

L. 109–59, title I, §1104(a), Aug. 10, 2005, 119 Stat. 1163; Pub. L. 110–244, title I, §101(m)(3)(B), June 6, 2008, 122 Stat. 1576.)

REFERENCES IN TEXT

Section 1404 of the SAFETEA–LU, referred to in subsec. (a)(2)(L), is section 1404 of Pub. L. 109–59, which is set out as a note under section 402 of this title.

Section 1303 of the SAFETEA–LU, referred to in subsec. (a)(2)(N), is section 1303 of Pub. L. 109–59, which is set out as a note under section 101 of this title.

The date of enactment of the SAFETEA–LU, referred to in subsec. (b)(1)(B), (2), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS

2008—Subsecs. (a)(2)(C), (b)(2)(C). Pub. L. 110–244 struck out “replacement and rehabilitation” after “highway bridge”.

2005—Pub. L. 109–59 amended section catchline and text generally, substituting provisions relating to equity bonus program for allocating amounts among the States for each of fiscal years 2005 through 2009 for provisions relating to minimum guarantee to each State of funds apportioned under this chapter for each of fiscal years 1998 through 2003.

1998—Pub. L. 105–178 amended section catchline and text generally, substituting provisions relating to minimum guarantee to each State of funds apportioned under chapter for provisions relating to programs to be submitted by State highway departments for approval by Secretary for utilization of funds apportioned under chapter.

Subsec. (a). Pub. L. 105–178, §1104(c)(1), as added by Pub. L. 105–206, §9002(d), inserted at end “The minimum amount allocated to a State under this section for a fiscal year shall be \$1,000,000.”

Subsec. (c)(1). Pub. L. 105–178, §1104(c)(2), as added by Pub. L. 105–206, §9002(d), struck out “50 percent of” after “shall apportion” in introductory provisions.

Subsec. (c)(1)(A). Pub. L. 105–178, §1104(c)(3), as added by Pub. L. 105–206, §9002(d), inserted “(other than metropolitan planning, minimum guarantee, high priority projects, Appalachian development highway system, and recreational trails programs)” after “subsection (a)”.

Subsec. (c)(1)(B). Pub. L. 105–178, §1104(c)(4), as added by Pub. L. 105–206, §9002(d), substituted “each State” for “all States”.

Subsec. (c)(2). Pub. L. 105–178, §1104(c)(5), as added by Pub. L. 105–206, §9002(d), substituted “administer” for “apportion” and “administered” for “apportioned”.

Subsec. (f)(1). Pub. L. 105–178, §1104(c)(6)(A), as added by Pub. L. 105–206, §9002(d), inserted “percentage” before “return”.

Subsec. (f)(2). Pub. L. 105–178, §1104(c)(6)(A), (B), as added by Pub. L. 105–206, §9002(d), inserted “percentage” before “return” and substituted “in the table in subsection (b) was equal to” for “for the preceding fiscal year was equal to or less than”.

Subsec. (f)(3). Pub. L. 105–178, §1104(c)(6)(C), as added by Pub. L. 105–206, §9002(d), inserted “proportionately” before “adjust”, struck out “set forth” before “in subsection (b)”, and substituted “is equal to” for “do not exceed”.

Subsec. (f)(4). Pub. L. 105–178, §1104(c)(6)(A), as added by Pub. L. 105–206, §9002(d), inserted “percentage” before “return”.

1991—Subsec. (k). Pub. L. 102–240 added subsec. (k).

1983—Subsec. (h). Pub. L. 97–424 added subsec. (h).

1978—Subsec. (b). Pub. L. 95–599, §111, inserted provision relating to selection of program projects after consultation with local officials in situations where public roads and highways are under control and supervision of State highway departments.

Subsec. (g). Pub. L. 95–599, §112, substituted “public airports, public ports for water transportation, new town communities, and new town-intown communities,” for “public airports and public ports for water transportation.”

1973—Subsec. (d). Pub. L. 93–87 substituted “projects be selected by the appropriate local officials with the concurrence of the State highway department of each State and, in urbanized areas, also in accordance with the planning process required pursuant to section 134 of this title”, for “projects be selected by the appropriate local officials and the State highway department in cooperation with each other”.

1970—Subsecs. (d) to (f). Pub. L. 91–605, §106(d), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (g). Pub. L. 91–605, §132, added subsec. (g).

1966—Subsec. (e). Pub. L. 89–564 added subsec. (e).

1960—Subsec. (e). Pub. L. 86–624 repealed subsec. (e) which required the Secretary, in approving programs in Hawaii, to give preference to such projects as will expedite the completion of highways for the national defense or which will connect seaports with units of the national parks.

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.

ACCELERATION OF PROJECTS

Section 129 of Pub. L. 97–424 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, 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 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 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 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)¹ 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 appor-

¹ See References in Text note below.