§ 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 recipient 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.

(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) NHS Projects.—For projects under this title that are on the National Highway System, including projects 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 with respect to the projects unless the Secretary determines that the 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 Interstate Projects.—
(A) In General.—The Secretary shall not assign any responsibilities to a State for projects the Secretary determines to be in a high risk category, as defined under subparagraph (B).

(B) High Risk Categories.—The Secretary may define the high risk categories under this subparagraph on a national basis, a State-by-State basis, or a national and State-by-State basis, as determined to be appropriate by the Secretary.

(d) Responsibilities of the Secretary.—
(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 planning and design phases, by a multidisciplinary 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 lifecycle 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 for—
(A) each project on the National Highway System receiving Federal assistance with an estimated total cost of $50,000,000 or more;
(B) a bridge project on the National Highway System receiving Federal assistance with an estimated total cost of $40,000,000 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.—
(A) Value Engineering Program.—The State shall develop and carry out a value engineering program that—
(i) establishes and documents value engineering program policies and procedures;
(ii) ensures that the required value engineering analysis is conducted before completing the final design of a project; and
(iii) ensures that the value engineering analysis that is conducted, and the recom-
recommendations developed and implemented for each project, are documented in a final value engineering report; and

(iv) monitors, evaluates, and annually submits to the Secretary a report that describes the results of the value analyses that are conducted and the recommendations implemented for each of the projects described in paragraph (2) that are completed in the State.

(B) BRIDGE PROJECTS.—The value engineering analysis for a bridge project under paragraph (2) shall—

(i) include bridge superstructure and substructure requirements based on construction material; and

(ii) be evaluated by the State—

(I) on engineering and economic bases, taking into consideration acceptable designs for bridges; and

(II) using an analysis of lifecycle costs and duration of project construction.

(5) DESIGN-BUILD PROJECTS.—A requirement to provide a value engineering analysis under this subsection shall not apply to a project delivered using the design-build method of 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 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.

(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 49.

(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, including a phasing plan when applicable.

(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—

(A) shall be based on detailed estimates of the cost to complete the project;

(B) shall 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;

(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a
phasing plan is adopted for a project pursuant to this section, the project shall be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135; and

(D) shall assess the appropriateness of a public-private partnership to deliver the project.

(1) 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.

(j) USE OF ADVANCED MODELING TECHNOLOGIES.—

(1) DEFINITION OF ADVANCED MODELING TECHNOLOGY.—In this subsection, the term "advanced modeling technology" means an available or developing technology, including 3-dimensional digital modeling, that can—

(A) accelerate and improve the environmental review process;

(B) increase effective public participation;

(C) enhance the detail and accuracy of project designs;

(D) increase safety;

(E) accelerate construction, and reduce construction costs; or

(F) otherwise expedite project delivery with respect to transportation projects that receive Federal funding.

(2) PROGRAM.—With respect to transportation projects that receive Federal funding, the Secretary shall encourage the use of advanced modeling technologies during environmental, planning, financial management, design, simulation, and construction processes of the projects.

(3) ACTIVITIES.—In carrying out paragraph (2), the Secretary shall—

(A) compile information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

(B) disseminate to States information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies; and

(C) promote the use of advanced modeling technologies.

(4) COMPREHENSIVE PLAN.—The Secretary shall develop and publish on the public website of the Department of Transportation a detailed and comprehensive plan for the implementation of paragraph (2).

Amendments


Subsec. (c)(3). Pub. L. 112–141, § 1503(a)(2)(A)(ii), struck out ""NHS"" in heading. Resulting initial word was editorially changed to ""NHS"" to conform to style of paragraph headings.

Subsec. (c)(4). Pub. L. 112–141, § 1503(a)(2)(A)(iii), inserted ""NHS"" in heading. Resulting initial word was editorially changed to ""NHS"" to conform to style of paragraph headings.

Subsec. (e)(1)(A)(i). Pub. L. 112–141, § 1503(a)(3)(A)(i), added cl. (i) and struck out former cl. (i) which read as follows: ""providing the needed functions safely, reliably, and at the lowest overall cost;"


Subsec. (e)(3). Pub. L. 112–141, § 1503(a)(3)(C), added par. (4) and (5) and struck out former par. (4). Prior to amendment, text read as follows: ""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."


Subsec. (h)(3). Pub. L. 112–141, § 1503(a)(4)(B), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: ‘‘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.’’


2005—Subsec. (e). Pub. L. 109–99, § 1901(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 Fed-
eral-aid highway shall be accompanied by a value engineering analysis or other cost reduction analysis.”

Subsecs. (g) to (i). Pub. L. 105–178, §1306(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.


Subsecs. (a) to (d). Pub. L. 105–178, §1305(a)(3), added 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, reconstructing, 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) which related to requirement for State highway department and the appropriate local road officials to be the lead administering authority for the overall project.

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. (f) as (g), redesignated subsec. (h) as (f), and redesignated subsec. (i) as (g).


1995—Subsec. (e). Pub. L. 104–59 added subsec. (e) which provided that 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.

“Subsec. (g). Pub. L. 104–59, §1002(b)(1), added subsec. (g) which read as follows: “In addition to the approval required under subsection (a) of this section, proposed specifications for projects construction on 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. (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 construction on 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, §1017, substituted “15 per cent” for “10 per centum” and struck out at end “However, this limitation shall be 15 per cent in any State with respect to which the Secretary finds such higher limitation to be necessary.”

1963—Subsec. (c). Pub. L. 88–157 substituted “Federal-aid highway funds” for “Federal-aid primary, secondary, or urban funds” and “such total estimated cost” for “such total estimated cost” and struck out 10 per centum limitation on projects financed with interstate funds.


1953—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 2012 Amendment**


**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 100 of Pub. L. 102–240, set out as a note under section 101 of this title.

**Consolidation of Grants**


“(a) Definitions.—In this section, the term ‘recipient’ means—

“(1) a State, local, or tribal government, including—

“(A) a territory of the United States;

“(B) a transit agency;

“(C) a port authority;

“(D) a metropolitan planning organization; or

“(E) any other political subdivision of a State or local government;

“(2) a multistate or multijurisdictional group, if each member of the group is an entity described in paragraph (1); and

“(3) a public-private partnership, if both parties are engaged in building the project.

“(b) Consolidation.—

“(1) IN GENERAL.—A recipient that receives multiple grant awards from the Department [of Transportation] to support 1 multimodal project may request that the Secretary [of Transportation] designate 1 modal administration in the Department to be the lead administering authority for the overall project.

“(2) New starts.—Any project that includes funds awarded under section 5309 of title 49, United States Code, shall be exempt from consolidation under this section unless the grant recipient requests the Federal Transit Administration to be the lead administering authority.

“(c) Review.—

“(1) IN GENERAL.—Not later than 30 days after the date on which a request under paragraph (1) is made, the Secretary shall review the request and approve or deny the designation of a single modal administration as the lead administering authority and point of contact for the Department.

“(2) Notification.—

“(1) IN GENERAL.—The Secretary shall notify the requestor of the decision of the Secretary under subparagraph (A) in such form and at such time as the Secretary and the requestor agree.

“(2) Denial.—If a request is denied, the Secretary shall provide the requestor with a detailed explanation of the reasons of the Secretary with the notification under clause (1).”

**(c) Duties.—**
$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 Secretary an amount equal to 10 per centum of the costs incurred by the Secretary in acquiring such lands or interests in lands, or such lesser percentage which represents the State’s pro rata share of project costs as determined in accordance with subsection (c) of section 120 of this title.

The authority granted by this section shall also apply to lands and interests in lands received as grants of land from the United States 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

1 See References in Text note below.