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REGULATIONS FOR CARRYING INTO EFFECT THE PROVISIONS OF THE FEDERAL-AID HIGHWAY ACT OF 1944 AND THE FEDERAL-AID ROAD ACT OF JULY 11, 1916, AS AMENDED AND SUPPLEMENTED

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REGULATIONS

SECTION 1.1 *Definitions.*—For the purposes of these regulations the following terms shall be construed, respectively, to mean:

(a) *Act.*—The Federal-Aid Road Act of July 11, 1916, and all acts amendatory thereof or supplementary thereto (U. S. C., title 23), and the "Federal-Aid Highway Act of 1944" (Public Law 521—78th Congress), except those provisions which relate to national forest roads and highways, national park and national park approach roads and parkways, and Indian reservation roads under the act of May 26, 1928 (45 Stat. 750).

(b) *Administrator.*—The Federal Works Administrator, Federal Works Agency.

(c) *Commissioner.*—The Commissioner of Public Roads, Public Roads Administration, Federal Works Agency.

(d) *State highway department.*—The department of each State government adequately organized and equipped to exercise all the functions incident to oper-



ations under the Federal highway legislation and authorized, by the laws of the State, to make final decisions for the State in all matters relating to, and to enter into on behalf of the State, all contracts and agreements providing for State-Federal cooperative road projects.

(e) *Latest available Federal census.*—The Federal census of 1940.

(f) *Urban area.*—An area including and adjacent to a municipality or other urban place, of five thousand or more, listed in Tables 13 and 14, Volume I, Sixteenth Census of the United States, 1940, published by the U. S. Department of Commerce, Bureau of Census, 1942.

(g) *Rural areas.*—All areas of the State not included in "urban areas."

SEC. 1.2 *Intent of the act (Federal-Aid Highway Act of 1944).*—The Federal-Aid Highway Act of 1944 is held:

(1) To establish the pattern for a long-range program of highway development designed for the national defense and to serve the major classes of highway traffic broadly defined as (a) interstate or interregional, (b) intercity or intrastate, (c) rural secondary or farm-to-market, and (d) intra-urban, restricted in cities above five thousand to general use streets which are extensions of Federal-aid routes;

(2) To recognize the State highway department as the legal representative of the State including all Government subdivisions in the administration of the act within each State;

(3) To provide for a more comprehensive rural-road program through cooperation between the State highway department, the county or other appropriate local road officials and the Public Roads Administration in the selection and improvement of the system of principal secondary or feeder roads;

(4) To insure continuity in the direction of expenditures to accomplish the objectives of the long-range program by the selection of road systems as defined in section 1.4 and by an annual improvement program of projects lying upon each system (see sec. 1.6);

(5) To create for the purposes of the act "urban areas" predicated upon the characteristic urban quality of traffic which overflows municipal boundaries into suburban communities and to make provision for aiding the planning and development of arterial highways to serve such areas.

SEC. 1.3 *Organization and powers of State highway department.*—Each State shall maintain at its own expense a State highway department as defined in section 1.1, having adequate powers and suitably equipped and organized to discharge to the satisfaction of the Administrator the duties required by the act and by these regulations. From time to time as the Administrator may determine, there shall be furnished to him, by or on behalf of a State, information concerning: (1) Laws affecting roads and the authority of the State and local officials in reference to the acquisition of rights-of-way, construction, maintenance, and control of roads; (2) the State highway department, how equipped and organized; (3) constitutional and legislative provisions relative to revenues for the administration, construction, reconstruction, and maintenance of roads; and (4) funds that will be available to meet the State's share of the cost of construction work to be performed and the sources of such funds.

SEC. 1.4 *Selection and designation of highway systems.*—The highway systems designated to become the pattern for the long-range development of adequate highway service shall be so selected as to form an integrated net within each State and with like systems at State boundaries. There is no predetermined time limit for the submission of the full selection of the systems and no fixed maximum for the mileage of the systems other than the specific limitations of the act.

Projects on the presently approved Federal-aid highway system, and on secondary road systems which were selected in cooperation with appropriate local road officials as required by section 3 (b) of the Federal-Aid Highway Act of 1944, may be included in programs proposed by the State highway department for improvement under the act without further system approvals. Prior to the inclusion in the program of projects lying off the approved systems, the routes of which such projects form an integral part shall be submitted by



the State highway department and approved by the Commissioner as routes of the appropriate system.

The extent of the over-all mileage of the systems as finally approved shall be determined by the ratio of the estimated annual income, that will be available from all sources for, and the estimated annual costs of, the maintenance, construction, and reconstruction of the mileage included in the long-range program and shall be so balanced as to permit completion of the initial improvements within a reasonable period of years. The conservation and development of natural resources and of economic and social values, particularly those encouraging desirable land utilization, by providing adequately improved and maintained highways are to be given greater weight in the selection of routes for inclusion in the several systems than is the existing numerical traffic volume.

The highway systems to be selected and designated in accord with the requirements of the act are:

(a) A national system of interstate highways as required by section 7 of the Federal-Aid Highway Act of 1944.

(b) The Federal-aid highway system as now constituted and approved, with such revisions as may be approved. Transfers, if conditions warrant, may be made between the systems.

(c) A system of principal secondary and feeder roads as required by section 3 (b) of the Federal-Aid Highway Act of 1944. The roads selected shall be roads not included in the Federal-aid highway system and shall be exclusively within "rural areas," except that in States which have a population density exceeding 200 per square mile, roads and streets within "urban areas" may be included. The system so selected in cooperation with local road officials shall be submitted to the Commissioner of Public Roads in the form required by him and shall be subject to his approval.

The manner of cooperation with county, municipal, or other appropriate local road officials to meet the requirements of section 3 (b) of the act shall be determined and exercised by each State highway department.

**SEC. 1.5** *Establishment of "urban area" boundaries.*—Prior to the inclusion in a proposed program of any project involving funds authorized for urban areas, the boundaries of the particular urban area or areas involved shall be submitted by the State highway department and approved by the Commissioner, in accord with the terms of the act. Projects in urban areas for which the boundaries have been established may be approved prior to the determination of the boundaries of all urban areas within a State.

**SEC. 1.6** *Programs of proposed projects.*—Each State highway department shall prepare and submit to the Commissioner for approval detailed programs of proposed projects for the utilization of any apportionment of funds made to the State under the provisions of the act. These programs shall be in such form and shall be supported by such information as the Commissioner may require.

**SEC. 1.7** *Project statements.*—(a) A project statement, on a form furnished by the Commissioner, may be submitted for the whole or a substantial part of a continuous route embraced in the Federal-aid highway system or in the system of principal secondary and feeder roads selected or designated in accordance with the provisions of the act.

(b) Each project statement shall be accompanied by such information as the Commissioner may require, including a sketch map in sufficient detail and covering such length of road as may be necessary to determine the fitness of the general location for improvement on the road system of which it forms a part.

(c) The Commissioner shall not authorize the advertisement of any project and shall not concur in the award of any contract for any project until the project statement has been approved.

**SEC. 1.8** *Surveys, plans, specifications, and estimates.*—(a) Surveys, plans, specifications, and estimates for all projects shall be prepared by or under the immediate direction of the State highway department and shall show in convenient form and detail the work to be performed and the probable cost thereof, all in conformity with the standards governing form and arrangement prescribed by the Commissioner.

(b) The State highway department may utilize the services of well-qualified



and suitably equipped engineering organizations of counties, municipalities, or other local subdivisions, acting under its direction, for making surveys, preparing plans, specifications, and estimates, and for supervising the construction of any project. Inasmuch as the act requires each State to maintain at its own expense a State highway department having adequate powers and suitably equipped and organized to discharge the duties required, no part of the cost of maintaining the central office of a State highway department or the central office of any publicly maintained engineering organization which may be utilized by the State shall be paid with Federal funds.

The State highway department may utilize the services of the engineering organizations of the affected railroad companies for railway-highway crossing projects subject to the same limitations as to the general overhead costs.

The services of private engineering organizations and of consulting engineers may be utilized on the basis of contracts for work of an unusual character requiring highly specialized knowledge and experience.

(c) Until plans, specifications, and estimates for a project or part thereof have been submitted and found satisfactory by the authorized representative of the Commissioner, and the State has been so notified, no project or part thereof shall be advertised for contract.

(d) If any part of the cost of a project is to be provided by a county, municipality, or other local subdivision of a State, the State highway department shall determine the official actions to be taken by, and shall enter into such agreements with, the appropriate local officials as the department shall find desirable to safeguard its responsibility under the act for the fulfillment of the project agreement and the continuous maintenance of the project.

SEC. 1.9 *Project agreements.*—(a) A project agreement between the State highway department and the Commissioner shall be executed for each project on a form furnished by the Commissioner. No payment on any project shall be made by the United States unless and until such agreement has been executed, or nor on account of costs incurred prior to authorization by the authorized representative of the Commissioner.

(b) Subsequent to execution of the project agreement no change shall be made which will increase the cost of a project to the Federal government or alter its termini, type, or other conditions except upon agreement with the Commissioner.

SEC. 1.10 *Construction and contracts.*—(a) Actual construction work shall be performed by the contract method unless another method is recommended by the State highway department and approved by the Commissioner for the reason that, under the circumstances, the interests of the public will be served, or that the proposed work is of a character not adapted to normal contract procedures. Before any work is undertaken by direct labor, the State highway department shall determine that the organization that is to undertake the work is able and equipped to perform such work at reasonable costs and favorably comparable with similar contract work.

(b) No part of the Federal money set aside on account of any project shall be paid until it has been shown to the satisfaction of the Commissioner that adequate methods, either advertising or other devices appropriate for the purpose, were employed, prior to the beginning of construction, to insure economy and efficiency in the expenditure of such money. An advertising period of two weeks may be accepted, provided a suitable mailing list of contractors is maintained by a State highway department to whom notices of new work are mailed, and public advertisement is inserted at least once a week for two weeks in such publications as will insure adequate publicity, the first insertion to be two weeks prior to the opening of bids. In case of emergency an advertising period of less than two weeks, or another method insuring competitive prices, may be approved.

(c) All contracts for the construction of highways under the act shall require the contractor to furnish all materials entering into the work, except as otherwise authorized by the prior approval of the Commissioner. No requirement shall be contained in any contract entered into by any State providing price differentials for, requiring the use of, or otherwise discriminating in favor of materials produced within the State.



(d) No procedure or requirement shall be approved which, in the judgment of the Administrator, is designed or may operate to prevent the submission of a bid by, or the award of a contract to, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed, such as laws or regulations which require the licensing of a contractor before he may submit a bid or which prohibit the consideration of a bid submitted by a contractor not so licensed, or rules which govern the prequalification of contractors by which the amount of work that may be awarded to a contractor is limited otherwise than by a full and appropriate evaluation of his experience, equipment, financial resources, and performance record.

(e) No contract for any project or part thereof shall be entered into or award therefor made by any State without prior concurrence in such action by the Commissioner, and no alteration in the contract subsequently shall be made without the approval of the Commissioner.

(f) Where bids for a project are received on alternate types of construction, the award of contract shall be made to the responsible bidder submitting the lowest acceptable bid irrespective of type, unless it be satisfactorily shown that it is in the public interest to accept a higher bid.

(g) All contracts for projects under the act shall contain suitable stipulations designed to insure that the contractor shall perform with his own organization not less than 80 percent of the work, exclusive of items not commonly found in contracts for similar work, or which require highly specialized knowledge, craftsmanship, or equipment not ordinarily available in contracting organizations which perform work of the character involved. A contractor who states in his proposal a particular item or items which he proposes to sublet, and names the subcontractor to whom he proposes to sublet such work, may, if such item or items do not constitute the major item or items of the contract, have such item or items performed by the subcontractor named.

(h) No part of the money apportioned under the act shall be used, directly or indirectly, to pay or to reimburse a State, county, or local subdivision for the payment of any premium or royalty on any patented or proprietary material, specification, or process for a distinctive type of construction unless purchased or obtained on open actual competitive bidding at the same or a less cost than unpatented articles or methods, if any, equally suitable for the same purpose: *Provided, however,* That patented or proprietary articles or methods of reasonable cost which constitute minor elements of a contract item may be specified and paid for if purchased in competition with one or more equally suitable patented or proprietary articles or methods or if information is included in the advertisement stating the price at which such patented or proprietary articles or methods are available to all contractors. Manufactured patented or proprietary articles which constitute a major part of the cost of a contract item may be specified and paid for if competition is assured with unpatented or nonproprietary articles or between two or more manufactured patented or proprietary articles accepted as equally suitable for the same purpose. Nothing in this section shall be construed as a prohibition against the use of any patented or proprietary material, specification, or process for a distinctive type of construction on relatively short sections of road for experimental purposes.

(i) Construction engineering and inspection charges reimbursable with Federal funds shall be limited to the salaries of individuals directly employed on a project and to other necessary costs incurred in connection with such engineering and inspection.

(j) Where a public or private utility occupies a public highway right-of-way and the facilities of such utility have to be moved, adjusted, or changed because of the construction of a project, the State highway department shall make a formal finding as to the extent that such utility is required to move, adjust, or change its facilities at its own expense, or is relieved of that obligation by law or otherwise. The Commissioner will determine in all such cases whether reimbursement from Federal funds may be made. Reimbursement from Federal funds in any case shall not exceed the regular Federal pro rata share of the cost of such work actually paid by the State or its subdivisions. Work for the necessary adjustment of public utility facilities in connection with the construction of a project may be undertaken, if so determined by the State highway department, by the utility concerned on a force account basis. Maintenance of railroad traffic, including temporary support trestles, track adjustments, signal installa-



tions and adjustments, the rearrangement of telegraph and telephone lines on railroad rights-of-way, and the adjustment of existing drainage facilities, may be undertaken by the railroad or other utility involved, by agreement with the State highway department. Any material furnished by a railroad company or other utility for temporary work will be reimbursed at actual cost less fair salvage value when the material is released.

SEC. 1.11 *Roadside improvements.*—To insure proper treatment of the roadsides, to eliminate insofar as possible the scars of construction, and to provide footpaths or other safety facilities, the project agreement shall prescribe what part of the work of this character is to be performed as a part of the original construction of a project and what part, if any, at a later date.

SEC. 1.12 *Right-of-way.*—Federal participation in right-of-way shall be restricted to costs of new or additional lands required and acquired subsequent to July 13, 1943, and subsequent to the date of approval of the program which includes the project for which such right-of-way is acquired. Payment will not be made for any land owned by a State or its subdivisions that is not acquired for and used as a part of the right-of-way for such project, but payment may be made in proper cases for the readjustment, repair, or restoration of facilities and improvements on such publicly owned lands made necessary by reason of the construction of the highway project thereon. Only such right-of-way costs as are paid from public funds of the State or its subdivisions shall be eligible for reimbursement.

SEC. 1.13 *Labor and employment.*—(a) No convict labor shall be employed and no materials manufactured or produced by convict labor shall be used on any project constructed under these regulations.

(b) If a local employment service is maintained by the Federal government or by the Federal government in cooperation with the State, in the vicinity of any work undertaken under the act, the contract may require that unskilled labor for a project shall be selected from qualified workers referred by such agency.

(c) To prevent the exploitation of labor all contracts shall prescribe the minimum rates of wages for skilled, intermediate, and unskilled labor, as predetermined by the State highway department, which contractors shall pay, and such minimum rates shall be stated in the specifications advertised in the call for bids on the proposed project.

(d) All contracts for the construction of projects shall require that the wages of all labor shall be paid in legal tender of the United States. This condition will be considered satisfied if payment is made by a negotiable check on a solvent bank, which may be readily cashed by the employee in the immediate community for the full amount, without discount or collection charges of any kind.

SEC. 1.14 *Highway planning and research projects.*—Each State highway department shall prepare and submit a detailed program of proposed engineering and economic investigations and highway research necessary in connection therewith, showing the amount of Federal and State funds proposed for expenditure on each item of the program. The program shall be subject to the approval, project statement, and project agreement procedure provided for construction projects. Pending the submission and approval of a final program 1½ per centum of the total apportionment to each State shall be reserved for highway planning and research projects.

SEC. 1.15 *Railway-highway crossing projects.*—(a) Before a project for the elimination of hazards at a railway-highway crossing shall be approved for construction an agreement shall be entered into between the State highway department and the railroad concerned for the construction and maintenance of such project. For each such project financed in whole or in part from funds provided under the Federal-Aid Highway Act of 1944 an estimate of the total benefits to the railroad and of anticipated contributions of every kind from the railroad, with supporting data, shall be submitted with the plans, specifications, and estimates and such estimate of benefits and contributions shall be included in the agreement between the State highway department and the railroad.

(b) State laws pursuant to which contributions are imposed upon railroads



for the elimination of hazards at railway-highway crossings shall be held not to apply to Federal-aid projects.

SEC. 1.16 *Coordination of airport and highway location.*—Federal highway funds shall not be used for the reconstruction or relocation of any highway giving access to, or closed or impaired by, an airport hereafter constructed or extended, unless, prior to such construction or extension, the State highway department and the Public Roads Administration have concurred with the officials in charge of the airport that the location or extension of such airport and the consequent reconstruction or relocation of the highway are in the public interest.

SEC. 1.17 *Maintenance of projects.*—(a) Maintenance of all projects constructed under the provisions of the act shall be the responsibility of the State except for those projects or portions thereof which may be eliminated from the Federal-aid highway system or from the system of principal secondary and feeder roads through relocation in connection with further improvement of a project. The State highway department, acting under the laws of the State, may provide for maintenance of Federal-aid projects by agreement with municipal or other local authorities, but the responsibility of the State to maintain such projects satisfactorily remains unchanged under the requirements of section 14 of the Federal Highway Act.

(b) A project for which the State highway department proposes to provide maintenance by an agreement with a municipality or a county shall not be approved if any project previously improved with Federal funds under the provisions of the Federal Highway Act, as amended and supplemented, which the said county or other subdivision has agreed to maintain, is not being satisfactorily maintained as determined by the Commissioner.

SEC. 1.18 *Traffic signs and signals.*—(a) All signs and traffic-control devices and other protective structures, whether paid for from Federal or other funds, erected on or in connection with highways or structures on which Federal funds are expended, shall be in conformity with such manual of uniform traffic-control devices as may be adopted by the American Association of State Highway Officials, approved by the State highway department, and concurred in by the Commissioner.

(b) The rights-of-way provided for Federal-aid highway projects shall be held inviolate for public highway purposes and no signs (other than those specified in paragraph (a) of this section), posters, billboards, roadside stands, or other private installations shall be permitted within the right-of-way limits.

SEC. 1.19 *Diversion of gasoline and motor-vehicle taxes—reduction of apportionment.*—If the Administrator shall find at any time that lesser amounts of the revenues derived from State motor-vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators in any State are required by its laws to be applied to highway purposes than were required to be so applied by the laws of such State on June 18, 1934, he shall take such action as he may deem necessary to comply with the provisions of section 12 of the act of June 18, 1934 (48 Stat. 995), by reducing the apportionment of Federal funds to such State by not to exceed one-third of the amount to which it otherwise would be entitled for any fiscal year in which such finding may be made.

SEC. 1.20. *Records and cost keeping.*—(a) Such records of the cost of construction, of inspection, of tests, and of maintenance done by or on behalf of the State, shall be kept, by or under the direction of the State highway department, as will enable the State to report, upon the request of the Commissioner, the amount and nature of the expenditure for these purposes.

(b) The accounts and records, together with all supporting documents, shall be open at all times to inspection by the Commissioner, or his authorized representatives, and copies thereof shall be furnished when requested.

SEC. 1.21 *Payments.*—Vouchers in the form provided by the Commissioner and certified as therein prescribed, showing amounts expended on any project and the amount claimed to be due from the Federal government, shall be submitted by the State highway department to the Public Roads Administration, either after completion of the project or as the work progresses.



SEC. 1.22 *Advance of funds.*—If necessary to enable any State highway department to make prompt payment for work as it progresses and thereby insure expeditious completion of projects, the Commissioner may advance the Federal share of the cost of such projects to any State that does not after June 30, 1945, divert to other than highway uses road-user revenues in violation of section 12 of the act of June 18, 1934 (48 Stat. 995). Such advances shall be made in such manner and subject to such conditions as may be prescribed by the Commissioner.

SEC. 1.23 *Delegation of authority.*—In carrying out the provisions of the act, the Commissioner is hereby authorized to delegate such of the duties and responsibilities imposed upon him to such official or officials of the Public Roads Administration as in his judgment will result in economy and efficiency in effectuating the purposes of the act and of these regulations.

SEC. 1.24 *Operating procedures and instructions.*—The Commissioner is hereby authorized to issue such operating procedures and instructions not in conflict with the act or with these regulations as he may deem necessary for carrying out the provisions and effectuating the purposes of the act and these regulations, and all such operating procedures and instructions issued by him shall be and continue in full force and effect from the date on which issued or made effective until modified or revoked by him.

SEC. 1.25 *Application of regulations.*—These regulations shall apply to all provisions of the act and to all classes of projects thereunder, shall take effect upon approval, and shall supersede the rules and regulations approved by the Secretary of Agriculture February 27, 1935, "For Carrying out the Federal Highway Act (Except the Provisions Thereof Relative to Forest Roads)," the rules and regulations approved by the Secretary of Agriculture January 13, 1939, "For Construction of Secondary or Feeder Roads Under Act of June 8, 1938," and the rules and regulations approved by the Secretary of Agriculture April 11, 1939, "For Elimination of Hazards at Grade Crossings Under Act of June 8, 1938," and all amendments thereof.

Recommended for Issuance:

THOS. H. MACDONALD,  
*Commissioner of Public Roads.*

APRIL 21, 1945.

Issued:

PHILIP B. FLEMING,  
*Federal Works Administrator.*

APRIL 21, 1945.