract to any bidder which, as the prime contractor, has listed itself as the subcontractor for any subcontractor category on the listing as provided in paragraph (d)(10)a. of this section, unless:

A. It has been established to the satisfaction of the awarding agency that the bidder has customarily performed the specialty work of such subcontractor category by artisans regularly employed by the bidder's firm;

B. That the bidder is duly licensed by the State to engage in such specialty work, if the State requires such licenses; and

C. That the bidder is recognized in the industry as a bona fide subcontractor or contractor in such specialty work and subcontractor category.

The typical subcontractor categories involving specialty work includes, by way of illustration and not limited to, plumbing, electrical wiring, heating, roofing, insulating, weather stripping, masonry, bricklaying and plastering. The decision of the awarding agency as to whether a bidder who lists itself as the subcontractor for a subcontractor category set forth in the listing as provided in paragraph (d)(10)a. of this section shall be final and binding upon all bidders, and no action of any nature shall lie against any awarding agency or its employees or officers because of its decision in this regard.

3. After such a contract has been awarded, the successful bidder shall not substitute another subcontractor for any subcontractor whose name was set forth in the statement which accompanied the bid without the written consent of the awarding agency. No

agency shall consent to any substitution of subcontractors unless the agency is satisfied that the subcontractor whose name is on the bidders accompanying statement:

A. Is unqualified to perform the work required;

B. Has failed to execute a timely reasonable subcontract;

C. Has defaulted in the performance on the portion of the work covered by the subcontract; or

D. Is no longer engaged in such business.

4. All such contracts shall contain a provision for a penalty against the successful bidder for its failure to utilize any or all the subcontractors in the successful bidder's accompanying statement in the performance of the work on the public building contemplated by the contract. The penalty amount shall be set by the agency. The agency will also determine if the amount is to be deducted from payments to the bidder for contract performance or if the amount is to be paid directly to the agency by the bidder. Any penalty amount assessed against the contractor may be remitted or refunded, in whole or in part, by the agency awarding the contract, only if it is established to the satisfaction of the agency that the subcontractor in question has defaulted or is no longer engaged in such business. No claim for the remission or refund of any penalty shall be granted under this section unless an application is filed within 1 year after the liability of the successful bidder accrues. All penalty amounts assessed and not refunded or remitted to the contractor shall be reverted to the State, municipality or other agency as the case may be.

5. If awarded, not to a general contractor, but to a prime contractor which contracts directly with agency awarding and/or administering the contract, such contract may include a provision in its contract specifications that the successful bidder perform a fixed percentage of the work of said public works contract up to 50% of the total contract bid. Factors to be considered by the agency awarding the contract in setting the required percentage of amount of work the successful bidder must perform may include the degree of difficulty involved in the agency's administration of the work covered under the terms of the public works contract; the degree of specialty work contemplated in the contract including, but not limited to, the amount of plumbing, electrical wiring, heating, roofing, insulation, weather-stripping, masonry, bricklaying or plastering work under the contract; and the time period required in which to complete the public works project. The terms of the contract shall so specify reasons for the stated percentage in its general terms and conditions. The decision of the agency setting the required percentage shall not be set aside by any court of competent jurisdiction as long as there is a rational basis for setting the required fixed percentage to be performed by the contractor. If the successful bidder fails to perform pursuant to the terms of this provision, the agency awarding and/or administering the contract may invoke the provisions of § 6964 of this title.

6. No construction manager contract for public school projects may be signed unless approved by the Director.

(11) *Other contracting requirements.* — a. *Asbestos abatement.* — The selection of any contractor to perform asbestos abatement for State-funded projects shall be approved by the Office of Management and Budget pursuant to Chapter 78 of Title 16.

b. *Standards of construction; protection of physically handicapped.* — All contracts shall conform with the standards established by the Delaware Architectural Accessibility Board as authorized by Chapter 73 of this title, unless otherwise exempted by the Board.

(12) *Public bid opening requirements.* — a. Bids shall be opened publicly and the contractor and total bid price or the contractor, base bid, and alternate price should be read aloud at the time and place designated in the plans and specifications.

b. Bids shall be unconditionally accepted without alteration. After the bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interests of the State or fair competition shall be permitted.

(13) *Bid evaluation, contract award and execution procedure*. —

a. The contracting agency shall award any public works contract within 30 days of the bid opening to the lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school district and its board shall award public works contracts in accordance with this section's requirements except it shall award the contract within 60 days of the bid opening. A contracting agency shall extend the 30-day bid evaluation period by a total of 5 working days and a school district shall extend the 60-day bid evaluation period by a total of 5 working days if a bid is nonresponsive or a bidder is judged to be not responsible, and the bidder cannot be notified in writing a minimum of 5 days prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district. Written notification to the bidder or bidders whose bid is non-responsive or who have been determined to be not responsible shall be received at least 5 working days prior to the end of the original or the extended evaluation period and shall specify the reason or reasons why the bid is nonresponsive or the bidder determined to be not responsible. If the bid evaluation period is extended by 5 working days, the contracting agency or school district shall notify each bidder in writing prior to the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the case of a school district, that the bid evaluation period is being extended by 5 working days. The written notification to all bidders shall include the calendar date by which the agency or school district shall award a contract or reject all bids.

1. Each bid on any public works contract must be deemed responsive by the agency to be considered for award. A responsive bid shall conform in all material respects to the requirements and criteria set forth in the contract plans and specifications.

2. An agency shall determine that each bidder on any public works contract is responsible before awarding the contract. Factors to be considered in determining the responsibility of a bidder include:

A. The bidder's financial, physical, personnel or other resources including subcontracts;

B. The bidder's record of performance on past public or private construction projects, including, but not limited to, defaults and/or final adjudication or admission of violations of prevailing wage laws in Delaware or any other state;

C. The bidder's written safety plan;

D. Whether the bidder is qualified legally to contract with the State;

E. Whether the bidder supplied all necessary information concerning its responsibility; and,

F. Any other specific criteria for a particular procurement, which an agency may establish; provided however, that, the criteria shall be set forth in the invitation to bid and is otherwise in conformity with state and/or federal law.

3. If an agency determines that a bidder is nonresponsive or not responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be sent to the affected bidder within 5 working days of said determination. The final determination shall be made part of the procurement file.

4. A. If the agency elects to award on the basis of best value, the agency must determine that the successful bidder is responsive and responsible, as defined in this subsection. The determination of best value shall be based upon objective criteria that have been communicated to the bidders in the invitation to bid. The following objective criteria shall be assigned a weight consistent with some or all of the following:

I. Price — must be at least 70% but no more than 90%.

II. Schedule — must be at least 10% but no more than 20%.

III. Performance — must be at least 10% but no more than 20%.

IV. Disadvantaged business enterprise participation (only for projects valued in excess of $30,000,000) — must be at least 10% but no more than 30%.

B. Performance criterion must be based on a contractor's performance rating as determined by the agency's performance-based rating system. The agency's performance-based rating system must be based on previous contracting performance and may not be based on a set of prescriptive rules favoring a particular business model or business procedure. The performance-based rating system must be defined in regulations promulgated by the Secretary of the agency and must include a procedure for a contractor to appeal a performance-based rating.

C. A weighted average stated in the invitation to bid shall be applied to each criterion according to its importance to each project. The agency shall rank the bidder according to the established criteria and award to the highest ranked bidder. Every state agency and school district shall, on a yearly basis, file a report with every member of the General Assembly and the Governor that states which projects were bid under best value and what contractor was awarded each contract.

b. A contract may be awarded to a bidder other than the lowest responsible and responsive bidder if, in the opinion of the contracting agency, the interest of the agency shall be better served by awarding the contract to another bidder. Such award shall be made only if the contracting agency makes a written determination of the award describing the reason or reasons why such award better serves the interest of the agency. The reason or reasons for making such award may include, but are not limited to, unsatisfactory performance on any previously awarded contract by the bidder being rejected.

c. The successful bidder shall execute a formal contract within 20 days after the award of the contract. The contract shall be in a form with terms and conditions approved by the contracting agency. The successful bidder shall also provide a bond as required in paragraph (d)(8) of this section within 20 days after the award of the contract.

d. If the successful bidder refuses or neglects to execute a formal contract and bond as required in this subchapter, the bidder's bid bond or security deposit shall be taken and become the absolute property of the agency for the benefit of the agency as liquidated damages, and not as a forfeiture or as a penalty. Such moneys shall be deposited with the Secretary of Finance or the chief financial officer of the agency if the agency is not a state agency.

e. If 2 or more responsible and responsive bidders shall bid an equal amount and such amount shall be the lowest bid, the contracting agency may award the contract to any 1 of them or may reject all bids.

f. A contracting agency may reject all bids on any contract prior to the award of the contract for any reason it believes to be in the best interest of the agency.

g. *Electronic bid or electronic submission.* —

1. If the Office or an agency determines that an electronic bid or electronic submission is beneficial, the Office or the agency may use the selected method to obtain bids for public works contracts.

2. The solicitation must designate that the procurement method will be an electronic bid or electronic submission, a schedule of bid activities, and an electronic mail account to which the response must be sent.

3. The Office's or the agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the vendors that responded, the date and time submitted, and the bids or associated prices; and prepare a tabulation of all responsive vendors for review.

h. *On-line bidding method.* —

If the Office or an agency determines that an on-line bidding method is beneficial, the Office or the agency may use an on-line bidding method to obtain and evaluate bids for public works contracts. The Office or agency must indicate the method in the solicitation.

i. [Repealed.]

(14) *Suspension and debarment. —*

a. 1. Any contractor who fails to perform a public works contract or complete a public works project within the time schedule established by the agency in the invitation to bid, may be subject to suspension or debarment for 1 or more of the following reasons:

A. Failure to supply the adequate labor supply ratio for the project.

B. Inadequate financial resources.

C. Poor performance on the project.

D. Failure to provide required craft training under § 6960A of this title.

2. Any subcontractor who fails to provide required craft training under § 6960A of this title may be subject to suspension or debarment.

b. If a contractor fails to perform a public works contract or complete a public works project under paragraph (d)(14)a. of this section or a subcontractor fails to provide required craft training under § 6960A of this title, the agency that contracted for the public works project may petition the Director of the Office of Management and Budget for suspension or debarment of the contractor. The agency shall send a copy of the petition to the contractor within 3 working days of filing with the Director. If the Director concludes that the petition has merit, the Director shall schedule and hold a hearing to determine whether to suspend the contractor, debar the contractor or deny the petition. The agency shall have the burden of proving, by a preponderance of the evidence, that either the subcontractor failed to provide required craft training under § 6960A of this title or the contractor failed to perform or complete the public works project within the time schedule established by the agency by failing to do so for 1 or more of the following reasons:

1. Failure to supply the adequate labor supply ratio for the project.

2. Inadequate financial resources.

3. Poor performance on the project.

4. Failure to provide required craft training under § 6960A of this title.

c. 1. Upon a finding in favor of the agency under paragraph (d)(14)b. of this section because a contractor failed to perform a public works contract or complete a public works project, the Director may suspend a contractor from bidding on any project funded, in whole or in part, with public funds for up to 1 year for a first offense, up to 3 years for a second offense and permanently debar the contractor for a third offense.

2. Notwithstanding the penalties under paragraph (d)(14)c.1, of this section, upon a finding in favor of the agency that a contractor or subcontractor failed to perform the requirements under § 6960A of this title, the Director shall suspend a contractor or subcontractor who fails to perform the requirements under § 6960A of this title and shall debar the contractor or subcontractor from bidding on any project funded, in whole or in part, with public funds for up to 5 years.

d. The Director shall issue a written decision and shall send a copy to the contractor and the agency. Such decision may be appealed to the Superior Court within 30 days for a review on the record.

(70 Del. Laws, c. 601, § 9; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 133, §§ 3-6; 72 Del. Laws, c. 258, § 77; 73 Del. Laws, c. 289, § 1; 73 Del. Laws, c. 300, § 1; 73 Del. Laws, c. 364, § 4; 73 Del. Laws, c. 428, §§ 3, 4; 73 Del. Laws, c. 438, § 2; 74 Del. Laws, c. 373, §§ 2-4; 74 Del. Laws, c. 416, §§ 2, 3; 75 Del. Laws, c. 88, § 16(5); 77 Del. Laws, c. 90, § 23; 77 Del. Laws, c. 329, § 116; 78 Del. Laws, c. 288, § 3; 79 Del. Laws, c. 47, § 26; 80 Del. Laws, c. 56, § 1; 81 Del. Laws, c. 298, § 4; 81 Del. Laws, c. 365, § 1; 82 Del. Laws, c. 36, § 2; 83 Del. Laws, c. 13, § 24; 83 Del. Laws, c. 129, § 5; 83 Del. Laws, c. 188, § 1; 84 Del. Laws, c. 42, § 1; 84 Del. Laws, c. 45, § 1; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 429, § 13; 84 Del. Laws, c. 489, § 11; 84 Del. Laws, c. 513, § 2.)

§ 6963. Emergency procedures and contract change orders.

(a) All of the provisions of this subchapter may be waived pursuant to § 6907 of this title.

(b) The awarding agency may issue a change order to the public works contract setting forth any change, addition or extra work required to be undertaken by the contractor. Such changes may be necessitated by changed situations, unforeseen conditions, strikes and acts of God. Change orders shall be issued for all changes or extra work determined to be necessary and requested by the agency, but not specified in the contract or its plans and specifications. The change order shall not:

(1) Be subject to the competitive bidding requirements of this subchapter; or

(2) Invalidate the contract, provided that such change is within the scope of the contract as set forth in the standard specifications, special provisions or similar publication of the agency; or

(3) Be subject to the requirement for lifecycle costing analysis as described in §§ 6902 and 6909A(a) of this title.

(70 Del. Laws, c. 601, § 9; 74 Del. Laws, c. 419, § 9.)

§ 6964. Contract performance.

If any firm entering into a public works contract neglects or refuses to perform or fails to comply with its terms, the agency may terminate the contract and proceed to award a new contract in accordance with this subchapter or may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond.

(70 Del. Laws, c. 601, § 9.)

§ 6965. Sole source procurement.

(a) A contract may be awarded for a public works project without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required public works project. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required public works project and that no other type of public works project will satisfy the requirements of the agency. The agency shall examine cost or pricing data, which shall include lifecycle costing analysis as described in §§ 6902 and 6909A(a) of this title if the sole source offers more than 1 type or variety of equipment prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 9; 74 Del. Laws, c. 419, § 10; 75 Del. Laws, c. 88, § 22.)

§ 6966. Multiple source contracting.

An agency may award a contract for a particular public works project to 2 or more firms if the agency head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award will be based.

(70 Del. Laws, c. 601, § 9.)

§ 6967. Requirement of occupational and business license [For application of (b) and (c), see 79 Del. Laws, c. 401, § 4].

(a) All contractors, subcontractors and independent contractors shall have a proper and current occupational and/or business license, as required by Title 30, to enter or perform work under a public works contract. It is the responsibility of a contractor to verify and make a record that all subcontractors or independent contractors working for such contractor pursuant to a public works contract shall have their occupational and/or business licenses, as required by Title 30.

(b) No agency shall accept a proposal for a public works contract unless such contractor has provided a proper and current copy of its occupational and/or business license, as required by Title 30, to such agency.

(c) Any contractor that enters a public works contract must provide to the agency to which it is contracting, within 30 days of entering such public works contract, copies of all occupational and business licenses of subcontractors and/or independent contractors that will perform work for such public works contract. However, if a subcontractor or independent contractor is hired or contracted more than 20 days after the contractor entered the public works contract the occupational or business license of such subcontractor or independent contractor shall be provided to the agency within 10 days of being contracted or hired.

(d) Any contractor, subcontractor or independent contractor that does not have a proper and current occupational and/or business license, as required by Title 30, while working under a public works contract shall be subject to a civil penalty not to exceed $1,000. Such penalty shall be enforced by the Director of Revenue and administered in accordance with Chapters 3 and 5 of Title 30. This penalty shall be in addition to any other penalties imposed pursuant to Title 30.

(79 Del. Laws, c. 401, § 1.)

§ 6968. Requirement of certificate of registration.

(a) After a bid proposal for a public works contract is submitted, but before the award of a public works contract, a contractor must provide the agency to which it is contracting a copy of the certificate of registration under Chapter 36 of Title 19 for each subcontractor listed in the bid proposal.

(b) An agency shall provide contractors and subcontractors the opportunity to register under Chapter 36 of Title 19 before the award of a contract.

(82 Del. Laws, c. 168, §§ 5, 6; 82 Del. Laws, c. 291, § 2.)

§ 6969. [Reserved].

(82 Del. Laws, c. 168, §§ 5, 6; 82 Del. Laws, c. 291, § 2.)

§ 6970. Open-end contract process for highway construction and reconstruction.

(a) *Legislative findings.* — The General Assembly finds that certain market conditions, including but not limited to a diminished number of available private contractors and/or limits on competitive pricing opportunities for basic materials, can impede the State's ability to complete its highway construction and reconstruction projects on a timely and useful schedule. Under these circumstances, the General Assembly finds that the limited use of an open-end contract process for such work may enable the Department of Transportation to meet its capital improvement schedules despite these impediments.

(b) Notwithstanding any portion of this chapter to the contrary, the Department of Transportation is hereby authorized to use an open-end contract process for highway construction and reconstruction projects, under the following terms and conditions:

(1) As used herein, "open-end contract" means a contract for highway construction and reconstruction work to be performed for a defined period of time, not to exceed 3 years, in which the Department may designate 1 or more locations for highway construction and reconstruction projects to be completed during the contract period, and in which the payments for the work to be performed at such locations are calculated based on a unit price/item basis during the contract period.

(2) The Department shall limit the use of this contract process to no more than 25% of its total authorized capital improvement budget for the applicable fiscal year or years, in order to provide adequate alternative contracting opportunities for those seeking to work on other Departmental highway construction and reconstruction projects.

(3) The Department may award open-end contracts to more than 1 firm, for work anywhere within the State, as it deems necessary.

(4) In all other respects, the award and execution of open-end contracts shall be deemed to have complied with the provisions of this subchapter.

(74 Del. Laws, c. 308, § 108.)

§ 6970A. Design-build contracting for Transportation Trust Fund projects.

(a) As used herein, "design-build contracting" is a project delivery method under which the procurement of both the design and construction of a project is done in a single contract with a company or combination of companies capable of providing the necessary engineering services and construction.

(b) Notwithstanding any portion of this chapter to the contrary, the Department of Transportation is hereby authorized to use design-build contracting method, under the following terms and conditions:

(1) The contract terms shall include provisions to pay the prevailing wage rates as provided in § 6960 of this title, in conjunction with federal prevailing wage rates for such work;

(2) The contracts shall adhere to § 6962(d)(4)a., (d)(7) and (d)(8) of this title;

(3) Any such contracts shall conform to all applicable federal laws and regulations concerning design-build contracting, including but not limited to 23 C.F.R. Part 636, without regard to the source of funds; and

(4) Any design-build contract for the construction of any transportation facility shall also be subject to the provisions of Chapter 8 of Title 17.

(c) The use of design-build contracting shall be used at the discretion of the Secretary of the Department of Transportation for specialized projects that have time constraints, unique site conditions, specialized construction methods or similar complexities and is expected to be used on a limited basis.

(80 Del. Laws, c. 107, § 1.)

Subchapter V

The Energy Performance Contracting Act

§ 6971. Short title; declaration of policy.

(a) This subchapter shall be known and may be cited as the "Energy Performance Contracting Act."

(b) The General Assembly finds that investment in energy conservation measures in agency facilities can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this State to encourage agencies to invest in energy conservation measures that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and when economically feasible, build or renovate existing agency facilities in such a manner as to minimize energy consumption and maximize energy savings. It is further the policy of this state to encourage agencies to reinvest any energy savings resulting from energy conservation measures in additional energy conservation efforts.

(75 Del. Laws, c. 67, § 2.)

§ 6972. Definitions.

As used in this subchapter:

(1) "Agency" means any state agency, authority, or any political subdivision of state or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, and institutions of higher education, any state-supported institution, or a joint action agency composed of political subdivisions.

(2) “Energy and operational cost savings” means a measured reduction in the cost of fuel, energy consumption, and stipulated operation and maintenance created from the implementation of 1 or more energy conservation measures when compared with an established baseline for the previous cost of fuel, energy consumption, and stipulated operation and maintenance.

(3) “Energy conservation measure” means a training program, facility alteration, facility improvement, or equipment purchase to be added or used in any facility that is designed to reduce energy or operating costs and includes, but is not limited to:

a. Insulation of the facility structure and systems within the facility;

b. Storm windows and doors, caulking and weather-stripping, multi-glazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

c. Automatic energy control systems;

d. Heating, ventilating, or air-conditioning system modifications or replacements;

e. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system;

f. Day-lighting systems;

g. Energy recovery systems;

h. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities;

i. Renewable energy systems, such as solar, biomass or wind systems;

j. Devices that reduce water consumption or sewer charges;

k. Storage systems, such as fuel cells and thermal storage;

l. Generating technologies, such as micro turbines; and

m. Any other repair, replacement or upgrade of existing equipment that produces energy and operational cost savings, improves safety, significantly reduces energy consumption or increases the operating efficiency of the facilities and which must conform to the applicable state or local building code.

(4) “Guaranteed energy performance contract” means a contract between the agency and a qualified provider for the evaluation, recommendation, and implementation of energy conservation measures, which, at minimum, shall include:

a. The design and installation of equipment to implement 1 or more of such measures and, if applicable, operation and maintenance of such measures;

b. That the amount of guaranteed actual savings must meet or exceed the total annual contract payments made by the contracting agency for the guaranteed performance contract; and

c. The finance charges incurred by the agency over the life of the contract.

(5) “Qualified provider” means a person or business with a record of established projects that is experienced in the analysis, design, implementation, or installation of energy conservation measures through guaranteed energy performance contracts.

(75 Del. Laws, c. 67, § 2; 77 Del. Laws, c. 222, § 1.)

§ 6973. Authorization.

(a) An agency may enter into an energy performance contract with a qualified provider to reduce energy or operational costs of an agency facility through one or more energy conservation measures. Cost savings work shall comply with state or local building codes.

(b) An agency may enter into a performance contract structured as an installment payment contract or lease-purchase agreement for the purchase and installation of cost-saving measures. Financing, including tax exempt financing, implemented through an entity other than the qualified provider is authorized.

(c) The agency may enter into an energy performance contract with a qualified provider if the agency finds that the amount the agency would spend on the energy conservation measures will not exceed the amount to be saved in both energy and operational costs for up to 20 years from the date of installation.

(d) The qualified provider shall be selected pursuant to § 6924 of this title.

(e) The selected qualified provider shall prepare a financial grade energy audit which, upon acceptance, shall be part of the final performance contract which shall be executed with the agency. Notwithstanding the foregoing, if after preparation of the financial grade energy audit the governmental unit decides not to execute a performance contract, then the costs incurred in preparing such financial grade energy audit shall be paid to the qualified provider by the agency, otherwise the costs of the financial grade energy audit shall be deemed part of the costs of the performance contract.

(f) Simultaneous with the execution of a contract for energy conservation measures, the agency shall require the qualified provider to provide a payment and performance bond relating to the installation of energy conservation measures in the amount equal to 100% of the value of the performance contract.

(g) Where appropriate, agencies shall determine cost-effectiveness based on the life-cycle costs of combinations of conservation measures, particularly to encourage bundling of energy efficiency projects with onsite generation and renewable energy projects.

(75 Del. Laws, c. 67, § 2.)

§ 6974. Allocation of obligations, use of moneys and payment schedule.

(a) Each governmental unit shall allocate sufficient moneys for each fiscal year to make payment of any amounts payable by the governmental unit under performance contracts during that fiscal year.

(b) The agency engaging in the performance contract shall retain the savings realized by entering into the performance contract. In no event shall the agency utilize such savings to supplant otherwise appropriated funds for the agency.

(c) A governmental unit may use funds designated for operating, energy, or capital expenditures for any performance contract, including, without limitation, for purchases on an installment payment or lease purchase basis.

(d) Grants, subsidies, or other payments from the State to an agency shall not be reduced as a result of energy savings obtained as a result of a performance contract during the life of the contract.

(e) A performance contract, and payments provided there under, may extend beyond the fiscal year in which the performance contract became effective, subject to appropriation of moneys, if required by law, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed 20 years.

(f) No obligation of the State or an agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 69 or Chapter 80 of this title shall constitute or create a debt of the State or agency. No such obligation of the State or an agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of this title.

(75 Del. Laws, c. 67, § 2; 77 Del. Laws, c. 222, § 2.)

§ 6975. Monitoring and reporting.

(a) During the term of each performance contract, the qualified provider shall monitor the reductions in energy consumption and cost-savings attributable to the cost-savings measures installed through the performance contract, and shall, no less than annually, prepare and provide a report to the governmental unit documenting the performance of the cost-savings measures to the governmental unit.

(b) The agency and qualified provider may agree to base the measurement and verification of the performance contract on the practices outlined by the International Performance Measurement and Verification Protocol when appropriate.

(75 Del. Laws, c. 67, § 2.)

§ 6976. Adherence to state procurement laws.

(a) The qualified provider shall, in the execution of a performance contract, adhere to the requirements of § 6961 or § 6962 of this title.

(b) Before an agency enters into a performance contract, the performance contract shall be approved by the Secretary.

(75 Del. Laws, c. 67, § 2.)

Subchapter VI

Professional Services

§ 6980. Small professional services procurement process.

(a) *Applicability. —*

Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, less than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for the completed job shall be excluded from all other portions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) *Procedure. —*

The Director, with the approval of the Contracting and Purchasing Advisory Council, shall provide for a simplified administrative process for obtaining competitive procurement for small professional services purchases. If applicable, the procedure shall incorporate the procedures identified as lifecycle costing analysis as specified in § § 6902 and 6909A(b) of this title. This procedure shall be in writing and distributed to all agencies.

(70 Del. Laws, c. 601, § 9; 71 Del. Laws, c. 4, §§ 10, 11; 84 Del. Laws, c. 489, § 12.)

§ 6981. Large professional service procurement process.

(a) *Authority. —*

Any state contract for which an agency is a party with probable fees, including reimbursable expenses and amendments, greater than the threshold amount or amounts established by the Contracting and Purchasing Advisory Council pursuant to § 6913 of this title for the completed job will be subject to the provisions of this subchapter. Agencies may, alternately, at their discretion, procure services which include materiel other than professional services in accordance with § 6924 of this title.

(b) Each contracting agency shall publicly announce, not less than once a week for 2 consecutive weeks, when professional services are required except:

(1) In case of critical needs so certified pursuant to § 6907 of this title; or

(2) Where professional services are determined by the agency to be necessary during the course of completion of a previously awarded contract and:

a. The agency determines that it would be in the best interest of the State to procure such additional or supplemental professional services from a firm already under contract for which the supplemental and additional professional services are required; and

b. Such additional or supplemental professional services are within the scope of the contract.

(c) Subject to the exceptions of subsection (b) of this section:

(1) Each agency shall publicly announce each professional services contract subject to subsection (a) of this section by electronic publication accessible to the public in a manner prescribed pursuant to § 6902(12) of this title for 2 consecutive weeks unless a shorter advertisement period has been approved by the Section director.

(2) The advertisement for proposals shall state the name of the procuring agency, indicate with reasonable accuracy the character, quantity, and location of the work or the character and quantity of materiel, the time and place for the opening of proposals and where the specifications or descriptions may be obtained. The advertisement shall also state that the agency may extend the time and place for opening proposals from that described in the advertisement, on not less than 2 calendar days' notice, unless special circumstances exist, as determined by the Section director.

(d) *Proposal openings. —*

(1) At the discretion of the agency, it may elect to have a public proposal opening or not to have a public proposal opening. The agency shall identify the type of proposal opening, public or nonpublic, in the initial solicitation posting. Proposals opened publicly shall have the time and place designated in the solicitation. The main purpose of the proposal opening is to reveal the names of the proposing firms, not to serve as a forum for determining any other factors.

(2) Proposals shall be evaluated based on the requirements set forth in the solicitation. No criteria may be used in proposal evaluations that are not set forth in the solicitation.

(3) Neither the proposals, proposal summaries, nor any other aspect of the proposal evaluations shall be open for public inspection until after receipt of a signed contract.

(e) *Vendor eligibility. —*

(1) A firm may be required to have a valid Delaware state business license prior to the execution of an agency contract.

(2) Vendors are responsible for reviewing all public advertisements which announce the solicitation and request for proposals for an agency contract.

(3) To supplement the contract public notice, the agency may compile and maintain a prospective vendors list. Inclusion of the name of a person on a prospective vendors list shall not indicate whether the firm is responsible concerning a particular procurement or otherwise capable of successfully performing a contract.

(4) Firms desiring to be included on the prospective vendors list shall notify the agency. Upon notification, the agency shall provide the firm with a means to register its interest in competing for future formal procurement opportunities. A vendor registration list shall not be used as a means to restrict competition.

(5) No cause of action shall accrue from any good faith effort to contact, distribute, or announce solicitations, solicit amendments to requests for proposal, or any correspondence utilizing the agency's vendor eligibility list.

(f) *Solicitation. —*

(1) The agency shall make available solicitations at least 14 days before the time and date of the proposal opening, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the agency.

(2) The solicitation shall include all of the following:

a. Instructions and information concerning the proposal submission requirements, including the time, date, and place set for proposal opening and any other special information;

b. The agency's intention to award to more than 1 firm, if applicable;

c. The description, specifications, evaluation criteria as defined in § 6982 of this title, delivery or performance schedule and inspection and acceptance requirements for the resulting contract; and

d. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) If the solicitation incorporates documents by reference, the solicitation shall specify where such documents may be obtained or reviewed.

(4) A solicitation may require the submission of proposal samples, descriptive literature and technical data and may require inspection or testing of a product before award.

(5) A copy of the solicitation shall be made available for public inspection at the agency.

(6) Additional advertising shall be at the discretion of the agency.

(g) *Pre-proposal conferences. —*

An agency may conduct a pre-proposal conference within a reasonable time but not less than 7 days before a proposal opening to explain the requirements of a solicitation. An agency may require mandatory attendance by potential proposing firms at such pre-proposal conferences to qualify as a responsible and responsive proposing firm. Statements made at the pre-proposal conference shall not be considered amendments to the solicitation unless a written amendment is issued pursuant to subsection (h) of this section.

(h) *Amendments to solicitations. —*

(1) An amendment to a solicitation shall be issued to:

a. Make changes in the solicitation;

b. Correct defects or ambiguities in the solicitation; and/or

c. Change the date, place or time of the proposal opening.

(2) Amendments to solicitations shall be so identified and shall be advertised along with the original solicitation.

(3) The agency may obtain vendor acknowledgement of all amendments issued.

(i) *Withdrawal of proposals. —*

(1) A vendor may withdraw its proposal at any time before proposal opening if the withdrawal is received in writing before the proposal opening at the location designated in the invitation for proposals for receipt of proposals. A vendor or its authorized representative may withdraw its proposal in person if, before the proposal opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the proposal. If a proposal has been received electronically, the agency shall delete the file in the agency system records.

(2) All documents concerning a withdrawal of a proposal shall be retained in the appropriate procurement file.

(3) After a proposal opening, a firm may request in writing that its proposal be withdrawn. Such a request may be allowed only upon the approval of the agency. The agency shall prepare a written determination showing that the request was permitted or denied along with the reasons for such determination.

(j) *Late proposals and late modifications. —*

(1) A proposal or withdrawal of a proposal is late if it is received at the location designated in the solicitation for receipt of proposals after the time and date set for proposal opening.

(2) Proposing firms submitting proposals or withdrawals of proposals that are late shall be notified as soon as practicable and the proposal shall be returned unopened.

(3) Documentation concerning a late proposal or late withdrawal of a proposal shall be retained in the appropriate procurement file.

(k) *Receipt, opening, and recording of proposals. —*

(1) Except as provided in paragraph (j)(2) of this section, each proposal shall be time stamped upon receipt and stored by the agency unopened in a secure place until the time and date set for proposal opening.

(2) An envelope that is not marked as a proposal or does not identify the proposing firm or solicitation may be opened solely for the purpose of identification. A record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the proposal responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.

(3) If the agency has elected to open proposals publicly, then the opening shall be in the presence of 1 or more witnesses at the time, date, and location designated in the solicitation. Proposal information shall be disclosed at the public opening pursuant to paragraph (d)(1) of this section. The proposal information made available at the public opening shall be recorded on a proposal abstract. The name of the required witness shall also be recorded. The proposal abstract shall be available for public inspection.

(4) Proposals shall not be available for public inspection before receipt of a signed contract pursuant to paragraph (d)(3) of this section. After contract award, the proposals shall be available for public inspection, except to the extent any information is exempt pursuant to Chapter 100 of this title. If the proposing firm designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions. The proposing firm shall include with this designation a statement that explains and supports the proposing firm's claim that the proposal items identified as confidential contain trade secrets or other proprietary data.

(*l*) *Cancellation of solicitation. —*

A solicitation may be canceled or any or all proposals may be rejected in whole or in part if it is in the best interest of the State. The reasons for the cancellation or rejection shall be made part of the procurement file.

(1) If a solicitation is canceled prior to the opening of proposals, a notice of cancellation shall be posted with the public record of the solicitation; and

(2) Any proposals that have been received shall be returned unopened to the vendors. Electronic proposals received shall be deleted from the agency system and notice of deletion provided to the vendor.

(3) If a solicitation is canceled after the proposal opening, a notice of cancellation shall be posted with the public record of the solicitation; and

(4) Any proposals shall be returned to the vendors. Electronic proposals shall be deleted from the agency system and notice of deletion provided to the vendor.

(m) *Rejection of individual proposals. —*

A proposal may be rejected if:

(1) The vendor is determined to be nonresponsive pursuant to subsection (n)(1) of this section; or

(2) The proposal is nonresponsive or not responsible in accordance with subsection (n)(2) of this section; or

(3) It is otherwise not advantageous to the State.

If an agency rejects a vendor, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the proposing firm. The final determination shall also be made part of the procurement file. Vendors whose proposals are rejected under this section shall be notified in writing about the rejection. Record of the rejection shall be made part of the procurement file.

(n) *Responsiveness and Responsibility of proposing firms. —*

(1) An agency shall determine that a proposing firm is responsive to all requirements of the solicitation and request for proposals before selecting a firm for negotiation.

(2) Factors to be considered in determining if a proposing firm is responsible include:

a. The proposing firm's financial, physical, personnel, or other resources, including subcontracts;

b. The proposing firm's record of performance and integrity;

c. Whether the proposing firm is qualified legally to contract with the State; and

d. Whether the proposing firm supplied all necessary information concerning its responsiveness.

e. Any additional specific responsibility criteria for a particular procurement that the agency includes in the solicitation.

f. *Evaluation Criteria. —*

Each agency shall establish written administrative procedures for the evaluation of applicants. One or more of the following criteria may be utilized in ranking the applicants under consideration:

1. Experience and reputation;

2. Expertise (for the particular project under consideration);

3. Capacity to meet requirements (size, financial condition, etc.);

4. Location (geographical);

5. Demonstrated ability;

6. Familiarity with public work and its requirements; or

7. Distribution of work to individuals and firms or economic considerations.

8. Any other criteria deemed necessary for a quality, cost-effective project.

(o) Each project shall be given individual attention, and a weighted average may be applied to criteria according to its importance to each project.

(p) For the selection process described in § 6982(b) of this title, price may be a criterion used to rank applicants under consideration.

(q) If the agency determines that an electronic submission is beneficial, the agency may use this method to receive proposals from proposing firms under this subchapter.

(1) The solicitation must designate that the procurement method will be an electronic submission, a schedule of proposing activities, and an electronic mail account to which the proposals must be sent.

(2) The agency's representative and a witness shall open the electronic mail account immediately after the closing date and time; record the names of the proposing firms that responded, and the date and time submitted; and prepare a tabulation of all responsive proposing firms for review.

(70 Del. Laws, c. 601, § 9; 78 Del. Laws, c. 288, § 4; 81 Del. Laws, c. 298, § 5; 82 Del. Laws, c. 36, § 1; 83 Del. Laws, c. 56, § 37; 84 Del. Laws, c. 124, § 1; 84 Del. Laws, c. 489, § 13; 84 Del. Laws, c. 513, § 1.)

§ 6982. Selection.

(a) Agencies shall use the selection process described in paragraphs (a)(1) through (5) of this section for those professional services within the scope of the practice of architecture, professional engineering, including, but not limited to, environmental engineering, consulting and environmental monitoring, professional land surveying, construction management, landscape architecture and geology as defined and authorized by the laws of the State or those services performed by persons engaged in the above-mentioned professions in connection with their professional employment or practice.

(1) Based upon the criteria established pursuant to § 6981(n)(2)f. of this title, the agency shall rank, in order of preference, the applicants deemed to be qualified to perform the required services.

(2) Beginning with the qualified firm designated first on the preference list, the agency shall negotiate for professional services at compensation which the agency determines is fair and reasonable. The agency shall conduct an analysis of the cost of the professional

services required, in addition to considering their scope and complexity. Fee proposals shall not be solicited from this or any other firm on the preference list for use in comparison of fee negotiations. The agency may require the firm receiving the award to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(3) Should the agency be unable to negotiate a satisfactory contract with the qualified firm designated to be first on the preference list, at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated. The agency may negotiate with the remaining firms by order of ranking. At any point in the negotiations process, the agency may, at its discretion, terminate negotiations with any or all firms.

(4) After accomplishing the evaluation and conducting discussions and negotiations, the agency shall select 1 applicant and prepare a public notice within 10 days after awarding the contract stating the firm selected. This notice will appear in a statewide news publication or by letter to all applicants. If the agency has elected to select multiple firms, the agency shall continue the selection process by negotiating with the next firm on the preference list. This process shall be continued until the required number of vendors have been selected.

(5) It shall be the responsibility of the professional services firm to be current with any professional registration or certification as required by law.

(b) For all professional services not described in subsection (a) of this section, agencies shall use the selection process described in paragraphs (b)(1) through (3) of this section.

(1) Based upon the criteria established pursuant to § 6981(n)(2)f. of this title, the agency shall determine all applicants that meet the minimum qualifications to perform the required services.

(2) The agency shall then interview at least 1 of the qualified firms. The agency may negotiate with 1 firm without terminating negotiations with another firm and may negotiate with 1 or more firms during the same period. At any point in the negotiation process, the agency may, at its discretion, terminate negotiations with any or all firms.

(3) The agency may require the firm with whom the agency is negotiating to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(c) *Contract award. —*

Once the agency has successfully negotiated with the selected proposing firm:

(1) The agency shall award a contract to the selected proposing firm whose proposal is determined in writing to be most advantageous to the State, based on the factors set forth in the solicitation. The determination shall explain the basis of award.

(2) The agency shall notify each unsuccessful offeror in writing of the award.

(3) After receipt of a signed contract, the proposals shall be open for public inspection in accordance with § 6981(k)(4) of this title.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 70 Del. Laws, c. 601, § 9; 78 Del. Laws, c. 288, § 4; 84 Del. Laws, c. 489, §§ 13, 14.)

§ 6983. State assistance to local governmental units.

The Office of Management and Budget shall provide assistance in selecting professional services firms and negotiating professional service contracts upon the request by an agency, municipality or political subdivision. The Office shall be reimbursed by the municipality or political subdivision for all costs involved.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 16(5).)

§ 6984. Administrative provisions.

In the case of any contract entered into by an agency other than any county of this State and other than a public school district, and which is not excluded under §§ 6980 and/or 6981 of this title, no contract shall be executed unless and until the firm has provided the agency with its taxpayer identification number (i.e., federal employer identification number or Social Security number) or its Delaware business license number and, within 15 days of the time identification of any subcontractor shall be required or at the time the contract is executed, whichever is later, the number of such subcontractor. The agency shall report to the Division of Revenue each firm and subcontractor selected for an award within 15 days of identification of such firm or subcontractor under this section unless the Director of the Division of Revenue notifies the agency of criteria according to which, in the Director's discretion, reporting is not required, and the contract meets such criteria.

(59 Del. Laws, c. 573, § 1; 60 Del. Laws, c. 589, § 1; 61 Del. Laws, c. 3, § 3; 70 Del. Laws, c. 94, § 2; 70 Del. Laws, c. 601, § 9.)

§ 6985. Sole source procurement.

(a) A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only 1 source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only 1 source for the required professional service and that no other type of professional service will satisfy the requirements of the agency. The agency shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the agency on the basis for the sole source procurement shall be included in the contract file.

(b) An agency seeking a sole source procurement shall prepare written documentation citing the existence of a sole source condition. The document shall include the specific efforts made to determine the availability of any other source and an explanation of the procurement need. The agency may, for confirmation, submit this documentation to the Section for review and comment prior to the intended date of award.

(c) The agency shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the agency. The agency shall enter into a formal contract stating the terms and conditions of the procurement.

(70 Del. Laws, c. 601, § 9; 75 Del. Laws, c. 88, § 22.)

§ 6986. Multiple source contracting.

An agency may award a contract for a particular professional service to 2 or more firms if the agency head makes a determination that such an award is in the best interests of the State. If such a determination is made, the advertisement shall include a notification of the right of the agency to make such an award and the criteria upon which such an award will be based.

(70 Del. Laws, c. 601, § 9.)

§ 6987. Cooperative procurement.

The Section may, with written approval by the Section director or the Section director's designee, allow an agency to participate in, sponsor, conduct or administer a cooperative agreement for the procurement of professional services with 1 or more public procurement units either within this State, with or within another state, or with a consortium of other states in accordance with an agreement entered into between the participants. Such agreement may include material and/or nonprofessional services with professional services. The other provisions of this subchapter shall not apply when an agency participates in an existing cooperative agreement for the procurement of professional services with a contractor holding a current contract as part of such cooperative agreement.

(73 Del. Laws, c. 427, § 1; 77 Del. Laws, c. 327, § 30; 80 Del. Laws, c. 323, § 1; 84 Del. Laws, c. 489, § 15.)

§ 6988. Purchases using federal contracts.

The Section may, with written approval by the Section director or the Section director's designee, enter into negotiations with various manufacturers or distributors and award contracts which will enable agencies and local governments to purchase professional services at prices approved by the General Services Administration of the United States government or its successor.

(80 Del. Laws, c. 323, § 1; 84 Del. Laws, c. 489, § 16.)

§ 6989. Performance bond.

(a) Simultaneous with the execution of the formal contract, the agency may require the successful proposing firm to execute a good and sufficient bond to the State for the benefit of the agency. Such performance bonds shall:

(1) Be with a corporate surety authorized to do business in this State;

(2) Be in a sum equal to 100% of the contract award, except as otherwise provided in this subsection; and

(3) Be in the standard form issued by the Office of Management and Budget for this purpose and shall be included in the solicitation.

(b) *Contents of performance bonds. —*

The bond shall be conditioned upon the faithful compliance and performance by the successful bidder of each and every term and condition of the contract and the proposal, plans, and specifications thereof. Each term and condition shall be met at the time and in the manner prescribed by the contract and the specifications, including the payment in full to every person furnishing materiel or performing labor in the performance of the contract, of all sums of money due the person for such labor and materiel. The bond shall also contain the successful proposing firm's guarantee to indemnify and save harmless the State and the agency from all costs, damages and expenses growing out of or by reason of the successful proposing vendor's failure to comply and perform the work and complete the contract in accordance with the contract.

(c) *Invoking a performance bond. —*

The agency may, when it considers that the interests of the State so require, cause judgment to be confessed upon the bond. All sums received through confession of judgment shall be deposited with the Secretary of Finance for the credit of the agency. Such moneys pertaining to Department of Transportation contracts shall be deposited in the Transportation Trust Fund. Every person furnishing materiel or performing labor under the contract for which the successful proposing firm is liable may maintain an action on the bond for the person's own use in the name of the State in any court of competent jurisdiction for the recovery of such sum or sums as may be due

such person from the successful bidder, but if the bond so provides, no suit shall be commenced after the expiration of 1 year following the date on which the successful proposing vendor ceased work on the contract, otherwise suits may be commenced at any time within 3 years following the date the last work was done on the contract. No person or surety, in any action brought under this section or on the bond required in this section shall assert as a defense to such action the claim that the bond given pursuant to this section contained a limitation or restriction not provided for by this section.

(d) *Other security for contracts under threshold amount. —*

Contracts valued less than the threshold amount set by the Contracting and Purchasing Advisory Council may contain a waiver of the bond requirement provided that the successful proposing firm posts with the State an irrevocable letter of credit or other suitable or readily-collectible financial security for the project. Such letter of credit or other security shall be issued for a term commencing simultaneously with the execution of the formal contract and terminating no earlier than 3 years subsequent to the date of final acceptance by the agency or to the extent of the warranty period, whichever is later. In no event shall such security expire without the express written approval of the State. Such waiver as described in this paragraph shall be stated in the solicitation.

(e) *Waivers from performance bonds. —*

The State may, at its discretion, reduce or waive the bond or other form of security. Such waiver shall be stated in the solicitation.

(84 Del. Laws, c. 489, § 17.)

§ 6989A. Failure to comply with contract.

If any firm entering into a contract under the authority of this chapter neglects or refuses to perform or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this subchapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.

(84 Del. Laws, c. 489, § 17.)

§ 6989B. Right to audit records.

An agency shall have the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of 3 years from the date of final payment under the prime contract and by the subcontractor for a period of 3 years from the date of final payment under the subcontract.

(84 Del. Laws, c. 489, § 17.)

§ 6989C. Maximum practicable competition.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the agency's needs and shall not be unduly restrictive.

(84 Del. Laws, c. 489, § 16.)

Subchapter VII

Pay for Success Contracts

(81 Del. Laws, c. 366, § 1.)

§ 6990. Definitions.

For the purposes of this subchapter:

(1) "Outcome payment" means the money paid when a pay for success contract performance measure is met.

(2) "Pay for success contract" means a written agreement to provide a program, service, or economic development initiative, under which an investor provides funding that a state agency agrees to repay to the investor if the service, program, or economic development initiative meets the performance measures and outcomes in the agreement.

(3) "Program intermediary" means a firm that contracts with a state agency to establish and deliver a service, program, or economic development initiative by doing any of the following:

a. Delivering or contracting for relevant services or outcomes.

b. Raising capital to finance the delivery of services or outcomes.

c. Providing ongoing project management and investor relations for the social impact funding instrument.

d. Raising capital to create jobs in scalable, high-growth startups.

(81 Del. Laws, c. 366, § 1.)

§ 6991. Authorization of pay for success contracts.

(a) (1) An agency may enter into a pay for success contract if the agency head determines with reasonable certainty that the contract will produce a quantifiable public benefit or financial savings to the State by doing any of the following:

a. Reducing or avoiding costs.

b. Increasing economic productivity.

c. Improving client outcomes.

d. Creating high wage jobs.

(2) A pay for success contract may be used for a service, program, or economic development initiative that produces a public benefit or financial savings under paragraph (a)(1) of this section and includes any of the following:

a. Economic development.

b. Public education, including early childhood education.

c. Workforce preparedness and employment, including school to work programs.

d. Public safety, including programs that reduce recidivism and address juvenile justice.

e. Health and human services, including programs for drug and alcohol addiction, mental health, chronic homelessness, supportive housing, and child welfare services.

(3) A pay for success contract for education must comply with the specific procedures for pay for success contracts for public education. The procedures for pay for success contracts for public education must be consistent with the recommendations from a working group.

(b) A pay for success contract may be made between either of the following:

(1) An agency and a program intermediary.

(2) An agency and an investor.

(c) The agency head shall design a pay for success contract in collaboration with other relevant agencies and the program intermediary or investor.

(d) The Director must approve the terms and conditions of a pay for success contract before an agency head may enter into a contract under subsection (a) of this section.

(e) An agency must comply with the requirements of this chapter when selecting a program intermediary, investor, or any necessary consulting assistance.

(f) Each pay for success contract must include all of the following:

(1) A full and thorough description of the objectives to be addressed by the pay for success contract and an analysis of how the defined performance measures will demonstrate progress in addressing the objectives, and how achieving the objectives should provide a significant public benefit, lead to a long-term reduction in state expenditures, or enhance job growth.

(2) A requirement that the agency will hold the funds for the pay for success contract in a reserve account that is specifically for the pay for success contract.

(3) A requirement that a substantial portion of the outcome payment is conditioned on achieving specific outcomes based on the defined performance measures that lead to fiscal, economic, or social value for the State.

(4) A requirement that the program intermediary or investor provide evidence that the program intermediary or investor has secured all of the necessary financing before service delivery begins.

(5) A description of the data each agency involved in developing the pay for success contract will provide to the program intermediary or investor. The data will be provided by the agency only to the extent permissible by law.

(6) The objective process that an independent evaluator, chosen by the agency head, will use to monitor program progress and determine if a performance measure is achieved.

(7) The reporting requirements the program intermediary or investor must provide to the agency regarding the program intermediary's or investor's progress in meeting the objectives.

(8) The method that will be used to calculate the amount and timing of outcome payments to the program intermediary or investor during each year of the pay for success contract if the independent evaluator determines that the program intermediary or investor achieves a performance measure.

(9) The terms under which a pay for success contract may be terminated.

(81 Del. Laws, c. 366, § 1.)

§ 6992. Pay for Success Contract Reserve Account.

(a) The State Treasurer shall create a Pay for Success Contract Reserve Account for public funds appropriated by the General Assembly for each pay for success contract.

(b) Money held in a Pay for Success Contract Reserve Account is not subject to yearly reversion until the pay for success contract is completed or terminated and all obligations to the program intermediary or investor are satisfied.

(c) An agency head whose agency has entered a pay for success contract may authorize a payment under a pay for success contract from the Pay for Success Contract Reserve Account.

(d) (1) If the amount of funding in the Pay for Success Contract Reserve Account does not equal or exceed the amount of the total payments due to the program intermediary or investor under a pay for success contract if the program intermediary and investor achieve full performance for the services or outcomes under the pay for success contract, the agency head must submit to the Director a schedule detailing how much funding is needed in each remaining year of the pay for success contract to meet the contract obligations.

(2) After the Director approves the schedule under paragraph (d)(1) of this section, the agency head must request an appropriation from the General Assembly as part of the agency's annual budget request, in the amount required under the schedule to meet the funding requirements under the pay for success contract, during each fiscal year under the term of the contract.

(3) Funds appropriated by the General Assembly under this subsection must be designated as a separately identifiable appropriation.

(81 Del. Laws, c. 366, § 1.)

Part VIII
Departments of Government
Chapter 84
Department of Transportation

§ 8401. Establishment of Department.

(a) The Department of Transportation is hereby established. The Department, through appropriate divisions, authorities, subdivisions, offices and administrations shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the Department of Highways and Transportation immediately prior to July 1, 1976.

(b) The powers and duties of the Department of Transportation shall also include, but not be limited to, the following activities:

(1) Coordinating and developing, in cooperation with the federal government, other states, Delaware state agencies, counties, cities, councils and agencies comprehensive balanced transportation planning and policy for the movement of people and goods within the State;

(2) To be the lead agency for establishing and maintaining the continuing, comprehensive, cooperative transportation planning process pursuant to the existing and future provisions of Title 23, United States Code and the Urban Mass Transportation Act of 1964 as amended [49 U.S.C. § 5301 et seq.];

(3) To be the supervising and responsible planning staff for all urban and rural transportation studies and programs in the State and enter into any contracts, agreements and stipulations as required;

(4) To provide the necessary staffing, coordination and liaison required by present and future federal and state acts for transportation planning, programs, grant applications and required administration;

(5) Planning, designing, constructing, operating and maintaining those highway and public transportation systems under its jurisdiction;

(6) Preparing a biennial transportation needs program directed at the achievement of a coordinated and balanced transportation system for the State that is consistent with the state's social, economic and environmental needs and goals;

(7) To establish a selection process intended to promote engineering and design quality and ensure maximum competition by professional companies of all sizes providing engineering or architectural design services, pursuant to the authority granted in Section 307 of the National Highway System Designation Act of 1995, P.L. 104-59. In developing this process, the Department shall also comply with the Professional Services Negotiation Act, subchapter II of Chapter 69 of this title, as amended. In addition, the Department shall comply with limits on costs reimbursement, including, but not limited to, overhead limits, established by its Consultant Policy Committee. In setting such limits, the Consultant Policy Committee shall consider the goal of the selection process set forth in the 1st sentence of this subsection, as well as the reasonable cost of architectural or engineering services.

(29 Del. C. 1953, § 8401; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 2; 61 Del. Laws, c. 520, § 5; 70 Del. Laws, c. 473, § 74; 82 Del. Laws, c. 13, § 1.)

§ 8402. Definitions.

As used in this chapter:

(1) "Authority" or "Transportation Authority" means Delaware Transportation Authority.

(2) "Corridor route" means any existing or proposed road in an urban or rural area which is classified as part of the "principal arterial highway system" as defined in the National Highway Functional Classification Studies on record with the Department and which serves traffic corridor movements of substantial statewide or interstate travel and as to which the concept of service to abutting land is subordinate to the provisions of travel service to major traffic movements.

(3) "Department" means the Department of Transportation.

(4) "Deputy Secretary" means the Deputy Secretary of the Department of Transportation.

(5) "Director" means the Director of the Transportation Authority and/or the Director of the Division of Highways and/or the Director of the Office of Administration.

(6) "Division" means the Division of Highways.

(7) "Secretary" means the Secretary of the Department of Transportation.

(29 Del. C. 1953, § 8402; 57 Del. Laws, c. 514, § 1; 60 Del. Laws, c. 503, § 3; 62 Del. Laws, c. 379, § 1; 67 Del. Laws, c. 46, § 57(a).)

§ 8403. Secretary; Deputy Secretary; division directors; Acting Secretary; appointment [Effective until fulfillment of the contingency in 84 Del. Laws, c. 455, § 20].

(a) (1) The administrator and head of the Department shall be the Secretary of the Department of Transportation, who shall be a person qualified by training and experience to perform the duties of the office and preference shall be given to a resident of this State provided that such person is acceptable and equally qualified. The Secretary shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor. The Secretary shall be paid an annual salary not in excess of $34,000. The

Part IX
State Planning and Property Acquisition
Chapter 93
Uniform Relocation Assistance

§ 9301. Definitions.

As used in this chapter:

(1) The term “agency” means any department, agency or instrumentality of the State or of a political subdivision of the State, any department, agency or instrumentality of 2 or more states, or 2 or more political subdivisions of the State, or states, and any person who has the authority to acquire property by eminent domain under state law.

(2) The term “business” means any lawful activity, except a farm operation, conducted primarily:

a. For the purchase, sale, lease and rental of personal and/or real property, and/or for the manufacture, processing and/or marketing of products, commodities or any other personal property;

b. For the sale of service to the public;

c. By a lawful nonprofit organization; or

d. Solely for the purposes of § 9302 of this title for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of above activities are conducted.

(3) The term “comparable replacement dwelling” means any dwelling that is:

a. Decent, safe and sanitary;

b. Adequate in size to accommodate the occupants;

c. Within the financial means of the displaced person;

d. Functionally equivalent to the displacement dwelling;

e. In an area not subject to unreasonably adverse environmental conditions;

f. In a location generally not less desirable than the location of the displaced person’s dwelling with respect to public utilities, facilities, services, and the displaced person’s place of employment;

g. On a site that is typical in size for residential development; and

h. Currently available on the open market to the displaced person.

(4) “Criteria established by the agency” as used in this chapter, shall mean those criteria established and approved pursuant to the relevant provisions of 49 C.F.R. Part 24, as amended.

(5) a. The term “displaced person” means: any person who moves from real property, or moves personal property from real property:

1. As a direct result of a written notice of intent to acquire, the initiation of negotiations or the acquisition of such real property in whole or in part for a program or project undertaken by an agency; or

2. As a direct result of rehabilitation, demolition or such other displacing activity as the agency may prescribe, under a program or project undertaken by an agency in any case in which the agency determines that such displacement is permanent; and

3. As a direct result of a written notice of intent to acquire, the acquisition, rehabilitation or demolition of, in whole or part, other real property on which the person conducts a business or farm operation, for a program or project undertaken by an agency; however, eligibility for such person under this paragraph applies only for purposes of obtaining moving expenses and relocation assistance advisory services under §§ 9302(a) and (b) and 9306 of this title.

b. The term “displaced person” does not include:

1. A person who has been determined, according to criteria established by the agency, either to be unlawfully occupying the displacement dwelling, to have been evicted for lawful cause prior to the initiation of negotiations for the property, or to have occupied such dwelling for the purpose of obtaining assistance under this chapter;

2. In any case in which the agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project;

3. In any case where such action is of voluntary nature where the agency would not seek to purchase such real property through eminent domain proceedings.

(6) The term “farm operation” means any activity conducted solely or primarily for the production of 1 or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

(7) The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State, together with the credit instruments, if any, secured thereby.

(8) The term “person” means any individual, family, partnership, corporation or association.

(9) In the event a term in this chapter is undefined, but which term is defined in 49 C.F.R. Part 24, as amended, the definition contained therein shall apply.

(29 Del. C. 1953, § 9101; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 1.)

§ 9302. Moving and related expenses.

(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after May 27, 1972, the agency shall make a payment to any displaced person upon proper application as approved by the agency for:

(1) Actual reasonable expenses in moving the person, the person’s family, business, farm operation or other personal property;

(2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property as determined by the agency;

(3) Actual reasonable expenses in searching for a replacement business or farm; and

(4) Actual expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria established by the agency, but not to exceed $10,000. Notwithstanding the limitations of the preceding sentence, state agency payments under this paragraph shall use the same criteria and shall be authorized to pay in excess of the $10,000 payment permitted by the preceding sentence under said criteria, but shall not use or attempt to obtain reimbursement from federal funds to the extent of the excess. In any event, total payments under this paragraph shall not exceed $22,500.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a fixed expense allowance payment in an amount to be determined according to criteria established by the agency.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person’s place of business or farm operation and who is eligible under criteria established by the agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the agency, except that such payment shall be not less than $1,000 nor more than $20,000. A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

(d) In addition to all other payments authorized under this chapter, a person displaced by any program or project may receive reimbursement for miscellaneous expenses incurred within 30 days of relocation, which expenses are directly attributable to such relocation and which expenses have in fact been paid and for which a proper receipt can be shown. In no event, however, shall such miscellaneous payments as authorized by this subsection exceed 1% of the appraised residential fair market value of the residence acquired, as determined by such agency. Payments authorized by this subsection shall not be allowed if provided for by any other section of this chapter.

(29 Del. C. 1953, § 9102; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, §§ 2, 3; 68 Del. Laws, c. 405, § 58; 70 Del. Laws, c. 186, § 1.)

§ 9303. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this chapter, the displacing agency shall according to established criteria make an additional payment, not in excess of $22,500, to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(2) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling.

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling within 1 year after the date on which such person receives final payment from the agency for the acquired dwelling or the date on which the obligation of the agency under § 9307 of this title is met, whichever is later, except that the agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within 1 year of such date.

(29 Del. C. 1953, § 9103; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 4.)

§ 9304. Replacement housing for tenants and certain others.

(a) In addition to amounts otherwise authorized by this chapter, an agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 9303 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to:

(1) The initiation of negotiations for acquisition of such dwelling and has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within 1 year of moving from the displacement dwelling; or

(2) In any case in which displacement is not a direct result of acquisition, such other event as the agency shall prescribe.

Such payment shall be made in accordance with criteria established by the agency not to exceed $5,250 and shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling. At the discretion of the agency, a payment under this subsection may be made in periodic installments.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe and sanitary replacement dwelling. Any such person may, at the discretion of the agency, be eligible under this subsection for the maximum payment allowed under subsection (a) of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under § 9303(a) of this title had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

(c) The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

(29 Del. C. 1953, § 9104; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 5.)

§ 9305. Maximum federal participation.

In determining the amounts to be paid under §§ 9302, 9303 and 9304 of this title, the agency shall provide payments which will assure maximum federal participation in federally assisted projects or programs.

(29 Del. C. 1953, § 9105; 58 Del. Laws, c. 413, § 2.)

§ 9306. Relocation assistance advisory services.

(a) Programs or projects undertaken by an agency shall be planned in a manner that:

(1) Recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements, the problems associated with the displacement of individuals, families, businesses and farm operations; and

(2) Provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) An agency shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency may make available to such person such advisory services.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities or services as may be necessary or appropriate in order to:

(1) Determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

(2) Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

(3) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

(4) Supply:

a. Information concerning federal, state and local programs which may be of assistance to displaced persons; and

b. Technical assistance to such persons in applying for assistance under such programs;

(5) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

(6) The agency shall coordinate relocation activities performed by such agency with other federal, state or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(d) Notwithstanding § 9301(5)b. of this title, in any case in which an agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the agency.

(29 Del. C. 1953, § 9106; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 6.)

§ 9307. Assurance of availability of housing.

(a) If a program or project undertaken by an agency cannot proceed on a timely basis because comparable replacement dwellings are not available, and the agency determines that such dwellings cannot otherwise be made available, the head of the agency may take such

action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The agency may use this section to exceed the maximum amounts which may be paid under §§ 9303 and 9304 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the agency shall issue.

(b) No person shall be required to move from a dwelling on account of any program or project undertaken by an agency unless the agency is satisfied that comparable replacement housing is available to such person.

(c) The agency shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

(1) A major disaster as defined in § 102(2) of the Federal Disaster Relief Act of 1974 [42 U.S.C. § 5122];

(2) A national emergency declared by the President or a state of emergency declared by the Governor; or

(3) Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person.

(29 Del. C. 1953, § 9107; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 7.)

§ 9308. Authority of the agency; rules and regulations.

(a) The Governor may, by proclamation or execution order, designate an agency or agencies to establish rules and regulations as may be necessary under this chapter. In lieu of such proclamation or executive order, each agency concerned shall adopt such rules and regulations to assure:

(1) That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) That a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, paid in advance; and

(3) That any person aggrieved by a determination as to eligibility for a payment authorized by this chapter or the amount of payment may have the application reviewed by the head of the agency.

(b) The agency may prescribe such other regulations and procedures as it deems necessary or appropriate to carry out this chapter.

(c) If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, the agency may take action as necessary or appropriate to provide such housing by use of funds authorized for such project.

(d) In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any project or program, the agency may take actions as necessary or appropriate to utilize federal loans for planning and preliminary expenses for additional housing as provided under 42 U.S.C. § 4635.

(29 Del. C. 1953, § 9108; 58 Del. Laws, c. 413, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 31.)

§ 9309. Administration.

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the agency may enter into contracts with any individual, firm, association or corporation for services in connection with those programs or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the State or its political subdivisions having an established organization for conducting relocation assistance programs.

(29 Del. C. 1953, § 9109; 58 Del. Laws, c. 413, § 2.)

§ 9310. Fund availability.

(a) Funds appropriated or otherwise available to any agency or unit of local government for the acquisition of real property or any interest therein for a particular program or project shall also be available to carry out the provisions of this chapter as applied to that program or project.

(b) No payment or assistance under this chapter or under Chapter 95 of this title shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by federal, state or local law which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter or under Chapter 95 of this title.

(29 Del. C. 1953, § 9110; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 8.)

§ 9311. State participation in cost of local relocation payments and services.

If a unit of local government or political subdivision of this State acquires real property, and state financial assistance is available to pay the cost, in whole or part, of the acquisition of that real property, or of the improvement for which the property is acquired, the cost to the unit of local government or political subdivision of providing the payments and services prescribed by this chapter shall be included as part of the costs of the project for which state financial assistance is available and the unit of local government or political subdivision shall be eligible for state financial assistance for relocation payments and services in the same manner and to the same extent as other project costs.

(29 Del. C. 1953, § 9111; 58 Del. Laws, c. 413, § 2.)

action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The agency may use this section to exceed the maximum amounts which may be paid under §§ 9303 and 9304 of this title on a case-by-case basis for good cause as determined in accordance with such regulations as the agency shall issue.

(b) No person shall be required to move from a dwelling on account of any program or project undertaken by an agency unless the agency is satisfied that comparable replacement housing is available to such person.

(c) The agency shall assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:

(1) A major disaster as defined in § 102(2) of the Federal Disaster Relief Act of 1974 [42 U.S.C. § 5122];

(2) A national emergency declared by the President or a state of emergency declared by the Governor; or

(3) Any other emergency which requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person.

(29 Del. C. 1953, § 9107; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 7.)

§ 9308. Authority of the agency; rules and regulations.

(a) The Governor may, by proclamation or execution order, designate an agency or agencies to establish rules and regulations as may be necessary under this chapter. In lieu of such proclamation or executive order, each agency concerned shall adopt such rules and regulations to assure:

(1) That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable and as uniform as practicable;

(2) That a displaced person who makes proper application for a payment authorized for such person by this chapter shall be paid promptly after a move or, in hardship cases, paid in advance; and

(3) That any person aggrieved by a determination as to eligibility for a payment authorized by this chapter or the amount of payment may have the application reviewed by the head of the agency.

(b) The agency may prescribe such other regulations and procedures as it deems necessary or appropriate to carry out this chapter.

(c) If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, the agency may take action as necessary or appropriate to provide such housing by use of funds authorized for such project.

(d) In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any project or program, the agency may take actions as necessary or appropriate to utilize federal loans for planning and preliminary expenses for additional housing as provided under 42 U.S.C. § 4635.

(29 Del. C. 1953, § 9108; 58 Del. Laws, c. 413, § 2; 70 Del. Laws, c. 186, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 31.)

§ 9309. Administration.

In order to prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the agency may enter into contracts with any individual, firm, association or corporation for services in connection with those programs or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the State or its political subdivisions having an established organization for conducting relocation assistance programs.

(29 Del. C. 1953, § 9109; 58 Del. Laws, c. 413, § 2.)

§ 9310. Fund availability.

(a) Funds appropriated or otherwise available to any agency or unit of local government for the acquisition of real property or any interest therein for a particular program or project shall also be available to carry out the provisions of this chapter as applied to that program or project.

(b) No payment or assistance under this chapter or under Chapter 95 of this title shall be required to be made to any person or included as a program or project cost under this section, if such person receives a payment required by federal, state or local law which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter or under Chapter 95 of this title.

(29 Del. C. 1953, § 9110; 58 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 8, § 8.)

§ 9311. State participation in cost of local relocation payments and services.

If a unit of local government or political subdivision of this State acquires real property, and state financial assistance is available to pay the cost, in whole or part, of the acquisition of that real property, or of the improvement for which the property is acquired, the cost to the unit of local government or political subdivision of providing the payments and services prescribed by this chapter shall be included as part of the costs of the project for which state financial assistance is available and the unit of local government or political subdivision shall be eligible for state financial assistance for relocation payments and services in the same manner and to the same extent as other project costs.

(29 Del. C. 1953, § 9111; 58 Del. Laws, c. 413, § 2.)

§ 9312. Displacement by building code enforcement or rehabilitation; demolition programs.

A person who moves or discontinues a business, or moves other personal property or moves from such person's dwelling as a direct result of any project or program which receives federal financial assistance under Title I of the Housing Act of 1949 [42 U.S.C. § 1441 et seq.], as amended, or as a result of carrying out a comprehensive city demonstration program under Title I of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. § 3301 et seq.] shall, for the purposes of this chapter, be deemed to have been displaced as the result of the acquisition of real property.

(29 Del. C. 1953, § 9112; 58 Del. Laws, c. 436; 70 Del. Laws, c. 186, § 1.)

§ 9313. Payments not income or resources.

No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under state law or for the purposes of the Delaware state income or corporation income tax. Such payments shall not be considered as income or resources to any recipient of public assistance under Title 31, and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

(29 Del. C. 1953, § 9113; 58 Del. Laws, c. 413, § 2.)

§ 9314. Eminent domain.

Nothing contained in this chapter shall be construed as creating in any condemnation proceeding brought under the power of eminent domain any element of damages not in existence on May 27, 1972, and the payments authorized by this chapter are to be in addition to the just compensation established in such proceedings, but only to the extent they are not otherwise included in the condemnation award.

(29 Del. C. 1953, § 9114; 58 Del. Laws, c. 413, § 2.)

Part IX
State Planning and Property Acquisition
Chapter 94
Real Property Disposition

§ 9401. Purpose of chapter.

This chapter is designed to provide a formal review procedure for the disposition of real property no longer needed by the State for public purposes.

(64 Del. Laws, c. 96, § 1.)

§ 9402. Definitions.

(a) "Director" shall mean the Director of the Office of Management and Budget.

(b) "Office" shall mean the Office of Management and Budget.

(c) "Real property" shall mean real property, either improved or unimproved, owned by the State, but shall not include property which has been acquired by the Department of Transportation pursuant to Title 17 of this Code, in connection with proposed highway construction projects.

(d) "Surplus real property" shall mean real property no longer needed by the State for a public purpose.

(64 Del. Laws, c. 96, § 1; 67 Del. Laws, c. 29, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 9403. Prerequisites to disposition.

No real property shall be sold, leased, transferred or otherwise conveyed until a review of the proposed conveyance is completed in accordance with this chapter and the property is deemed to be surplus real property.

For purposes of this chapter the granting of an easement shall not be considered a conveyance of real property. The determination to grant an easement shall be at the discretion of the Director of the Office of Management and Budget.

(64 Del. Laws, c. 96, § 1; 72 Del. Laws, c. 313, § 1; 75 Del. Laws, c. 88, § 16(5).)

§ 9404. Commission on State Surplus Real Property.

(a) A Commission on State Surplus Real Property is established and shall report in an advisory capacity to the Governor and to the General Assembly. It shall be comprised of the following members:

(1) The Speaker of the House of Representatives;

(2) The President Pro Tempore of the Senate;

(3) The Director of the Division of Small Business;

(4) The Secretary of the Department of Transportation;

(5) The Director of the Office of Management and Budget.

(b) The Governor shall designate 1 member to serve as Chairperson of the Commission.

(c) The Commission shall be assisted by staff designated by the Director of the Office of Management and Budget and shall work in cooperation with all state and local agencies of government and with private organizations or individuals to secure all necessary and relevant information for its assignments.

(64 Del. Laws, c. 96, § 1; 69 Del. Laws, c. 458, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(5); 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 32.)

§ 9405. Annual review of proprietary state real property; report of surplus; conditions of sale or other disposition; annual report.

(a) On or before December 31 of each year each state agency shall make a review of all proprietary state real property over which it has jurisdiction to determine what, if any, property is in excess of its reasonably foreseeable needs and report thereon in writing to the Surplus Real Property Commission.

(b) Jurisdiction of all real property reported as surplus shall be transferred to the Commission, when requested by the Chairperson thereof, for sale, lease or disposition under this section or as may be otherwise authorized by law.

(c) The Commission shall report to the Governor and to the General Assembly annually any real property declared surplus and make recommendations as to disposition of the property by sale or otherwise.

(d) Whenever any real property is reported as surplus pursuant to this section, the Commission shall determine whether or not the use of the real property is needed by any other state agency. If the Commission determines that the property is needed by any other state agency it shall transfer jurisdiction of the property to such other state agency upon such terms and conditions as it may deem to be for the best interests of the State.

(e) If the Commission determines that use of the real property is not needed by any other state agency, it may recommend that the surplus property be retained by the State or that it be offered to a political subdivision of the State or to an interested private organization for an amount not less than 30% of the fair market value nor more than 75% of the fair market value. Any such recommended transfer shall be subject to the following conditions:

(1) The property shall be used for a public purpose;

(2) The property shall be developed or used according to plan within a time period not to exceed 5 years;

(3) The deed or other instrument of transfer shall provide that the property shall revert to the State if the property is not developed within the stated period of time or if the property ceases to be used for public purposes;

(4) The Commission may recommend additional terms and conditions as it determines to be in the best interest of the State.

(f) If the Commission determines that the use of state surplus real property is not needed by any other state agency or by any other local governmental agency or by a private organization pursuant to subsection (e) of this section it may recommend that the surplus property be retained by the State or that the surplus property be sold to the highest bidder after advertising. Sales of state surplus property pursuant to this section shall be at fair market value or for such other price as may be approved in writing by the Commission.

(g) The Commission shall report to the Governor and to the General Assembly annually, with respect to any surplus real property approved and recommended for sale or other disposition under this section, giving the following information:

(1) A description or other precise identification of the surplus property;

(2) The name of the agency which reported the excess property and the date of said report;

(3) The present status or use of the property;

(4) An accurate appraisal of the fair market value of the surplus property;

(5) An estimate of the amount of state funds, if any, expended in acquiring, preserving, improving, restoring or reclaiming the property;

(6) A description of whether the property is needed by any other state agency or local governmental agency and, if not, a description of alternative highest and best uses of the property which the Commission deems to be in the best interest of the State.

(64 Del. Laws, c. 96, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 313, § 2.)

§ 9406. State parks and open spaces.

Notwithstanding any provision of this chapter to the contrary, no state park, or any part thereof, open space as defined in § 7504 of Title 7 or other area acquired primarily for recreational use, shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

(72 Del. Laws, c. 156, § 4.)

Part IX
State Planning and Property Acquisition
Chapter 95
Real Property Acquisition

§ 9501. Declaration of policy and definitions.

(a) This chapter shall be applicable to the acquisition of real property by state and local land acquisition programs or projects in which federal, state or local funds are used.

(b) The term "agency" means any department, agency or instrumentality of the State or of a political subdivision of the State, any department, agency or instrumentality of 2 or more states, or 2 or more political subdivisions of the State, or states, and any person who has the authority to acquire property by eminent domain under state law.

(29 Del. C. 1953, § 9201; 58 Del. Laws, c. 413, § 3; 67 Del. Laws, c. 8, § 9.)

§ 9501A. Acquisition by eminent domain.

(a) The policy of the provisions of this chapter pertaining to eminent domain is to ensure that eminent domain is used for a limited, defined public use. Public use does not include the generation of public revenues, increase in tax base, tax revenues, employment or economic health, through private land owners or economic development.

(b) Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning agency, including an agency as defined in § 9501(b) of this title, shall use eminent domain other than for a public use, as defined in subsection (c) of this section.

(c) The term "public use" shall only mean:

(1) The possession, occupation, or utilization of land by the general public or by public agencies;

(2) The use of land for the creation or functioning of public utilities, electric cooperatives, or common carriers, or

(3) Where the exercise of eminent domain:

a. 1. Removes a "blighted area" as defined at § 4501(3) of Title 31, or a "slum area", as defined at § 4501(23) of Title 31;

2. Removes a structure that is beyond repair or unfit for human habitation or use; or

3. Is used to acquire abandoned real property; and

b. Eliminates a direct threat to public health and safety caused by or related to the real property in its current condition.

(d) Whenever real property is condemned and will be used, including owned, occupied or developed by a private party, the State or agency thereof or a political subdivision must establish by clear and convincing evidence that the use of eminent domain complies with the definition of "public use" in subsection (c) of this section.

(e) No written notice or correspondence shall be sent to property owners from the State, an agency or a political subdivision communicating to the property owner that the real property is subject to eminent domain without the State, an agency, or a political subdivision first notifying the property owner in writing of the public use as defined in subsection (c) of this section and as required by § 9505(15) of this title.

(77 Del. Laws, c. 12, § 1.)

§ 9501B. Transportation and eminent domain.

The provisions of § 9501A of this title shall not apply to the acquisition of property or property rights by the Department of Transportation for any transportation facility, project, or program as defined in Titles 2, 9, 14, 17, and this title, if the primary purpose of each parcel being required is to maintain or improve the State's transportation network, as sworn to by the Secretary of the Department or the Secretary's authorized designee.

(77 Del. Laws, c. 12, § 5; 70 Del. Laws, c. 186, § 1.)

§ 9501C. Natural resources and eminent domain.

The provisions of § 9501A of this title shall not apply to the acquisition of property or property rights by the Department of Natural Resources and Environmental Control, any tax ditch, and any tax lagoon, for any acquisition authorized in Title 7, if the primary purpose of such acquisition is to maintain, protect or improve the State's natural resources, as sworn to by the Secretary of the Department or the Secretary's authorized designee.

(77 Del. Laws, c. 12, § 6; 70 Del. Laws, c. 186, § 1.)

§ 9502. Expenses incidental to transfer of title.

The agency acquiring real property for such use shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the agency deems fair and reasonable, for expenses necessarily incurred for:

(1) Recording fees, transfer taxes and similar expenses incidental to conveying such real property to the State;

(2) Penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) The prorata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the State or the effective date of possession of such real property by the State, whichever is the earlier.

(29 Del. C. 1953, § 9202; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9503. Litigation expenses.

Where a condemnation proceeding is instituted by the agency to acquire real property for such use and the final judgment is that the real property cannot be acquired by condemnation or the proceeding is abandoned, the owner of any right, title or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings. The awards of such sums will be paid by the agency.

(29 Del. C. 1953, § 9203; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 216, § 2.)

§ 9504. Inverse condemnation proceedings.

Where an inverse condemnation proceeding is instituted by the owner of any right, title or interest in real property because of use of the owner's property in any program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or the Department of Justice effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the Department of Justice, reimburse such plaintiff for reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceedings.

(29 Del. C. 1953, § 9204; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9505. Real property acquisition policies.

The agency shall comply with the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during an inspection of the property except that the agency may with the owner's permission, eliminate the appraisal in cases involving acquisition by donation. The agency shall provide the owner with a copy of the agency's approved appraisal prior to initiation of negotiations for acquisition of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor, and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of real property. Any decrease or increase of the fair market value of real property prior to the date of valuation caused by any program or project for which such property is acquired or by the likelihood that the property would be acquired for such program or project, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with the court, in accordance with Chapter 61 of Title 10, for the benefit of the owner in an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) Any program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least 90 days' written notice from the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time for negotiations or condemnation be advanced, the deposit of funds in court for the use of the owner be deferred nor any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of power of eminent domain, formal condemnation proceedings shall be instituted. The agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency concerned shall offer to acquire that uneconomic remnant. For the purpose of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and the agency concerned has determined the parcel has little or no value or utility to the owner.

(10) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of the right to receive just compensation for such property, donate such property, any part thereof, any interest therein or any compensation paid therefor, to an agency, as such person shall determine.

(11) The term “appraisal” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(12) Purchase of title insurance in the acquisition of property by the Department of Transportation shall only be authorized upon written request of the Secretary of the Department with unanimous written approval of the co-chairs of the Joint Finance Committee, the Controller General and the Director of the Office of Management and Budget.

(13) a. When state funds are transferred into nonstate-controlled escrow accounts in anticipation of property acquisitions by the Department of Transportation, the Department shall pursue the most cost-effective and timely means of effectuating said transfer of funds. Methods of funds transfer shall include, but not be limited to, the electronic transfer of funds.

b. Any funds escrowed for such purposes shall be subject to routine audit by the State Auditor.

(14) For a real property acquisition necessitated by a highway project, an appraisal is unnecessary if the Department of Transportation determines that the valuation of the property to be acquired is uncomplicated and the market value is estimated at $50,000 or less, based on a review of available data. If an appraisal is determined to be unnecessary, the Department of Transportation shall prepare a waiver of valuation. The Department of Transportation may seek from the federal agency funding the project, approval on a case-by-case basis to increase the waiver amount on any valuation over $10,000 and up to a maximum of $25,000, or the amount currently approved by the federal agency, provided that the Department of Transportation offers the property owner the option of having an appraisal prepared. In all cases in which the estimated market value of a property to be acquired is over $10,000, the property owner must be given the option of having an appraisal prepared.

(15) Notwithstanding any other provision of law to the contrary, the acquisition of real property through the exercise of eminent domain by any agency shall be undertaken, and the property used, only for the purposes of a recognized public use, as defined in § 9501A of this title, at least 6 months in advance of the institution of condemnation proceedings:

a. In a certified planning document;

b. At a public hearing held specifically to address the acquisition; or

c. In a published report of the acquiring agency.

This paragraph shall not apply to the obtaining of right-of-ways or easements by an agency for public utilities, such as sewer, water, or electric.

(29 Del. C. 1953, § 9205; 58 Del. Laws, c. 413, § 3; 67 Del. Laws, c. 8, §§ 10-12; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 226, §§ 1, 2; 74 Del. Laws, c. 297, § 2; 75 Del. Laws, c. 88, § 21(13); 75 Del. Laws, c. 216, § 1; 77 Del. Laws, c. 12, § 2.)

§ 9506. Buildings, structures and improvements.

(a) Where any interest in real property is acquired, an equal interest in all buildings, structures or other improvements located upon the real property so acquired and which is required to be removed from such real property or which is determined to be adversely affected by the use to which such real property will be put shall be acquired.

(b) For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as above set forth, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of the tenant’s term, and the fair market value which such building, structure or improvement contributes to the fair market value of the property to be acquired, or the fair market value of such building, structure or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(c) Payment for such buildings, structures or improvements as set forth above shall not result in duplication of any payments otherwise authorized by the laws of this State. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release all right, title and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures or other improvements shall be construed to deprive the tenant of any right to reject payment and to obtain payment for such property interests in accordance with other laws of this State.

(29 Del. C. 1953, § 9206; 58 Del. Laws, c. 413, § 3; 70 Del. Laws, c. 186, § 1.)

DEPARTMENT OF TRANSPORTATION
2400 Division of Transportation Solutions

2406 Policies and Procedures for Acquisition of Certain Real Property

1.0 Purpose

1.1 The Department of Transportation has limited statutory authority to acquire public or private property and property rights in connection with the Department's jurisdiction. Traditionally, the Department has acquired the necessary property rights upon final right-of-way plan approval for a project. In certain instances, the best interests of the state and individual property owners may be better served if such interests are either acquired or reserved by the Department prior to final right-of-way plan approval. The purpose of this regulation is to enumerate the specific policies and procedures governing the advanced acquisition of real property by the Department, as contemplated by 17 **Del.C.** §137(a)(2).

1.2 Property acquisitions pursued in accordance with an approved final right-of-way plan prepared for a Department project as defined herein are specifically exempt from this regulation.

1.3 The Department, when acting as the agent of the Delaware Transportation Authority for special property acquisitions in accordance with 2 **Del.C.** §1309(5), shall seek a consistency review from the Committee established under §137(a)(2) prior to settlement with owners to verify the transaction is in the public interest, unless otherwise subject to approval by another public body or federal agency.

22 DE Reg. 545 (12/01/18)

2.0 Definitions

"**Advanced acquisition**" means the acquisition by the Department of any interest in real property prior to approval of final right-of-way plans for the project for which such real property interest is being acquired. For purposes of this regulation and the Department's Real Estate Manual, "advanced acquisitions" shall include, without limitation, reservation agreements.

"**Advanced Acquisition Committee**" or "**Committee**" means the committee created and defined pursuant to 17 **Del.C.** §137(a)(2).

"**Consistency review**" shall mean the review by the Committee to determine the consistency of such action with the State's overall goals for land use planning pursuant to 17 **Del.C.** §137(a)(2).

"**Corridor**" means a particular route of one or more highways of this State, serving predominantly statewide and/or regional travel needs. By way of example and not limitation, State Routes 1, 2, and 141, and U.S. Routes 13, 113, and 202 are corridors under this definition.

"**Department**" means the Delaware Department of Transportation.

"**Hardship acquisition**" shall mean an advanced acquisition to resolve a specific hardship imposed upon the owner as a result of a project. Hardship acquisitions shall include situations in which an owner must demonstrate the need to relocate for personal reasons (e.g., job transfer, death in the family, retirement plans, or medical reasons) and is unable to sell his or her property as a result of a project.

"**Owner**" shall mean the owner of the real property interest which the Department seeks to acquire or reserve.

"**Project**" means an undertaking for a capital improvement by the Department acquisition of real property as part of the Corridor Capacity Preservation Program, or certain Special Property Acquisitions, and which uses state and/or federal funds.

"**Protective acquisition**" shall mean an advanced acquisition to allow the Department to protect from development real property within a project area, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project. Protective acquisitions shall include, without limitation, long-term leases and reservations to allow the Department to protect from development real property within a project area.

"**Reservation**" means a commitment by the Department to compensate an owner of any interest in real property, in exchange for an agreement by the owner to refrain from further developing his or her property or designated portions thereof.

"**Special Property Acquisitions**" shall mean the acquisition of real property in fee simple or lesser interest pursuant to 2 **Del.C.** §1309(5).

22 DE Reg. 545 (12/01/18)

3.0 Hardship Acquisition

3.1 Depending upon the availability of funding, the Department may consider requests by owners for hardship acquisitions.

3.2 Written Request - The owner of the real property must submit to the Department a written request for a hardship acquisition. A request for hardship acquisition of property shall be submitted to the:

Delaware Department of Transportation
Right-of-Way Section
Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903

3.3 Criteria. Upon receipt of a written request for a hardship acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria set forth herein. At a minimum, the request must demonstrate to the Department's satisfaction that:

3.3.1 The property has been marketed for at least six (6) months; and

3.3.2 The realtor, or owner in absence of a realtor, must certify and provide evidence that he or she is unable to sell the property at a reasonable price as a result of the proposed project; and

3.3.3 The owner must be able to document a compelling reason for his or her move from the property, e.g., job transfer, death in the family, retirement plans or for medical reasons.

3.4 If an owner demonstrates to the Department's satisfaction that a hardship acquisition is appropriate, then such proposed acquisition shall be considered in accordance with the procedures set forth in Section 6.0.

22 DE Reg. 545 (12/01/18)

4.0 Protective Acquisition by Owner

4.1 Depending upon the availability of funding, the Department may consider requests from owners to purchase all or a portion of their property. The Department will consider such requests when there is an anticipated need for the property as part of a planned project and acquiring it prior to final right-of-way plan approval would protect the availability of the property for use by the project.

4.2 Written Request - All requests for a protective acquisition by an owner must be in writing. A request for protective acquisition of property shall be submitted to the:

Delaware Department of Transportation
Right-of-Way Section
Chief of Right-of-Way
P.O. Box 778
Dover, DE 19903

4.3 Criteria. Upon receipt of a written request for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

4.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

4.3.2 Development would limit location alternatives for a project.

22 DE Reg. 545 (12/01/18)

5.0 Protective Acquisition Recommended by DelDOT

5.1 Depending upon the availability of funding, in instances where development would increase the eventual cost of property acquisition to taxpayers, or would limit location alternatives for the project, the Department may consider contacting property owners for possible protective acquisitions.

5.2 Recommendation. Prior to contacting owners of potential protective acquisition properties, the Chief Engineer must certify that all or part of the property will be required for a future project which complies with the purpose of this regulation as stated in Section 1.0 of this regulation.

5.3 Criteria. Upon the certification of need for a protective acquisition, the Department and its legal counsel shall initiate an internal review process to determine whether the property meets the criteria for a protective acquisition. At minimum, the request must demonstrate to the Department's satisfaction that:

5.3.1 Development would increase the ultimate cost of the acquisition to taxpayers; or

5.3.2 Development would limit location alternatives for a project;

5.3.3 The request does not violate the National Environmental Policy Act (NEPA) or other Federal or State Regulations.

22 DE Reg. 545 (12/01/18)

6.0 Procedures for Review and Approval of Advanced Acquisitions

6.1 For advanced acquisitions satisfying the criteria set forth in subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, as the case may be, the Department shall have an appraisal performed by an independent appraiser in accordance with the Department's Real Estate Manual.

6.2 Following receipt of the appraisal, the Department and its legal counsel shall discuss the potential terms of an agreement and the justifications therefor, including the nature of the interest to be acquired (i.e., acquisition, reservation, leasehold); the necessity of acquiring such interest and the existence of any alternative transactions; the fair market value of such interest; the amount of land required; the duration of the agreement; and such other factors as may be relevant. Following such discussion, counsel shall prepare a detailed term sheet reflecting the material terms of the proposed transaction.

6.3 The Department will present the term sheet to the Advanced Acquisition Committee at a scheduled meeting as soon as reasonably practicable. The Committee shall consider the terms of and rationale for the proposed transaction and may either approve, or reject such transaction. If the Committee approves the proposed transaction, the Department shall negotiate the final terms with the owner.

6.3.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's review shall be considered an advisory opinion.

6.4 The material terms of all advanced acquisitions shall be reflected in an agreement prepared or reviewed by the Department's legal counsel and signed by the owner and an authorized representative of the Department.

22 DE Reg. 545 (12/01/18)

7.0 Consistency Review of Proposed Advanced Acquisitions

7.1 The Committee shall conduct a consistency review of proposed advanced acquisitions of real properties determined by the Department as necessary for its projects prior to approval of final right-of-way plans, real property acquisitions by the Corridor Capacity Preservation Program and for Special Property Acquisitions. This review shall be conducted prior to initiating any real property acquisitions with owners.

7.2 At the scheduled meeting for the consistency review, the Department shall present to the Committee such evidence as it deems necessary to demonstrate that the proposed acquisitions are consistent with state planning goals. This evidence shall include:

7.2.1 a detailed visual depiction of the proposed acquisitions;

7.2.2 the relevant project pages from the Capital Improvement Program adopted by the Council on Transportation, pursuant to 29 **Del.C.** §§8409 and 8419;

7.2.3 the relevant project authorizations as described in the relevant Bond and Capital Improvements Acts adopted by the General Assembly;

7.2.4 where applicable, the Department's Corridor Capacity Preservation plan for the corridor adopted in accordance with the procedures set forth in 17 **Del.C.** §145(d) for which the proposed acquisition would be made, along with other evidence showing how the acquisition furthers the Department's goals under that Program;

7.2.5 for Special Property Acquisitions, evidence showing how the proposed acquisition furthers the Department's goals for the particular project purpose, including a cost/benefit analysis and other relevant data;

7.2.6 a description of the State's Strategies for Policies and Spending, and how the project fits with those strategies.

7.3 The Committee shall conclude its consistency review indicating its support or denial of the proposed acquisition by simple majority vote of its members. A quorum must be present. The vote shall be recorded in the meeting minutes.

7.3.1 For Special Property Acquisitions made under the authority of 2 **Del.C.** §1309(5), the Committee's determination shall be considered an advisory opinion.

22 DE Reg. 545 (12/01/18)

8.0 Dispute Resolution Process

8.1 If after negotiations with the owner as identified above for advanced acquisitions satisfying the criteria set forth in subsection 3.3, 4.3 or 5.3 or for Special Property Acquisitions, the Department and the owner cannot reach an agreement upon the acquisition price or terms, the owner may request the following options:

8.1.1 Alternative Dispute Resolution

8.1.1.1 Upon notification from the Department that an impasse has been reached, the owner may request to follow the Alternative Dispute Resolution (ADR) process as identified in DelDOT Regulation 2407.

8.1.1.2 As per Regulation 2407, the owner and the Department will agree prior to commencing the ADR if the process shall be binding or non-binding. If the process is non-binding, the owner shall retain their rights under subsection 8.1.2.

8.1.2 Ceasing Advanced Acquisition

8.1.2.1 Upon notification from the Department that an impasse has been reached, the owner may notify the Department that they are no longer interested in an Advanced Acquisition and do not wish to continue with either negotiations or ADR. The Department at that time shall cease all acquisition activities and notify the Advanced Acquisition Committee.

8.1.2.2 If the Department ceases advanced acquisition activities at the request of the owner, advanced acquisition activities may not be re-initiated without first obtaining approval of the Advanced Acquisition Committee.

18 DE Reg. 733 (03/01/15)

22 DE Reg. 545 (12/01/18)

2400 Division of Transportation Solutions

2407 Alternative Dispute Resolution Process for Acquisition of Certain Real Property

1.0 Purpose

The Department may initiate an Alternative Dispute Resolution (ADR) process, at the discretion of the Chief Engineer, on a per project basis to provide a property owner the opportunity to initiate and/or agree to a binding or non-binding review to determine the Just Compensation for the acquisition. This review will be held in an attempt to amicably settle the case without going to a formal court hearing. The results of this review will be either binding or non-binding on either party as they may agree in writing. If non-binding, either party can request the case proceed thereafter to a formal hearing. The results of the non-binding review will be considered privileged information and any part of the review, including value conclusions shall not be admissible in any future valuation hearings by either party.

2.0 Requirements

2.1 Both parties must agree to the ADR and the process listed below. Any changes to the process must be approved by both parties and a DAG assigned to the case.

2.2 The ADR review can only take place after an Order for Possession has occurred. However, an agreement to proceed to an ADR is allowed at anytime prior to the Order for Possession.

2.3 Expenses related to the conducting of the ADR review shall be borne by DelDOT, except for any cost incurred by the defendant, their attorney or witnesses in preparing or presenting their case.

2.4 No discovery other than the transfer of appraisals, engineering reports or other documentation typically available during negotiations is allowed.

2.5 All information related to the case shall be held as confidential in the non-binding ADR.

3.0 Steps

3.1 Upon the entering of an Order for Possession by the Courts, either party (DelDOT or the owner, or their respective representatives) may request an ADR review. This request must be in writing and may be submitted any time after the initiation of negotiations, but no later than within 90 days of the Order for Possession.

3.2 A response to the ADR request must be sent to the requesting party within 15 days of receipt of the request. Non-response by the party receiving the request within the 15 day period shall be construed as a refusal to the request for an ADR review.

3.3 All ADR requests or responses to a request made to DelDOT, or activities/determinations performed by DelDOT as part of the review process must have approval of the DelDOT Chief of Right of Way with concurrence from a Deputy Attorney General. In cases with Just Compensation in excess of $500,000, approval of the Secretary is also required.

3.4 If no request is made or response received within the time frames identified, no ADR shall be allowed. If any activity or determination of either party is not performed within the identified time frames during the ADR process, without a written request and agreement for additional time to meet the obligation, the ADR process will be considered canceled by the obliged party.

3.5 Both parties shall have the right to cancel the ADR at any time. However if the ADR review is canceled by the property owner less than 30 days prior to the hearing, they shall be responsible for any costs incurred by DelDOT related to the conducting of the ADR review.

3.6 Within 30 days of agreement between the parties to meet, each party shall submit the name of one Delaware Licensed Real Estate Appraiser that is qualified to appraise the property being acquired, who shall act as a review panel member.

3.7 The parties shall mutually select a third, independent, qualified member for the ADR review panel. If no agreement for a third member is reached, the parties shall request the Board of Realtors for the County the property is located in to appoint a Delaware Licensed Real Estate Broker, or Delaware Licensed Real Estate Appraiser, whose expertise includes the type of property being acquired, to act as the Chief ADR officer. This person shall be compensated for their time at the review as well as any travel in accordance with DelDOT's reimbursement for Fee Appraisers.

3.8 The Chief ADR Officer will act as the lead for the review panel and will be responsible to prepare the final report.

3.9 The date and place of the review shall be arranged between the two parties and the members of the ADR review panel.

3.10 All documentation to be supplied by the parties shall be presented to the ADR officers and the opposing party no less than 15 days prior to the review.

3.11 The members of the ADR review panel shall meet in private to discuss the merits of each party's appraisal and documentation. Prior to this discussion, both sides may make a short opening statement, and the owner may make an owner's statement. There will not be any testimony or input required from either party for the review unless requested by the ADR review panel. Copies of any testimony or input required of the parties shall be made available to the opposing party.

3.12 The ADR review panel shall then reach a value conclusion based upon the information provided. A majority vote of the members must agree to approve the final value determination.

3.13 The Chief ADR officer, with assistance from the other members, shall present a report detailing the determination of value as well as the justification for the determination. The amount of detail required is to be determined by the ADR panel members; however, the report must clearly justify the panel's findings and reference any materials, testimony or input used to arrive at the determination.

3.14 The final report shall be transmitted in writing to the parties within 30 days of the review meeting.

3.15 If the ADR is a non-binding review, each party shall have 20 days to accept or reject the ADR determination. If both parties accept, the parties shall proceed to settlement. If either party rejects the determination, the case shall continue the normal eminent domain process.

3.16 The parties shall notify the other party as well as the ADR of their determination in writing.

3.17 Upon final receipt of the ADR report, the ADR review panel shall be dismissed and any compensation will be made to the members.

3.18 The ADR report is considered a protected document and may not be distributed to any party without consent by both parties and the members of the ADR prior to completion of all portions of the real estate transaction or any ancillary activities relating to the real estate transaction.

18 DE Reg. 734 (03/01/15)

RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF THE STATE OF DELAWARE

Rule 71.1. Condemnation of property.

In a condemnation proceeding instituted by a public agency, such as an agency of the State, a county, a municipality or a school district, an order of possession of the property to be taken shall be entered forthwith, pursuant to 10 Del. C. § 6110(a), upon 10 days' written notice of intent to present such order, to be given to the property owner or his attorney of record, supported by an affidavit of necessity executed by the chief administrative officer of the condemning agency, unless the property owner by affidavits, depositions, and/or verified answer shall show good cause why such order of possession should not be entered forthwith. Any hearing on the issue of good cause shall be held without delay and on such affidavits, depositions, and/or verified answer. Disposition of the issue of good cause shall be made by the Court without delay.

This Rule shall be applicable solely to the condemnation proceedings brought by such public agencies.

In all such condemnation proceedings the burden shall be upon the property owner to overcome the presumption of regularity and the prima facie case of necessity for a public use presented by the institution of such proceeding.

Nothing herein contained shall affect the power of the Court, in its discretion, to enter an order of possession ex parte and without notice, as is provided by 10 Del. C. § 6110(a), upon proper cause being shown by the public agency.

History. Added, effective July 20, 1962

REQUEST FOR
POLICY IMPLEMENT

STATE OF DELAWARE

DEPARTMENT OF TRANSPORTATION

P.I. NUMBER: R-04

Joint Use of Right of Way Beneath Roadway Structures

References: 23 CFR, 710.401, 710.403 and 710.405
DelDOT Policy: M-01
49 CFR, Part 172

Issued: 03/05/2019

Revised: 11/30/2022

Effective: 2/6/2023

Primary Responsibility:
Director of Transportation Solutions

Table of Contents

Title of Policy

I. Purpose
II. Policy
A)-Rights of Ingress and Egress
B)-Occupancy and Storage
C)-Lease Agreements
D)-Surveillance
E)-Temporary Use Agreements
III. Justification
IV. Effective Date
V. Appendix A

I. Purpose

This document will set out DelDOT procedures for allowable uses of the real property interests under structures, how those uses may function, and what agreements must be in place to permit such uses. Specific guidelines for leasing and occupancy compensation will also be set out. Under no circumstance will any use be permitted which could possibly impair the safety of the structure or adjacent roadway. This policy will be applicable to any location either below or adjacent to DelDOT maintained structures.

II. Policy

A) RIGHTS OF INGRESS AND EGRESS: In the past, DelDOT has occasionally granted private property owners the right to pass under a structure in order to access their property. These rights were typically granted, in order to maintain the functional use of the adjacent property, which was being divided by the construction of the new roadway. These access rights were usually permanent in nature and were considered to be in the greater public benefit. Any individual or organization that obtained such rights, may continue to exercise these rights as long as they do not violate the terms of the access agreement, or until such rights are extinguished by DelDOT. Any future rights of ingress, egress or other use of areas under a structure should be in the form of an agreement per paragraph C). No right of use for under a structure may be conveyed as a permanent right, such as an easement without express written consent of the Chief Engineer of the Department.

B) OCCUPANCY AND STORAGE: As long as it is deemed not to be a safety risk, DelDOT may enter into agreements which allow the use and occupancy of real property interests below and adjacent to roadway structures. Each potential use will be thoroughly considered as to any potential damaging impact the use could have on the facility. Regardless of whether or not there is any agreement in place, all areas under bridge facilities will follow the following standards:

1. No Hazardous Materials of any kind will be permitted under a structure or within the DelDOT right of way at any time. These include, but are not limited to, items listed in federal regulations at 49 CFR, Part 172.
2. No vehicles or materials will be permitted to be stored within ten feet of the underside of girders or other structural elements, or within ten feet of any side of a pier or column.
3. No storage material may exceed a height of fifteen feet above ground level.
4. All permanent storage materials must be fenced in a manner as described in the property lease.
5. No material or vehicles may be stacked or stored in a manner that obstructs or interferes with DelDOT's ability to inspect and maintain the bridge.
6. No long-lasting combustible materials such as tires, plastic traffic cones, wooden pallets, or other rubber or plastic items may be stored, regardless of location.
7. No items may be stored which could emit noxious fumes or odors.
8. No items may be stored which could fall or lean against any pier or column.
9. No smoking is permitted on the property.
10. No heating equipment will be permitted on the property.
11. No materials may be permitted which are deemed by DelDOT to be hazardous or may cause damage to the structure or the right of way.
12. No commercial activity will be permitted as outlined in 17 Del.C. §526.

C) LEASE AGREEMENTS: A bona fide lease must be prepared and executed for all permanent and temporary uses beneath structures. Unless otherwise justified, all leases must charge current market value rental. In accordance with federal regulations at 23 CFR 710.403(e), the FHWA must approve any lease agreement for less than market value if the real property interests were obtained with title 23 U.S.C. funding (certain exceptions are set out in the referenced regulation). Other FHWA approvals may be required as established in the State/Federal Stewardship Agreement. In addition to typical lease requirements, all leases for permanent and temporary uses adjacent to or beneath structures must also contain at a minimum:

1. The term of the lease arrangement
2. Identify the design and location of the non-highway use
3. Identify permitted and prohibited activities
4. Establish terms for revocation and termination of the lease
5. Provide for adequate insurance and to hold DelDOT harmless
6. Require compliance with nondiscrimination requirements
7. Reserve the right of access to DelDOT to inspect the premises at any time
8. Provide a sketch of the proposed use location boundary and relationship of all facility components
9. Provisions for appropriate fire suppression capability
10. Reserve the right to remove any and all stored material under a bridge or cause the owner to remove stored material at the lease holder's expense should it pose a risk to safety or interfere with DelDOT' s ability to inspect and maintain the bridge.

D) SURVEILLANCE: Representatives of the Right of Way (ROW) Section will be responsible to inspect all leased facilities below structures at least once every three months, for compliance with terms of the lease. They will also inspect all bridges on the monitoring list (Appendix A) but not under lease, at least once every three months. The ROW representative shall inform the Land Services Manager immediately of any violations of lease agreements or prohibited items found beneath any bridge, as listed in Section B) above. The Land Services Manager will notify the area's District Maintenance Engineer of the issue in writing. Bridge inspection crews will make note of materials and activities found under bridges as part of their normal bridge inspections and notify the Land Service Manager and the Chief of Bridges & Structures of any questionable materials or activities.

It will be the responsibility of the area's District Maintenance Engineer and the Chief of Bridges & Structures to determine the immediacy of all situations and issue a "High Priority Road Condition" if necessary, to take action to address any critical issues. If the situation is determined to be non-critical, the ROW section may be asked to address the matter if under an existing agreement.

In order to monitor under bridge storage issues, the ROW Section will provide to the Chief of Bridges & Structures a report identifying all existing leases and any violations identified, on a yearly basis. The Chief of Bridges & Structures will make any changes to the attached monitoring list as it is needed.

Although the ROW representatives will make such inspections, all DelDOT employees are responsible to report any perceived unauthorized activities below structures to the ROW's

Land Services Section, the Chief of Bridges & Structures, and the area's District Maintenance Engineer as soon as noticed.
The various District Maintenance Engineers will be ultimately responsible for taking action to remove and eliminate any unauthorized use of the right of way. Removal of personal belongings shall be made only in full compliance with DelDOT Policy Implement M-01, the Homeless Encampment Removal Policy.

E) **TEMPORARY USE AGREEMENTS:** Temporary Use Agreements such as those used for special events will be subject to this policy. Any Temporary Use Agreement will require concurrence from the District Engineer and the Chief of Bridges & Structures. A complete layout of temporary structures or vendor kiosks and a copy of liability insurance must be provided to the department prior to approval.

III. Justification

This document contains the policy and procedures applicable to management of real property interests below bridges and viaducts that may be utilized by private entities or other public agencies as a general public benefit. Such uses may be allowed under strict compliance with the needs for the safety and the integrity of the transportation system.

IV. Effective Date

This policy shall become effective 30 day(s) after signature by the Secretary, or, if applicable, upon compliance with the regulatory process required by the Administrative Procedures Act (29 Del.C. Ch. 101).

Appendix A

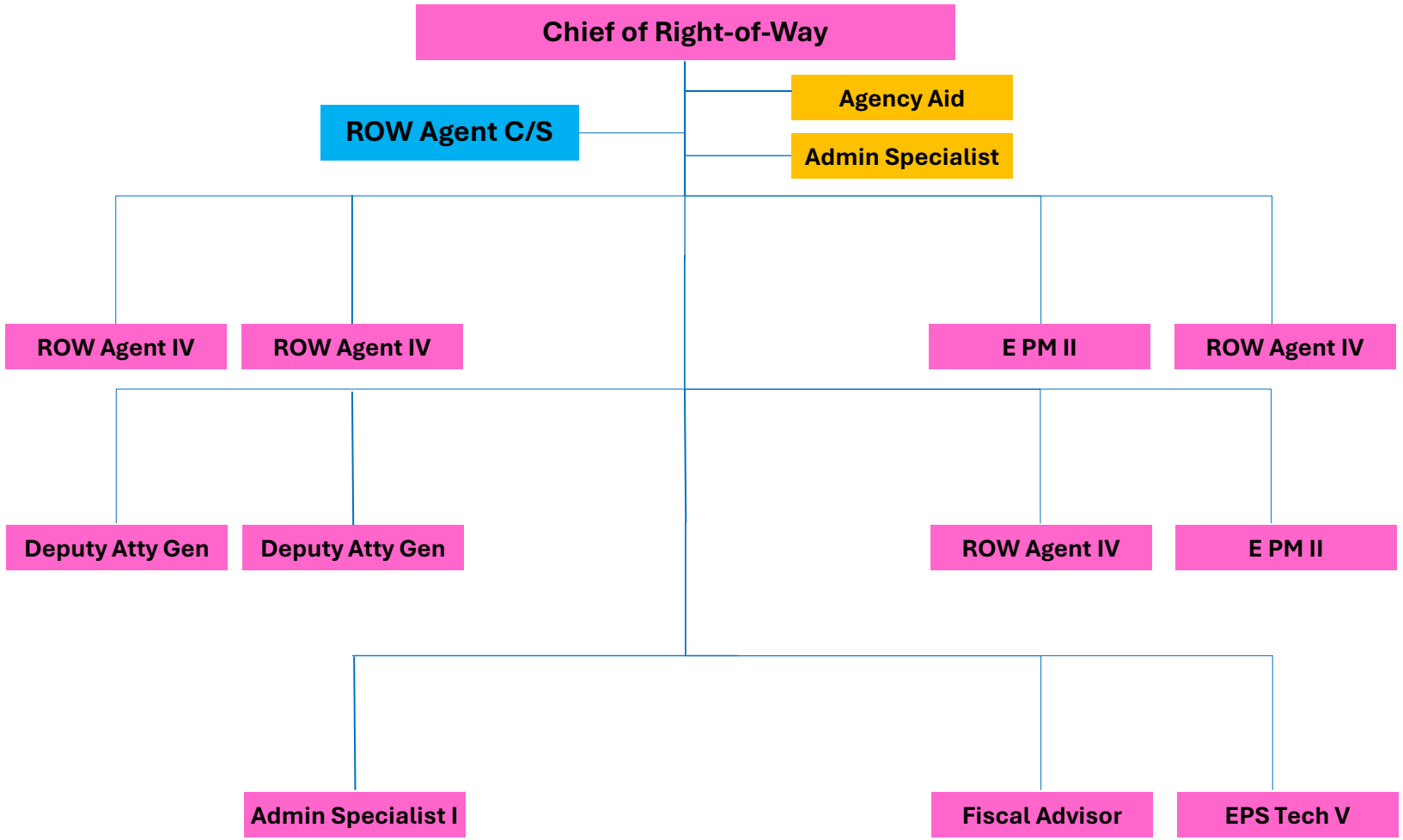
Bridge #	Facility Carried
1282 366	CHRISTINA PARKWAY
1501 006	SR 141
1501A6262	RAMP SR141N TO SR4
1501B6263	SR 4 TO SR 141 S
1555 356	LIBRARY AVE/SR 72
1567 220	EDGEMOOR RD / SR3
1576 043	WASHINGTON ST
1585 049	AUGUSTINE CUTOFF

1587 267	SR141/BARLEY MILL
1629 027	DUPONT RD
1632 011	KIRKWOOD HGWY/SR2
1635E011	KIRKWOOD HGWY/SR2
1635W011	KIRKWOOD HGWY/SR2
1641 387	S. COLLEGE AVE
1641P000	Pedestrian Traffic
1680 006	BASIN RD/SR141
1684 028	SOUTH HEALD ST
1686 029	S. WALNUT ST/US13
1687 029	S. WALNUT ST/US13
1693 050	FOURTH STREET
1748 059	I 95
1748N059	I 95 NB
1748S059	I 95 SB
1749 6142	I 95 NB TO SR 4
1758E6141	MLK BLD TO I 95 N
1758F6149	RAMP TO I 95 S
1758G6149	MLK BLD TO I 95 S
1758H057	MLK BLVD
1759 059	I 95 RD 59
1813 060	I 495
2012B012	SMYRNA-LEIPSIC RD
3156 050	SR1/COASTAL HGWY
3257E021	STEIN HWY/SR20
3257W021	STEIN HWY/SR20

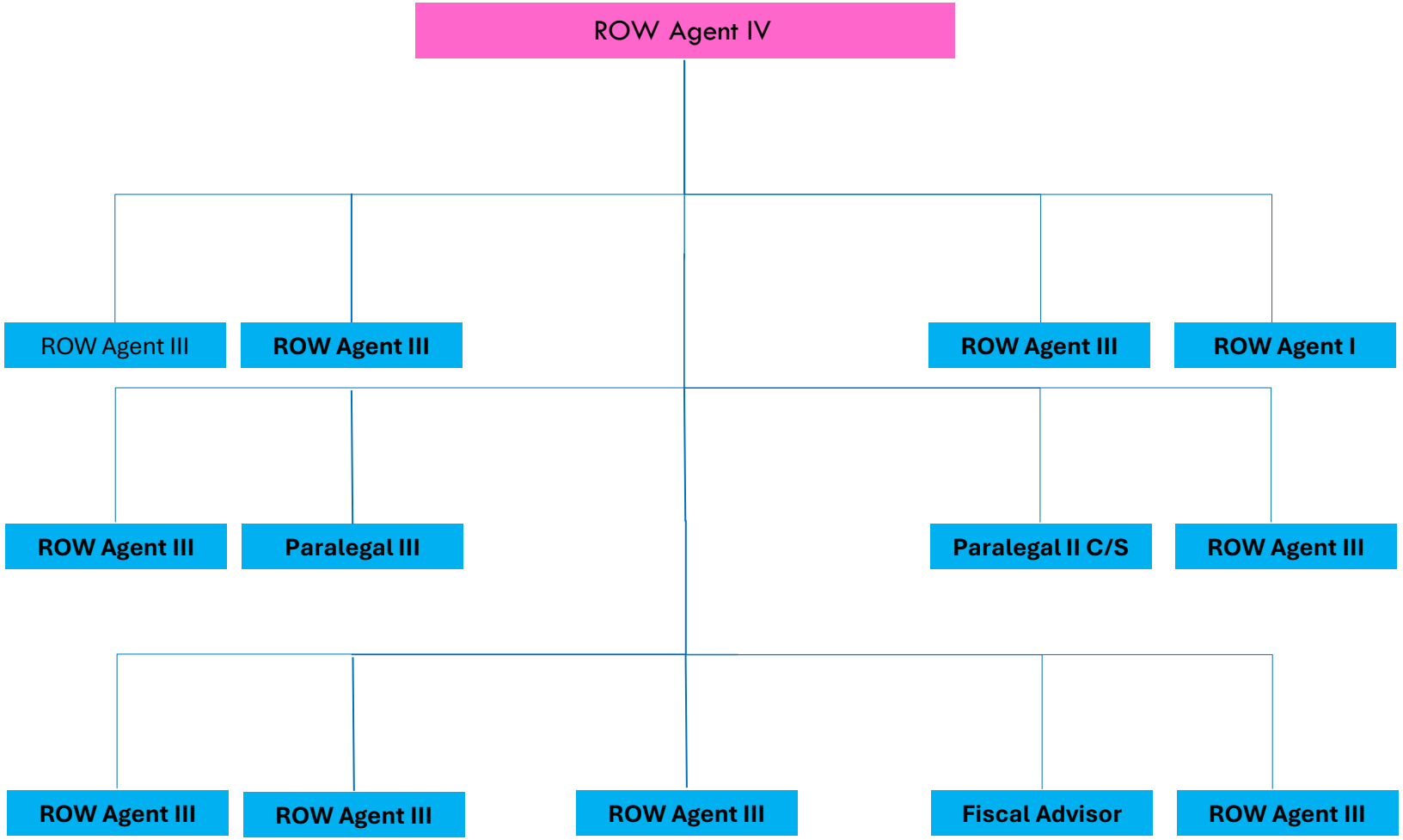
Attachment G

DelDOT Right-of-Way Org Chart

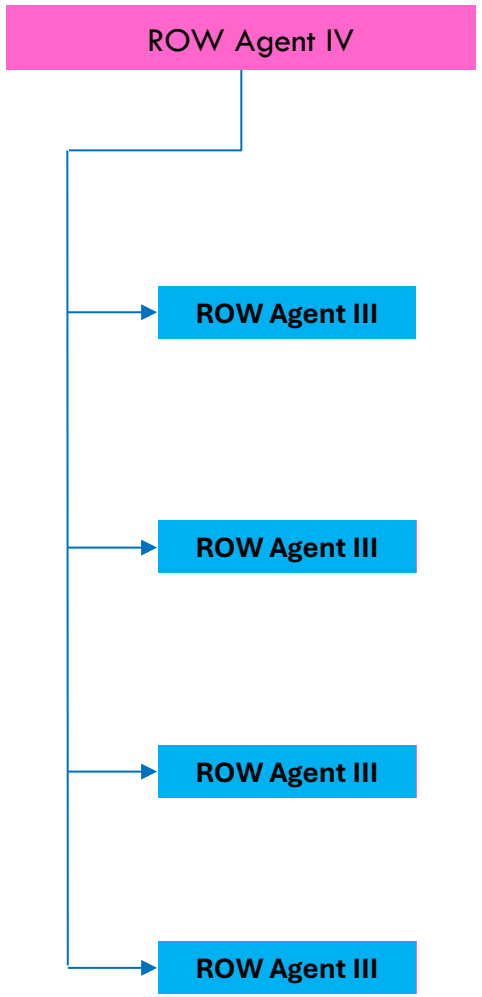
Right-of-Way


Chief of Right-of-Way
Agency Aid
ROW Agent C/S
Admin Specialist
ROW Agent IV
ROW Agent IV
E PM II
ROW Agent IV
Deputy Atty Gen
Deputy Atty Gen
ROW Agent IV
E PM II
Admin Specialist I
Fiscal Advisor
EPS Tech V

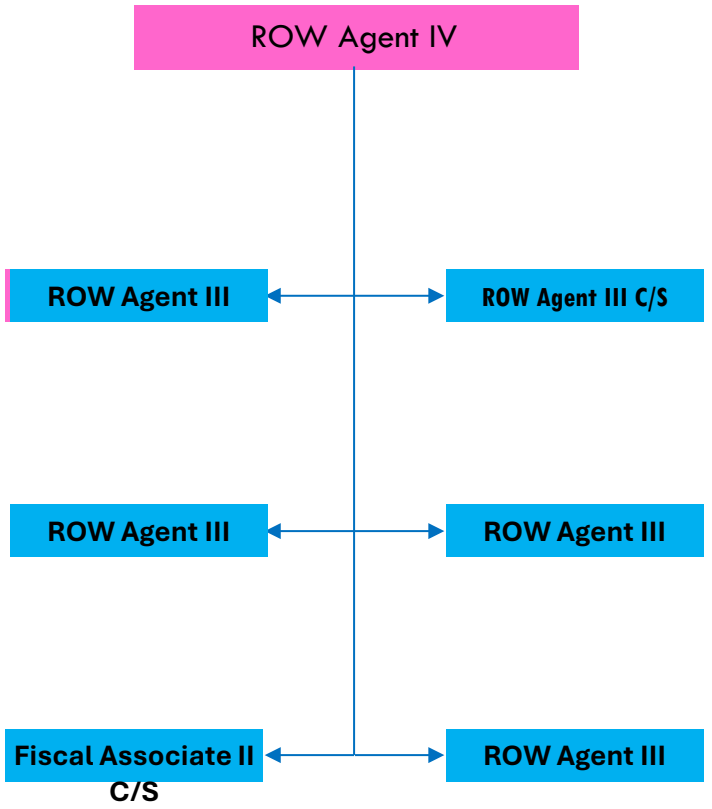
Acquisitions Relocations and Settlements



Land Services



Appraisals



Operation Services

